

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

FILING DETAILS

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**INTERNATIONAL CO-PROSECUTOR'S DISCLOSURE OF TWO CASE 003
DOCUMENTS INTO CASE 002**

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I. DISCLOSURE

1. The International Co-Prosecutor (“Co-Prosecutor”) hereby discloses two Written Records of Interview admitted in Case 003, which fall within the Co-Prosecutors’ disclosure obligations in relation to the current S-21 Security Centre Segment in Case 002 (“Materials”). The Materials are identified in Strictly Confidential **Annex 1**.
2. The Co-Prosecutor sought leave to disclose the first document in this disclosure via a request made to the Co-Investigating Judges (“CIJ’s”) on 16 March 2015.¹ The Co-Prosecutor sought leave to disclose the second document via an urgent request made to the Co-Investigating Judges (“CIJ’s”) on 25 April 2016.² The International Co-Investigating Judge (“ICIJ”) granted both requests in relation to the Materials on 25 April 2016.³ The decision was distributed to the Trial Chamber on its issuance. The Co-Prosecutor apologises to the Chamber and Parties for the delay in disclosing the second document. It was inadvertently overlooked during our review for the S-21 segment due to the use of a different spelling of the witness’s name on Zylab and in our internal database.
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 2015.⁴ 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 002/02.⁵ It also directed the Co-Prosecutors to disclose Case 003 and 004 statements of all individuals who have been proposed to testify in Case 002/02.⁶ The Trial Chamber further held that any additional Case 003 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).⁷

¹ Case 003- **D100/7** International Co-Prosecutor’s Request to Disclose Case 003 Documents Relevant to the Case 002/02 Trial, 16 March 2015.

² Case 003-**D193** International Co-Prosecutor’s Urgent Request to Disclose One Case 003 Document Relevant to S-21 into Case 002, 25 April 2016.

³ Case 003- **D100/20** Decision on International Co-Prosecutor’s Urgent Request to Disclose One Case 003 Document Relevant to S-21 into Case 002, 25 April 2016. The ICIJ indicated that he authorised the disclosure of D114/43 in the text of Case 003-**D100/19** Decision on the International Co-Prosecutor’s Case 002 Disclosure Requests D100, D100/2, D100/6, D100/7 and D100/8, 14 May 2015, however the document was not listed in Annex C of the decision. The ICIJ therefore clarified that this exclusion was inadvertent and that disclosure is authorised.

⁴ **E363/3** Decision on Khieu Samphan Defence Motion Regarding Co-Prosecutors’ Disclosure Obligations, 22 October 2015.

⁵ *Ibid.*, paras 21-24, disposition, EN 01157631-33, 01157640-41.

⁶ *Ibid.*, paras 25-27, disposition, EN 01157634-35, 01157640-41.

⁷ *Ibid.*, paras 28-30, disposition, EN 01157635-36, 01157640-41.

4. 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.⁸
5. 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.⁹ Therefore, the Co-Prosecutor notifies the Trial Chamber of the documents contained in **Annex 1** on a strictly confidential basis.
6. Authorisation to disclose the Materials is subject to the following requirements imposed by the ICIJ:¹⁰
 - a. that all material provided from Case 003 be treated as confidential;
 - b. in the event that the Materials are admitted as evidence in Case 002/01, they shall be treated as confidential;
 - c. in the event the witnesses whose WRIs are authorised for disclosure are called to testify, they can do so in open sessions of the court, provided their names and identities are kept confidential;
 - d. the Materials shall not be disseminated beyond those explicitly identified herein;
 - e. the Materials 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. any party, counsel, or other individual who reads from, cites, or otherwise uses any of the WRIs disclosed shall identify the witnesses mentioned by the person interviewed only by their assigned pseudonym for Case 002/02 and use descriptions reasonably calculated to avoid identifying the witnesses by other information;
 - g. the records of 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;

⁸ **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.

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

¹⁰ Case 003-**D193** International Co-Prosecutor's Urgent Request to Disclose One Case 003 Document Relevant to S-21 into Case 002, 25 April 2016, para. 9.

- h. 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 fer* (4), respectively, along with their officially assigned interns;
- i. 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. 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; and
- k. should any member of the Parties or the Trial Chamber in Case 002/02 learn of an unauthorised copy of the Materials authorised for disclosure, he/she shall immediately take all measures to secure and return the copy to the CIJs;
- 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.

II. RELIEF REQUESTED

- 7. Therefore, the Co-Prosecutor requests that the Trial Chamber obtain and place onto Case File 002 the documents identified in **Annex 1**.

Respectfully submitted,

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