



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber
Chambre de la Cour suprême

សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 002/19-09-2007-ECCC/SC

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 20-Mar-2023, 15:22
CMS/CFO: Sann Rada

Before: Judge KONG Srim, President
Judge Chandra Nihal JAYASINGHE
Judge SOM Sereyvuth
Judge Florence Ndepele Mwachande MUMBA
Judge MONG Monichariya
Judge Phillip RAPOZA
Judge YA Narin

Date: 20 March 2023
Language(s): English/Khmer/French
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DECISION ON GUIDELINES FOR RECLASSIFICATION OF DOCUMENTS ON CASE FILE 002

Co-Prosecutors
CHEA Leang
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Accused
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Civil Party Lead Co-Lawyers
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I. INTRODUCTION

1. Pursuant to Article 12 of the Practice Direction on Classification and Management of Case-Related Information Revision 1 (“Practice Direction on Classification”), the Supreme Court Chamber, as the last judicial office seised of Case File 002/19-09-2007-ECCC (“Case File 002”), has initiated a review of all documents included therein for the purposes of reclassification.

2. On 2 August 2022, the President of the Supreme Court Chamber outlined the proposed guidelines for reclassification and invited comments from all Parties, Chambers and Sections of ECCC by 22 August 2022. The Chamber hereby adopts the final guidelines that will be followed in reviewing the classification of all documents on Case File 002. In order to give due consideration to the reasons that initially warranted the classification of documents as Confidential or Strictly Confidential, the Chamber has carefully reviewed the submissions of the concerned Parties, Chambers and Sections of the ECCC – in particular, the judicial offices that originally decided on the classification of the documents – and has given careful considerations to the reasons, if any, against public disclosure of certain documents or categories of documents that still persist at this stage of the proceedings.

II. PARTIES’ OBSERVATIONS

3. The Parties, Chambers, Sections of the ECCC who submitted their observations on the proposed guidelines generally support public access to documentation and concur with this Chamber’s proposed guidelines and the presumption of publicity of materials on Case File 002, unless the protection of other interests, such as the security and privacy of persons, necessitates the classification of documents as Confidential or Strictly Confidential.¹

4. The Defence for KHIEU Samphân, supported by the Defence Support Section,² emphasises the importance of respecting the privacy of those who have not chosen to be civil parties and maintaining the Strictly Confidential classification of documents related to the health of suspects,

¹ Défense de KHIEU Samphân, Observations de la Défense suite au Mémorandum du Président de la Chambre de la Cour suprême en date du 2 août 2022, F71/1/1/5, 22 août 2022 (“Observations de la Défense (F71/1/1/5)”), paras 4-6; Office of Administrations’ Observations on Proposed Reclassification in Case 002, F71/1/1/2, 22 August 2022 (“Office of Administration’s Response (F71/1/1/2)”), para. 2; Response to the Supreme Court Chamber’s “Review of Confidential and Strictly Confidential Documents on Case File 002”, F71/1/1/6, 22 August 2022 (“Defence Support Section’s Response (F71/1/1/6)”), para. 2; Response to the Supreme Court Chamber’s “Review of Confidential and Strictly Confidential Documents on Case File 002”, F71/1/1/3, 22 August 2022 (“Lead Co-Lawyers’ Response (F71/1/1/3)”); Co-Prosecutors’ Response to the Supreme Court Chamber’s Request for Submissions Regarding Reclassification, F71/1/1/4, 22 August 2022 (“Co-Prosecutors’ Response (F71/1/1/4)”).

² Defence Support Section’s Response (F71/1/1/6), para. 2.

accused persons and defendants before the ECCC *e.g.*, medical certificates, expert reports, hospitalisation reports and other documents issued by medical entities.³

5. In response to the proposed guidelines, the Witness and Expert Support Unit (“WESU”) provides a list of witnesses, civil parties and experts who testified in Cases 002/01 and 002/02, as well as the protective measures that were ordered for their testimony.⁴ It is noted that the Trial Chamber referred to all witnesses, civil parties and experts who testified publicly by name in their judgments (E313 and E465) and witness decisions (E312 and E459). To the WESU’s knowledge, other protective measures, such as facial or voice distortion, are still in place for the identified witnesses.⁵

6. The Office of Administration recommends that the following categories of documents be reviewed for possible reclassification as public:⁶

- a) Confidential documents on Case File 002 that are classified as public in other case files: In this regard, the Office of Administration attached a list of confidential documents that are public on other case files (Annex A).⁷
- b) Special cases relevant to the Accused in Case 002: The Office of Administration attached a list of relevant special cases in this regard (Annex B).⁸
- c) All exhibits (E3), including video material (E3/*R) presented to the Trial Chamber, particularly those exhibits referenced in the Trial and Appeal Judgments.
- d) Introductory Submissions, Supplementary Submissions, and underlying evidence that no longer warrant a confidential classification.
- e) Written Records of Interview, transcripts, statements, speeches and publications by, or relevant to, all accused or convicted persons.
- f) All judicial decisions, orders, judgments and party motions pertaining to the accused or convicted persons.
- g) Investigation documents, particularly those which fell outside the scope of trial in Cases 002/01 and 002/02, where facts were limited by severance decisions or were otherwise excluded from closing orders or trials.

³ Observations de la Défense (F71/1/1/5), paras 6-8.

⁴ Witness and Expert Support Unit’s Interoffice Memorandum, F71/1/1/7, 19 August 2022 (“Witness and Expert Support Unit’s Response (F71/1/1/7)”), p. 1.

⁵ Witness and Expert Support Unit’s Response (F71/1/1/7), p. 1.

⁶ Office of Administration’s Response (F71/1/1/2), para. 4.

⁷ Annex A, Confidential CF002 Documents Which are Public on Other Case Files, F71/1/1/2.1, 22 August 2022.

⁸ Annex B, List of Special Cases relevant to Case 002, F71/1/1/2.2, 22 August 2022.

h) All Democratic Kampuchea, CPK and contemporaneous documents, that have significant historical value.

7. The Pre-Trial Chamber proposes that the confidential or public redacted documents included in its previous memorandum “Confidential and Public Redacted Documents in Case File 002 Proposed for Reclassification to Public”⁹ be reclassified as “public”, as their current classification is no longer appropriate at this stage of the proceedings.¹⁰ It does, however, recommend that the names and personal information of witnesses who are under protective measures or whose requests for protective measures are pending remain confidential.¹¹

8. The Civil Party Lead Co-Lawyers (“Lead Co-Lawyers”) respond that contact details of civil parties should be kept as confidential or classified as such, as specified in the Practice Direction on Classification.¹² Concerning paragraph 4(g) of the proposed guidelines,¹³ the Lead Co-Lawyers request that the Chamber explicitly include the Lead Co-Lawyers and Civil Party Lawyers as concerned parties, and that they represent and act on behalf of the civil parties in Case 002 with assistance, support, and facilitation from the Victim Support Section.¹⁴

9. They also draw the Chamber’s attention to other categories of information about which civil parties have expressed concerns, that is, information identifying victims of sexual violence, personal medical information, experiences with and perspectives on forced marriage, torture-tainted material, including confessions and biographies and naming of alleged perpetrators.¹⁵

10. The Lead Co-Lawyers request that the Chamber: (i) affirms the principles of privacy and informed consent with respect to redaction of Civil Party documents on the Case File prior to any reclassification; (ii) confirm that Civil Party documents that fall outside Article 4 of the Practice Direction will not be reclassified as public without a request demonstrating the informed consent of the Civil Party in question; and (iii) order the immediate reclassification as Confidential of all

⁹ Confidential and Public Redacted Documents in Case File 002 Proposed for Reclassification to Public, F67, 5 May 2021.

¹⁰ Pre-Trial Chamber’s Interoffice Memorandum, F71/1/1/1, 11 August 2022 (“Pre-Trial Chamber’s Response (F71/1/1/1)”), paras 3-4.

¹¹ Pre-Trial Chamber’s Response (F71/1/1/1), para. 4.

¹² Lead Co-Lawyers’ Response (F71/1/1/3), para. 4, referring to Practice Direction on Classification Articles 7.2, 7.3. They also stress that some Civil Parties have expressed that if their contact details are released publicly, they may be exposed to unwanted approaches of internet and telephone fraud.

¹³ Supreme Court Chamber Interoffice Memorandum “Review of Confidential and Strictly Confidential Documents on Case File 002”, F71/1/1, 2 August 2022 (“Proposed Guidelines (F71/1/1)”), para. 4(g) (“Any concerned party, including the Victim [*sic*] Support Section acting on behalf of the Civil Parties in Case 002 [...] may seek reclassification of any document which retains its Confidential or Strictly Confidential status following the conclusion of the reclassification procedure. In such a case the concerned party should demonstrate changed circumstances justifying the reclassification”).

¹⁴ Lead Co-Lawyers’ Response (F71/1/1/3), para. 3.

¹⁵ Lead Co-Lawyers’ Response (F71/1/1/3), para. 5.

Civil Party documents in all cases that have been reclassified as Public in error or without appropriate redactions in violation of the Practice Direction until and subject to the outcome of the full reclassification process.¹⁶

11. The Co-Prosecutors advocate for the redaction of confidential information within documents rather than classification of entire documents as Confidential, arguing that it is in the interests of a strong ECCC legacy to devote human and financial resources to the review and redaction process.¹⁷ In addition, the Co-Prosecutors request that the Chamber formulate an access policy with guidelines governing access to all records that remain Confidential or Strictly Confidential.¹⁸ They encourage the Chamber to provide greater public access to records such as confessions and biographies in future, and specifically suggest that the successor authority to the ECCC grant automatic declassification of all confidential materials 20 years after the closure of the ECCC, and conduct a review of all “strictly confidential” material 20 or 50 years after the closure of the ECCC where compelling reasons exist to justify continued confidentiality.¹⁹

12. The Co-Prosecutors request that the Chamber delete paragraph 4(a)(vi) of the proposed guidelines²⁰ to the extent that the classification of a document in another Case File no longer has the importance it did when proceedings, including confidential judicial investigations, were still ongoing.²¹

13. Concerning paragraph 4(e),²² the Co-Prosecutors submit that the Chamber should be careful not to unduly restrict access to members of the public who wish to make fair use of ECCC holdings for educational and research purposes, as recognised by the copyright law of many states, while preserving the rights of the copyright holders.²³ Accordingly, they propose that, similar to the approach adopted by the International Residual Mechanism for Criminal Tribunals (“IRMCT”) on its website, the Court may require users seeking access to any records to accept certain conditions in an Access Policy, such as the following:²⁴

¹⁶ Lead Co-Lawyers’ Response (F71/1/1/3), paras 6-10, 12.

¹⁷ Co-Prosecutors’ Response (F71/1/1/4), para. 4.

¹⁸ Co-Prosecutors’ Response (F71/1/1/4), para. 5.

¹⁹ Co-Prosecutors’ Response (F71/1/1/4), para. 79.

²⁰ Proposed Guidelines (F71/1/1), para. 4(a)(vi) (“Documents which are also included in other existing Case Files and classified as confidential shall remain or be classified as Confidential”).

²¹ Co-Prosecutors’ Response (F71/1/1/4), para. 44.

²² Proposed Guidelines (F71/1/1), para. 4(e) (“Public documents shall not be subject to public dissemination where they are: (a) protected by copyright applicable law; or (b) “subject to agreement with a third party that prohibits dissemination [...] unless permission is granted by the third party.””)

²³ Co-Prosecutors’ Response (F71/1/1/4), paras 76-78.

²⁴ Co-Prosecutors’ Response (F71/1/1/4), para. 78.

- i. The user shall acknowledge that the ECCC's grant of access to a document should not be construed as a release of copyright.
- ii. In accordance with the copyright law applicable in the user's jurisdiction, the user may make fair use of the material for non-commercial research, study, or education.
- iii. If the user wishes to make any other use of the material, including further dissemination, the permission of the copyright holder must be obtained.

14. In light of Article 5.1(a) of the Practice Direction on Classification,²⁵ the Co-Prosecutors contend that the Rule 54 classification of their Introductory, Supplementary and Final Submissions as confidential is no longer necessary – subject to limited redactions – because the scope of Case 002 as set out in the Introductory and Supplementary Submissions has since been made public in the Closing Order, the Cases 002/01 and 002/02 trials judgments, and KHIEU Samphân's Case 002/02 Appeal.²⁶

15. In accordance with Article 5.1(f) of the Practice Direction on Classification,²⁷ these documents should be made public, subject to applicable safeguards or protective measures and the redaction of sensitive information.²⁸ Concerning Article 5.1(b) of the Practice Direction on Classification,²⁹ the Co-Prosecutors recommend that the DK-era documents, which are essential for both evidentiary and historical purposes, be made public, subject to some exceptions.³⁰ Concerning prisoner lists, they argue that because these documents are not the result of torture, they should be made public, and names of victims should be redacted only when necessary, such as when required by protective measures or to protect victims of sexual and gender-based violence.³¹ They specifically point out that paragraph 4(a)(iv) of the proposed guidelines³² which deals with “names [...] of victims who are not Civil Parties” is disproportionately broad.³³ They emphasise that because the term “victim” has not been defined, this guideline would require, *inter alia*, the redaction of the name of every victim from every document on the Case File, including every victim of forced transfer and everyone named in the S-21 prisoner lists.³⁴ In the same vein,

²⁵ Practice Direction 004/2009, Classification and Management of Case-Related Information (“Practice Direction on Reclassification”), Art. 5.1(a) (“Introductory, Supplementary and Final submissions of the Co-Prosecutors”).

²⁶ Co-Prosecutors' Response (F71/1/1/4), para. 42.

²⁷ Practice Direction on Reclassification, Art. 5.1(f) (“Decisions, orders and other findings of the Co-Investigating Judges”).

²⁸ Co-Prosecutors' Response (F71/1/1/4), para. 74.

²⁹ Practice Direction on Reclassification, Art. 5.1(b) (“[F]ilings received and materials generated during a judicial investigation”).

³⁰ Co-Prosecutors' Response (F71/1/1/4), para. 46.

³¹ Co-Prosecutors' Response (F71/1/1/4), paras 48-49.

³² Proposed Guidelines (F71/1/1), para. 4(a)(iv) (“names and contact details of victims who are not Civil Parties, including in cases where such information is included in victim complaints”).

³³ Co-Prosecutors' Response (F71/1/1/4), para. 49.

³⁴ Co-Prosecutors' Response (F71/1/1/4), para. 49.

the Co-Prosecutors state that redacting sensitive information from “Confession” documents, which are presumptively produced under torture or threat of torture, enhances historical and educational legacy by leaving valuable information such as annotations by Duch and other DK leaders publicly accessible rather than making confessions entirely confidential.³⁵

16. Similarly, the Co-Prosecutors propose that identifying information in biographies collected at S-21 and other security centres be kept confidential, and that biographies that have previously been made public in full be reclassified (by redaction).³⁶ They also advise maintaining confidentiality or reclassifying identifying and/or sensitive information contained in these notebooks as confidential, since these documents may contain details of prisoner confessions presumptively obtained under torture.³⁷

17. The Co-Prosecutors further emphasise that the following information should be kept strictly confidential³⁸ (i) requests for protective measures and associated documents; (ii) documents and information subject to protective measures; (iii) information concerning the health of a suspect charged person or accused; and (iv) any other document where the reasons for classification as strictly confidential persist.

18. The Co-Prosecutors recommend that the Chamber should consider redacting sensitive information pertaining to, for example, sexual and gender-based violence, complainants’, witnesses’ or civil parties’ medical information or information that identifies alleged perpetrators named by civil parties where that information was not made public during the trial phase.³⁹ Finally, they underline that reclassifying requests for corrections to documents and surrogate sheets serves little purpose.⁴⁰

19. The Co-Prosecutors advise caution when documents relating to the investigative process contain confidential details relating either to investigative leads or potential witnesses, including civil parties.⁴¹ Accordingly, they recommend that the WESU reports and risk assessments, letters of assurance, birth or death certificates, identity cards of complainants, witnesses and civil parties, and letters relating to the service of documents should remain confidential.⁴² Further, they submit that documents appropriate for reclassification to public, subject to the redaction of sensitive

³⁵ Co-Prosecutors’ Response (F71/1/1/4), para. 51.

³⁶ Co-Prosecutors’ Response (F71/1/1/4), para. 53.

³⁷ Co-Prosecutors’ Response (F71/1/1/4), para. 54.

³⁸ Co-Prosecutors’ Response (F71/1/1/4), para. 56.

³⁹ Co-Prosecutors’ Response (F71/1/1/4), para. 57.

⁴⁰ Co-Prosecutors’ Response (F71/1/1/4), para. 57.

⁴¹ Co-Prosecutors’ Response (F71/1/1/4), para. 58.

⁴² Co-Prosecutors’ Response (F71/1/1/4), para. 60.

information, include correspondence between parties and the Co-Investigating Judges and Chambers, as well as correspondence between the ECCC Chambers, Co-Investigating Judges and Office of Administration.⁴³

20. Regarding “Rogatory Letters and Reports”, the Co-Prosecutors recommend that these documents be reclassified to public with careful redaction of identifying and sensitive information, as these investigative documents frequently contain information that needs to remain protected.⁴⁴ They also recommend that summonses issued to the Case 002 accused and/or lawyers be reclassified as public in order for them to attend initial and subsequent appearances before the Co-Investigating Judges and Pre-Trial Chamber, including provisional detention hearings, as well as hearings before the Chambers, and their arrest warrants.⁴⁵

21. Concerning statements and testimonial evidence, the Co-Prosecutors recommend that, with some exceptions and after careful review to redact private and sensitive information, these materials be made public in general because they will allow future generations and researchers to better understand DK history, the events and charges in these cases.⁴⁶

22. In terms of civil party, victim and witness materials, including transcripts and AV recordings, the Co-Prosecutors believe that, in the interests of education, legacy and capacity building, written records of interview, DC-Cam statements and interview transcripts, Case 001 trial transcripts, the other noted civil party materials and complaints should be made public, subject to the redaction of contact details and other sensitive information as well as appropriate consultation with civil parties.⁴⁷ The Co-Prosecutors consider that administrative documents, such as statements waiving the presence of Civil Party Lawyers and the swearing in of various individuals, do not merit declassification.⁴⁸

23. In response to paragraph 4(a)(v) of the proposed guidelines,⁴⁹ they argue that *in camera* hearings do not automatically result in the removal of the transcripts and recordings from the public record, and that the documents should be made public with sensitive information redacted, subject to existing protective measures.⁵⁰

⁴³ Co-Prosecutors’ Response (F71/1/1/4), para. 60.

⁴⁴ Co-Prosecutors’ Response (F71/1/1/4), para. 62.

⁴⁵ Co-Prosecutors’ Response (F71/1/1/4), para. 63.

⁴⁶ Co-Prosecutors’ Response (F71/1/1/4), para. 68.

⁴⁷ Co-Prosecutors’ Response (F71/1/1/4), para. 71.

⁴⁸ Co-Prosecutors’ Response (F71/1/1/4), para. 71.

⁴⁹ Proposed Guidelines (F71/1/1), para. 4(a)(v) (“Written records, transcripts, and audio/visual recordings of hearings held *in camera*, unless the reasons for maintaining confidentiality are no longer valid”)

⁵⁰ Co-Prosecutors’ Response (F71/1/1/4), para. 72.

24. Finally, they submit that DC-Cam regional investigative reports can be made public without risk.⁵¹ The Co-Prosecutors recommend that the site identification reports from the Office of the Co-Investigating Judges be reclassified to public, but only after determining whether any redactions are required to protect sensitive information.⁵²

III. DISCUSSION

A. General Principles

25. In light of this Court's goals of education and legacy, the Supreme Court Chamber observes that the classification of documents must be determined by balancing the exigency of confidentiality with the demands of transparency derived from the fundamental principles that govern the procedure before the ECCC.⁵³ The Chamber recalls that the "wide dissemination of material concerning the proceedings before this Court [...] is consistent with the ECCC's mandate, which includes contributing to national reconciliation and providing documentary support to the progressive quest for historical truth."⁵⁴ The wide dissemination of the substantial documentation in the Case File may promote "a public and genuine discussion on the past grounded upon a firm basis, thereby minimising denial, distortion of facts, and partial truths."⁵⁵

26. Notably, most of the valuable material in the Case File was collected during the judicial investigation. Since the proceedings in Case 002 have effectively concluded, 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 should be reclassified as public, allowing full access to the public and maximising transparency. The Chamber supports the presumption of publicity of materials and public access to documentation while protecting other legitimate interests such as personal security and privacy, particularly of civil parties and witnesses with protective measures. Even though proceedings before the ECCC have concluded, certain reasons for non-disclosure may continue to be valid, in such instances, limited safeguards must be retained, as outlined in the guidelines below.

⁵¹ Co-Prosecutors' Response (F71/1/1/4), para. 73.

⁵² Co-Prosecutors' Response (F71/1/1/4), para. 73.

⁵³ See Internal Rule 21(1); Practice Direction on Reclassification, Article 1.2.

⁵⁴ Case 001 Decision on Guidelines for Reclassification of Documents on Case File, 16 July 2012, F30/2 ("Case 001 Decision on Guidelines for Reclassification (F30/2)"), para. 5. See also Case 001 Appeal Judgement, 3 February 2012, F28 ("Case 001 Appeal Judgment (F28)"), para. 708.

⁵⁵ Case 001 Decision on Guidelines for Reclassification (F30/2), para. 5. See also Case 001 Appeal Judgment (F28), para. 708.

27. The Chamber will identify categories of documents, particularly where submissions have indicated disagreement with the initial proposed guidelines; in those categories of documents, the Chamber will direct redactions, as required.

28. The Lead Co-Lawyers and Civil Party Lawyers have been recognised as parties in these proceedings, and their observations have been fully considered. The Co-Prosecutors have generally advocated for the redaction of confidential information within documents rather than classification of entire documents as confidential; however, if redactions fail to adequately protect the legitimate interests of persons, *i.e.*, security and privacy, that must be respected, such documents shall remain confidential. The Supreme Court Chambers will declassify the documents included in the Pre-Trial Chamber's previous memorandum⁵⁶ as public with redactions of the names and personal information of persons because their current classification is no longer appropriate at this stage of the proceedings.⁵⁷

29. With these general principles and observations in mind, and taking into account Articles 4, 5 and 6 of the Practice Direction on Classification, as well as having carefully reviewed and given due consideration to the various submissions tendered by the concerned Parties, Chambers and Sections of the ECCC, the Supreme Court Chamber adopts the following final guidelines for use during the reclassification process and the ongoing management of the Case File 002:

- a. Any document or part thereof which does not fall within paragraphs (b) or (c), below, shall be reclassified as public.
- b. The following documents or parts thereof shall remain Confidential:
 - i. Contact details of victims who are not civil parties in Case File 002,⁵⁸ including in cases where such information is found in victim complaints;
 - ii. Written records, transcripts, and audio/visual recordings of hearings held *in camera*, unless the reasons for maintaining confidentiality are no longer valid;⁵⁹

⁵⁶ Confidential and Public Redacted Documents in Case File 002 Proposed for Reclassification to Public, F67, 5 May 2021.

⁵⁷ Pre-Trial Chamber's Interoffice Memorandum, F71/1/1/1, 11 August 2022 ("Pre-Trial Chamber's Response (F71/1/1/1)"), paras 3-4.

⁵⁸ For the purpose of these guidelines, "Victim" refers to a natural person or legal entity that has suffered harm as a result of the commission of any crime within the jurisdiction of the ECCC, this definition is derived from the Glossary of the Internal Rules.

⁵⁹ The Chamber considers that these documents should be classified as public with redactions to the greatest extent possible. *See* Case 004/1 (PTC54), 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 28 ("With regard to the reclassification of the **hearings held in camera**, the Pre-Trial Chamber finds that the fact that the hearings took place in closed session does not automatically result in the transcripts remaining off the public record. Court management and document classification are governed by different legal instruments and have different purposes. Classification is governed by

- c. The following documents or parts thereof shall remain Strictly Confidential:
- i. Requests for protective measures and associated documents (including Witness and Expert Support Unit risk assessments);
 - ii. Documents and information subject to protective measures;
 - iii. Information concerning the health of a Suspect, Charged Person or Accused;
 - iv. Other documents where the reasons for classification as Strictly Confidential persist.
- d. If a document consists of a portion which ought to be public and a portion which ought to be classified as confidential or strictly confidential, Article 3.3 of the Practice Direction on Classification applies.
- e. Public documents shall not be subject to public dissemination where they are: (a) protected by copyright applicable laws unless it is fair use for educational and research purposes, in a manner recognised by the copyright law of the respective jurisdiction;⁶⁰ or (b) “subject to agreement with a third party that prohibits dissemination shall not be released to the public, unless permission is granted by the third party.”⁶¹
- f. The Supreme Court Chamber retains jurisdiction to sanction, in accordance with the Internal Rules, any unauthorised disclosure of classified information.
- g. Any concerned party, including the Co-Prosecutors, the Defence Support Section acting on behalf of the Accused in Case 002/01 and Case 002/02, Civil Party Lead Co-Lawyers and Civil Party Lawyers acting on behalf of the civil parties in Case 002/01 and Case 002/02 with assistance and support from the Victim Support Section, the Witness and Experts Support Unit, or the Public Affairs Section, may seek reclassification of any document which retains its Confidential or Strictly Confidential status following the conclusion of the reclassification procedure. In such a case, the concerned party should demonstrate changed circumstances justifying the reclassification.

the relevant Practice Direction, while hearings are governed by the Internal Rules”), 29 (The Pre-Trial Chamber stresses that: ‘**written records, transcripts, and audio/visual recordings of hearings held *in camera***’ are ‘**in principle confidential**’ unless a different classification is ordered by a Court decision. Therefore, no decision on the classification of written transcripts of hearings held *in camera* is final since such classification may be modified by a court decision. This reasoning also applies to the classification of the audio/video records of those hearings”).

⁶⁰ The Chamber will therefore adopt the access policy proposed by the Co-Prosecutors that is: The ECCC may require users seeking to access any records to accept certain conditions in an Access Policy as the following:

- i. The user shall accept that the granting of access to a document by the ECCC should not be construed as a release of copyright.
- ii. The user may make fair use of the material for the purposes of non-commercial research study or education in accordance with the copyright law applicable in the user’s jurisdiction.
- iii. If the user wishes to make any other use of the material including onward dissemination of the material, it must obtain the permission of the copyright holder.

⁶¹ Practice Direction on Classification, Article 12.3.

30. The public will be duly informed of the conclusion of the reclassification process.

B. Reclassification Process

1. Categorisation of Documents

31. To facilitate the efficient compilation of Annexes to the Supreme Court Chamber's order on reclassification, the Confidential documents in Case File 002 will be categorised according to which Party filed them, *i.e.*, Office of the Co-Investigating Judges, Office of the Co-Prosecutors, Defence Teams of: KAING Guek Eav *alias* Duch, KHIEU Samphân, NUON Chea, IENG Sary, IENG Thirith, and Pre-Trial Chamber, Trial Chamber, Supreme Court Chamber, Court Management Section, Defence Support Section, and others including Witness and Expert Support Unit.

32. In line with the above categorisation procedure, each Party's documents will further be catalogued by type of documents, *i.e.*:

- a) Submission, Motion, Request (substantial);
- b) Evidence;
- c) Supporting Material (Attachment);
- d) Memorandum;
- e) Civil Party or Victim related Document;
- f) Procedural or Administrative Document (Request for Correction, Document List, Table of Authorities).

33. Each Chamber and the Office of the Co-Investigating Judges' documents following the above categorisation, will be catalogued by type of documents:

- a) Judgment, Decision, Order, and Summons;
- b) Evidence;
- c) Supporting Material (Attachment);
- d) Suspect Statement;
- e) Transcript;
- f) Rogatoire Letters;
- g) Procedural or Administrative Documents (Request for Correction, Request for Reclassification, and Document Lists).

2. Examination of Documents

i. *Judgments, Decisions, Orders and Summonses of the Chambers and the Office of the Co-Investigating Judges*

34. The Judgments, Decisions and Orders of the Chambers and the Office of the Co-Investigating Judges will be declassified unless it addresses any matters that shall remain Confidential or Strictly Confidential under the General Principles.

35. Any information of the civil parties, victims or protected witnesses such as their names, contact, identifying and other private information shall be redacted.⁶²

36. Summonses will be removed from the list of documents to be declassified and remain confidential unless redacted.⁶³

37. Rogatory Letters will be removed from the list of documents to be declassified and remain confidential unless redacted.

ii. *Transcripts of Interviews and Hearings*

38. Reclassification of the interview transcripts of the Office of the Co-Investigating Judges and DC-Cam will require redaction of contact, identifying or other private information.

39. Reclassification of the transcripts of hearings that were held *in camera* will require declassification as public with redactions.

iii. *Parties' Submissions, Motions and Substantial Requests*

40. The Parties' Submissions, Motions and Substantial Requests will be declassified unless they address any matters that shall remain strictly confidential or confidential under the General

⁶² Given the Lead Co-Lawyer's concerns about information identifying victims of sexual violence, personal medical information, experiences of and perspectives on forced marriage, torture-tainted material, including confessions and biographies and naming of alleged perpetrators, the Chamber directs that such information be redacted. As previously observed, there is a need to strike a balance between the exigency of confidentiality and the demands of transparency. To the Co-Prosecutors' submission that Civil Party, Victim, and Witness materials, including transcripts and AV recordings, be made public in the interests of education, legacy and capacity building, subject to the redaction of contact details, other sensitive information and appropriate consultation with Civil Parties, the Chamber directs such information be accordingly redacted.

⁶³ The Chambers accepts the Co-Prosecutors recommendation to reclassify summonses as public of the Case 002 accused and/or their lawyers to attend initial and subsequent appearances before the Co-Investigating Judges and Pre-Trial Chamber, including provisional detention hearings, as well as to attend hearings before the Trial Chamber and Supreme Court Chamber, as well as their respective arrest warrants. The majority of pre-trial summonses, however, were issued to prospective witnesses for interviews with the Office of the Co-Investigating Judges. While some of these individuals later testified at trial, these documents identify individuals who had a reasonable expectation of privacy when they cooperated with the investigation. The Co-Prosecutors recommend that this category of summons remain confidential. Upon full review of summonses, the Chamber will identify sensitive information and accordingly direct redaction.

Principles. For example, Requests relating to inadmissible Civil Party Applicants, Requests concerning protective measures, and Documents and information subject to protective measures will remain confidential.

41. Any sensitive, identifying, or private information concerning the civil parties, victims or protected witnesses will be redacted. For example, any sensitive information pertaining to sexual and gender-based violence, medical information of complainants, witnesses, or civil parties or information identifying alleged perpetrators named by civil parties that was not made public during the trial phase will be redacted.

iv. *Evidence and Supporting Attachments*

42. Attachments of Judgments, Decisions, and Orders of the ECCC Chambers and other courts, which are usually excerpts, will be removed from the list of documents to be declassified and remain confidential unless they are already in the public domain.

43. Attachments of Reports will be removed from the list of documents to be declassified and remain confidential unless they are already in the public domain.

44. Attachments of Rules and Regulations will be removed from the list of documents to be declassified and remain confidential unless they are already in the public domain.

45. Attachments of Academic Articles, Books, Media Articles and Analytical Reports will be removed from the list of documents to be declassified and kept confidential in order to protect copyrights, unless they are already in the public domain.

46. To protect private and sensitive information, redactions will be required for the declassification of the Suspect Statements and Testimonial Evidence.

47. Witness materials will be removed from the list of documents to be declassified and will remain confidential.

a) **DK-era Documents**

48. Public Statements, Meeting Minutes, Telegrams, Reports, including Site Identification Reports, Reports relating to Civil Parties and Victims, Written Records of Investigation Action, Telegrams, Prisoner Lists, Biographies, Confessions, and Media Articles are among the DK-era Documents.

49. Many documents from the DK-era are already publicly available in other Case Files or online sources. However, the documents containing sensitive information that warrants continued protection, must remain confidential:

- a) Site Identification Reports: Redactions will be required to protect the identity of sources who have provided investigative leads but have not agreed to provide a formal statement.
- b) Reports on civil parties and victims whose applications were found admissible: Redactions will be required for contact details and private or sensitive information.
- c) Reports on civil parties and victims who were not admitted to the Case: Removed from the list of documents to be declassified and shall remain confidential.
- d) Written Records of Investigation Action: Removed from the list of documents to be declassified and shall remain confidential unless redacted.
- e) Prisoner Lists that contain sensitive information: Removed from the list of documents to be declassified and shall remain confidential unless redacted.⁶⁴
- f) Biographies: Removed from the list of documents to be declassified and shall remain confidential unless redacted.
- g) Confessions: Removed from the list of documents to be declassified and shall remain confidential unless redacted.
- h) Notebooks: Removed Security Centre Interrogators' Notebooks detailing the content of prisoner confessions, presumably obtained under torture, from the list of documents to be declassified and shall remain confidential unless redacted.

50. The International Co-Prosecutor has submitted a list of documents to be declassified in this category in Annex A of their Request.

b) Documents relating to the Investigative Process

51. The following types of letters will be removed from the list of documents to be declassified and remain confidential: Witness and Expert Support Unit Reports, Requests for Investigative Assistance, Rule 35 Investigation Correspondence, Letters of Assurance, Death Certificates, Letters relating to the Service of Documents Detailing the Location of the Individual being Served, Letters relating to staffing of the Office of the Co-Investigating Judges, Letters relating to the Legal Representation of Individual Civil Parties, Powers of Attorney, Withdrawal from Proceedings, the

⁶⁴ The Co-Prosecutors advocate for maximum transparency consistency with judicial functions of a court and that at the conclusion of the case any remaining confidential documents are reviewed for reclassification as public. They suggest that because these documents are not the product of torture, they should be made public and only, when necessary, for example, where it is required by protective measures or to protect victims of sexual and gender-based violence should names of victims be redacted. The Office of Administration also recommend suggest should be public. Upon review of these documents, the Chamber will identify sensitive information and declassify the documents as public with redactions.

Transfer of Documents onto Case Files 003 and 004 and Status Change Notifications Changing from a Complainant to an Applicant.

52. All maps in the Case File will be reclassified as public.

53. Photos of civil parties, victims and protected witnesses will remain confidential.

v. *Memos*

54. Memos of the Parties, Victims Support Section, Witness and Expert Support Unit will be removed from the list of documents to be declassified and remain confidential.

vi. *Civil Party and Victim related Documents*

55. The reclassification of civil party and victim related documents is conducted with extreme caution in order to protect the civil parties' and victims' security and privacy. Notably, a significant amount of time will be required for any redactions of any such documents, to allow for any change in their current confidential classification. Unless otherwise specified, the Chamber determines that such document shall be kept confidential.

vii. *Procedural or Administrative Documents*

56. Procedural or administrative documents such as Document Lists, Request for Correction forms, Request for Reclassification and Surrogate Sheets will be removed from the list of documents to be declassified and remain confidential.

C. Final Observations

57. Taking into consideration the submissions of the Parties, Chambers and Sections of the ECCC, the Supreme Court Chamber after careful review of the classified documents on Case File 002 considers that no additional observations are required from the Parties, Chambers, and Sections of the ECCC.

58. Following notification of the current decision, the Chamber will issue an order in due course to the Records and Archive Unit ("RAU"), along with an annexed spreadsheet listing the documents to be declassified.

59. Following the issuance of the reclassification order to RAU, the Supreme Court Chamber shall require RAU to revert the declassified documents for final review and approval prior to notifying them.

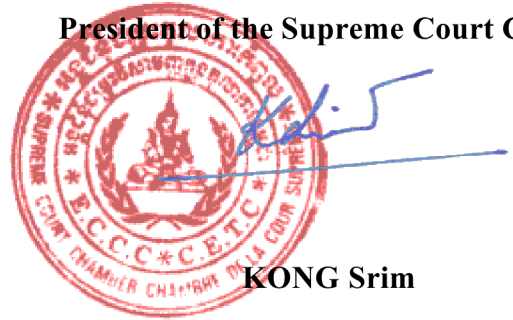
IV. DISPOSITION

FOR THE FOREGOING REASONS, THE SUPREME COURT CHAMBER:

ADOPTS the general guidelines for reclassification as set out above.

Phnom Penh, 20 March 2023

President of the Supreme Court Chamber



KONG Srim