



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

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Case File/Dossier No. 001/18-07-2007-ECCC/SC

Before:
Judge KONG Srim, President
Judge Agnieszka KLONOWIECKA-MILART
Judge SOM Sereyvuth
Judge Chandra Nihal JAYASINGHE
Judge SIN Rith
Judge Florence Ndepele MUMBA
Judge YA Narin

Date: 26 July 2012
Language(s): English/Khmer
Classification: PUBLIC

DECISION ON GUIDELINES FOR RECLASSIFICATION OF DOCUMENTS ON CASE FILE

Accused
KAING Guek Eav alias
'DUCH'

Lawyers for the Accused
KAR Savuth
KANG Ritheary

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

I. INTRODUCTION

1. In accordance with 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 seized of the Case File in Case 001/18-07-2007-ECCC (“Case 001 Case File”), has initiated a review of all documents included in the Case 001 Case File for the purposes of possible reclassification.
2. On 11 June 2012, the President of the Supreme Court Chamber outlined the proposed guidelines for reclassification and invited comments thereupon from all parties and concerned ECCC units, to be submitted preferably by 10 July 2012.¹ The Chamber hereby adopts the final guidelines that will be followed in the process of reviewing the classification of all documents on the Case 001 Case File. In order to give due consideration to the reasons that initially warranted the classification of documents as confidential or strictly confidential, the Chamber further invites the concerned parties and sections of the ECCC – in particular, the judicial offices that originally decided on the classification of the documents – to advise this Chamber if, and to what extent, reasons against public disclosure of certain documents or categories of documents still persist at this stage of the proceedings.

II. PARTIES’ OBSERVATIONS

3. The Co-Prosecutors filed their observations on 10 July 2012.² They generally concur with the Chamber’s proposed guidelines and recommend that, in principle, the goal of the reclassification process should be, as much as possible, complete transparency and accessibility.³ In this respect, the Co-Prosecutors favour a “wide use of redaction rather than maintaining restrictive classification”, requesting that an appropriate mechanism be devised to ensure identification of documents containing only limited portions of confidential material.⁴ The Co-Prosecutors finally submit that nearly all of the “contemporaneous DK-era documents” on the Case 001 Case File should be declassified, given that they are already publicly available through other repositories.⁵

¹ Interoffice Memorandum, Subject: “Review of Confidential and Strictly Confidential Documents on Case 001 Case File”, 11 June 2012, F30.

² Co-Prosecutors’ Response to H.E. KONG Srim’s “Review of Confidential and Strictly Confidential Documents on Case 001 Case File”, 10 July 2012, F30/1 (“OCP Observations”).

³ OCP Observations, paras 2-3.

⁴ OCP Observations, paras 3-5.

⁵ OCP Observations, para. 6.

4. No other party, judicial office or section has submitted any observations as of yet. The Supreme Court Chamber construes this lack of comments to mean that these entities have no objections to the proposed guidelines. It also notes that, in any event, parties, judicial offices or sections are now given a further opportunity to submit comments regarding the reclassification of specific documents.

III. DISCUSSION

5. 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.⁶ 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."⁷ 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."⁸

6. Most of the valuable material in the case file has been collected in the course of the judicial investigation. As the proceedings in Case 001 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. Therefore, the Supreme Court Chamber holds that, in principle, all such documents shall be declassified as public, thereby allowing full access to the public at large and maximising transparency. 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, as set out in the guidelines below.

7. Bearing in mind these general principles, and considering Articles 4, 5 and 6 of the PD on Classification, the Supreme Court Chamber adopts the following guidelines for use during the reclassification process and the ongoing management of the Case 001 Case File:

⁶ See Internal Rule 21(1); PD on Classification, Article 1.2.

⁷ Appeal Judgement, 3 February 2012, F28, para. 708.

⁸ *Id.*

- a. Any document or part thereof which does not fall within paragraphs (b) or (c), below, shall be declassified as public.
- b. The following documents or parts thereof shall remain Confidential:
 - i. Contact details of victims who are not civil parties, including in cases where such information is found 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.
- c. The following documents or parts thereof shall remain Strictly Confidential:
 - 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.
- 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.”⁹
- 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 Co-Prosecutors, the Defence Support Section acting on behalf of the Accused in Case 001, the Victim Support Section acting on behalf of the civil parties in Case 001, 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.

⁹ PD on Classification, Article 12.3.

8. Attached to this decision is a strictly confidential spreadsheet¹⁰ compiled by the Records and Archives Unit identifying the classified documents on the Case 001 Case File that are not included within the case file of other pending cases before the ECCC. The Supreme Court Chamber hereby invites all concerned parties and offices to comment on whether, and for what reasons, they consider that any specific document or general category of documents should retain its present classification. In order to allow sufficient time to take this opportunity, this Chamber shall refrain from reclassifying any document for twenty calendar days following the issuance of the present decision.

9. The public will be duly informed of the conclusion of the reclassification process.

IV. DISPOSITION

FOR THE FOREGOING REASONS, THE SUPREME COURT CHAMBER:

ADOPTS the general guidelines for reclassification as set out above;¹¹

INVITES the parties and the concerned offices to provide by 15 August 2012 comments on any of the documents listed in the attachment to this decision.

Phnom Penh, 26 July 2012

President of the Supreme Court Chamber



Kong Srim

¹⁰Confidential Case File 001 Records Not in Case File 002, 26 July 2012, F30/2.1.

¹¹See *supra*, para. 7.