



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

អង្គបុរេជំនុំជម្រះ

Pre-Trial Chamber
Chambre Preliminaire

D313/2

In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea

Case File N° 004/1/07-09-2009-ECCC/OCIJ (PTC56)

THE PRE-TRIAL CHAMBER

Before:

Judge PRAK Kimsan, President
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Kang Jin BAIK
Judge HUOT Vuthy

Date:

26 June 2018

ឯកសារដើម
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PUBLIC

**DECISION ON IM CHAEM'S REQUEST FOR RECLASSIFICATION OF
SELECTED DOCUMENTS FROM CASE FILE 004/1**

Co-Prosecutors

CHEA Leang
Nicholas KOUMJIAN

Co-Lawyers for IM Chaem

BIT Seanglim
Wayne JORDASH



THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”) is seised of *IM Chaem’s Request for Reclassification of Selected Documents from Case File 004/1*¹ (“Reclassification Request”) and its Annex A² and B³ filed by IM Chaem on 14 June 2018.

I. INTRODUCTION

1. IM Chaem’s Co-Lawyers (“Co-Lawyers”) request the reclassification of ninety-five documents filed in Case File 004/1 by the Co-Lawyers,⁴ the Co-Investigating Judges and the Pre-Trial Chamber.⁵

II. PROCEDURAL HISTORY

2. On 10 July 2017, the Co-Investigating Judges issued a confidential and a public Closing Order (Reasons) dismissing all charges against IM Chaem.⁶ On 9 August 2017, the International Co-Prosecutor filed his Appeal against the Closing Order (Reasons).⁷ On 22 September 2017, the Co-Lawyers filed their response to the International Co-Prosecutor’s Appeal against the Closing Order (Reasons).⁸ On 14 June 2018, the Defence filed the Reclassification Request,⁹ to which the International Co-Prosecutor replied on 19 June 2018,¹⁰ pursuant to the Pre-Trial Chamber’s instructions.¹¹

¹ Case No. 004/1/07-09-2009-ECCC-OCIJ (“Case 004/1”), IM Chaem’s Request for Reclassification of Selected Documents from Case File 004/1, 14 June 2018, D313 (“Reclassification Request”).

² Case 004/1, IM Chaem’s Request for Reclassification of Selected Documents from Case File 004/1, Annex A, 14 June 2018, D313.2 (“Annex A”).

³ Case 004/1, IM Chaem’s Request for Reclassification of Selected Documents from Case File 004/1, Annex B, 14 June 2018, D313.3 (“Annex B”).

⁴ Annex A.

⁵ Annex B.

⁶ Case 004/1, Closing Order (Reasons), 10 July 2017, D308/3.

⁷ Case 004/1, International Co-Prosecutor’s Appeal of Closing Order (Reasons), 9 August 2017, D308/3/1/1.

⁸ Case 004/1, IM Chaem’s Response to the International Co-Prosecutor’s Appeal of Closing Order (Reasons), 22 September 2017, D308/3/1/11.

⁹ Reclassification Request.

¹⁰ Case 004/1, International Co-Prosecutor’s Response to IM Chaem’s Request for Reclassification of Selected Documents, 19 June 2018, D313/1.

¹¹ Case 004/1, Email from the Pre-Trial Chamber addressed to the parties, 14 June 2018.



III. MERITS

A. Submissions

3. The Pre-Trial Chamber has considered the submissions as exposed by the Co-Lawyers and the International Co-Prosecutor.

B. Discussion

4. The Pre-Trial Chamber recalls that pursuant to Internal Rule 56(1), “judicial investigations shall not be conducted in public.” First, the investigation remains confidential until its conclusion in order to protect its integrity and the interests of the parties.¹² Second, decisions, orders and other findings of the Co-Investigating Judges are confidential.¹³ Third, filings to the Pre-Trial Chamber are in principle confidential until the Chamber has decided on the matter.¹⁴

5. Indeed, the Pre-Trial Chamber may reclassify those documents as public, with redactions *if necessary*.¹⁵ The principle underlying the classification “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.”¹⁶ Reclassification proceedings can be initiated by

¹² Internal Rule 56. *See also* Case 004/1 (PTC49), Decision on the International Co-Prosecutor’s Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons), 8 June 2018, D309/2/1/7, para. 36.

¹³ Practice Direction on the Classification and Management of case-Related Information, ECCC/004/2009/Rev.2 (“Practice Direction on Classification”), Article 5(1)(f). *See also* Case 004/1 (PTC49), Decision on the International Co-Prosecutor’s Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons), 8 June 2018, D309/2/1/7, para. 22.

¹⁴ Practice Direction on Classification, Article 5(1)(h).

¹⁵ Practice Direction on Classification, Articles 4(f), 9(2) and 9(3).

¹⁶ Practice Direction on Classification, Article 1(2). *See also* Case 002 (PTC57), Decision on Appeal of Co-lawyers for Civil Parties against Order on Civil Parties’ Request for Investigative Actions Concerning all Properties Owned by the Charged Persons, 4 August 2010, D193/5/5, para. 1; Case 004/1 (PTC49), Decision on the International Co-Prosecutor’s Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons), 8 June 2018, D309/2/1/7, para. 27; Case 004/1 (PTC54), Decision on IM Chaem’s Request for Reclassification of Her Response to the International Co-Prosecutor’s Final Submission, 8 June 2018, D304/6/4, para. 18.



a filing party, but this is not required. Moreover, the Pre-Trial Chamber enjoys significant discretion over that assessment.¹⁷

6. In the case at hand, all the requested reclassifications relate to Case 004/1, which is still protected by the secrecy¹⁸ of the investigation. In addition, some of those documents may also relate to ongoing proceedings in other cases.

7. First, the Pre-Trial Chamber is not convinced that every aspect of the submission meets the ECCC's goals of education and legacy.¹⁹ This is especially true in light of the nature of some of the documents for which reclassification is sought (*e.g.* "IM Chaem's Letter requesting a Courtesy Copy of Her Summons to Appear at an Initial Appearance on 8 August 2014,"²⁰ "IM Chaem's Request for a Legible Copy of D123/1/5.1c to be Placed on the Case File,"²¹ "IM Chaem's Letter requesting for an Extension of Time to Reply to Your Letter Concerning the Preparation of initial Appearance of Ms. IM Chaem,"²² or the "Request to File the Response to the International Co-Prosecutor's Final Submission in English first with Khmer translation to follow"²³).

8. Second, when balancing the interests at stake, the Pre-Trial Chamber finds that none of the documents listed in Annexes A and B requires immediate and full publicity. Furthermore, some of those documents are already publicly available,²⁴ thus fulfilling their educational purpose, if any.

9. Finally, pursuant to Article 12(2) of the Practice Direction on Classification and Management of Case-Related Information, the "last judicial office seized of a case shall undertake a review of the security classifications of records in the case file". Aware of its

¹⁷ Case 004/1 (PTC54), Decision on IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission, 8 June 2018, D304/6/4, para. 25.

¹⁸ Case 004/1 (PTC49), Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons), 8 June 2018, D309/2/1/7; Case 004/1 (PTC54), Decision on IM Chaem's Request for Reclassification of Her Response to the International Co-Prosecutor's Final Submission, 8 June 2018, D304/6/4.

¹⁹ Reclassification Request, para. 11-14.

²⁰ Annex A, document number 10.

²¹ Annex A, document number 23.

²² Annex A, document number 7.

²³ Annex A, document number 47.

²⁴ Annex B, document number 38 (D285); Reclassification Request, para. 24 referring to Annex B, document number 15 (D238).



duties, the Pre-Trial Chamber may indeed have to undertake such review of the Case 004/1 *archives* at a subsequent time.

10. Therefore, the Pre-Trial Chamber finds that none of the reclassifications sought by the Co-Lawyers is necessary at this stage of the proceedings and consequently denies the Reclassification Request.

FOR THESE REASONS, THE PRE-TRIAL CHAMBER UNANIMOUSLY HEREBY:


- **DENIES the Request.**

In accordance with Internal Rule 77(13), the present decision is not subject to appeal.

Phnom Penh, 26 June 2018

President

Pre-Trial Chamber



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PRAK Kimsan

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