



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

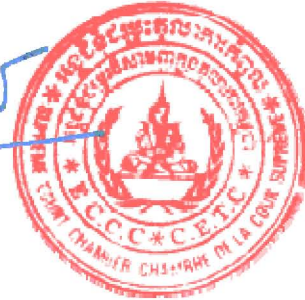
អង្គជំនុំជម្រះតុលាការកំពូល
Supreme Court Chamber
Chambre de la Cour suprême



INTEROFFICE MEMORANDUM

Date: 11 June 2012

FROM: H.E. KONG Srim
President, Supreme Court Chamber;



TO: Trial Chamber
Pre-Trial Chamber
Office of the Co-Investigating Judges
Office of the Co-Prosecutors
Defence Support Section
Counsel for the Accused KAING Guek Eav
Victims Support Section
Witness and Experts Support Unit
Civil Party Lawyers
Court Management Section
Acting Director and Deputy Director of Administration

SUBJECT: Review of Confidential and Strictly Confidential Documents on Case 001 Case File.

I. Introduction

1. Pursuant to Article 12 of the Practice Direction on Classification and Management of Case-Related Information (Rev. 1) (“PD on Classification”), the Supreme Court Chamber, as the “last judicial office” seised of the Case File in Case 001/18-07-2007-ECCC (“Case 001 Case File”), has been tasked with a review of all documents presently classified as Confidential or Strictly Confidential on the Case 001 Case File for the purposes of possible reclassification as Public. The purposes of this memo are to establish an overall procedure, set out proposed guidelines and seek input from interested parties in relation to the reclassification process.

2. The Supreme Court Chamber’s review of the Case 001 Case File will take place in three stages. First, in accordance with the present memorandum, the Chamber has presented proposed guidelines concerning which it seeks comments from the concerned parties,

sections and units. Second, upon review of these observations, the Chamber will circulate final guidelines for reclassification together with a list of the Confidential and, where appropriate, Strictly Confidential documents on the Case 001 Case File. At that time, the Chamber will seek further input from the parties concerning any specific document or category of documents. Third, the Chamber will undertake a review of the Confidential and Strictly Confidential documents and make reclassification decisions in accordance with the final guidelines.

II. Proposed Guidelines for Reclassification

3. The Supreme Court Chamber notes that, of 12,514 Confidential documents currently on the Case 001 Case File, 9,759 were filed by the Co-Investigating Judges. The Supreme Court Chamber considers that the continuing confidentiality of the judicial investigation, specifically those documents described in Articles 5.1(a), (b), (c) and (f) of the PD on Classification, is the key issue to be resolved for the purposes of reclassification. The Supreme Court Chamber therefore invites comments concerning the continuing need for confidentiality of such documents at this stage of Case 001.

4. In addition to any considerations relating to the judicial investigation, and bearing in mind Articles 4, 5 and 6 of the PD on Classification, the Supreme Court Chamber proposes the following guidelines for use during the reclassification process and the ongoing management of the Case 001 Case File:

- a. The following documents shall remain, or be classified as Confidential:
 - i. Names and contact details of victims who are not civil parties, including in cases where such information is included in victim complaints;
 - ii. Written records, transcripts, and audio/visual recordings of hearings held *in camera*, unless the reasons for maintaining confidentiality are no longer valid;
 - iii. Documents which are also included in other existing case files and classified as confidential.
- b. Documents which are classified Strictly Confidential will in principle retain their present classification. These include:
 - i. Requests for protective measures and associated documents;
 - ii. Documents and information subject to protective measures;
 - iii. Information concerning the health of a Suspect, Charged Person or Accused;

- iv. Other documents where the reasons for classification as strictly confidential persist.
- c. Any document or part thereof which does not fall within paragraphs (a) or (b), above, is in principle to be declassified.
- d. If a document consists of a portion which ought to be public and a portion which ought to be classified as confidential or strictly confidential, Article 3.3 of the PD on Classification applies.
- e. Public documents shall not be subject to public dissemination where they are: (a) protected by copyright applicable laws; or, (b) “subject to agreement with a third party that prohibits dissemination [...] unless permission is granted by the third party.”¹
- f. The Supreme Court Chamber retains jurisdiction to sanction in accordance with the Internal Rules any unauthorised disclosure of classified information.
- g. Any concerned party, including the Office of the Co-Prosecutors, the Defence Support Section acting on behalf of the defendant in Case 001, the Victim Support Section acting on behalf of the civil parties, the Witness and Experts Support Unit, or the Public Affairs Section may seek reclassification of any document which retains its Confidential or Strictly Confidential status following the conclusion of the reclassification procedure. In such a case the concerned party should demonstrate changed circumstances justifying the reclassification.

III. Input from the Parties, Chambers and Other Units of the Court

5. The Supreme Court Chamber hereby invites the addressees of the present memorandum to comment on the Chamber’s proposed guidelines for reclassification and the continuing confidentiality of the judicial investigation by **10 July 2012**. In light of the present status of Case 001, the Chamber requests the assistance of the Defence Support Section and Victims Support Section in ensuring consultation with defence counsel and civil party lawyers, respectively. Any comments filed later than 10 July 2012 may be considered by the Chamber at its discretion.

¹ PD on Classification, Article 12.3.