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EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**INTERNATIONAL CO-PROSECUTOR'S REQUEST FOR RECLASSIFICATION
OF DOCUMENTS IN CASE 004/2**

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I. INTRODUCTION

1. Earlier this month when the Co-Rapporteurs presented their recommendations on initiatives for the residual functions of the ECCC, Judge Claudia Fenz stated that the “residual phase commends itself both to contributing to the victims’ healing process and the wider aspiration of national reconciliation”.¹ Judge You Ottara noted that the residual phase “has only just begun” and “there is still room and time to contribute to this process”.²
2. As the Court begins to shift its attention to residual phase efforts, the International Co-Prosecutor (“ICP”) recalls that the Supreme Court Chamber (“SCC”) has held that the “wide dissemination of material concerning the proceedings before this Court [...] is consistent with the ECCC’s mandate” and “may promote ‘a public and genuine discussion on the past grounded upon a firm basis, thereby minimising denial, distortion of facts, and partial truths.’”³ The Draft Completion Strategy makes clear that the United Nations (“UN”) and Royal Government of Cambodia (“RGC”) agree it is vital to ensure that the ECCC archives are not only preserved in accordance with international standards but are also “as broadly accessible as possible”.⁴ The reclassification process is expected to be carried out over the next three years.⁵
3. More transparency of the ECCC case files serves several goals. Aside from increasing access to historical records and thus facilitating education and research into DK-era events, making ECCC documents more publicly accessible will help to further demonstrate the credibility of the proceedings,⁶ thereby strengthening the legacy of this Court. In addition, providing access in Khmer to reasoned legal opinions and judgments; pleadings with well-

¹ ECCC Press Release, *Co-Rapporteurs on Residual Functions Related to Victims Deliver their Report*, 2 December 2021 (“Residual Functions Report Press Release”). See also Extraordinary Chambers in the Courts of Cambodia, Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea, 6 June 2003 (“ECCC Agreement”), introduction (recognising “the legitimate concern of the Government and the people of Cambodia in the pursuit of justice and national reconciliation, stability, peace and security”).

² Residual Functions Report Press Release.

³ Case 001-F30/2 Decision on Guidelines for Reclassification of Documents on Case File, 26 July 2021 (“Reclassification Guidelines”), para. 5, internal citations omitted. Offering an accurate factual basis helps authoritatively refute falsehoods and denialism, particularly in polarised societies after conflict. See e.g. Diane Orentlicher, *Memories of Judgment: Constructing the ICTY’s Legacies*, 19(3) Wash. U. Global Stud. L. Rev. (2020), pp. 316, 318-319, 324 (Holocaust survivor and Nobel laureate Elie Wiesel believed that there was a duty to preserve the memory of the Third Reich’s horrors because it was the surest way to upend what the Nazis had sought to achieve, which was to erase memory and, with it, the culture itself).

⁴ General Assembly Resolution 75/257, U.N. Doc. A/Res/75/257 B, 7 July 2021 (“Draft Completion Strategy”), art. 3(1). See also art. 3(2).

⁵ Draft Completion Strategy, art. 2(1).

⁶ ECCC Agreement, art. 12(2).

substantiated procedural, factual and legal arguments; and insights into investigative practices aimed at collecting reliable evidence will help enhance the quality of justice delivered by Cambodia's national legal system.

4. However, while transparency is an important objective for all the above reasons, it must be balanced against other rights and interests.⁷ Chief amongst those is safeguarding the rights of the Accused, witnesses, and victims.⁸ This includes protecting confidential personal material such as sensitive or private information regarding mental and physical health issues, statements that name or otherwise identify victims of sexual violence, and statements produced through the use of torture or threat of torture.⁹
5. The ICP notes that people who provided statements during the confidential ECCC investigations had an expectation of privacy when they gave their statements.¹⁰ In cases that never proceeded to trial, their views about making their information public have not been sought and, to the ICP's knowledge, no resources have been allocated to seek their views in the future. If this cannot be done, the parties and Chamber charged with reclassification have an obligation to properly safeguard their rights and interests. The ICP submits that this includes ensuring that private information is consistently protected for each individual, regardless of document type or case file. The ICP recognises that thought

⁷ See e.g. ECCC Agreement, arts 12(2), 23; Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, as promulgated on 27 October 2004, arts 33 new, 34 new; Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9) as revised on 16 January 2015 ("Internal Rules" or "IRs"), IR 21(1); Practice Direction on the Classification and Management of Case-Related Information, ECCC/004/2009/Rev.2, as revised on 5 June 2014 ("Practice Direction on Classification"), art. 1.2; Case 001-F30/2 Reclassification Guidelines, paras 5-6; D304/12 Decision on the Joint Defence Request for Reclassification of Rulings and Filings Concerning Resources, ICIJ, 31 August 2016, paras 14-17.

⁸ See e.g. Case 004/1-D304/6/4 Decision on Im Chaem's Request for Reclassification of her Response to the International Co-Prosecutor's Final Submission, PTC, 8 June 2018, para. 23; Case 002-E118/4 Trial Chamber Memorandum entitled "Response to Ieng Sary Defence Request for Access to Strictly Confidential Documents on the Case File (E118)", 28 November 2011; *The Prosecutor v. Yekatom and Ngaïssona*, ICC-01/14-01/18, Decision on Reclassification of Documents, Trial Chamber, 28 January 2021, para. 8 (in assessing what documents could be made publicly available, the Single Judge balanced the different interests at stake, including, *inter alia*, the principle of publicity; the safety, physical and psychological well-being, dignity and privacy of victims and witnesses; and the accused's right to privacy).

⁹ Making these materials public could result in a variety of harms, including stigmatisation or conflict within the community (particularly if the document makes allegations against others of criminal behaviour); adverse consequences on family members who were unaware of such harms (including children who were a product of forced consummations within forced marriages); and a chilling effect on the willingness of witnesses and victims (even at other tribunals) to speak candidly about similarly private matters despite assurances of confidentiality.

¹⁰ *Nshogoza v. The Prosecutor*, ICTR-2007-91-A, Judgement, Appeals Chamber, 15 March 2010, para. 67 ("[Tribunals have an] interest in protecting individuals who have agreed to cooperate and provide statements on a confidential basis. Potential witnesses who did not eventually testify may face similar risks as those who did, for instance by virtue of their cooperation with either party. Those who decided not to testify out of fear might also require anonymity, depending on the circumstances.").

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and great care will be required for this process, but the people who cooperated with the ECCC to help ascertain the truth deserve to have their sensitive and personal information safeguarded. Transparency should not override these interests, and the proper handling of such information will be an important part of the ECCC's legacy.

6. Mindful of all these considerations and with a view to making a meaningful contribution early in the reclassification process,¹¹ the ICP has undertaken a review of the documents on the Case 004/2 case file, highlighting the numerous issues that must be considered and making recommendations on how to resolve them. While this Request proposes the reclassification of specific Case 004/2 documents, the main goal is to more broadly facilitate the development of policies that will ensure reclassification at the ECCC is carried out with care and uniformity across all the cases. In this regard, this Request should be viewed in tandem with the request recently filed by the Civil Party Lead Co-Lawyers ("LCLs") in Case 002/02, which discusses issues relating to the civil parties that are applicable across all the ECCC cases.¹²
7. Finally, in addition to reclassification, the ICP urges the SCC (or the residual mechanism, depending on when the action is undertaken) to formulate a policy that would govern access to all records that remain classified as confidential or strictly confidential after the Chamber's resolution of this and related requests.¹³ By establishing guidelines detailing what justifications would warrant access and for what limited purposes the documents may be used when access is granted, the SCC will ensure consistency and fairness in administration of the policy. In keeping with the ECCC's mandate and goals, the overall approach should balance the principles of openness and transparency with the obligation to safeguard the security and privacy interests of individuals named in the documents.

¹¹ See Practice Direction on the Filing of Documents before the ECCC, ECCC/01/2007/Rev.8, as revised on 10 May 2012 ("Practice Direction on Filing"), art. 3.14 ("Where required in the interests of justice, [CIJs] or a Chamber seized of a case may re-classify any document on the case file. Affected parties will be given an opportunity to be heard either prior to such a decision being made, or during any period of temporary re-classification that is necessary to protect information that may be confidential or strictly confidential."); Residual Functions Report Press Release ("there is still room and time to contribute to this process"); Case 001-F30/2 Reclassification Guidelines, paras 2-4; Case 002-E467/6 Order to Reclassify Documents on the Case File as Public, TC, 27 June 2019, para. 2.

¹² Case 002-F71 Request for Directions Regarding the Reclassification of Civil Party Documents, 14 December 2021 ("Civil Party LCL Request for Directions").

¹³ The ICP refers the SCC to the access policies in force at the Mechanism for International Criminal Tribunals (see <https://www.irmct.org/sites/default/files/documents/pd-mict-17-160812-en.pdf>), the Residual Special Court for Sierra Leone (see <http://www.rscsl.org/Documents/RSCSL%20Access%20Policy.pdf>), and the Unified Court Records database (ICTR, ICTY, and IRMCT) User Guide for more details (see https://ucr.irmct.org/manuals/UCR_User_Guide.pdf).

II. RELEVANT PROCEDURAL HISTORY

8. On 7 September 2009, the Acting ICP forwarded the Third Introductory Submission and case file to the Co-Investigating Judges (“CIJs”), who then opened Case 004 and began investigative action into three suspects: Im Chaem, Ao An, and Yim Tith.¹⁴
9. On 5 February 2016, the CIJs, having completed their investigation into Im Chaem, severed her case from proceedings against the other Case 004 suspects, creating Case 004/1.¹⁵ The Case 004 investigation into Ao An and Yim Tith continued.
10. On 16 December 2016, the CIJs severed the Ao An case from the Case 004 investigation into Yim Tith, creating Case File 004/2 for the Ao An case.¹⁶
11. On 10 August 2020, the SCC terminated Case 004/2.¹⁷
12. On 14 August 2020, the CIJs ordered that Case File 004/2 be sealed and archived.¹⁸
13. On 6 November 2020, Ao An died.¹⁹
14. On 7 April 2021, the International Judges of the Pre-Trial Chamber (“PTC”) stated that the CIJs had not had the authority to issue the order to seal and archive Case 004/2 as they were no longer seised of the case after issuing their closing orders. The International Judges stated that the last judicial office seised of Case 004/2 was either the PTC or the SCC.²⁰
15. On 28 April 2021, the International Co-Investigating Judge (“ICIJ”) rejected all requests for protective measures by Civil Party applicants in Case 004/2.²¹
16. On 28 October 2021, the PTC reclassified documents on Case Files 004 and 004/1,²² many of which were shared by and/or relevant to Case 004/2. However, the PTC issued no

¹⁴ **D1** Co-Prosecutors’ Third Introductory Submission, 20 November 2008; **D1/1** Acting International Co-Prosecutor’s Notice of Filing of the Third Introductory Submission, 7 September 2009.

¹⁵ **D286/7** Order for Severance of Im Chaem from Case 004, 5 February 2016.

¹⁶ **D334/1** Order for Severance of Ao An from Case 004, 16 December 2016.

¹⁷ Special SC04/2-**E004/2/1/1/2** Decision on International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s Effective Termination of Case 004/2, 10 August 2020, para. 71(vi).

¹⁸ **D363/3** Order Sealing and Archiving Case File 004/2, 14 August 2020, para. 10.

¹⁹ The Phnom Penh Post, *Khmer Rouge’s Ao An Dies*, 8 November 2020; Cambodia News English, *Khmer Rouge Official Ao An Dies in Battambang*, 8 November 2020.

²⁰ Case 003-**D266/27 & D267/35** Considerations on Appeals Against Closing Orders, 7 April 2021, para. 133 (*see also* paras 126, 132).

²¹ **D348** Decision on Civil Party Applicants’ Requests for Protective Measures, 28 April 2021.

²² Case 004-**D387** Pre-Trial Chamber Interoffice Memorandum regarding Reclassification of Documents in Case File 004, 28 October 2021 (reclassifying a total of 509 documents, set out in **D387.1** Annex); Case 004/1-**D317** Pre-Trial Chamber Interoffice Memorandum regarding Reclassification of Documents in Case File 004/1, 28 October 2021 (reclassifying a total of 273 documents, set out in **D317.1** Annex).

corresponding reclassification decision in Case 004/2, thereby indicating that it considers the SCC to be the only chamber now qualified to reclassify Case 004/2 documents. As a result, many pleadings specifically relating to Ao An are publicly available on the case files relating to Im Chaem and/or Yim Tith, but not on the Ao An case file.²³

III. APPLICABLE LAW AND GUIDING PRINCIPLES

17. The ECCC Agreement provides:

In the interest of securing a fair and public hearing and credibility of the procedure, it is understood that representatives of Member States of the United Nations, of the Secretary-General, of the media and of national and international non-governmental organizations will at all times have access to the proceedings before the Extraordinary Chambers. Any exclusion from such proceedings in accordance with the provisions of Article 14 of the [ICCPR] shall only be to the extent strictly necessary in the opinion of the Chamber concerned and where publicity would prejudice the interests of justice.²⁴

18. The Internal Rules direct:

The applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations shall be interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused and Victims and so as to ensure legal certainty and transparency of proceedings, in light of the inherent specificity of the ECCC, as set out in the ECCC Law and the Agreement.²⁵

19. The Practice Direction on Classification provides:

The principle underlying this Practice Direction is the need to balance the confidentiality of judicial investigations and of other parts of judicial proceedings which are not open to the public with the need to ensure transparency of public proceedings and to meet the purposes of education and legacy.²⁶

²³ For example, the following documents are classified as confidential in Case 004/2 and public in Case 004/1: **D282/4** Ao An's Response to the ICIJ's Letter regarding Placement of the Documentation Center of Cambodia ('DC-Cam') Audio Recordings on the Shared Materials Drive, 22 December 2015; **D284/1/1** Request to File in English First the Appeal Against the Order on Ao An's Responses D193/47, D193/49, D193/51, D193/53, D193/56 and D193/60, 13 January 2016; **D258/1/2** Withdrawal of Notice of Appeal Against Decision on Ao An's Internal Rule 76 Application for Annulment of Premeditated Homicide Charges and Related Investigations, 9 December 2015; **D260/1/1/1** Request to File in English First the Appeal Against the Decision on Ao An's Fifth Request for Investigative Action, 8 December 2015.

²⁴ ECCC Agreement, art. 12(2).

²⁵ IR 21(1).

²⁶ Practice Direction on Classification, art. 1.2.

Documents or information can be re-classified (and placed in a section of the case file with a different level of confidentiality) only pursuant to an order of the Co-Investigating Judges or a Chamber, as appropriate.²⁷

The last judicial office seised of a case shall undertake a review of the security classifications of records in the case file [...] Guidelines for declassification *not* undertaken by the last judicial organ seised of the case shall be developed by or in the context of a residual mechanism.²⁸

20. After Case 001 concluded, the SCC issued guidelines for reclassifying documents, stating:

The Supreme Court Chamber observes that classification of documents is to be determined by balancing the exigency of confidentiality with the demands of transparency deriving from the fundamental principles that govern the procedure before the ECCC, in light of this Court's goals of education and legacy. In this regard, this Chamber recalls that '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.' Wide circulation of the substantial store of documentation in the Case 001 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.'²⁹

21. Particularly relevant to cases that did not proceed to trial was the SCC's view that:

Most of the valuable material in the case file has been collected in the course of the judicial investigation. As the proceedings [...] 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. [...] At the same time, considering that proceedings before the ECCC are still in progress and that, even after their conclusion, certain reasons for non-disclosure may continue to remain valid, limited safeguards need to be retained [...].³⁰

22. The ECCC Practice Direction on Classification recognises that some information continues to require careful handling after proceedings are completed. It provides particular protection to requests for protective measures and associated documents (including Witness and Expert Support Unit ("WESU") risk assessments), documents and information subject to protective measures, and information concerning the health of a Suspect, Charged Person or Accused.³¹ It also provides that Civil Party Applications

²⁷ Practice Direction on Classification, art. 9.1. *See also* Practice Direction on Filing, art. 3.14.

²⁸ Practice Direction on Classification, arts 12.2, 12.4 (emphasis added).

²⁹ Case 001-F30/2 Reclassification Guidelines, para. 5, internal citations omitted.

³⁰ Case 001-F30/2 Reclassification Guidelines, para. 6.

³¹ Practice Direction on Classification, art. 6 (providing that "Subject to a different classification in accordance with a Court decision, [these] categories of documents and information are in principle strictly confidential").

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(“CPAs”) denied joinder are to remain confidential, whereas contact details in Victim Complaints and CPAs deemed admissible must be redacted if they are made public.³²

23. The need to protect victims’ private and sensitive personal information has also been enshrined in the UN Secretary-General’s guidelines for the classification and handling of sensitive information³³ and in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which was adopted by the General Assembly.³⁴ The Declaration provides:

Victims should be treated with compassion and respect for their dignity. [...]

The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by [...] [t]aking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation[.]³⁵

24. The international criminal tribunals that have moved to residual functions have established formal access policies to ensure that interests are properly balanced and consistently honoured. At the Residual Special Court for Sierra Leone (“RSCSL”), the access policy provides:

The work of the RSCSL shall be open and transparent, except insofar as the nature of the records and information concerned is deemed sensitive [...]. For the purposes of this policy and consistent with the SCSL Records and Archival Policy, sensitive records and information shall include [...] [r]ecords and information related to the protection of witnesses, victims and other vulnerable individuals referred to in the evidence or otherwise related to the judicial process, including records which contain information which, if disclosed

³² Practice Direction on Classification, arts 7.2, 7.4. The ICP acknowledges that the CIJs took different views regarding admissibility of these materials, but as stated in **D362/6** Considerations on Appeal Against Order on the Admissibility of Civil Party Applicants, 30 June 2020 (“PTC Admissibility Considerations”), Opinion of Judges Baik and Beauvallet (“International Judges’ Opinion”), para. 118, the PTC’s failure to reach a supermajority on the appeal against the ICIJ’s order means the order stands.

³³ See e.g. Secretary-General’s bulletin, “Information sensitivity, classification and handling”, ST/SGB/2007/6, 12 February 2007, section 1.2 (“Information deemed sensitive shall include the following [...] Documents whose disclosure is likely to endanger the safety or security of any individual, violate his or her rights or invade his or her privacy; [...] Other kinds of information, which because of their content or the circumstances of their creation or communication must be deemed confidential.”); Secretary-General’s bulletin, “International Criminal Tribunals: information sensitivity, classification, handling and access”, ST/SGB/2012/3, 20 July 2012, section 4.2 (“In addition to records and information identified as sensitive in ST/SGB/2007/6, sensitive records and information shall include the following: [...] records which contain information which, if disclosed without appropriate authorization, could reveal the identity and location of protected witnesses, victims and other vulnerable individuals”).

³⁴ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by UN G.A. Res. 40/34, 29 November 1985.

³⁵ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, paras 4, 6.

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without appropriate authorisation, could reveal the identity and location of protected witnesses, victims and other vulnerable individuals[.]³⁶

The Access Policy for the Records Held by the International Residual Mechanism for Criminal Tribunals provides that information *exempt* from disclosure includes:

Records and information whose disclosure is likely to endanger the safety or security of any individual, violate his or her rights or invade his or her privacy. This shall include records and information related to the protection of witnesses, victims and other vulnerable individuals referred to in the evidence presented before the ICTR, ICTY or Mechanism or otherwise related to the judicial process, including records which contain information which, if disclosed without appropriate authorization, would reveal the identity and location of protected witnesses, victims and other vulnerable individuals. This shall also include personal information related to persons, or families of such persons, who have been or are currently detained by the ICTR, ICTY or Mechanism.³⁷

25. Similarly, the Tuol Sleng Genocide Museum (“TSGM”) balances competing interests, making many of the documents in its archives publicly accessible but also protecting highly sensitive information.³⁸ For example, an online search of a detainee’s name would produce a list of all the archive documents relating to that detainee, but the searcher would be unable to view the contents of any documents such as confessions or biographies that were presumptively produced under torture or threat of torture. The searcher would be alerted to the existence of such records but would have to apply for authorisation and meet the requirements set out in the Museum’s access policy before being allowed to view them. The TSGM clearly states on its website that:

The information contained in many of these documents was extracted under torture, or under threat of torture. In consequence, any opinions or statements expressed therein should be treated with the utmost discretion, should not be accepted as fact, and would be inadmissible as evidence in a court of law under the Convention Against Torture. Tuol Sleng Genocide Museum cannot be held liable for the use of or reliance on the opinions, findings and data in these documents.³⁹

³⁶ Residual Special Court for Sierra Leone: Records and information sensitivity, classification, changes in classification, handling and access policy, Residual Special Court for Sierra Leone, 1 January 2014, sections 4.1, 4.2(b).

³⁷ Access Policy for the Records Held by the International Residual Mechanism for Criminal Tribunals, International Residual Mechanism for Criminal Tribunals, MICT/17/Rev.1, 4 January 2019, art. 10(3)(b). *See also* art. 7(2).

³⁸ As discussed briefly in fn. 9, *supra*.

³⁹ *See* <http://archives.tuolsleng.gov.kh/documents>, disclaimer statement.

IV. METHODOLOGY OF THE ANALYSIS

26. To conduct her comprehensive review, the ICP obtained a Zylab inventory of the Case 004/2 case file from CMS in the form of a sortable spreadsheet that lists all the metadata for each document. The Zylab inventory also indicates the amount of evidence: in Case 004/2, there are 35,606 documents on the case file. However, this number reflects the records in all three languages, so the number of individual documents is substantially less than the total suggests. In other words, if document A is translated from Khmer into both English and French, it is counted as three documents in Zylab rather than one, whereas document B, translated from Khmer into English alone, would count as two. This Request will maintain this system of counting unless otherwise indicated since the Zylab inventory is the basis of the ICP's analysis. Of the 35,606 documents in Case 004/2, 2,132 are classified as public, 33,421 are confidential, and 53 are strictly confidential.
27. The documents on the case file are categorised by "record type" in Zylab, and for ease of reference, the ICP's analysis refers to the documents using these categories.⁴⁰ However, numerous kinds of documents may be found within one record type, so it would be imprudent to make blanket reclassification decisions based on this designation alone. For example, the "Reports" record type includes investigative reports that cover a variety of protectable interests as well as DK-era reports that present no issues warranting ongoing protection.
28. In addition, the "record type" system of categorisation may prevent a clear understanding of the relationship between documents that becomes more obvious when the spreadsheet is sorted and filtered in other ways. For example, a CPA may be categorised as a "Victims Application", while the summary of that CPA is designated as a "Report" and supplementary information is a "Letter". Putting the documents in numerical order makes evident that all three record types relate to the same applicant. This helps make reclassification more consistent: if one of the documents is made public or requires redaction, the related documents likely warrant similar treatment.⁴¹

⁴⁰ Annex A provides a detailed breakdown of the Case 004/2 documents by record type and, within each type, by classification status (public, confidential, strictly confidential).

⁴¹ The ICP's Case 004/2 analysis therefore organises the information in numerical groupings so the relationships are clearer for the pleadings, witness materials, and civil party and victim materials.

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29. To organise the information in a more digestible way for analysis, the ICP has grouped the record types assigned by Zylab into five broader categories. These categories are listed below in bold, and the record types within each category are noted in parentheses:
- A) **DK-era documents** (Public Statements, Meeting Minutes, Reports, Telegrams, Prisoner Lists, Biographies, Confessions, Notebooks, Media Articles (part I), Rules and Regulations)
 - B) **Pleadings** (Motions, Requests, Written Submissions, Responses, Replies, Decisions, Orders, Judgments, Records of Appeal, Document Lists⁴²)
 - C) **Documents relating to the investigative process** (Letters, Memos, Rogatoire Letters, Summonses, Maps, Photos/Photographs)
 - D) **Research and Authorities** (Academic Articles, Books, Analytical Reports, Media Articles (part II), Document Lists)
 - E) **Statements and testimonial evidence** (Suspect Statements, Transcripts, Victim Applications, Victim Documents, Witness Statements, Proces Verbal).
30. To promote consistent application across all case files, the analysis in Section V briefly outlines the relevant issues within each category, the ICP's recommendations regarding those issues, and the reasoning supporting her recommendations. The ICP has also prepared annexes detailing her specific recommendations for Case 004/2 to provide concrete examples that will assist the Chamber in making its reclassification determinations more broadly for all the cases.⁴³ Where the analysis recommends maintaining confidentiality, the ICP urges the Chamber to clearly set out in an access policy what documents would be authorised for limited access, what criteria would have to be met to obtain such access, and what terms of use would be imposed on that access in order to continue safeguarding the sensitive information the documents contain.⁴⁴
31. Finally, many of the documents currently classified as confidential in Case 004/2 are already publicly available elsewhere, either in other ECCC case files or through online sources. When already public on other case files, the relevant document numbers are noted in the annex. This is not to suggest that documents already public should be made public in Case 004/2 when such documents raise security or privacy concerns. This is noted

⁴² The document lists which the ICP seeks to make public are divided between two annexes. Annex B (pleadings) contains document lists that relate to other pleadings (requests, motions, etc.) for which reclassification is also being sought in this Request. Annex D-5 contains the remaining document lists, which, unless otherwise noted, relate to pleadings that are already classified as public in Case 004/2.

⁴³ The 26 confidential annexes detail the specific documents proposed for reclassification in Case 004/2. To minimise confusion about which documents are proposed for reclassification, the annexes maintain Zylab's assigned record type designations as well as any spelling errors that may appear in the "document title" field.

⁴⁴ See para. 7, *supra*, and the access policies referenced therein as examples.

merely to assist in tracking the documents so that the Chamber's reclassification and/or redaction decisions can be uniformly applied in all cases.⁴⁵

V. RECLASSIFICATION ANALYSIS

A. DK-ERA DOCUMENTS

32. The DK-era documents encompass 10 main record types: (1) public statements; (2) meeting minutes; (3) reports; (4) telegrams; (5) prisoner lists; (6) biographies; (7) confessions; (8) notebooks; (9) media articles (part 1); and (10) rules and regulations.
33. These documents were created either immediately prior to or during the DK regime. Collectively, they help demonstrate national policies and the *chapeau* elements necessary to prove Crimes Against Humanity. They also provide evidence of the administrative hierarchy and reporting structure of the DK regime that were crucial to the implementation of CPK policies and the success of the joint criminal enterprise. Consequently, they are important for both evidentiary and historical purposes.
34. Subject to some exceptions that are noted below, the ICP recommends that the DK-era documents be made **public** to serve the principle of transparency. More than 40 years have passed since the documents were produced, and they generally do not contain information that would breach the privacy rights of any individuals mentioned. Ensuring this DK-era evidence is made publicly accessible will allow future generations and researchers to better understand DK history and the events and charges in the cases.
35. Many of the DK-era documents are already publicly available on other ECCC case files or through online sources, and unless noted otherwise, those that are not publicly available have no information that would warrant continued confidentiality.

1. Public Statements

36. These documents are primarily official statements and communications made by DK leaders during the regime that do not warrant continued confidentiality and are already in the public domain. For Case 004/2, the ICP proposes that 25 out of 27 documents in this

⁴⁵ The ICP considers personal information that needs to be protected and therefore redacted includes, but is not limited to, information contained on a national identification card, photographs showing the witness or civil party's face, details regarding their residential location (including the village name), phone numbers, family members' names, and information regarding mental or physical health.

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record type be reclassified, as set out in Annex A-1.⁴⁶ As noted in the annex, all the proposed documents are publicly available in either Case 001, Case 002, or both.

2. Meeting Minutes

37. The documents in this record type include minutes from CPK Standing Committee meetings (also called the “Permanent Committee” in Zylab), ministerial and topical meetings (meetings of ministers, Ministry of Commerce; meetings regarding public works, local affairs, social affairs and health), military leadership meetings (division and regiments), a meeting of the “People’s Representative Assembly of Kampuchea”, and commerce/trade negotiations between a DK delegation and China. A record from a 1977 UN General Assembly meeting in which Ieng Sary gave an address as a representative of the DK Government is also included. None of these matters require continued protection.
38. For Case 004/2, the ICP seeks to make all 165 “Meeting Minutes” public, as detailed in Annex A-2.⁴⁷

3. Reports

39. The documents in this record type include DK-era reports from CPK officials, DC-Cam regional investigative reports, site identification reports from the Office of Co-Investigating Judges (“OCIJ”), Written Records of Investigation Action (“WRIAs”) that detail investigative efforts relating to potential witnesses and civil parties, reports summarising the content of victim information forms and CPAs, and reports attached as authorities or annexes to pleadings.
40. Because the reports contained in this record type are so varied in purpose and in the amount of sensitive or personal information they contain, the ICP makes the following specific recommendations. As with other contemporaneous documents, she recommends that DK-era reports be made public for the reasons discussed previously.⁴⁸ DC-Cam regional investigative reports that are relevant to the case file can also safely be made public.⁴⁹ To promote transparency and education, relevant site identification reports should be

⁴⁶ The remaining two documents in this record type are not sought for reclassification as they were attached as authorities to a party submission and were public statements made by the ICP, not by former DK officials.

⁴⁷ It is important to note that document **D219/487.1.3** has a public redacted version in the Case 001 case file (**E3/412**). If made public in Case 004/2, the ICP recommends that the Case 001 redactions be maintained in Case 004/2 to protect the personal information of the interviewee and promote uniformity across the case files.

⁴⁸ See paras 33-35, *supra*.

⁴⁹ The ICP notes that site identification reports and DC-Cam investigative reports may be on the case file but not relevant to that particular case due to the joint nature of a case prior to severance (as in Case 004/2).

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reclassified, but only after determining whether any redactions are necessary to protect the identity of sources who provided investigative leads but did not agree to provide a formal statement.⁵⁰ Similarly, reports relating to civil parties and victims whose applications were deemed admissible by the CIJs (or ICIJ) should be reclassified to public, but only after contact details and private or sensitive information have been redacted.⁵¹

41. In contrast, reports relating to civil party applicants and victims who were *not* admitted to the case should *not* be made public.⁵² The ICP also recommends that, subject to a few limited exceptions, WRIAs remain confidential since they often contain sensitive or personal information that warrants continuing protection.⁵³
42. Finally, the ICP is of the view that documents attached as authorities or annexes to pleadings should remain confidential. As discussed throughout this Request, such documents are either publicly available elsewhere or are protected by copyright or other confidentiality measures. Reclassifying Tables of Authorities (“TOAs”) while keeping the underlying authorities confidential (in this case, reports) would avoid ECCC violation of such protections and put the *onus* on the user to seek proper authorisation to access and/or use the materials.
43. In Case 004/2, the ICP seeks reclassification for 585 out of 5,340 confidential and strictly confidential reports, which are set out in Annex A-3.⁵⁴ These records include DK-era reports made by CPK officials and DC-Cam investigative reports relating to Case 004/2 regions. She also proposes reclassification of OCIJ site identification reports that relate to crime sites for which Ao An was investigated,⁵⁵ but *not* site identification reports relating to the Im Chaem or Yim Tith investigations that would be more appropriately reclassified

⁵⁰ As discussed in paras 23-24, *supra*.

⁵¹ See paras 22-24, *supra*. See also fn 32 (re. admissibility that was determined by only one CIJ), 45 (providing some examples of the type of information that should be redacted), *supra*.

⁵² See particularly para. 22, *supra*.

⁵³ See paras 22-24, *supra*. These often identify people who did not consent to a formal interview but spoke openly with an expectation that their role in providing investigative leads would remain confidential.

⁵⁴ Additional confidential “Reports” are included in the Civil Party and Victim Materials annex (Annex E-4) where they are more logically grouped with related civil party documents.

⁵⁵ **D219/584** Wat Ta Meak Site Identification Report, 14 September 2015; **D3/21** Kor (Met Sop) Site Identification Report, 29 November 2010; **D3/23** Phnom Pros Site Identification Report, 1 December 2010; **D117/48** Wat Angkuonh Dei and Tuol Beng Site Identification Report, 31 July 2014; **D107/16** Kok Pring Site Identification Report, 28 February 2012; **D3/25** Wat Batheay Site Identification Report, 8 February 2011; **D3/24** Anlong Chrey Dam Site Identification Report, 2 February 2011; **D6.1.397** Wat Au Trakuon Site Identification Report, 30 June 2009; **D107/17** Chamkar Svay Chanty Site Identification Report, 1 March 2012; **D6.1.391** Wat Baray Chan Dek Site Identification Report, 1 May 2009; **D117/15** Wat Srange Site Identification Report, 14 December 2012; **D117/16** Wat Kandal Site Identification Report, 14 December 2012; **D117/36.1.30** Trea Village Site Identification Report, 30 June 2009.

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in their respective cases.⁵⁶ In keeping with the principles stated above, the ICP does *not* seek reclassification of reports attached as authorities or annexes to pleadings, nor of the reports relating to CPAs that were deemed inadmissible by the ICIJ.⁵⁷ Reports for admissible CPAs and complaints are sought for reclassification alongside related victim and civil party materials in Annex E-4, discussed below.

4. Telegrams

44. The documents in this record type are primarily DK-era telegrams that, *inter alia*, provide evidence of the communication and reporting structure of the DK hierarchy, the issuance of directives, and the implementation of those directives. There is no need for such information to remain confidential. In Case 004/2, the ICP seeks reclassification of 578 out of 583 confidential documents in this record type, as detailed in Annex A-4.⁵⁸

⁵⁶ For purposes of future reclassification efforts in the other two cases, the relevant reports for Cases 004/1 (Im Chaem) and 004 (Yim Tith) are as follows: **Im Chaem: D106/12** Wat Preah Net Preah Site Identification Report, 14 February 2012; **D106/15** Phum Chakrey and Prey Taruth Site Identification Report, 15 February 2012; **D106/18** Phnom Trayoung Site Identification Report, 11 April 2012; **D106/19** Spean Sreng and Prey Roneam Dam Site Identification Report, 11 April 2012; **D118/38** Wat Chamkar Khnol Site Identification Report, 25 March 2013; **D119/9** Wat Ang Srei Mealy Site Identification Report, 4 December 2012; **D119/10** Prey Sokhon Site Identification Report, 6 December 2012; **D119/46** Ta Krak House, Chamkar Daung, and Chamkar Yeay Ning Site Identification Report, 9 May 2013; **D6.1.710** Trapeang Thma Dam Site Identification Report, 6 January 2010. **Yim Tith: D3/22** Wat Pratheath Site Identification Report, 30 November 2010; **D6.1.149** Kraing Ta Chan Site Identification Report, 17 March 2009; **D6.1.150** Wat Kirirum Site Identification Report, 21 April 2009; **D6.1.395** Wat Samrong Khong Site Identification Report, 24 June 2009; **D105/10** Wat Kandal Security Centre Site Identification Report, 24 February 2012; **D105/11** Wat Samdech Site Identification Report, 28 February 2012; **D105/12** Wat Po Laingka Site Identification Report, 29 February 2012; **D105/13** Wat Thoamayutt Site Identification Report, 29 February 2012; **D105/14** Banteay Treng Site Identification Report, 1 March 2012; **D105/15** Banteay O Ta Krey Site Identification Report, 1 March 2012; **D105/16** Wat Thipakdei Site Identification Report, 24 April 2012; **D105/17** Wat So Ben Site Identification Report, 24 April 2012; **D105/18** Tuol Mtes Site Identification Report, 24 April 2012; **D105/19** Sector 1 Security Centre Site Identification Report, 24 April 2012; **D105/20** Prison No. 8 Site Identification Report, 24 April 2012; **D118/11** Phum Veal Site Identification Report, 17 January 2013; **D118/12** Tuol Seh Nhauv Site Identification Report, 18 January 2013; **D118/13** Prey Krabau Site Identification Report, 22 January 2013; **D118/14** Wat Chanreangsei Site Identification Report, 23 January 2013; **D118/15** Svay Chrum Site Identification Report, 24 January 2013; **D118/16** Trach Kraol Site Identification Report, 25 January 2013; **D118/32** Phnom Tra Cheak Chet Site Identification Report, 5 March 2013; **D118/35** Anlong Vil Preng and Chhnal Moan Site Identification Report, 4 March 2013; **D118/36** Wat Banteay Neang Site Identification Report, 8 March 2013; **D118/37** Koas Krala Site Identification Report, 10 March 2013; **D118/146** Banan (Sector 1) Security Centre Site Identification Report, 2 November 2013; **D119/9** Wat Ang Srei Mealy Site Identification Report, 4 December 2012; **D119/10** Prey Sokhon Site Identification Report, 6 December 2012; **D134/6** Veal Bak Chunching Site Identification Report, 17 September 2013; **D219/271** Thipakdei Security Centre Site Identification Report, 24 April 2015; **D219/272** Kang Hort Dam Site Identification Report, 24 April 2015; **D219/273** Khnang Kou Site Identification Report, 24 April 2015; **D219/274** Kampong Kol Sugar Factory Site Identification Report, 24 April 2015; **D219/500** Reang Kesei Commune Site Identification Report, 11 September 2015.

⁵⁷ The ICP observes that many of the CPAs and victim complaints were deemed inadmissible in Case 004/2 because they were relevant to the Im Chaem or Yim Tith investigations and not the Ao An case, but they were added to the case file prior to severance.

⁵⁸ The remaining documents in this category are not sought for reclassification because they are surrogate sheets that merely refer to a subsequently assigned document number where the original content can be found.

5. Prisoner Lists

45. These documents include lists of prisoners interrogated and/or executed at DK security centres, and other administrative reports regarding prisoners. Together, the documents demonstrate that specific groups were targeted, and they also help establish the widespread nature of the attacks. Prepared in the normal course of managing the DK security apparatus, these records were not the product of torture and can safely be made public.
46. For Case 004/2, the ICP seeks reclassification of 314 out of 323 confidential documents in this record type, including lists relating to cadres purged from the Central Zone. These are detailed in Annex A-5. The few documents *not* sought for reclassification contain sensitive information that warrants continued protection.⁵⁹

6. Biographies

47. These records include identity cards and birth/death certificates of prospective civil parties and witnesses, the *curricula vitae* of potential experts who were never contacted to gauge their interest in serving as experts since the case did not proceed to trial, and biographies collected and used by the DK regime to identify and target enemies (produced under duress or, in the case of security centre biographies, presumably torture).
48. Subject to some exceptions noted below, the ICP recommends that documents in the “Biographies” record type remain confidential, as the interest of transparency is substantially outweighed by the need to protect identifying and/or sensitive personal information that comprise the main content of these documents.
49. The ICP notes that some of the prisoner biographies have already been made public in Case 001 and/or Case 002, so for the sake of consistency, the Chamber should consider revising these classifications, or redact identifying data across all the case files in which these documents appear.⁶⁰ As a matter of principle, the ICP agrees with the approach taken

⁵⁹ These include S-21 prisoner confessions (**D6.1.87**, **D6.1.88**) that were presumably produced under torture, and a prisoner list annexed to a civil party application that the ICIJ deemed inadmissible for Case 004/2 (**D5/275.9**). As noted in paras 4, 22 and 25, *supra*, such documents should remain confidential.

⁶⁰ See e.g. **Case 001: E3/503/2** (D219/444.1.3 in Case 004/2); **E3/222** (D219/702.1.55 on Case 004/2, *see particularly* pp. 3-6 of the document). **Case 002: E3/7508** (D132.1.11 in Case 004/2); **E3/1533** (D219/702.1.44 in Case 004/2); **E3/961** (D219/702.1.55 in Case 004/2, *see particularly* pp. 3-6 of the document); **E3/7525** (D219/879.1.16 in Case 004/2); **E3/7516** (D219/883.1.18 in Case 004/2); **E3/9297** (D219/883.1.20 in Case 004/2); **E3/7509** (D6.1.1239 in Case 004/2); **E3/7592** (D6.1.1256 in Case 004/2). *See also* fn. 45, *supra*.

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by the TSGM as discussed in paragraph 25 above, and she recommends that the ECCC adopt a similarly restrictive approach regarding access to the content of these documents.⁶¹

50. In regard to Case 004/2, the ICP seeks to make public only 8 out of 383 confidential documents in this record type. These eight documents fall outside the parameters that warrant continued protection, as they post-date the DK era and are not products of torture. They include the post-DK biography of Ke Pauk, who was Secretary of the Central Zone and Ao An's direct superior, and a statement given in 2000 by one of Ieng Sary's former direct subordinates at the Ministry of Foreign Affairs. See Annex A-6 for more detail.

7. Confessions

51. The documents in this record type are primarily security centre prisoner confessions presumptively produced under torture or threat of torture. Some of the records contain annotations made by CPK officials that give directives regarding the fate of the prisoner. Collectively, these documents constitute proof of the coordinated and systematic interrogation, torture, and execution of those who were considered enemies by the DK regime, but their public value is substantially outweighed by the potential harms that could result from making such records public.⁶²
52. For this reason, the ICP recommends that documents in this record type remain confidential unless the presumption of torture is successfully rebutted. She also encourages the ECCC to adopt the same approach that the TSGM uses regarding access to security centre confessions.⁶³
53. The ICP additionally notes that some prisoner confessions, which in her view warrant confidential classification, have already been made public in Case 001 and/or Case 002. For the sake of uniformity, the Chamber should consider whether such classifications should be maintained or revised, or if redactions should be applied across all the case files in which these documents appear.⁶⁴

⁶¹ See also para. 4, *supra*.

⁶² As discussed in para. 4, *supra*.

⁶³ See para. 25, *supra*.

⁶⁴ **Case 001: E3/72** (D1.3.4.2 in Case 004/2); **D32/IV-Annex 26** (D219/702.1.16 on Case 004/2); **E5/2.21** (D219/702.1.53 on Case 004/2); **E3/501** (D6.1.1005 on Case 004/2); **D32/IV-Annex 63** (D6.1.1025 on Case 004/2); **E3/369** (D6.1.1114 on Case 004/2); **E3/80** (D6.1.1119 on Case 004/2); **E3/62** (D6.1.1124 on Case 004/2); **E3/500** (D6.1.1126 on Case 004/2); **E3/132** (D6.1.534 on Case 004/2); **E3/72** (D6.1.541 on Case 004/2); **E3/125** (D6.1.544 on Case 004/2); **E3/110** (D6.1.545 on Case 004/2). **Case 002: E3/3989** (D1.3.18.2 on Case 004/2); **E3/2650** (D1.3.4.11 on Case 004/2); **E3/2792, E3/2794** (D1.3.4.2 on Case 004/2); **E3/7403, E3/9446** (D1.3.4.4 on Case 004/2); **E3/3192** (D1.3.4.6 on Case 004/2); **E3/4322** (D131/2.1.121 on Case 004/2); **E3/4432** (D131/2.1.136 on Case 004/2); **E3/4260** (D131/2.1.143 on Case 004/2); **E3/7432**

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54. In regard to Case 004/2, the ICP seeks reclassification for 7 out of 490 confidential documents in this record type, all of which were miscategorised: one is an ICP submission (in two languages) and the remainder are interview statements given after the DK regime collapsed.⁶⁵ Details are set out in Annex A-7.

8. Notebooks

55. The DK-era documents in this record type include security centre interrogators' notes from ideology training, notebooks detailing the content of prisoner confessions, a draft of the CPK statute, an analysis by DC-Cam Director Chhang Youk on the structure of the CPK Standing and Central Committees, and Ieng Sary-related documents that include his personal copies of CPK Standing and Central Committee meeting minutes.
56. Subject to one exception noted below, the ICP recommends that the records classified as "Notebooks" be made public, as they constitute important evidence of the DK's training on techniques for interrogation of enemies, or they relate to the CPK's decision-making bodies and the leadership's policy discussions.
57. As to the exception, the ICP recommends continued confidentiality for security centre interrogators' notebooks detailing the content of prisoner confessions presumably obtained under torture. Here, the interest of transparency is substantially outweighed by the need to protect identifying and/or sensitive personal information contained in the documents.⁶⁶

(D191.1.110 on Case 004/2); **E3/3645** (D219/702.1.1 on Case 004/2); **E3/1826** (D219/702.1.14 on Case 004/2); **E3/1546** (D219/702.1.16 on Case 004/2); **E3/1687** (D219/702.1.17 on Case 004/2); **E3/1709** (D219/702.1.21 on Case 004/2); **E3/7218** (D219/702.1.53 on Case 004/2); **E3/3646** (D6.1.1003 on Case 004/2); **E3/3647** (D6.1.1004 on Case 004/2); **E3/3648** (D6.1.1005 on Case 004/2); **E3/7408** (D6.1.1009 on Case 004/2); **E3/3654** (D6.1.1010 on Case 004/2); **E3/7409** (D6.1.1011 on Case 004/2); **E3/1706** (D6.1.1013 on Case 004/2); **E3/2129** (D6.1.1014 on Case 004/2); **E3/3665** (D6.1.1019 on Case 004/2); **E3/3667** (D6.1.1021 on Case 004/2); **E3/1558**, **E3/2325** (D6.1.1025 on Case 004/2); **E3/3682** (D6.1.1027 on Case 004/2); **E3/3683** (D6.1.1028 on Case 004/2); **E3/7421** (D6.1.1034 on Case 004/2); **E3/7434** (D6.1.1042 on Case 004/2); **E3/3849** (D6.1.1044 on Case 004/2); **E3/3856** (D6.1.1045 on Case 004/2); **E3/3857** (D6.1.1046 on Case 004/2); **E3/1831** (D6.1.1107 on Case 004/2); **E3/1832** (D6.1.1108 on Case 004/2); **E3/2129** (D6.1.1110 on Case 004/2); **E3/1839** (D6.1.1111 on Case 004/2); **E3/1842** (D6.1.1112 on Case 004/2); **E3/1705** (D6.1.1114 on Case 004/2); **E3/1604** (D6.1.1115 on Case 004/2); **E3/1876** (D6.1.1119 on Case 004/2); **E3/1886** (D6.1.1122 on Case 004/2); **E3/1889** (D6.1.1123 on Case 004/2); **E3/1892** (D6.1.1124 on Case 004/2); **E3/1625** (D6.1.1125 on Case 004/2); **E3/1895** (D6.1.1126 on Case 004/2); **E3/2421** (D6.1.205 on Case 004/2); **E3/2431** (D6.1.230 on Case 004/2); **E3/8426** (D6.1.286 on Case 004/2); **E3/2462** (D6.1.309 on Case 004/2); **E3/7353** (D6.1.311 on Case 004/2); **E3/2464** (D6.1.314 on Case 004/2); **E3/2474** (D6.1.326 on Case 004/2); **E3/7366** (D6.1.329 on Case 004/2); **E3/7372** (D6.1.335 on Case 004/2); **E3/2490** (D6.1.337 on Case 004/2); **E3/9750** (D6.1.461 on Case 004/2); **E3/2784**, **E3/2785** (D6.1.534 on Case 004/2); **E3/2792** (D6.1.541 on Case 004/2); **E3/2990** (D6.1.879 on Case 004/2); **E3/2997** (D6.1.881 on Case 004/2).

⁶⁵ **D5/1387** is also designated as a "Confession" on Case 004/2, but it is more properly identified as a Victims Application. It is therefore presented for reclassification in Annex E-4, where it is more logically grouped with related admissible civil party and victim materials.

⁶⁶ As discussed in paras 4, 24 and 25, *supra*.

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58. Applying these principles to this record type in Case 004/2, the ICP seeks to make public 31 of the 49 confidential documents, as set out in Annex A-8.⁶⁷ The remaining 18 documents are security centre interrogators' notebooks discussing the details of presumably torture-produced confessions. The ICP notes that these particular records are already public in Case 002.⁶⁸ For the reasons already stated, she recommends that the Chamber revise the Case 002 public classification back to confidential and apply this classification across all case files for these particular documents.

9. Media Articles (part I)

59. The materials in this record type include CPK magazines, media articles and reports, transcripts of radio broadcasts, DK press communiques and government statements, U.S. diplomatic cables,⁶⁹ Foreign Broadcast Information Service (FBIS) reports, and media articles that were attached as authorities or annexes to pleadings. For purposes of this analysis, the "Media Articles" are split into two parts: part I is comprised of the DK-era documents, while part II contains documents that post-date the DK era.⁷⁰
60. With one exception, the ICP recommends that the DK-era media articles be made public. As a contemporaneous record of events that occurred either during the DK period or immediately prior to it, the documents help explain events at issue. They also provide evidence of CPK leaders' admissions and national policies. In contrast and for the reasons stated previously, the ICP sees no utility in making media articles attached as authorities publicly accessible and recommends that such documents remain confidential.⁷¹
61. In relation to Case 004/2, the ICP seeks reclassification of 519 out of 864 confidential documents in this record type, as set out in Annex A-9.⁷²

⁶⁷ The annex also notes which documents may require redaction before being made public. *See* fn. 45, *supra*.

⁶⁸ In Case 002, *see* **E3/4092** (D6.1.202 in Case 004/2), **E3/5860** (D6.1.214 in Case 004/2), **E3/2427** (D6.1.217 in Case 004/2), **E3/4095** (D6.1.218 in Case 004/2), **E3/5827** (D6.1.275 in Case 004/2), **E3/4122** (D6.1.297 in Case 004/2).

⁶⁹ The ICP notes that making the U.S. diplomatic cables public may require authorisation from the U.S. government. As the same cables are already public on other ECCC case files, the ICP assumes such requirements have been met, but she calls the Chamber's attention to the issue should this not be the case. A similar *caveat* is included in the attached annex relevant to the Case 004/2 proposed documents.

⁷⁰ The post-DK era media articles are sought for reclassification in Annex D-4, as discussed in para. 91, *infra*.

⁷¹ *See* para. 42, *supra*.

⁷² Note that there are 863 documents classified as "Media Articles" in Case 004/2. The additional (864th) document was classified by its name in Zylab rather than by its type (*see* **D219/879.1.4**), but for the purposes of this analysis, it is grouped with the other "Media Articles".

10. Rules and Regulations

62. This record type contains rules, laws, decisions, judgments, legal instruments, and other materials that are already in the public domain. The ICP recommends that such documents be made public, but only when they were not attached as authorities to pleadings.⁷³
63. For Case 004/2, the ICP seeks to reclassify 15 of the 668 confidential documents in this record type. The 15 documents include the CPK Statute and DK Constitution, regional and national maps of Cambodia that help make sense of locations mentioned in the evidence, and a map that notes the location of Ao An's sector office in relation to the charged crime sites.⁷⁴ These are set out in Annex A-10.

B. PLEADINGS

64. The "Pleadings" in the Zylab inventory encompass 10 record types: (1) motions, (2) requests, (3) written submissions, (4) responses, (5) replies, (6) decisions, (7) orders, (8) judgments, (9) records of appeal, and (10) document lists.⁷⁵
65. For analytical purposes, instead of grouping documents by individual record type, the pleadings are better understood when placed in numerical order by document number, as this groups related pleadings together.⁷⁶ This helps facilitate reclassification decisions when some of the documents have already been made public but related pleadings have not yet been reclassified. For example, it would be reasonable to reclassify a response and reply if the corresponding motion and decision were both already publicly available.
66. As a general principle, the ICP recommends that pleadings be made **public** whenever possible, as it allows for a more complete record of the legal and factual arguments and decisions in a case. This serves the important goals of transparency, education and legacy.
67. Nonetheless, security and privacy concerns, or practicality, dictate that some pleadings remain confidential. For example, the Practice Direction on Classification provides that requests relating to CPAs that were deemed inadmissible and requests concerning protective measures *must* remain confidential.⁷⁷ The ICP also submits that there is little utility in reclassifying requests for corrections to documents on the case file since the

⁷³ As discussed in para. 42, *supra*.

⁷⁴ Despite the fact that some of these documents are maps, they were designated as "Rules and Regulations" in Zylab and are therefore included in this section of the analysis.

⁷⁵ See fn. 42, *supra* (noting that some of the document lists are contained in Annex B while the remainder are contained in Annex D-5 and explaining the reasoning for that division).

⁷⁶ See para. 28, *supra*.

⁷⁷ As discussed in para. 22, *supra* (emphasis added).

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corrections have already been implemented and the old versions are generally no longer available in Zylab. However, the Chamber may decide that transparency of the process favours reclassifying such requests. Finally, as explained previously, the ICP is of the view that documents attached as authorities to other pleadings should remain confidential.⁷⁸

68. In Case 004/2, the ICP seeks to reclassify 723 confidential pleadings, as detailed in Annex B.⁷⁹ Many of the proposed documents were submitted or issued prior to the severance of Case 004/2 and, because of the PTC's recent reclassification decisions, are public in Cases 004 and/or 004/1, but not Case 004/2.⁸⁰ Other documents proposed for reclassification include pleadings specific to the Ao An case. Reclassification is *not* sought for documents that are primarily administrative in nature, were merely attached to other pleadings as authorities or annexes, or relate to inadmissible CPAs.⁸¹

C. DOCUMENTS RELATING TO THE INVESTIGATIVE PROCESS

69. The Zylab record types that relate to the investigative process of the case are (1) letters, (2) memos, (3) rogatoire letters, (4) summonses, (5) maps, and (6) photos/photographs. These documents demonstrate the depth and breadth of the investigation and the extensive efforts required to prosecute such cases.
70. As a general principle, the documents in this broad category should remain **confidential**. Many are either administrative in nature with little substantive value, or they warrant protection because they contain confidential details relating either to investigative leads or to potential witnesses or civil parties. However, making investigative documents public wherever possible would help promote the credibility and fairness of the proceedings, and giving insight into good investigative practices could also potentially enhance the quality of justice delivered by Cambodia's national legal system.
71. Many of the investigative documents in Cases 004, 004/1 and 004/2 are irrelevant to their respective investigations due to the shared nature of the case file amongst the three accused prior to severance. The ICP submits that investigative documents relevant to the Ao An investigation that are made public in Case 004/2 should not be made public in Cases 004 or 004/1 unless they are relevant there also.⁸²

⁷⁸ See para. 42, *supra*.

⁷⁹ Note that requests regarding CPAs that were deemed admissible in Case 004/2 are grouped with related civil party materials for reclassification purposes in Annex E-4, discussed *infra*.

⁸⁰ As discussed in para. 16, *supra*.

⁸¹ See **D362.2** Annex B: Civil Party Applications Declared Inadmissible, 16 August 2018.

⁸² This includes OCIJ site identification reports, which have already been discussed in para. 43, *supra*.

72. With all these principles in mind, the ICP makes the following recommendations.

1. Letters

73. This record type contains correspondence that can be divided into three categories. First are the documents that are indisputably protected and should remain confidential, second are documents that can safely be made public, and third are documents that could go either way, depending on the weight the Chamber assigns to competing interests.

74. Documents falling into the first category that should remain confidential include WESU 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), and letters relating to OCIJ staffing.⁸³ For the second category, the ICP submits that documents appropriate for reclassification include DK-era letters, orders and reports, as well as correspondence to and from the ICIJ.

75. Documents in the third category are more administrative in nature. They include letters relating to the legal representation of individual civil parties, powers of attorney, withdrawal from proceedings, the transfer of documents onto Cases 003 and 004, and status change notifications (changing from a complainant to an applicant). While there may be some value in allowing access to such administrative documents for those who have an interest in the process, the ICP is of the view that the value would be minimal. However, if the Chamber decides that transparency interests justify reclassification for such administrative documents, it is important to note that some of the documents contain addresses and personal identification numbers that warrant redaction. Moreover, when the letters relate to civil parties, reclassification would only be appropriate if the related CPA was deemed admissible by the ICIJ, and again, these documents would be subject to redactions before being made public.⁸⁴ The ICP therefore flags all these issues for the SCC's consideration and uniform implementation.

76. Applying the above approach in Case 004/2, the ICP seeks to reclassify 175 out of the 6,382 confidential "Letters", as detailed in Annex C-1.⁸⁵ These documents include DK-era records, correspondence regarding Ao An's legal representation and notification of his

⁸³ See paras 4, 22-24, *supra*.

⁸⁴ See para. 22, *supra*; **D362.1** Annex A: Civil Party Applications Declared Admissible, 16 August 2018.

⁸⁵ Additional "Letters" are included in the Civil Party and Victim Materials annex (Annex E-4) where they are more logically grouped with related civil party documents.

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rights as a Suspect and Charged Person, and letters that were placed on the case file prior to severance which the PTC made public in Cases 004 and/or 004/1.⁸⁶

2. Memos

77. This record type contains WESU and Victims Support Section (“VSS”) memos regarding and/or containing confidential personal information about witnesses or victims; memos that discuss staffing and budgetary issues; memos detailing the implementation of protective measures; memos relating to Rule 35 investigation matters; and memos concerning administrative issues that, in the ICP’s view, have minimal to no value for public audiences (such as the extension of investigative rogatory letters). In keeping with the general principles stated above,⁸⁷ the ICP recommends that these documents remain classified as confidential. Nonetheless, some memoranda may justify an exception to the rule, such as judicial memos regarding investigative practices or instructions addressed to the parties in the case.
78. In Case 004/2, the ICP proposes reclassification for 24 out of 291 confidential documents, which are detailed in Annex C-2. These documents include judicial interoffice memoranda relevant to the Case 004/2 investigation (including instructions from the CIJs to all investigators regarding the conduct of witness interviews), a declassified 1976 memo from the U.S. National Security Advisor to U.S. President Gerald Ford regarding life in Cambodia, and a corrigendum to a decision that has already been classified as public.

3. Rogatoire Letters

79. The “Rogatoire Letters” assign specific investigative tasks to OCIJ investigators and often contain information that needs to remain protected. Balancing the general principle of confidentiality for such investigative documents with the interest of transparency, the ICP recommends reclassification of 11 out of 69 of these confidential documents in Case 004/2. These authorise specific investigative tasks relevant to the Ao An investigation that, unless otherwise noted, contain no sensitive information that would require redaction.⁸⁸ The documents are detailed in Annex C-3.

⁸⁶ As discussed in para. 16, *supra*.

⁸⁷ See para. 70, *supra*.

⁸⁸ In the ICP’s view, location details need to be redacted on p. 2 of **D241**, which is also noted in the annex.

4. Summonses

80. The majority of documents in this record type are summonses that were sent to prospective witnesses for interviews with the OCIJ. In the cases that never went to trial, the documents identify individuals who had an expectation of privacy when they cooperated with the investigation. The documents also contain personal addresses that should remain private.⁸⁹ The ICP therefore recommends that such documents remain confidential, as they are mainly administrative in nature and the risk of harm if they are made public outweighs the minimal value they might provide in promoting transparency.
81. However, the ICP *does* recommend reclassification of 8 out of 665 confidential documents in this record type in Case 004/2. As set out in Annex C-4, the proposed documents are OCIJ summonses of Ao An and/or his lawyers to attend his initial and further appearances before the ICIJ so that he could be charged.⁹⁰ These are of extreme relevance, importance, and interest to the case. The ICP does *not* seek to reclassify the documents that summon Im Chaem and Yim Tith to appear before the ICIJ, as those are more appropriate for reclassification on their respective case files.⁹¹

5. Maps

82. These documents include DK-era maps of the country, crime site sketches drawn by witnesses, and regional and national maps that post-date the regime and help make sense of locations mentioned in testimonial and documentary evidence, including the widespread and systematic nature of the attacks and paths of forced transfers. As a general principle, the ICP recommends that maps be reclassified as public.
83. In Case 004/2, the ICP seeks the reclassification of 121 of the 175 confidential maps, as detailed in Annex C-5. Should the SCC determine that all maps in the case files should be made public, all 175 documents could be safely reclassified, as the remaining documents are simply maps relating to the Im Chaem and Yim Tith investigations.

6. Photos/Photographs

84. This record type includes photographs that were shown to potential witnesses who were asked by OCIJ investigators to identify the people in the picture (the photos were then attached to the statement). The documents also include photos of potential civil parties,

⁸⁹ See fn. 10 and paras 22-24, *supra*, regarding the protection of contact details.

⁹⁰ Note that the “Current residence” details should be redacted, as specifically indicated in the annex.

⁹¹ As discussed in para. 71, *supra*.

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crime site photos, book photos, and photographs from identification documents. As a general principle, the ICP recommends that photographs be made public except where privacy concerns or legal impediments such as copyright laws dictate otherwise.

85. In Case 004/2, the ICP seeks reclassification for 85 out of the 639 confidential documents in this record type, as detailed in Annex C-6. The proposed materials include photographs of the three original Case 004 suspects and site identification report photos documenting the Case 004/2 crime sites.⁹² The ICP does *not* seek to reclassify photos of potential civil parties, photos contained in books protected by copyright laws, photographs relevant to the Case 004 or 004/1 crimes sites, or photos of people that witnesses were asked to identify (that were then attached to their witness statements).

D. RESEARCH AND AUTHORITIES

86. The documents in this category are comprised of (1) academic articles, (2) books, (3) analytical reports, (4) media articles (part II), and (5) document lists. Primarily, they are the works of academics and journalists that help explain important aspects of the DK regime and its policies. Secondarily, they are lists of authoritative documents that support legal and factual arguments made in the case. Reclassifying both groups of documents would advance the Court's goals of transparency, education and legacy. Therefore, the ICP recommends as a general principle that these records be made **public** unless doing so would violate copyright laws protecting their use.⁹³

1. Academic Articles

87. This record type contains articles written by academics on topics such as genocide, the East Zone massacre, and a *coup* attempt allegedly linked to Koy Thuon.⁹⁴ In Case 004/2, the ICP seeks reclassification of 6 out of 12 confidential documents, which are set out in Annex D-1 and are all publicly accessible (as detailed in the annex) and relevant to the Ao An investigation. The ICP does *not* seek reclassification of the remaining documents because they are protected by copyright laws.

⁹² For reclassification efforts for Cases 004 and 004/1, the ICP directs the Chamber to fn. 56, *supra*, setting out an exhaustive list of the crime site identification reports generated in those cases (including ones that were subsequently excluded when the scope of the investigation was narrowed pursuant to Rules 66*bis* and 67) so it is easier to identify which photographs are relevant to that particular case.

⁹³ See also Case 001-F30/2 Reclassification Guidelines, para. 7(e), which states that public documents “shall not be subject to public dissemination where they are [...] protected by copyright applicable laws”.

⁹⁴ Koy Thuon was a member of the Standing Committee who was also in charge of the DK Ministry of Commerce and served as North Zone Secretary until he was arrested as a suspected traitor, beginning the purge of (old) North Zone cadres. These cadres were replaced by Southwest Zone cadres, including Ao An.

2. Books

88. Many of the documents in this record type are contemporaneous DK documents that are already classified as public on other case files and/or contain no information that requires protection. The remaining documents include books on issues such as forced marriage and gender-based violence during the DK regime, Buddhism under Pol Pot, and the leadership's motives for the killings that took place.⁹⁵ As stated above, the ICP recommends that such books be made public unless copyright laws dictate otherwise.⁹⁶
89. Applying these principles in Case 004/2, the ICP seeks to reclassify 70 out of 311 confidential documents in this record type, as set out in Annex D-2. For the Chamber's reference, the annex identifies where non-DK-era documents proposed for reclassification are publicly available online. Finally, the ICP recommends that the Chamber consider reclassifying back to confidential any books that have been made public in Cases 001 and 002 that are protected by copyright laws and do not constitute a "fair use" exception.⁹⁷

3. Analytical Reports

90. The documents in this record type include UN documents from the DK era; a history of the Khmer Communist Party; and scholarly analyses and reports relating to the CPK authority structure, the Cham, and sexual violence. In Case 004/2, the ICP seeks reclassification for 33 out of 83 confidential documents, as identified in Annex D-3. The ICP does *not* seek reclassification of analytical reports that are protected by copyright laws or are attached as authorities to various pleadings.

4. Media Articles (part II)

91. As discussed above,⁹⁸ these "Media Articles" post-date the DK era. Several describe events that occurred shortly after the regime ended, while others are post-DK media

⁹⁵ A small portion of the remaining documents were "books" attached as authorities to various pleadings. As noted elsewhere in this Request (e.g. para. 42, *supra*), the ICP does not seek to reclassify such documents.

⁹⁶ As discussed in para. 86, *supra*.

⁹⁷ In conducting its analysis of documents on the Case 004/2 case file, the ICP noted that the following "Books" are currently classified as public in Case 002. Whereas book excerpts that were introduced into evidence during court proceedings may constitute a "fair use" exception, the same cannot be said for books that were made public in their entirety. The ICP therefore recommends that the Chamber re-examine whether the following should retain their public status in Case 002 (and apply the decision uniformly when the same documents appear in other case files): E3/9, E3/14, E3/16, E3/17, E3/18, E3/20 (E3/510 in Case 001), E3/22, E3/29, E3/48, E3/49, E3/1593, E3/1683, E3/1684 and E3/1693 (E3/427 in Case 001), E3/1690, E3/1757, E3/1794, E3/1815, E3/1818 (E3/523 in Case 001), E3/1820, E3/1822 (E3/404 in Case 001), E3/2120, E3/2121 (E3/48 in Case 001), E3/2376 (E3/193 in Case 001), E3/2653, E3/2812, E3/2813, E3/2817 (E160.1 in Case 001), E3/2818, E3/3304, E3/3346, E3/3555, E3/4202, E3/9686, E3/10655, E131/1/13.12, E285.1.1.

⁹⁸ See Section V.A.9, *supra*.

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interviews given by senior leaders. In keeping with the general principle to make such documents public, the ICP seeks to reclassify 56 of these confidential documents in Case 004/2. These are detailed in Annex D-4 and notably include articles relating to Ao An and charged crimes such as the persecution and genocide of the Cham.

5. Document Lists⁹⁹

92. This record type contains two main kinds of document lists. The first is the TOA, which is filed with a pleading and provides the full reference for authorities and other documents that the party cited in the pleading to support its legal and factual arguments. As discussed elsewhere in this Request, the ICP recommends that the TOAs be reclassified to public but keep the underlying authorities confidential.¹⁰⁰
93. The second is a detailed list of documents that were either added (or proposed to be added) to the case file or were relevant to a pleading (and therefore might contain summaries or arguments in relation to each of the listed documents¹⁰¹). The ICP recommends that this kind of document list remain confidential, as it often contains information that warrants protection, such as the names of civil parties whose applications were inadmissible.
94. In Case 004/2, the ICP seeks reclassification of 274 out of 635 confidential document lists. Some are TOAs that were filed with pleadings which are already public in Case 004/2 (set out in Annex D-5), while the remainder are grouped with the related pleadings that are being sought to be made public in this Request (Annex B).

E. STATEMENTS AND TESTIMONIAL EVIDENCE

95. The record types contained in this broad category are (1) suspect statements, (2) transcripts, (3) witness statements, (4) procès verbaux, (5) victim applications, and (6) victim documents.¹⁰² These materials play a key role in helping ascertain the truth about the crimes committed during the DK regime, as they provide first-hand accounts of the events. They also give evidence of the CPK hierarchy and communication structure, the logistical coordination involved amongst the network of security centres, and patterns that

⁹⁹ See fn. 42, *supra* (noting that some of the document lists are contained in Annex B while the remainder are contained in Annex D-5 and explaining the reasoning for that division).

¹⁰⁰ See para. 42, *supra*.

¹⁰¹ For example, it may list witness statements that one of the parties argued were inadmissible because the OCIJ investigator used biased questioning techniques when interviewing the witnesses. In addition to providing the document number, title, date, and ERN range of each objectionable witness statement, the “document list” might also contain excerpts from the statements that allegedly demonstrated bias.

¹⁰² For analysis purposes, the witness statements and procès verbaux are combined as “Witness Materials” and the victim applications and victim documents are grouped together in “Civil Party and Victim Materials”.

show the widespread and systematic nature of, and/or intent for, the crimes committed. Consequently, they are important for both evidentiary and historical purposes.

96. Subject to some exceptions noted below, the ICP recommends that the statements and testimonial evidence be made **public**, but only after a careful review has been undertaken and protectable private and sensitive information has been redacted.¹⁰³ Ensuring that these materials are made as public as possible will allow future generations and researchers to better understand DK history and the events and charges in these cases, while redactions will maintain the rights and interests of the individuals who bravely participated in the ECCC process.¹⁰⁴

1. Suspect Statements

97. This record type contains statements made by former DK officials Ieng Sary, Nuon Chea, Khieu Samphan, Kaing Guek Eav alias Duch, Ao An, and Im Chaem. The statements fall into three categories: some were publicly made during the DK regime, some were made after the regime fell but before the speaker became an ECCC suspect, and some were made after the speaker was aware he/she was an ECCC suspect or charged person. As these statements were made by former leaders, they offer a unique and crucial perspective of the events that took place. None of the statements contain any information that requires continued protection.
98. In keeping with the general principle to make statements and testimonial evidence public, the ICP seeks the reclassification of all 90 confidential documents in this record type in Case 004/2, as set out in Annex E-1. The annex also identifies which statements are already public in Case 001 and/or Case 002 and their relevant document numbers.

2. Transcripts

99. The materials in this record type include ECCC public trial transcripts, transcripts of ECCC hearings held *in camera*, transcripts of OCIJ interviews, transcripts of DC-Cam interviews, transcripts of interviews given by Cambodian refugees shortly after the fall of the DK regime, completed Cambodian Defenders Project (“CDP”) questionnaires relating to sexual violence, and transcripts of video documentaries relating to the Khmer Rouge. Subject to some exceptions, the ICP is of the view that transcripts should be made **public**.

¹⁰³ See paras 4, 22-24, and fn. 45, *supra*.

¹⁰⁴ As discussed in para. 5, *supra*.

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100. However, the ICP recommends that the Chamber take a more cautious approach with OCIJ and DC-Cam interview transcripts as these may contain contact or other private information that requires redaction before making them publicly accessible.¹⁰⁵ The ICP also notes that DC-Cam has an access policy for some of the documents in its collection, so the ECCC needs to ensure that it does not contravene these policies. The ICP encourages the Chambers to seek input from the parties on these matters but, in any event, the OCIJ and DC-Cam documents should be carefully reviewed so that any personal, sensitive, or protected information is redacted before being made public.

101. In Case 004/2, the ICP seeks reclassification of 957 of the 2,394 confidential transcripts. These documents include public trial transcripts from Cases 001 and 002,¹⁰⁶ DC-Cam interviews of Ao An and Im Chaem, completed CDP questionnaires relating to sexual violence (with identifying information already removed), and refugee interview transcripts. The ICP also seeks reclassification of the transcripts from the Case 004/2 oral arguments before the PTC. Although the hearings were held *in camera*, there is no reason for continued confidentiality as the contents discussed have already been made public in the parties' written pleadings and PTC's Considerations. The ICP does not seek reclassification for the remaining documents in this record type at this time.¹⁰⁷

3. Witness Materials

102. For purposes of this analysis, the ICP has grouped the "witness statement" and "process verbal"¹⁰⁸ record types together because the same reclassification principles apply to both. In addition to statements made by potential witnesses (and civil parties) to the OCIJ and DC-Cam, these materials include sexual violence surveys; statements and notes made by ECCC suspects; WRIAs; statements waiving the presence of civil party lawyers during OCIJ interviews; and records of the swearing in of interpreters, translators, and witnesses.

¹⁰⁵ See paras 4-5, 22-24, and fn. 45, *supra*.

¹⁰⁶ The ICP notes that several of the Case 002/02 trial transcripts that were revised and corrected have not been updated in Case 004/2. She submits that this should be done before the documents are made public in Case 004/2. By electronically comparing the ERN page ranges and document names for the transcripts on the two case files, the Chamber can identify and replace the outdated versions. For example, if a document title for the same ERN page range begins with [Corrected 2] on Case 004/2 and [Corrected 3] on Case 002/02, it would be clear that the Case 004/2 version was outdated and should be replaced with [Corrected 3]. Another way to tell if the 004/2 transcript is outdated is if the corresponding Case 002 transcript contains the word "old" in the document number. In many instances the "old" version remains on the case file but the updated version is also there. The ICP raises the issue only in relation to transcripts where this is not the case. See *e.g.* **D179/1.2.13** (EN transcript); **D179/1.2.8** (EN and FR transcripts), **D219/702.1.6** (transcripts for all three languages), **D289.5** (EN and FR transcripts).

¹⁰⁷ As discussed in para. 100, *supra*.

¹⁰⁸ This is the spelling of the record type in Zylab.

103. As discussed above in relation to the OCIJ and DC-Cam interview transcripts,¹⁰⁹ the ICP submits that the Chamber needs to determine the reclassification process it will undertake regarding statements given to the OCIJ and DC-Cam.¹¹⁰ In relation to the other documents in this category, the ICP reiterates her recommendation that the WRAs remain confidential.¹¹¹ She also submits that the statements waiving the presence of civil party lawyers and the swearing in of various individuals are administrative in nature and do not merit reclassification. Should the Chamber disagree, the ICP notes that many of the documents contain personal contact information that should be redacted before they are made public. Moreover, any materials relating to civil parties should only be reclassified if the related CPAs or complaints were deemed admissible by the ICIJ for that case.¹¹²

104. Applying these principles in Case 004/2, the ICP seeks reclassification of 394 out of 6,263 confidential documents. These are set out in Annex E-3 and include statements made by ECCC suspects, sexual violence surveys in which all identifying information has been removed, Case 004/2-specific site identification reports, records relating to the initial and subsequent appearance of Ao An before the ICIJ, and testimony from a public women's forum discussing sexual violence.

4. Civil Party and Victim Materials

105. This analysis groups the "victims application" and "victims document" record types together because the same reclassification principles apply to both. However, as detailed previously, the civil party and victim materials are best understood when numerically grouped with other related documents to ensure consistent application of redactions.¹¹³ These materials may include a CPA or Victim Information Form ("VIF"), a report summarising the contents of the CPA or VIF, a Power of Attorney letter, Supplementary Information, and other materials such as photos provided by the victim or civil party.¹¹⁴

¹⁰⁹ See para. 100, *supra*. The same principles and concerns apply.

¹¹⁰ For this reason, she does not seek reclassification for these documents in Case 004/2 at this time. As discussed in para. 100, *supra*, the ICP recommends that the Chamber seek the parties' input before reclassifying such records but, in any event, the OCIJ and DC-Cam documents should be carefully reviewed so that any personal, sensitive or protected information is redacted before being made public.

¹¹¹ As discussed at para. 41, *supra*.

¹¹² See para. 22, *supra*; **D362.1** Annex A: Civil Party Applications Declared Admissible, 16 August 2018; **D362.3** Annex C: Civil Party Applications Considered as Complaints, 16 August 2018. See also **D362/6** PTC Admissibility Considerations, International Judges' Opinion, para. 118 (finding that the ICIJ's order on admissibility stands).

¹¹³ As discussed in para. 28, *supra*.

¹¹⁴ See paras 40-41, 75, 84-85, *supra*, for the ICP's specific recommendations on the other types of documents.

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106. As a general principle for investigative cases that never went to trial, the CPAs and Complaints that were admitted by the ICIJ (and their related materials) are the only civil party and victim materials that should be reclassified in that particular case.¹¹⁵ Most importantly, the documents should be carefully reviewed so that any personal, sensitive or protected information is redacted before the documents are made public.¹¹⁶ The ICP additionally refers the Chamber to the principles discussed by the Civil Party LCLs in Case 002/02, which raises other issues relevant to civil parties and victims in all the ECCC cases and are deserving of thoughtful consideration and careful implementation.¹¹⁷

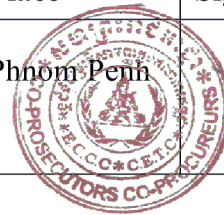
107. Applying these principles, the ICP seeks reclassification of 1,616 confidential victim and civil party materials in Case 004/2, as detailed in Annex E-4, but only after the appropriate redactions have been implemented.

VI. CONCLUSION

108. It is the ICP's hope that this request will assist in identifying issues and developing policies that will ensure the ECCC reclassification process is carried out with care and uniformity. She asks the Chamber to make public the documents proposed for reclassification in Case 004/2 after any necessary redactions of protectable information have been implemented.

Respectfully submitted,

| Date | Name | Place | Signature |
|------------------|---|------------|---|
| 29 December 2021 | Brenda J. HOLLIS International Co-Prosecutor | Phnom Penh |  |



¹¹⁵ See particularly para. 22, *supra*. In Case 004/2, this would exclude reclassifying the numerous materials found admissible in Cases 004 or 004/1 because they did not meet the threshold requirements of admissibility for Case 004/2. Such a policy would ensure that protectable information is more contained and consistent.

¹¹⁶ See paras 4-5, 22-24, and fn. 45, *supra*.

¹¹⁷ Case 002-F71 Civil Party LCL Request for Directions.