



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

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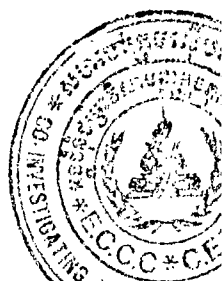
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**THIRD ORDER ON INTERNATIONAL
CO-PROSECUTOR'S REQUEST TO DISCLOSE IN CASE 002/02
THE IDENTITY OF CERTAIN WITNESSES
INTERVIEWED IN CASE 004**

Distribution:

Co-Prosecutors
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Noting the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004 (“ECCC Law”);

Noting the 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 55, 72 and 87 of the ECCC Internal Rules (“Internal Rules”);

Considering the International Co-Prosecutor’s Request to Disclose in Case 002/02 the Identity of Certain Witnesses Interviewed in Case 004 (“ICP” and “Request”⁴);

Noting the Disagreements registered on 22 February 2013, 5 April 2013 and 26 June 2014;

SUBMISSIONS

1. In compliance with a Trial Chamber ruling in Case 002/02, the Co-Prosecutors are currently preparing Internal Rule 87(4) applications with respect to trial witnesses who were not identified prior to the June 2011 Initial Hearing in Case 002/01. In the Request, the ICP notes Judge Harmon’s (“International CIJ”) previous decision to the effect that he is not yet ready to consider full disclosure of Case 004 interviews associated with such witnesses.⁵ Nevertheless, he seeks the Co-Investigating Judges’ leave for limited disclosure:

- to the Trial Chamber and the parties in Case 002/02, of the fact that 8 proposed prosecution trial witnesses in Case 002/02 (“8 Witnesses”) were

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. 004-D200, *International Co-Prosecutor’s Request to Disclose in Case 002/2 the Identity of Certain Witnesses Interviewed in Case 004*, dated 23 June 2014.

⁵ Case File No. 004-D193/1, *Decision on the International Co-Prosecutor’s Request to Disclose Case 004 Interviews Relevant to Case 002/02*, 8 May 2014.



selected in part because of new information obtained in the Case 004 interviews of those individuals, as well as summaries of that evidence;⁶

- alternatively, of their identities only, on an *ex parte* and strictly confidential basis, to the Trial Chamber; and
- to give first priority to disclosure of the interviews associated with the 8 Witnesses, at such time as the International CIJ is able to rule upon them, as well as the interviews of two further proposed Case 002/02 trial witnesses whom the Co-Prosecutors have currently identified by pseudonyms, because they have no Case 002 statements and their identity is only known and established through their Case 004 interviews.⁷

DISCUSSION

2. On 26 June 2014, in an initial response to the Request, the International CIJ decided, *inter alia*, “to review the Written Records of Interview of the 8 Witnesses in Case File 004 in order to determine whether to grant leave for the confidential disclosure of their identities and a general description of their evidence to the Trial Chamber and the parties in Case 002/02”.⁸
3. On 16 July 2014, in response to a request from the International CIJ,⁹ the ICP filed draft summaries of the evidence given in Case 004 by the individuals he wishes to propose as witnesses to the Trial Chamber in Case 002/02. The ICP filed the summaries on a strictly confidential and *ex parte* basis (ICP’s Response).¹⁰ The ICP’s Response included the summary of one additional Case 004 witness, HEM Moeun, whose evidence the ICP had not sought permission to disclose in the Request (“Additional Request”). The ICP requests to disclose HEM Moeun’s evidence to the Trial Chamber in the same way as the other witnesses (“Summaries”).¹¹
4. Upon review of the Summaries, the International CIJ considers that the information set out in paragraphs 12(a), (b) and (c) of the Request may be disclosed to the Trial Chamber and the parties in Case 002/02 as regards the 8 Witnesses and HEM Moeun, except as provided below:

⁶ The 8 Witnesses are: NEANG Ouch *alias* San (Written Records of Interview D119/82 and D118/172); UL Hoeun (DC-Cam Statement D119/70/4); Written Records of Interview D118/208 and D118/209); CHHUM Seng (DC-Cam Statement D67.5; Written Record of Interview D119/89); PAN Chhuong (DC-Cam Statement D67.6); Written Records of Interview D61 and D119/29); RIEL San (Written Record of Interview D118/181); TOEM Hy *alias* TOEM Hi (Written Record of Interview D118/166); PEOU Sinuon (Pov Sinuon) (Written Record of Interview D118/127); NHEM Kol *alias* Say (Written Record of Interview D117/32).

⁷ Witnesses TOAT Thoeun (Written Records of Interview D118/102, D118/154 and D118/154.1) and YOU Van (Written Record of Interview D117/31).

⁸ Case File No. 004-D200/1, *Order on International Co-Prosecutor’s Request to Disclose in Case 002/02 the Identity of Certain Witnesses Interviewed in Case 004*, 26 June 2014, para. 6.

⁹ Case File No. 004-D200/2, *Second Decision on International Co-Prosecutor’s Request to Disclose in Case 002/02 the Identity of Certain Witnesses Interviewed in Case 004*, 10 July 2014, para. 5.

¹⁰ Case File No. 004-D200/3.1, *International Co-Prosecutor’s ex parte Response to International Co-Investigating Judge’s Request for Draft Summaries, Annex I: draft summaries*, 16 July 2014.

¹¹ ICP’s Response, para. 5.

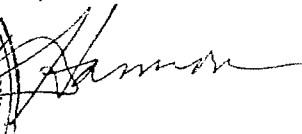


- As regards witness NHEM Kol *alias* Say, in keeping with the International CIJ's previous determination,¹² in order to protect the integrity of the on-going investigation and to ensure the safety of victims and witnesses in Case 004, only the Trial Chamber may be apprised of the witness' identity, on a strictly confidential and *ex parte* basis. Only a redacted version of the ICP's summary of the witness' evidence may be disclosed to the parties, as indicated in paragraph 7 of the annexed version of the Summaries.
- As stated in a related decision issued in Case 003,¹³ the International CIJ considers that, until all investigative action concerning potential witness MA Chhoeun has been completed, it is not appropriate to disclose any further information to the parties in Case 002. Accordingly, only the Trial Chamber may be apprised, on a strictly confidential and *ex parte* basis, of the ICP's summary concerning this witness and fact that this evidence came to the Co-Prosecutors' attention when the DC-Cam statement was placed on Case File 003.

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

5. **PARTIALLY GRANT** the Request as regards witnesses NHEM Kol *alias* Say and MA Chhoeun, as provided in paragraph 4 above; and
6. **GRANT** the remainder of the Request and the Additional Request.
7. **DECIDE** to give priority to disclosure of the existing evidence and any future interviews associated with the 8 Witnesses, as well as the interviews of two further witnesses referred to in paragraph 11 of the Request and the additional witness the subject of the Additional Request, at such time as the International CIJ is ready to consider the full disclosure of Case 004 interviews requested previously.¹⁴

Dated 23 July 2014, Phnom Penh



Judge Mark B. Harmon
 សម្រាប់ក្រុមស៊ើបអង្កេតអន្តរជាតិ

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¹² Case File No. 004-D167/1, *Decision on International Co-Prosecutor's Request for Disclosure of Documents in Case 002*, 19 September 2013, para. 6.

¹³ Case File No. 003-D106/4, *Third Order on International Co-Prosecutor's Request to Disclose in Case 002/2 Information Regarding the Statements of Two Witnesses and One Civil Party in Case 003*, 22 July 2014, para. 5.

¹⁴ Case File No. 004-D193/1, *Decision on the International Co-Prosecutor's Request to Disclose Case 004 Interviews Relevant to Case 002/02*, 8 May 2014.