

CLASSIFICATION AND MANAGEMENT OF

CASE-RELATED INFORMATION

The Rules and Procedure Committee of the Extraordinary Chambers in the Courts of Cambodia (ECCC),

CONSIDERING the 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, signed on 6 June 2003 (hereinafter referred to as ‘the Agreement’),

CONSIDERING the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia with inclusion of the amendments as promulgated on 27 October 2004 (hereinafter referred to as ‘ECCC Law’),

CONSIDERING the Internal Rules of the ECCC, adopted by the Plenary Session of Judges on 12 June 2007 and signed into force on 19 June 2007,

CONSIDERING the general principles concerning the classification and management of confidential information on the case files adopted by the Plenary Session of Judges on 5 September 2008,

ACTING in accordance with Rule 20(3) of the ECCC Internal Rules, which entitles the Rules and Procedure Committee to adopt Practice Directions relating to the functioning of the ECCC, subject to review in the subsequent Plenary Session,

HEREBY ISSUE this Practice Direction on classification and management of case related information.

Article 1: Scope and object of this Practice Direction

- 1.1. This Practice Direction sets out rules for classification of case-related information and documents within the categories referred to in Article 2(d), unless otherwise determined by judicial decision.
- 1.2. 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.

Article 2: Definitions

In this Practice Direction, unless one of its provisions states otherwise, the following terms shall have the meanings as defined below:

- a. “Authorised court staff” means staff approved by the Co-Investigating Judges or a Chamber, as appropriate, for the purposes of this Practice Direction.
- b. “Court” means the Co-Investigating Judges or a Chamber, as appropriate.

- c. “Document” means any record of information (whether physical or electronic), including, but not limited to, any written or paper record, audio / visual records, photographs, plans, drawings and maps.
- d. In relation to information, a document, or a case file, or portion thereof:
 - i. “Public” means open to the public and not subject to any restrictions on public distribution.
 - ii. “Confidential” means open only to the Judges, the Co Prosecutors, lawyers for the civil parties, defence counsel, authorised court staff and any other person expressly given access by the Court.
 - iii. “Strictly confidential” means open only to the Judges and such other persons, including court staff who require access in the discharge of their duties, expressly given access by the Court.
- e. “Witness” means a person, other than a civil party, who:
 - i. has given or agreed to give evidence in connection with proceedings before the Court, or
 - ii. has been identified by a party, Co-Investigating Judges or a Chamber, as appropriate, as an individual who has been, or may be, asked to give evidence in the course of preliminary investigations or in proceedings before the Court.

Article 3: Classification of documents in the case file

- 3.1. In order to enable filing of documents in accordance with the levels of confidentiality indicated in Article 2(d), each subfolder category of the case file (as per the Practice Direction on Filing of Documents before the ECCC) will have a public, confidential and strictly confidential section.
- 3.2. In this Practice Direction, a reference to a public section, confidential section or strictly confidential section of the case file is a reference to that section within the relevant subfolder category.
- 3.3. If a document to be filed consists of a portion which is public and a portion which is confidential or strictly confidential (e.g. a public filing with a confidential annex), the public portion of the document shall be filed in the public section of the case file, together with a sheet indicating the existence of a confidential or a strictly confidential portion, as applicable. The confidential or strictly confidential portion shall be filed in the confidential or strictly confidential section of the case file, as applicable. A similar procedure, if appropriate, can be used in the case of a document which consists of a confidential portion and a strictly confidential portion.

Article 4: Public section of the case file

Subject to a different classification in accordance with a Court decision, and redaction under Articles 9.2 and 9.3, if necessary, the following categories of documents and information are in principle public:

- a. During the course of a judicial investigation, documents classified as public by the Co-Investigating Judges
- b. Amicus curiae briefs
- c. Written records, transcripts, and audio / visual recordings of public hearings
- d. Evidence, including expert reports, filed during a trial hearing e. Chambers' decisions and judgments
- f. Documents listed in Article 5.1(h) after a decision by the Pre-Trial Chamber that the document is public; and
- g. Documents listed in Article 5.1(i) after the expiration of the time limit in Article 5.1(i), unless the appropriate Chamber rules that the document shall remain confidential.

Article 5: Confidential section of the case file

5.1. Subject to a different classification in accordance with a Court decision, and redaction under Articles 9.2 and 9.3 if necessary, the following categories of documents and information are in principle confidential:

- a. Introductory, Supplementary and Final submissions of the Co Prosecutors,
- b. Subject to Article 4, filings received, and materials generated during a judicial investigation
- c. Written records, transcripts, and audio / visual recordings of interviews and other investigative acts carried out by the Co-Investigating Judges or those acting under their delegated authority
- d. Victims' complaints
- e. Identity and contact details of victims who are not civil parties (including applications to be joined as civil parties)
- f. Decisions, orders and other findings of the Co-Investigating Judges, g. Written records, transcripts, and audio / visual recordings of hearings held in camera
- h. Filings to the Pre-Trial Chamber until the Pre-Trial Chamber has decided on the matter; and
- i. Documents not covered by Article 4 filed during the Trial Chamber and Supreme Court Chamber proceedings for a period of 30 days from filing

5.2. The fact that specific evidence is being considered by the Co-Investigating Judges as part of the investigation, irrespective of the content of such evidence, is confidential information.

Article 6: Strictly confidential section of the case file

Subject to a different classification in accordance with a Court decision, the following categories of documents and information are in principle strictly confidential:

- a. Requests for protective measures and associated documents (including Witness and Expert Support Unit risk assessments)
- b. Documents and information subject to protective measures, and c. Information concerning the health of a Suspect, Charged Person or Accused.

Article 7: Witnesses and victims

- 7.1. In order to allow effective protection of witnesses in subsequent phases of proceedings, in public hearings and filings submitted prior to the testimony of each witness, he / she will be referred to by number, initial, pseudonym or other means deemed appropriate. A witness may waive the application of this sub-article in writing.
- 7.2. In accordance with Article 5(e), an application to be joined as a civil party will be held in the confidential section of the case file. Where such an application is denied, and has not been made public, the application and the applicant's identifying details will as a rule remain in the confidential section of the case file.
- 7.3. If a person who has applied to be joined as a civil party is also the subject of a request for protective measures, the civil party application will be treated as strictly confidential until a decision is made on the protective measures request.
- 7.4. Contact details of Complainants and Civil Party Applicants contained in Victims Information Forms made public under Article 4, shall be redacted from the documents appearing on the ECCC website.

Article 8: Duty of confidentiality

- 8.1. All persons having access to confidential or strictly confidential information are under a duty of confidentiality. They shall not disclose such information to any person, except in accordance with this Practice Direction. Further, they shall not act in a manner which would lead to unauthorised disclosure of any confidential or strictly confidential information.
- 8.2. The duty of confidentiality relating to the contents of the case file which are generated during a judicial investigation, as provided in Internal Rule 56, continues to apply after the conclusion of the investigation, subject to Article 9.1.

Article 9: Re-classification and redaction

- 9.1. 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.
- 9.2. A public version of a confidential or strictly confidential document may be created for the purposes of placement in the public section of the case file, on instruction of the Co-Investigating Judges or a Chamber, as appropriate. The public version will be produced by:

- a. creating a copy of the original document
- b. redacting from the copy all confidential and strictly confidential information, as applicable, and
- c. submitting the redacted version to the Co-Investigating Judges or the Chamber for review and approval, prior to its placement in the public section of the case file.

A confidential version of a strictly confidential document may be created in a similar manner.

- 9.3. If a public version of a confidential or strictly confidential document is to be prepared at the request of a party, any redactions shall be undertaken by the requesting party and submitted for approval in accordance with Article 9.2.(c).

Article 10: Case file inventory

There shall be a separate inventory for each section of the case file, containing information as follows:

- a. The inventory of the public section of the case file will contain the titles of public documents, while the words “Confidential” or “Strictly confidential”, as applicable, will be used to replace the titles of confidential or strictly confidential documents.
- b. The inventory of the confidential section of the case file will contain the titles of public and confidential documents. This inventory will also contain generic titles of strictly confidential documents, to enable the individuals who have access to the inventory to understand the nature of such documents, without disclosing their strictly confidential contents.
- c. The inventory of the strictly confidential section of the case file will contain the titles of all documents in the case file.

Article 11: Sanctions

A violation of this Practice Direction shall be sanctioned in accordance with the Internal Rules.

Article 12: Archives

12.1. Confidential material remains confidential and strictly confidential material remains strictly confidential after the conclusion of the proceedings, subject to re-classification in accordance with the provisions of this Practice Direction.

12.2. The last judicial office seized of a case shall undertake a review of the security classifications of records in the case file as follows:

- a. Records that remain confidential or strictly confidential shall be reviewed and reclassified as necessary.
- b. Records that have limited portions of confidential material shall be appropriately redacted to produce a public version.

- c. The list of reclassified records shall be placed in the case file.
 - d. Any records sealed during any stage of the case shall be reviewed and necessary unsealing carried out.
- 12.3. Materials classified as public may be accessed by the public. However, any such materials that are under copyright or subject to an agreement with a third party that prohibits dissemination shall not be released to the public, unless permission is granted by the third party.
- 12.4. Guidelines for declassification not undertaken by the last judicial organ seized of the case shall be developed by or in the context of a residual mechanism.

Amended on 09 March 2018 and 30 April 2018;