

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

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**CO-PROSECUTORS' RESPONSE TO H.E. KONG SRIM'S "REVIEW OF CONFIDENTIAL AND
STRICTLY CONFIDENTIAL DOCUMENTS ON CASE 001 CASE FILE"**

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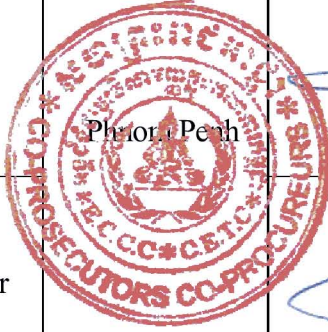

1. In response to the Supreme Court Chamber's Interoffice Memorandum of 11 June 2012 *Review of Confidential and Strictly Confidential Documents on Case 001 Case File* ("Memorandum"), the Co-Prosecutors hereby submit the following comments, as invited.¹
2. As a general approach, the Co-Prosecutors believe that maximum possible transparency and accessibility under the circumstances should be the goal of the declassification process. The practice direction regarding *Classification and Management of Case-Related Information* ("Practice Direction") also recognizes "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."²
3. On the whole, the Co-Prosecutors agree with the proposed procedures articulated in paragraph 4 of the Memorandum. However, the Co-Prosecutors seek some clarification on the extent to which the Supreme Court Chamber intends to use redaction to render documents that contain some limited confidential or strictly confidential material suitable for release. In the interests of maximizing transparency, and if resources permit, the Co-Prosecutors would be in favor of wide use of redaction rather than maintaining restrictive classification, particularly in regards to documents that without the use of redaction most likely will not be deemed eligible for public release in the relatively near future (as opposed to at the conclusion of further ECCC proceedings) due to the information contained in them.
4. Article 9.2 of the Practice Direction recognizes a chamber's ability to order a redacted, public version of a document to be created. More specifically, Article 12.2(b) indicates that redaction should be used in the archival process that the Supreme Court Chamber is preparing to undertake: "Records that have limited portions of confidential material shall be appropriately redacted to produce a public version."

¹ F30 Memorandum, paras. 2 & 5.

² Practice Direction ECCC/004/2009/Rev.1, Classification and Management of Case-Related Information, Art. 1.2.

5. Therefore, the Co-Prosecutors request that the review process include a mechanism for determining which documents that might otherwise not be declassified contain “limited portions of confidential material” and could be declassified following redaction. The Co-Prosecutors caution, however, that such redaction would need to remove not only the confidential or strictly confidential material itself from the document, but also contextual information that might allow a reader to determine the content of the confidential or strictly confidential material. As all the case file documents are in electronic format, electronic redaction enables this process to be as efficient and effective as possible through the use of the Court’s available Adobe software.
6. Finally, the Co-Prosecutors note that contemporaneous DK-era documents that are on the Case File should almost all be declassified, because those documents are available through other publicly-available repositories such as DC-Cam.
7. The Co-Prosecutors look forward to receiving the anticipated final guidelines for reclassification, as well as the list of Confidential and Strictly Confidential documents on the Case 001 Case File. As instructed, the Co-Prosecutors will make any necessary additional comments on any specific document or category of documents at that time.³

Respectfully submitted,

Date	Name	Place	Signature
10 July 2012	CHEA Leang Co-Prosecutor		
	William SMITH Deputy Co-Prosecutor		

³ F30 Review of Confidential and Strictly Confidential Documents on Case 001 Case File, 11 June 2012, para. 2.