

BEFORE THE PRE-TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 004/1/07-09-2009-ECCC/OCIJ (PTC) **Party Filing:** The Defence for IM Chaem**Filed to:** The Pre-Trial Chamber**Original language:** English**Date of document:** 14 June 2018**CLASSIFICATION****Classification of the document suggested by the filing party:** PUBLIC**Classification by OCIJ or Chamber:** សាធារណៈ/Public**Classification Status:****Review of Interim Classification:****Records Officer Name:****Signature:**

**IM CHAEM'S REQUEST FOR RECLASSIFICATION OF SELECTED DOCUMENTS
FROM CASE FILE 004/1**

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Pre-Trial Chamber Judges:
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Case 004/1**

I. INTRODUCTION

1. Ms. IM Chaem, through her Co-Lawyers (“the Defence”), pursuant to Article 9.1 of the Practice Direction on the Classification and Management of Case-Related Information and Articles 3.12 and 3.14 of the Practice Direction on the Filing of Documents before the ECCC, hereby submits this request for reclassification (“Reclassification Request”).
2. The Defence respectfully requests the Pre-Trial Chamber to reclassify the documents listed in Annexes A and B of this Reclassification Request (“Requested Documents”) in public or public redacted forms, as appropriate.¹ Granting the Reclassification Request will ensure that the public has access to the procedural and legal background of Case 004/1 to a fuller extent so as to promote the transparent administration of justice and the integrity of the Extraordinary Chambers in the Courts of Cambodia’s (“ECCC”) legacy.
3. The filing of this Request is appropriate and timely at this stage of the proceedings. Should the International Co-Prosecutor’s Appeal of the Closing Order (Reasons)² be denied and all proceedings in Case 004/1 terminated, Ms. IM Chaem will then be unable to avail herself of the right to be heard on this matter. Notably, the Pre-Trial Chamber has considered it presently appropriate to reclassify as public numerous documents pertaining to the pre-trial stage of Case 004/1.³ Moreover, the Reclassification Request does not pertain to any documents which are presently the subject of outstanding litigation before the Pre-Trial Chamber.

II. BACKGROUND

4. On 7 September 2009, the acting International Co-Prosecutor filed the Third Introductory Submission, opening a judicial investigation against Ms. IM Chaem.⁴

¹ Reclassification Request, Annex A – IM Chaem’s Defence Filings for Reclassification (“Annex A”); Reclassification Request, Annex B – Chambers’ Filings for Reclassification (“Annex B”).

² International Co-Prosecutor’s Appeal of Closing Order (Reasons), 9 August 2017, **D308/3/1/1**.

³ Decision on IM Chaem’s Request for Reclassification of Her Response to the International Co-Prosecutor’s Final Submission, 8 June 2018, **D304/6/4**, paras. 16, 27, 30, 32.

⁴ Co-Prosecutors’ Third introductory Submission, 7 September 2009, **D1**.

5. On 3 March 2015, former International Co-Investigating Judge Harmon charged Ms. IM Chaem for crimes against humanity and violations of the 1956 Penal Code allegedly committed between approximately April 1977 and 6 January 1979, in her capacity as Secretary of Preah Net Preah District, at two sites, Phnom Trayoung Security Centre and Spean Sreng Work Site.⁵
6. On 18 December 2015, the Co-Investigating Judges concluded the investigation against Ms. IM Chaem⁶ and notified the parties of their intent to dismiss the charges against her as well as to sever her from Case 004 proceedings.⁷ On 5 February 2016, the Co-Investigating Judges severed Ms. IM Chaem from Case 004.⁸
7. On 22 February 2017, the Co-Investigating Judges dismissed all charges against Ms. IM Chaem,⁹ the full reasoning for which was issued on 10 July 2017.¹⁰ This decision is currently the subject of an appeal by the International Co-Prosecutor before the Pre-Trial Chamber.¹¹
8. On 12 March 2018, the Defence filed a Request for Reclassification of its Response to the International Co-Prosecutor's Final Submission.¹² On 23 March 2018, the International Co-Prosecutor filed a response to that request,¹³ to which the Defence replied on 2 April 2018.¹⁴ On 8 June 2018, the Pre-Trial Chamber ordered the reclassification of the Defence's

⁵ Decision to Charge IM Chaem *in Absentia*, 3 March 2015, **D239**; Notification of Charges against IM Chaem, 3 March 2015, **D239.1**, paras. 2-9.

⁶ Notice of Conclusion of Judicial Investigation against IM Chaem, 18 December 2015, **D285**.

⁷ Notice of Intent to Dismiss the Charges against IM Chaem and to Sever the Proceedings against Her, 18 December 2015, **D286**.

⁸ Order for Severance of IM Chaem from Case 004, 5 February 2016, **D286/7**.

⁹ Closing Order (Disposition), 22 February 2017, **D308**.

¹⁰ Closing Order (Reasons), 10 July 2017, **D308/3**, paras. 312-13, 325.

¹¹ International Co-Prosecutor's Appeal of Closing Order (Reasons), 9 August 2017, **D308/3/1/1**.

¹² IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission, 12 March 2018, **D304/6/1**.

¹³ International Co-Prosecutor's Response to IM Chaem's Request for Reclassification, 23 March 2018, **D304/6/2**.

¹⁴ IM Chaem's Reply to the International Co-Prosecutor's Response to Her Request to Reclassify Her Response to the Final Submission, 2 April 2018, **D304/6/3**.

Response to the International Co-Prosecutor's Final Submission¹⁵ as well as several other documents on Case File 004/1.¹⁶

III. APPLICABLE LAW

9. The Defence incorporates by reference the applicable law as set out at paragraphs 7 to 11 of its Request for Reclassification of its Response to the International Co-Prosecutor's Final Submission.¹⁷

IV. ARGUMENT

10. In the paragraphs below, the Defence submits that the reclassification of the Requested Documents i) is in the interests of justice and meets the Court's goals of education and legacy, and ii) will not compromise any confidential material at the ECCC.

A. The reclassification of the Requested Documents is in the interests of justice and meets the Court's goals of education and legacy

11. The classification of documents is a balancing exercise between the imperatives of confidentiality and transparency.¹⁸ Whilst the overarching principle in the judicial investigation is that of confidentiality,¹⁹ this principle must be balanced against the interests of justice²⁰ and the purposes of education and legacy.²¹ The Pre-Trial Chamber has

¹⁵ Decision on IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission, 8 June 2018, **D304/6/4**, para. 16.

¹⁶ Decision on IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission, 8 June 2018, **D304/6/4**, paras. 27, 30, 32. *See also*, Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons), 8 June 2018, **D309/2/1/7**, pp. 12-13.

¹⁷ IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission, 12 March 2018, **D304/6/1**, paras. 7-11.

¹⁸ *Case of KAING Guek Eav alias Duch*, 001/18-07-2007-ECCC/SC, Decision on Guidelines for Reclassification of Documents on Case File, 26 July 2012, **F30/2**, para. 5.

¹⁹ Internal Rules of the Extraordinary Chambers in the Courts of Cambodia (Rev. 9), adopted on 12 June 2007 (as revised on 16 January 2015), Rule 56(1).

²⁰ Practice Direction on the Filing of Documents before the ECCC (Revision 8), ECCC/01/2007/Rev.8, 10 May 2012, Art. 3.14.

²¹ Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons), 8 June 2018, **D309/2/1/7**, para. 27. *See also*, *Case of KAING Guek Eav alias Duch*, 001/18-07-2007-ECCC/SC, Decision on Guidelines for Reclassification of Documents on

recognised that, when considering the classification of documents, it is appropriate to consider the interests of the charged person and victims, alongside those of transparency and the interests of justice.²²

12. Transparency is necessary in this instance because it will enable the public and Cambodian legal professionals to have a more accurate understanding of the entirety of judicial proceedings against Ms. IM Chaem, to peruse submissions of the parties, decisions of the Co-Investigating Judges and the Pre-Trial Chamber in the fullest possible context, and to prevent misinformation and uncertainty surrounding the conduct of Case 004/1. In addition, viewed holistically, the ECCC's objectives of education and legacy naturally extend to all issues of law and procedure relevant to the conduct of Case 004/1. Indeed, if the ECCC is to have any real value as a model for the domestic Cambodian legal system, the details and conduct of such matters ought to be made publicly available to the fullest extent possible.
13. As such, the reclassification will not only facilitate the creation of an accurate public record of Case 004/1 and provide redress to the current limits of information within the public domain,²³ but will also positively impact on the Cambodian justice sector, promote fair trial rights, and more generally enhance the rule of law.
14. Reclassifying the Requested Documents will provide the public and legal professionals with important context surrounding the issues of: the Defence's endeavours to be granted access to the Case File,²⁴ previous judicial disagreements between the Co-Investigating Judges,²⁵ Ms. IM Chaem's proposed initial appearance,²⁶ the arrest warrant issued and subsequently rescinded for Ms. IM Chaem,²⁷ the charging of Ms. IM Chaem *in absentia*,²⁸ the placement

Case File, 26 July 2012, **F30/2**, para. 5. In respect of the relevance of education and legacy, *see also*, Practice Direction on the Classification and Management of Case-Related Information (Revision 2), ECCC/004/2009/Rev.2, 5 June 2014, Art. 1.2.

²² Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons), 8 June 2018, **D309/2/1/7**, para. 28.

²³ A Zylab search for English documents filed in Case 004/1 as 'Public' returns 54 results only.

²⁴ Annex A, nos. 1 – 3; Annex B, nos. 1 – 2.

²⁵ Annex A, nos. 4 – 6; Annex B, nos. 3 – 6.

²⁶ Annex A, nos. 7 – 16; Annex B, nos. 7 – 13.

²⁷ Annex B, nos. 14 – 16.

²⁸ Annex A, nos. 17 – 21; Annex B, nos. 17 – 19.

of information on Case File 004/1,²⁹ the interview practices of investigators from the Office of the Co-Investigating Judges,³⁰ the conclusion of the judicial investigation against Ms. IM Chaem,³¹ and considerations surrounding the determination of the ECCC's lack of personal jurisdiction over Ms. IM Chaem.³² The specific reasons warranting the publication of documents concerning such matters are explored below.

a. Access to the Case File

15. The Defence seeks reclassification of documents relevant to its efforts to be granted access to Case File 004/1 prior the charging of Ms. IM Chaem.³³ The publication of these documents will serve an important educational purpose by providing the Cambodian legal community with considerations concerning any defendant's right to be afforded a meaningful opportunity to review, comment on, and challenge the evidence gathered against them in criminal proceedings. The Defence's arguments in Case 004/1 highlight the relevance of such procedural matters to a person's right to adequate time and facilities for the preparation of their defence, the right to equality of arms, and fair trial rights as a whole.³⁴ In a context where defendants – or their legal representatives – are not given access to the case file against them prior to the commencement of their trial,³⁵ these considerations are critical to the positive development of the Cambodian judicial profession.

b. Judicial Disagreements

16. The Defence seeks reclassification of documents related to litigation concerning judicial disagreements between the Co-Investigating Judges in Case 004/1.³⁶ In light of the public

²⁹ Annex A, nos. 22 – 33; Annex B, nos. 20 – 31.

³⁰ Annex A, nos. 34 – 39; Annex B, nos. 32 – 37.

³¹ Annex A, nos. 40 – 42; Annex B, nos. 38 – 42.

³² Annex A, nos. 43 – 47; Annex B, nos. 43 – 48.

³³ Annex A, nos. 1 – 3; Annex B, nos. 1 – 2.

³⁴ *See, e.g.*, IM Chaem's Motion Requesting Order for Access to the Case File, 21 May 2014, **D201**; Supplemental Arguments to IM Chaem's Motion Requesting Order for Access to the Case File, 14 November 2014, **D201/2**.

³⁵ *See, e.g.*, LICADHO, "Human rights 2012: The year in review", February 2013, p. 21 ["Courts often disregarded procedural requirements in these cases, leaving HRLP lawyers with inadequate time to prepare. Courts sometimes even refused to allow the lawyers to consult with their clients or to access case files prior to trials"], available at: <http://www.licadho-cambodia.org/reports/files/176LICADHOREportHumanRightsReview2012English.pdf>.

³⁶ Annex A, nos. 4 – 6; Annex B, nos. 3 – 6.

speculation and commentary about the Judges' disagreements,³⁷ the introduction of the parties' submissions will provide an accurate representation of the legal implications and the procedural steps taken in the Case to deal with the Judges' disagreements,³⁸ in turn benefitting the ECCC's legacy.

c. Initial Appearance

17. The Defence seeks reclassification of documents related to Ms. IM Chaem's proposed initial appearance.³⁹ Publication of these documents will contribute to the educational goal of the ECCC by bringing into the public domain matters concerning the proper processes to follow at important procedural junctures in criminal cases. For example, this includes arguments aimed at ensuring that a defendant is properly served with court documents⁴⁰ and challenging the validity of action taken in criminal matters where, arguably, authorities have not complied with proper legal procedures.⁴¹

d. Arrest Warrant

18. The Defence seeks reclassification of documents related to the rescission of the arrest warrant for Ms. IM Chaem.⁴² Bringing these documents into the public sphere will promote transparency in Case 004/1. Importantly, whilst the existence of an arrest warrant for Ms. IM Chaem is on the public record,⁴³ the public currently remains unaware that the warrant was later rescinded.⁴⁴ Accordingly, the reclassification of documents will provide the public with

³⁷ See, e.g., Open Society Foundations, "New Judge will be at Center of Struggle over Khmer Rouge Tribunal", 30 July 2012, available at: <https://www.opensocietyfoundations.org/press-releases/new-judge-will-be-center-struggle-over-khmer-rouge-tribunal>; F. Donson, "Yet more crisis at the ECCC as investigating judge resigns" (Centre for Criminal Justice and Human Rights, 11 October 2011), available at: <http://blogs.ucc.ie/wordpress/ccjhr/2011/10/11/yet-more-crisis-at-the-cccc-as-investigating-judge-resigns/>.

³⁸ See, e.g., IM Chaem's Request for Clarification on the Law Should There Be a Disagreement Between the Co-Investigating Judges When Issuing the Closing Order, 26 January 2016, **D293**.

³⁹ Annex A, nos. 7 – 16; Annex B, nos. 7 – 13.

⁴⁰ See, e.g., Letter Regarding Modalities of Service of Ms. IM Chaem's Summons, 18 July 2014, **A122/5**.

⁴¹ See, e.g., IM Chaem's Urgent Application to Seize the Pre-Trial Chamber with a Request for Annulment of Her and Her Co-Lawyers' Summonses Dated 31 July 2014, 6 August 2014, **D207**, paras. 19-27.

⁴² Annex B, nos. 14 – 16.

⁴³ See, *Case of MEAS Muth*, 003/07-09-2009-ECCC/OCIJ, International Co-Investigating Judge's Letter to H.E. Em Sam An, 30 January 2015, **D127**.

⁴⁴ See, Rescission of the Arrest Warrant against IM Chaem, 5 February 2016, **C1/1**.

a more complete and accurate understanding of this issue that ultimately bears on the public's perception of Ms. IM Chaem.

e. Charging in absentia

19. The Defence seeks reclassification of documents related to the charging of Ms. IM Chaem *in absentia*.⁴⁵ Such material will be a valuable educational source for the Cambodian legal profession in assessing the legitimacy of this procedure. In particular, litigation surrounding the Defence's Appeal against the charging of Ms. IM Chaem *in absentia*⁴⁶ contains detailed arguments and considerations surrounding the legality of this course of action under Cambodian law.

f. Placement of Information on the Case File

20. The Defence seeks reclassification of documents concerning requests for the placement of certain documents on the Case File.⁴⁷ Publication of these documents would serve an educational purpose that may be translated into legal practice in Cambodia by providing a demonstration of a party seeking to avail itself of procedural avenues to ensure procedural and evidential fairness. Such procedural avenues include requests for investigative action,⁴⁸ requests relating to obtaining audio and video recording of witness interviews,⁴⁹ and the disclosure of materials from separate legal proceedings.⁵⁰

g. Investigatory Practices

21. The Defence seeks reclassification of documents concerning interview practices of staff from the Office of the Co-Investigating Judges.⁵¹ In the Defence's respectful submission, publication of these documents would be a valuable educational tool for domestic

⁴⁵ Annex A, nos. 17 – 21; Annex B, nos. 17 – 19.

⁴⁶ See, e.g., IM Chaem's Appeal Against the International Co-Investigating Judge's Decision to Charge Her *in Absentia*, 2 April 2015, **D239/1/2**.

⁴⁷ Annex A, nos. 22 – 33; Annex B, nos. 20 – 31.

⁴⁸ See, e.g., IM Chaem's First Request for Investigative Action, 3 December 2015, **D279**.

⁴⁹ See, e.g., IM Chaem's Request for Audio and Video Recordings of Written Records of Interviews Disclosed in Case File 004, 2 June 2015, **D247**.

⁵⁰ See, e.g., IM Chaem's Request for Disclosure of Unredacted Case 002 Transcripts and Related Documents Relevant to Her, 15 December 2015, **D283**.

⁵¹ Annex A, nos. 34 – 39; Annex B, nos. 32 – 37.

investigatory staff, in demonstrating the standards required in the proper conduct of legal investigations, and lawyers, in showing how arguably defective evidence may be properly challenged. The Defence's filings on this issue relate to both the conduct of the investigation itself⁵² and the consequences of evidence being collected in an improper manner.⁵³

h. Conclusion of the Judicial Investigation

22. The Defence seeks reclassification of documents related to the conclusion of the judicial investigation against Ms. IM Chaem and her severance from Case 004 proceedings.⁵⁴ The release of these documents into the public domain will serve the dual purposes of education and legacy. In terms of education, the publication of filings in response to the severance of proceedings against Ms. IM Chaem will provide the Cambodian legal community with an understanding of important defence rights, most particularly the right of response at the pre-trial stage.⁵⁵ From the perspective of the ECCC's legacy, the reclassification of documents such as those concerning the Co-Investigating Judges' intent to dismiss the charges against Ms. IM Chaem,⁵⁶ will assist the public in understanding the full procedural context leading to the conclusion reached in their Closing Order and allay concerns that this decision lacked adequate judicial consideration or procedural fairness.⁵⁷

⁵² See, e.g., IM Chaem's Motion Requesting the Co-Investigating Judges to Resume the Audio or Video Recording of All Interviews, 22 June 2015, **D252**.

⁵³ See, e.g., IM Chaem's Application to Seize the Pre-Trial Chamber with a view to Annulling Transcripts and Written Records of Witnesses' Interviews, 16 February 2016, **D298**.

⁵⁴ Annex A, nos. 40 – 42; Annex B, nos. 38 – 42.

⁵⁵ See, e.g., IM Chaem's Submission on the Co-Investigating Judges' Notice of Intent to Dismiss the Charges against IM Chaem and to Sever the Proceedings against Her, 8 January 2016, **D286/2**; IM Chaem's Response to the Co-Prosecutors' Submission on the Severance of the Proceedings Against Her, 18 January 2016, **D286/3/1**.

⁵⁶ Notice of Intent to Dismiss the Charges against IM Chaem and to Sever the Proceedings against Her, 18 December 2015, **D286**.

⁵⁷ See, e.g., E. Handley, "Im Chaem filing short on reasoning" (The Phnom Penh Post, 11 July 2017), available at: <https://www.phnompenhpost.com/national/im-chaem-filing-short-reasoning>; E. Handley, "Tribunal's edited decision on Im Chaem draws ire" (The Phnom Penh Post, 12 July 2017), available at: <https://www.phnompenhpost.com/national/tribunals-edited-decision-im-chaem-draws-ire>.

i. Considerations on Personal Jurisdiction

23. The Defence seeks reclassification of documents related to the question of the ECCC's personal jurisdiction over Ms. IM Chaem.⁵⁸ Publication of these documents would also contribute to the Court's educational value and legacy. For example, the documents in question are informative in their exploration of legal questions relevant to the pre-trial stage of criminal proceedings – such as the procedure and standard of proof for assessing jurisdictional questions.⁵⁹ Further, by bringing the content of litigation on this topic into the public domain, the legacy of the ECCC will be enhanced, as the public will have an opportunity to peruse arguments surrounding the operation of the Court's unique personal jurisdiction criterion and its contribution to the ultimate disposition in Case 004/1 in its full and proper context.⁶⁰

j. Rectification of certain anomalies in the classification of documents in Case 004/1

24. Further to the above considerations, in specific instances, the Defence requests the formal reclassification of information which, it is respectfully submitted, ought already to be public. In particular, the Defence requests the reclassification of:

- Former International Co-Investigating Judge Harmon's Decision on Suspect's Motion Requesting Clarification Regarding Disagreements Between the Co-Investigating Judges.⁶¹ The Defence notes that this document is already present on the case file in a public redacted form, however this version itself was filed as confidential.⁶²

⁵⁸ Annex A, nos. 43 – 47; Annex B, nos. 43 – 48.

⁵⁹ *See, e.g.*, IM Chaem's observations on whether she should be considered a "senior leader" or among "those who were most responsible", 21 September 2015, **D251/4**, paras. 5-11.

⁶⁰ *See, e.g.*, IM Chaem's observations on whether she should be considered a "senior leader" or among "those who were most responsible", 21 September 2015, **D251/4**, paras. 12-60; IM Chaem's Response to the International Co-Prosecutor's Submission on whether she should be considered a "senior leader" or among "those who were most responsible", 9 November 2015, **D251/5/3**, paras. 7-21.

⁶¹ Decision on Suspect's Motion Requesting Clarification Regarding Disagreements Between the Co-Investigating Judges, 8 August 2014, **D204/2**.

⁶² *See*, Decision on Suspect's Motion Requesting Clarification Regarding Disagreements Between the Co-Investigating Judges, 8 August 2014, **D208/1.1**.

- Former International Co-Investigating Judge Harmon’s Letter to H.E. Em Sam An.⁶³ The Defence notes that an identical copy of this document has been already placed on the Case File 003 and was published on the Court’s website.⁶⁴

The Defence recognises that the Requested Documents cover filings on a significant scope of the entire Case File. Although the Reclassification Request is broad in scope it is, particularly in light of the Pre-Trial Chamber’s recent decisions,⁶⁵ consistent with the Pre-Trial Chamber’s approach to the reclassification of documents with the intent to “contribute to the transparency of justice, the legacy of the ECCC and to the fundamental objectives of education and the pursuit of justice”.⁶⁶ In the Defence’s respectful submission, such imperatives would be best promoted in Case 004/1 through reclassification of the Requested Documents as public.

B. The reclassification of the Requested Documents will not compromise any confidential material

25. The classification of documents must be determined through an assessment of various considerations relevant to ensuring the protection of sensitive information, including any ongoing proceedings at the ECCC, the risks of prejudice to any charged person or existing investigations, and any other issue contingent upon confidentiality.⁶⁷

⁶³ International Co-Investigating Judge’s Letter to H.E. Em Sam An, 30 January 2015, **D238**.

⁶⁴ See, *Case of MEAS Muth*, 003/07-09-2009-ECCC/OCIJ, International Co-Investigating Judge’s Letter to H.E. Em Sam An, 30 January 2015, **D127**, available at: <https://www.eccc.gov.kh/en/document/court/icijs-letter-he-mr-cm-sam>.

⁶⁵ Decision on the International Co-Prosecutor’s Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons), 8 June 2018, **D309/2/1/7**; Decision on IM Chaem’s Request for Reclassification of Her Response to the International Co-Prosecutor’s Final Submission, 8 June 2018, **D304/6/4**.

⁶⁶ Decision on the International Co-Prosecutor’s Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons), 8 June 2018, **D309/2/1/7**, para. 39.

⁶⁷ *Case of KAING Guek Eav alias Duch*, 001/18-07-2007-ECCC/SC, Decision on Guidelines for Reclassification of Documents on Case File, 26 July 2012, **F30/2**, para. 6 [“As the proceedings in Case 001 have effectively terminated, the declassification of documents pertaining to the judicial investigation no longer poses a generalised risk of prejudice to the rights of the accused or the integrity of the investigation. Therefore, the Supreme Court Chamber holds that, in principle, all such documents shall be declassified as public, thereby allowing full access to the public at large and maximising transparency. At the same time, considering that proceedings before the ECCC are still in progress and that, even after their conclusion, certain reasons for non-

26. The Pre-Trial Chamber has, in respect of reclassification of documents in Case 004/1, taken the following approach to the application of redactions:

- The names of persons subject to, or with outstanding applications in respect of, protective measures are to be redacted.⁶⁸ The identities of such individuals in Case 004/1 have been provided by the Witness / Expert Support Unit⁶⁹ and the Co-Investigating Judges.⁷⁰
- Ms. IM Chaem's name and references to her statements are to be left unredacted.⁷¹
- The names of deceased Khmer Rouge officials are to be left unredacted.⁷²

27. In light of the above approach, the Defence has reviewed all its filings listed in Annex A and concluded that no redactions are warranted. Accordingly, the Defence seeks that the existing versions of the documents listed in Annex A, which are currently on Case File 004/1, simply be reclassified as 'public'.

28. Notwithstanding the above approach regarding redactions, the Defence sees it appropriate to bring to the Pre-Trial Chamber's attention the references to the existence of an investigation into misconduct by ECCC staff. This matter was raised in three of the Defence's submissions.⁷³ The Defence would welcome the public disclosure of these matters and has

disclosure may continue to remain valid, limited safeguards need to be retained, as set out in the guidelines below."].

⁶⁸ Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons), 8 June 2018, **D309/2/1/7**, para. 38; Decision on IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission, 8 June 2018, **D304/6/4**, paras. 23, 31.

⁶⁹ Witness Expert Support Unit (WESU) Victims Assessment, 16 May 2018, **D309/2/1/5/1**; Case Map Report Im Chaem Related CPs with PM Requests – 15.01.2016, 17 May 2018, **D309/2/1/5/1.2**.

⁷⁰ Memorandum entitled "Response to PTC Order of 21 May 2018 – D309/2/1/6", 22 May 2018, **D309/2/1/6/1**; Annex I: Protective Measures Closing Order (Reasons) Case 004/01, 22 May 2018, **D309/2/1/6/1.1**; Annex II: Protective Measures Case 004/01, 22 May 2018, **D309/2/1/6/1.2**.

⁷¹ Decision on IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission, 8 June 2018, **D304/6/4**, paras. 20-21.

⁷² Decision on IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission, 8 June 2018, **D304/6/4**, para. 22.

⁷³ IM Chaem's Application to Seize the Pre-Trial Chamber with a View to Annuling Transcripts of Written Records of Witnesses' Interviews, 16 February 2016, **D298**, paras. 30-31, 42, fn. 74; IM Chaem's Reply to the International Co-Prosecutor's Response to Her Application for Annulment of Records of Interviews, 13 June

not proposed redactions to this information at present. However, the Defence will follow any instruction to the contrary by the Chamber.

29. Further, the Defence suggests that the redaction of documents filed by judicial chambers is a task most appropriately undertaken by the respective filing chamber, or the Pre-Trial Chamber itself, consistent with the approach taken by the Pre-Trial Chamber previously on this matter.⁷⁴
30. Lastly, whilst the Requested Documents only include documents filed by the Defence, the Office of the Co-Investigating Judges, and the Pre-Trial Chamber, the Defence recognises that all parties to Case 004/1 have an interest in the transparency of proceedings. However, it is respectfully submitted that it is most appropriate for parties themselves to propose which of their own filings may appropriately be reclassified as public. The Defence reserves its right to respond to such requests in due course. Alternatively, in the interests of transparency and the creation of a complete public record, the Defence would welcome any order by the Pre-Trial Chamber to other parties in Case 004/1 requiring the reclassification of any of their submissions.

2016, **D298/2/1/2**, para. 9; IM Chaem's Motion Requesting the Co-Investigating Judges to Resume the Audio or Video Recording of All Interviews, 22 June 2015, **D252**, para. 30.

⁷⁴ Decision on IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission, 8 June 2018, **D304/6/4**, pp. 12-13; Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons), 8 June 2018, **D309/2/1/7**, p. 13.

V. RELIEF REQUESTED

For the reasons above, the Defence respectfully requests the Pre-Trial Chamber to i) instruct the Greffier of the Pre-Trial Chamber to file the Requested Documents listed in Annexes A and B of this Request in public or public redacted forms; and ii) file this Reclassification Request as public.

Respectfully submitted,



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Signed on this 14th day of June, 2018