



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Royaume du Cambodge
Nation Religion Roi

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des Tribunaux cambodgiens

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត
Office of the Co-Investigating Judges
Bureau des co-juges d'instruction

Case File No: 004/07-09-2009-ECCC-OCIJ

Before: The Co-Investigating Judges
Date: 13 March 2015
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**ORDER VARYING DECISIONS D193/4, D193/6, D193/8, D193/10,
D193/11, D193/13, D193/15, AND D193/16 ON INTERNATIONAL
CO-PROSECUTOR'S REQUESTS TO DISCLOSE MATERIALS
IN CASE 002/02**

Distribution:

Co-Prosecutors Trial Chamber
CHEA Leang
Nicholas KOUMJIAN



Noting the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004;

Noting the Co Prosecutors' Third Introductory Submission, filed on 7 September 2009;¹

Noting the Co-Prosecutors' Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom, filed on 18 July 2011;²

Noting the Co-Prosecutor's Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence, filed on 24 April 2014;³

Noting the judicial investigation opened in relation to alleged violations of the **1956 Penal Code**, the **Convention on the Prevention and Punishment of the Crime of Genocide**, the **Geneva Conventions of 1949**, and **Crimes against Humanity**, punishable under Articles 3 (new), 4, 5, 6, 29 and 39 of the ECCC Law; and Articles 209, 210, 500, 501, 503, 504, 505, 506, 507 and 508 of the 1956 Penal Code;

Noting Rules 53, 56, 72, 80 and 87 of the ECCC Internal Rules ("Internal Rules");

Noting the Disagreements registered on 22 February 2013, 5 April 2013 and 19 September 2013;

Noting the memorandum of 16 August 2013 from the President of the Trial Chamber concerning information concerning Case 003 and Case 004 witness statements that may be relevant to Case 002 ("Memorandum");⁴

Considering the *Request for Variance of Restrictions Regarding the Disclosure of Case 003 and Case 004 Statements*, filed by the Trial Chamber on 5 March 2015 ("Request");⁵

PROCEDURAL HISTORY

1. The International Co-Investigating Judge ("International CIJ") recalls and incorporates by reference the procedural history summarised in paragraphs 1 to 7 in the 14 October Decision.⁶
2. On 14 October 2014, the International CIJ granted the International Co-Prosecutor's ("ICP") Second and Third Requests for disclosure of records of

¹ Case File No. 004-D1, *Co-Prosecutors' Third Introductory Submission*, 20 November 2008 ("Third Introductory Submission"); Case File No. 004-D1/1, *Acting International Co-Prosecutor's Notice of Filing of the Third Introductory Submission*, 7 September 2009.

² Case File No. 004-D65, *Co-Prosecutors' Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom*, 18 July 2011.

³ Case File No. 004-D191, *Co-Prosecutors' Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence*, 24 April 2014.

⁴ Case File No. 002/E127/7/1, *Information Concerning Case 003 and Case 004 Witness Statements That May be Relevant to Case 002*, 16 August 2013.

⁵ Case File No. 004-D193/18, *Request for Variance of Restrictions Regarding the Disclosure of Case 003 and Case 004 Statements*, 5 March 2015.

⁶ Case File No. 004-D193/4, *Decision on Co-Prosecutors' Urgent Request to Disclose Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial*, 14 October 2014 ("14 October Decision").



interviews of 26 witnesses, and remained seized in relation to one, based on the changes in circumstances to the 8 May Decision.⁷ In so doing, the International CIJ instituted a range of restrictions and modalities on the disclosure of the statements to the Trial Chamber and parties in Case 002/02.⁸ Between November 2014 and March 2015, the International CIJ issued further decisions authorising disclosure of material from Case 004 to Parties in Case 002/02 based on requests from the ICP.⁹

3. On 5 March 2015, the Trial Chamber requested the International CIJ to reconsider the conditions and modalities of disclosure to Case 002/02 Parties based on a request by the NOUN Chea Defence. The Trial Chamber specifically relayed the request for (a) the inclusion of interns within the meaning of Defence teams that can access the disclosed material; and (b) electronic access to the disclosed material. The Trial Chamber considers that these measures would be beneficial to the Parties and expedite their familiarisation with the disclosed material.¹⁰

DISCUSSION

4. The International CIJ considers that the Request are determined by practical considerations that would facilitate more efficient use of the material disclosed to Case 002/02 Parties. The two variations do not materially alter the conditions and restrictions, but only the modalities, of the disclosures approved by the International CIJ. Accordingly, all relevant paragraphs in D194/4, D193/6, D193/8, D193/10, D193/11, D193/13, D193/15 and D193/16 are varied as stated below.

FOR THE FOREGOING REASONS, I, MARK B. HARMON, HEREBY:

- # **AUTHORISE** disclosure of the [materials] of [requested witness/s] from Case 004/003 to the Trial Chamber and the Parties in Case 002/02. Owing to the confidential and sensitive nature of the ongoing investigations in Case 004, this disclosure is authorised with the following modalities and restrictions:

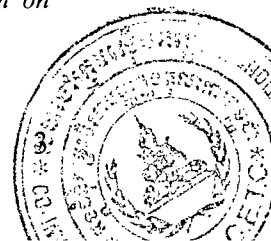
- (a) that all material provided from Case 004 be treated as confidential;

⁷ 14 October Decision, paras 19-20; Case File No. 004-D193/2, *Co-Prosecutor's Urgent Request to Disclose Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial*, 25 September 2014 ("Second Request"); Case File No. 004-D193/3, *Co-Prosecutor's Further Request to Disclose Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial*, 9 October 2014 ("Third Request").

⁸ 14 October Decision, paras. 19-20, 23.

⁹ Case File No. 004-D193/6, *Decision on International Co-Prosecutor's Urgent Request to Disclose Newly Posted Case 004 Interviews Relevant to 1st Segment of Case 002/02 Trial*, 3 November 2014; Case File No. 004-D193/8, *Partial Decision on International Co-Prosecutor's Urgent Request to Disclose Case 004 Interviews Relevant to Case 002/02 Trial And Case 002/01 Appeal*, 21 January 2015; Case File No. 004-D193/10, *Amendment of Disclosure Decisions D193/4, D193/6, And D193/8*, 30 January 2015; Case File No. 004-D193/11, *Decision on International Co-Prosecutor's Case 002 Disclosure Requests D193/7 and D193/9*, 4 February 2015; Case File No. 004-D193/13, *Decision on International Co-Prosecutor's Case 002 Disclosure Requests Concerning A Witness*, 24 February 2015; Case File No. 004-D193/15, *Decision on International Co-Prosecutor's Case 002 Disclosure Requests D193, D193/7, and D193/9*, 11 March 2015; Case File No. 004-D193/16, *Decision on International Co-Prosecutor's Case 002 urgent Disclosure Request D193/14*, 11 March 2015.

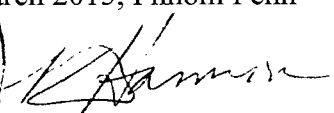
¹⁰ Request, p. 1.



- (b) the authorised material shall be electronically converted to any format that permits an indelible watermark as sub-script on each page of every document individualised for each receiving party;
- (c) the records of the authorised interviews 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 watermarked and individualised electronic copies;
- (d) the OCP shall only provide disclosure in a manner that each party can only access electronic copies with their individualised watermark;
- (e) the Defence Counsel, Standby Counsel and Civil Party Lead Co-Lawyers shall disclose the material provided pursuant to this decision only to those members of their teams that are officially retained under Internal Rule 22(5) and 12 *ter* (4), respectively, along with their officially assigned interns;
- (f) 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;
- (g) 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;
- (h) in the event that the material provided pursuant to this decision is admitted as evidence in Case 002/02, it shall be treated as confidential;
- (i) no material provided pursuant to this decision shall be disseminated beyond those explicitly identified herein;
- (j) no material provided pursuant to this decision shall be disseminated to the public, in any format or via any form of media whatsoever;
- (k) 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.

5. This Decision is filed in English, with a Khmer translation to follow.

Dated: 13 March 2015, Phnom Penh



Judge Mark B. Harmon
សមាជិកក្រុមស៊ើបអង្កេតអន្តរជាតិ

International Co-Investigating Judge
Co-juge d’instruction international