

**BEFORE THE SUPREME COURT CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

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CMS/CFO:	Sann Rada

**Response to the Supreme Court Chamber's "Review of Confidential and Strictly  
Confidential Documents on Case File 002"**

**Filed by:**

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**Before:**

**Supreme Court Chamber**  
Judge KONG Srim, President  
Judge Chandra Nihal JAYASINGHE  
Judge SOM Sereyvuth  
Judge Florence Ndepele  
MWACHANDE- MUMBA  
Judge MONG Monichariya  
Judge Maureen HARDING CLARK  
Judge YA Narin

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## 1 INTRODUCTION

1. The Civil Party Lead Co-Lawyer (“Lead Co-Lawyer”) notes that the Supreme Court Chamber (“Chamber”) issued an Interoffice Memorandum on “Review of Confidential and Strictly Confidential Documents on Case File 002” (“Memorandum”) inviting addressees of the Memorandum to submit their observations on (i) the proposed guidelines for reclassification; and (ii) the continuing confidentiality of the judicial investigation.<sup>1</sup> The Lead Co-Lawyer takes this opportunity to submit his comments and observations as an addressee and the section that represents the Civil Parties.

## 2 OBSERVATIONS

2. In response to the Chamber’s invitation to submit observations, the Lead Co-Lawyer maintains his position from the filing, “Request for Directions Regarding the Reclassification of Civil Party Documents” (“LCLs Reclassification Filing”).<sup>2</sup> The Lead Co-Lawyer intends to avoid repeating points from the LCLs Reclassification Filing but believes it to be necessary to highlight certain important observations in connection to the Memorandum. Thus, in addition to the LCLs Reclassification Filing, the Lead Co-Lawyer, after consulting with Civil Party Lawyers, submits other observations as follows.
3. *First*, the Chamber, as part of its guidelines for use during the reclassification process, proposes that, “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.”<sup>3</sup> The Lead Co-Lawyer requests the Chamber to explicitly include the Civil Party Lead Co-Lawyers and Civil Party Lawyers as concerned parties, and that the Civil Party Lead Co-Lawyers and Civil Party Lawyers represent and act on behalf of the Civil Parties in Case 002 with assistance, support, and facilitation from VSS.
4. *Second*, as the Chamber proposes that the contact details of victims who are not Civil Parties remain or be classified as Confidential,<sup>4</sup> the Lead Co-Lawyer submits that contact details of

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<sup>1</sup> F71/1/1 Supreme Court Chamber Interoffice Memorandum, Review of Confidential and Strictly Confidential Documents on Case File 002, 2 August 2022, para. 5.

<sup>2</sup> F71 Request for Directions Regarding the Reclassification of Civil Party Documents, 14 December 2021.

<sup>3</sup> F71/1/1 Memorandum, para. 4.

<sup>4</sup> *Ibid.*

Civil Parties also remain or be classified as Confidential. As mentioned in the LCLs Reclassification Filing,<sup>5</sup> the importance in protecting the contact details of victims and Civil Parties is reflected in the Practice Direction on Classification and Management of Case-Related Information (“Practice Direction on Classification”).<sup>6</sup> Furthermore, 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.<sup>7</sup>

5. *Third*, in addition to the contact details of Civil Parties, the Lead Co-Lawyer would like to draw the Chamber’s attention to other categories of information that Civil Parties have expressed concerns: information identifying victims of sexual violence,<sup>8</sup> personal medical information,<sup>9</sup> experiences of and perspectives on forced marriage,<sup>10</sup> torture-tainted material, including confessions and biographies,<sup>11</sup> and naming of alleged perpetrators.<sup>12</sup> Much of the material in these categories are in areas of uncertainty—some Civil Party documents are in evidence on the case file, which are presumptively to be reclassified as public, but contain information that is sensitive and private, and do not fall within any of the confidential material categories under Articles 5, 6, and 7 of the Practice Direction on Classification.<sup>13</sup> Moreover, much of the Civil Party material in the case file seems to be categorized neither as public nor confidential under the Practice Direction on Classification.<sup>14</sup>
6. In the LCLs Reclassification Filing, the Civil Party Lead Co-Lawyers proposed the following approach for Civil Party documents in evidence:

The Lead Co-Lawyers therefore propose that Civil Party documents with an E3 number should be reclassified according to the following principles:

- (i) As evidence, all are presumptively public, but subject to necessary redactions;
- (ii) Subject matter falling within all of the topics set out in Section 4.2<sup>15</sup> above should be presumptively treated as requiring redaction;

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<sup>5</sup> F71 LCLs Reclassification Filing, paras 27, 28, 38.

<sup>6</sup> Practice Direction on Classification, articles 7.2, 7.3.

<sup>7</sup> F71 LCLs Reclassification Filing, para. 38.

<sup>8</sup> *Ibid.*, para. 39.

<sup>9</sup> *Ibid.*, para. 40.

<sup>10</sup> *Ibid.*, para. 41.

<sup>11</sup> *Ibid.*, para. 42.

<sup>12</sup> *Ibid.*, para. 43.

<sup>13</sup> *Ibid.*, para. 46.

<sup>14</sup> *Ibid.*

<sup>15</sup> These are topics mentioned in paragraphs 5 and 6 of this response.

- (iii) However in individual cases these matters may be left unredacted: for example where the material was already made public through testimony at trial, or where the Civil Party gives informed consent.<sup>16</sup>
7. Regarding Civil Party documents not in evidence, the Civil Party Lead Co-Lawyers submitted that these documents need not be presumptively made public but could be made public based on principles of individual informed consent.<sup>17</sup> The Civil Party Lead Co-Lawyers submitted that Civil Party documents not in evidence should remain confidential unless requests by concerned Civil Parties are made for reclassification, subject to any requested redactions.<sup>18</sup> The principles of privacy and informed consent with respect to redaction of Civil Party documents on the case file must be applied prior to any reclassification.<sup>19</sup>
8. *Fourth*, as noted in the LCLs Reclassification Filing, several Civil Party documents have been declassified without any redactions.<sup>20</sup> The Civil Party Lead Co-Lawyers requested the Chamber to order the immediate reclassification as confidential (until and subject to the outcome of the full reclassification process) of all Civil Party documents in all cases which have been reclassified as public in error or without appropriate redactions in violation of the Practice Direction on Classification.<sup>21</sup>
9. *Fifth*, because a number of Case 002 Civil Parties has status in one or more other cases, a unified approach to reclassification across all ECCC cases is necessary—also so that classification granted in one case file will not be undermined by an inconsistent classification in another case.<sup>22</sup>
10. *Sixth*, the Lead Co-Lawyer notes for the Chamber the Civil Party Lead Co-Lawyers' proposed process in the LCLs Reclassification filing.<sup>23</sup> In summary, the steps in this process include: (i) a desk review to identify potentially sensitive material, during which documents in evidence would be prioritized; (ii) where there is doubt about whether redactions are necessary, meetings

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<sup>16</sup> F71 LCLs Reclassification Filing, para. 69.

<sup>17</sup> *Ibid.*, para. 73.

<sup>18</sup> *Ibid.*, para. 75.

<sup>19</sup> See Confidential Annex A to the LCLs Reclassification Filing, which contains tables listing examples of Civil Party documents that demonstrate the need for a careful reclassification process involving individual document review and an opportunity for affected parties to be heard.

<sup>20</sup> F71 LCLs Reclassification Filing, paras 48-53.

<sup>21</sup> *Ibid.*, para. 86(e).

<sup>22</sup> *Ibid.*, para. 78.

<sup>23</sup> *Ibid.*, para. 85.

would be arranged with individual Civil Parties to consult them about their preferences, during which any non-evidentiary material would be discussed as well; (iii) proposals for the classification and redaction of Civil Party documents in evidence would be made to the Chamber which the Chamber can then decide in due course and taking into account any responses from the other parties; and (iv) once submissions on evidentiary material have been made, a further process following a similar approach would be initiated to address remaining Civil Party material that is not in evidence.<sup>24</sup>

11. *Seventh*, the Lead Co-Lawyer notes that the Civil Party Lead Co-Lawyers along with Civil Party Lawyers and VSS have met 442 Civil Parties during Civil Party Forums and Consultation Meetings from October 2021 to August 2022, to consult and receive their views on the reclassification of their documents and information. Among them, 144 Civil Parties requested that any information mentioned in their documents that are personal or sensitive such as date of birth, contact details, personal and sensitive information of family members, medical and health information, information surrounding sexual violence and forced marriage suffered by Civil Parties, name of perpetrators who were mentioned by Civil Parties, and various photos of Civil Parties be considered as confidential and redacted. The Lead Co-Lawyer would like to draw the Chamber's attention that a notable number of Civil Parties among those that the Civil Party Lead Co-Lawyers and Civil Party Lawyers consulted expressed that their personal and sensitive information be protected.

### 3 REQUEST

12. Based on the observations above, the Lead Co-Lawyers request that the Chamber:
- (a) **AFFIRM** the principles of privacy and informed consent with respect to redaction of Civil Party documents on the case file prior to any reclassification;
  - (b) **CONFIRM** that Civil Party documents which 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;
  - (c) **ORDER** the immediate reclassification as confidential (until and subject to the outcome of the full reclassification process) of all Civil Party documents in all cases which have been

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<sup>24</sup> *Ibid.*

reclassified as public in error or without appropriate redactions in violation of the Practice Direction.

Respectfully submitted,

Date	Name	Place	Signature
22 August 2022	PICH Ang National Lead Co-Lawyer	Phnom Penh	