

**BEFORE THE PRE-TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**APPEAL AGAINST ORDER ON THE ADMISSIBILITY OF  
CIVIL PARTY APPLICANTS**

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**Pre-Trial Chamber**

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## I. PROCEDURAL HISTORY

1. On 20 November 2008, the International Co-Prosecutor filed the *Co-Prosecutors' Second Introductory Submission Regarding the Revolutionary Army of Kampuchea* ("Second Introductory Submission") opening a judicial investigation against Sou Met and Meas Muth.<sup>1</sup> On 29 April 2011, the Co-Investigating Judges (CIJs) issued a notice that the investigation had concluded.<sup>2</sup> On 2 December 2011, the International CIJ ruled that the judicial investigation conducted to date in Case 003 had been defective and prejudicial to all parties and ordered that it be resumed.<sup>3</sup> On 22 October 2013, the CIJs notified the parties that Sou Met had died,<sup>4</sup> and the proceedings against Sou Met were terminated on 2 June 2015.<sup>5</sup> On 31 October 2014, the International Co-Prosecutor filed a Supplementary Submission clarifying the scope of the investigation in Case 003 and adding the crime of forced marriage (including rape).<sup>6</sup> On 10 January 2017, the International CIJ reduced the scope of the investigation pursuant to Internal Rule 66 *bis*,<sup>7</sup> and issued the *Notice of Conclusion of Judicial Investigation against Meas Muth*.<sup>8</sup> The International Co-Prosecutor then submitted his Internal Rule 66 Final Submission on 14 November 2017.<sup>9</sup>
2. On 28 November 2018, the CIJs issued two separate Closing Orders in Case 003. In his Closing Order, the National CIJ dismissed the case against Meas Muth, finding that the ECCC did not have personal jurisdiction over him as a senior leader or as one of those most responsible for crimes committed during the Khmer Rouge period.<sup>10</sup> Having dismissed all charges against Meas Muth, the National CIJ did not examine the admissibility of the Civil Party applications in Case 003. Conversely, the International

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<sup>1</sup> Case File No. 003, **D1**, Co-Prosecutors' Second Introductory Submission Regarding the Revolutionary Army of Kampuchea, 20 November 2008 [hereinafter "Second Introductory Submission"].

<sup>2</sup> Case File No. 003, **D13**, Notice of Conclusion of Judicial Investigation, 29 April 2011.

<sup>3</sup> Case File No. 003, **D28**, Order on Resuming the Judicial Investigation, 2 December 2011.

<sup>4</sup> Case File No. 003, **D86**, Notification of the Death of a Suspect in Case File 003, 22 October 2013, para. 5.

<sup>5</sup> Case File No. 003, **D86/3**, Dismissal of Allegations Against Sou Met, 2 June 2015, p. 7.

<sup>6</sup> Case File No. 003, **D120**, International Co-Prosecutor's Supplementary Submission Regarding Crime Sites Related to Case 003, 31 October 2014, para. 20.

<sup>7</sup> Case No. 003, **D226**, Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 *bis*, 10 January 2017.

<sup>8</sup> Case No. 003, **D225**, Notice of Conclusion of Judicial Investigation against Meas Muth, 10 January 2017.

<sup>9</sup> Case No. 003, **D256/7**, International Co-Prosecutor's Rule 66 Final Submission, 14 November 2017.

<sup>10</sup> Case File No. 003, **D266**, National Co-Investigating Judge's Closing Order, 28 November 2018.

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CIJ held that the ECCC did have jurisdiction over Meas Muth in his Closing Order (“ICIJ Closing Order”),<sup>11</sup> and rendered substantive admissibility decisions in a separate order (“Admissibility Order”),<sup>12</sup> in which he rejected a number of Civil Party applications in Case 003. Annex B to the Admissibility Order details the grounds upon which the International CIJ found 604 Civil Party applications to Case 003 inadmissible.<sup>13</sup> An English-language translation of the National CIJ’s Closing Order was notified to the Parties on 1 February 2019, while a Khmer-language translation of the International CIJ’s Closing Order was notified to the Parties on 5 February 2019. Khmer-language translations of the International CIJ’s Admissibility Order and Annex B to the Admissibility Order were notified to the Parties on 30 January 2019 and 5 February 2019, respectively.

3. The Civil Party Co-Lawyers represent Civil Party applicants whose applications were rejected in the Admissibility Order (Appellants), identified in Annex A to this Appeal.

## II. STANDARD OF APPEAL

4. Internal Rule 77 *bis* provides for an expedited appeals process for Civil Party admissibility decisions. As per Internal Rule 77 *bis*, “[w]ithin 10 days of the notification of the decision on admissibility, an Appellant shall file an appeal, containing reasons why the [CIJs] are alleged to have erred in fact and/or law in determining the admissibility of the Civil Party application pursuant to Rule 23 *bis*.”<sup>14</sup>
5. On appeal, “alleged errors of law are reviewed *de novo* to determine whether the legal decisions are correct, and alleged errors of fact are reviewed under a standard of reasonableness to determine whether no reasonable trier of fact could have reached the finding of fact at issue.”<sup>15</sup>

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<sup>11</sup> Case File No. 003, **D267**, Closing Order, 28 November 2018 [hereinafter “ICIJ Closing Order”].

<sup>12</sup> Case File No. 003, **D269**, International Co-Investigating Judge’s Order on Admissibility of Civil Party Applicants, 28 November 2018 [hereinafter “Admissibility Order”].

<sup>13</sup> Case File No. 003, **D269.2**, Annex B: Civil Party Applications Declared Inadmissible, 28 November 2018.

<sup>14</sup> ECCC Internal Rule (Rev. 9) 77 *bis*.

<sup>15</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 34.

### III. ADMISSIBILITY OF THE APPEAL

6. The Case 003 Parties were notified of the Admissibility Order on 28 November 2018. On 18 January 2019, the Civil Party Co-Lawyers in Case 003 filed a consolidated request for an extension of time and page limits for their Internal Rule 77 *bis* appeals and sought permission to file in a single language.<sup>16</sup> On 8 February 2019, the Pre-Trial Chamber (PTC) granted the time and page extension requests, extending the deadline for appeals against Civil Party inadmissibility in Case 003 to 30 days from the notification of the ICIJ's Closing Order and Annex B to the Admissibility Order in Khmer, increasing the page limit to 45 pages in English or 90 pages in Khmer and authorizing a single language filing.
7. The Appeal is timely submitted within the 30-day period from the notification of Khmer translations of the ICIJ Closing Order and Annex B of the Admissibility Order and conforms to the 45-page limit in English granted by the PTC. With leave of the PTC, the Appeal is submitted in English. Khmer translations of the Appeal and its Annexes will be filed as soon as they become available.

### IV. PRELIMINARY SUBMISSIONS

8. The Civil Party Co-Lawyers offer the two following preliminary submissions.
9. First, as recognized by the PTC, the object and purpose of Internal Rule 23 *bis* is to set criteria for admissibility of Civil Party applications, not to restrict or limit the concept of civil party action at the ECCC.<sup>17</sup> Internal Rule 23 *bis* must be read in conjunction with Internal Rule 21, which sets out the fundamental principles of the ECCC, including that the core ECCC documents must always be interpreted to safeguard the interests of the victims and to ensure that their rights are respected throughout the proceedings.<sup>18</sup>

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<sup>16</sup> Case File No. 003, **D269/1**, Civil Party Co-Lawyers' Urgent Request for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 003, 18 January 2019.

<sup>17</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para 62.

<sup>18</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para 61.

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10. Moreover, Internal Rule 23 *bis* must be read in conjunction with the Court's broader principles and aims as set out in the ECCC Agreement and the Law on the Establishment of the ECCC.<sup>19</sup> As the PTC recognized in Case 002, "the [ECCC] Agreement provides that one of the fundamental principles for the establishment of [the] ECCC is 'national reconciliation.' This guides the Judges and Chambers of [the] ECCC to not only seek the truth about what happened in Cambodia, but also to pay special attention and assure a meaningful participation for the victims of the crimes committed as part of its pursuit for national reconciliation."<sup>20</sup> Indeed, the PTC has consistently held that "the inclusion of civil parties in proceedings is in recognition of the stated pursuit of national reconciliation."<sup>21</sup> Accordingly, the fundamental rights of victims enshrined in the ECCC's core documents, namely Internal Rules 21 and 23 *bis*, and the important role of civil parties in the pursuit of national reconciliation must guide the PTC in its review of the Admissibility Order and the present Appeal.
11. Second, the PTC should clarify the status of all Civil Party applicants in Case 003 given the CIJs' disagreement on jurisdiction and their attendant divergent treatment of Civil Party applications.
12. The Admissibility Order creates two sets of Civil Party applicants: (1) Civil Party applicants whose applications were admitted by the International CIJ and not examined by the National CIJ;<sup>22</sup> and (2) Civil Party applicants whose applications were rejected by the International CIJ and not examined by the National CIJ.<sup>23</sup> Because the National CIJ declined to examine any of the applications for Civil Party status, there is no substantive agreement between the CIJs as to the basis for Civil Party admissibility in Case 003.

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<sup>19</sup> 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, 6 June 2003 ("Agreement"); Law on the Establishment of the Extraordinary Chambers, with the inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1003/006), ("ECCC Law").

<sup>20</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para 65 (citing Preamble to the Agreement).

<sup>21</sup> Decision on Civil Party Participation in Provisional Detention Appeals, **C11/53**, 20 March 2008, para. 37; *see also* Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 65.

<sup>22</sup> Case File No. 003, **D269.1**, Annex A: Civil Party Applications Declared Admissible, 28 November 2018.

<sup>23</sup> Case File No. 003, **D269.2**, Annex B: Civil Party Applications Declared Inadmissible, 28 November 2018.

13. The Civil Party Co-Lawyers recall that, pursuant to Internal Rule 23 *bis* (2), Civil Party applications benefit from a presumption of admissibility “unless and until” they are affirmatively rejected by the CIJs.<sup>24</sup> More broadly, the consideration of Civil Party issues, including the admissibility of Civil Party applications, must be interpreted in light of the object, context and purpose of Civil Party participation, which requires the Court “to pay special attention and assure a meaningful participation for the victims of the crimes committed as part of its pursuit for national reconciliation.”<sup>25</sup> Accordingly, any uncertainty regarding a Civil Party application should be resolved in favor of its admissibility.
14. The PTC should affirm that the first set of Civil Party applicants are admitted as Civil Parties given the presumption of admissibility and the International CIJ’s decision to admit them as Civil Parties. The Civil Party Co-Lawyers submit that this presumption of admissibility continues to hold true for each and every one of these Civil Parties “unless and until” there is a reasoned supra-majority decision to the contrary by the PTC.
15. Similarly, the PTC should find that the presumption of admissibility for Civil Party applicants is not displaced by the decision of a single CIJ. As a result, the second set of Civil Party applicants, whose applications were rejected by the International CIJ and not examined by the National CIJ, should continue to exercise the rights of Civil Parties “unless and until” there is a reasoned supra-majority decision to the contrary by the PTC.
16. In the alternative, if the PTC finds that the International CIJ can unilaterally reject the Appellants’ Civil Party applications, the Civil Party Co-Lawyers submit that the Admissibility Order erred in law and fact as set out in the Principal Submissions below.

## V. PRINCIPAL SUBMISSIONS

17. The International CIJ manifestly erred in law and fact in rejecting Appellants’ Civil Party applications. First, the International CIJ impermissibly delimited the crimes

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<sup>24</sup> Internal Rule 23 *bis* (2) (“[...]. The Co-Investigating Judges may reject Civil Party applications at any time until the date of the Closing Order. Such orders shall be open to expedited appeal to the Pre-Trial Chamber by the Civil Party applicant as prescribed by Practice Direction. Such appeals shall not stay the proceedings. Unless and until rejected, Civil Party applicants may exercise Civil Party rights.”).

<sup>25</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 65.

determinative of Civil Party admissibility exclusively to crimes allegedly committed in the Kampong Som Autonomous Sector or in the waters and islands off the coast of Democratic Kampuchea (DK). In doing so, the International CIJ disregarded the allegations that Meas Muth took part in a national joint criminal enterprise (JCE) and misinterpreted the presumption of collective injury, which extends to all members of a targeted group regardless of their location. Second, the Admissibility Order erred in excluding Civil Party applicants who experienced harms at crime sites initially part of the Case 003 investigation that were later excluded under Internal Rule 66. As detailed in the Third and Fourth Grounds of Appeal, respectively, the Admissibility Order also fails to provide a reasoned decision for the rejection of Civil Party applications and errs in rejecting applicants for failure to provide sufficient information and related grounds.

**A. First Ground of Appeal: The International CIJ erred in law and fact by finding that the nexus requirement under Internal Rule 23 *bis* (1)(b) is met only by victims of crimes committed in the Kampong Som Autonomous Sector or in the waters and islands off the coast of DK**

18. The International CIJ erred in law and fact by failing to find that victims of nationwide policies also suffered direct injury as a result of the crimes alleged against Meas Muth.<sup>26</sup> The decision to limit civil party admissibility to crimes committed in the Kampong Som Autonomous Sector or in the waters and islands off the coast of DK is inconsistent with the PTC's interpretation of the required nexus between victims and alleged crimes as set out in Internal Rule 23 *bis* (1)(b).
19. Internal Rule 23 *bis* (1)(b) requires that a Civil Party applicant show "physical, material or psychological injury" arising "as a direct consequence of at least one of the crimes *alleged* against the Charged Person."<sup>27</sup> In the Admissibility Order, the International CIJ acknowledges the PTC's jurisprudence that the causal link requirement should be interpreted "broadly," such that it should allow "for the admission of applicants whose alleged harm did not necessarily stem from crimes committed specifically in the locations

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<sup>26</sup> Admissibility Order, at paras. 36-37.

<sup>27</sup> IR 23 *bis* (1)(b) (Emphasis added).



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identified in the OCP submissions, or in the Closing Order.”<sup>28</sup> The Admissibility Order nevertheless fails to abide by the PTC’s jurisprudence on the matter by denying Civil Party status to victims of crimes committed pursuant to coordinated national policies that were carried out through a joint criminal enterprise (JCE). Similarly, the Admissibility Order fails to apply the PTC’s presumption of collective injury, which extends Civil Party status to members of the same targeted group or community regardless of their location. Finally, the Admissibility Order inexplicably overlooks Civil Party applicants who suffered harms from policies and crimes carried out *within* the crimes sites and region enumerated in the International CIJ Closing Order.

**1. The PTC should admit as Civil Parties victims of policies and crimes alleged against Meas Muth that were implemented across Cambodia as part of a JCE, not just in the areas identified in the Admissibility Order**

20. The Admissibility Order disregards the PTC’s prior determinations on Civil Party admissibility by focusing exclusively on crimes committed in the Kampong Som Autonomous Sector or in the waters and islands off the coast of DK, despite the allegations in the ICIJ Closing Order, Second Introductory Submission and Supplementary Submission that Meas Muth participated in and implemented policies under a JCE that was national in scope. Internal Rule 23 *bis* (1)(b) is explicit—and the PTC has made clear—that the requisite link lies not between the injury and facts investigated by the CIJ, but between the injury and *the alleged crimes*.<sup>29</sup> This important distinction is one of law and fact with a crime “being the legal characterization of the facts investigated.”<sup>30</sup>
21. In Case 002, the Chamber concluded that the CIJ had improperly rejected Civil Party applications by imposing an erroneous requirement that applicants link their harm with

<sup>28</sup> Admissibility Order, para. 35; Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, paras 49, 66, 68-69, 72, 77.

<sup>29</sup> Internal Rule 23 *bis* (1)(b) (emphasis added); Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, paras. 49, 66, 68-69, 72, 77.

<sup>30</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 42; *see also Prosecutor v. Ayyash et al.*, STL-11-01/PT/PTJ, F0879, Fourth Decision on Victims’ Participation in the Proceedings, 2 May 2013, para. 15 (finding that the requisite causal nexus lies between “the harm alleged and a crime specifically charged in the Indictment” and explaining that “[t]his reading confers a legal character to the parameters of the causation elements, thereby providing greater certainty and rigour” to the victim participation process).

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the investigated factual incidents set out in the Closing Order.<sup>31</sup> The PTC noted that “[w]hile the facts investigated [were] limited to certain areas or crime sites[,] the legal characterizations of such facts [...] include[d] crimes which represent[ed] mass atrocities allegedly committed [...] by acting in a joint criminal enterprise [...] against the population and ‘throughout the country.’”<sup>32</sup> The PTC determined that “[i]t is the legal characterization of the investigated factual situations [*viz*–the crimes alleged], and not the investigated factual situations themselves, that should have been considered by the [CIJ].”<sup>33</sup>

22. In instances where the Closing Order determines that attacks against the civilian population were widespread or systematic, Civil Party applicants “do not necessarily have to relate their injury to only one crime site or even to only those crime sites identified” in the Closing Order, especially when “crimes and the underlying CPK policies forming the basis of the indictments were allegedly implemented throughout Cambodia.”<sup>34</sup> Notably, the PTC emphasized that “[t]he admission as a civil party in respect of mass atrocity crimes should [...] be seen in the context of dealing with wide spread [*sic*] and systematic actions resulting from the implementation of nationwide policies in respect of which the individual liability alleged against each of the accused also takes collective dimensions due to allegations for acting together as part of a joint criminal enterprise.”<sup>35</sup>
23. The PTC’s position in Case 002 applies with equal force in Case 003. According to the ICIJ Closing Order, Second Introductory Submission and Supplementary Submission, Meas Muth participated in a national JCE whose goal was the implementation of CPK policies throughout Cambodia, well beyond the Kampong Som Autonomous Sector or

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<sup>31</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 42.

<sup>32</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 42 (internal citations omitted).

<sup>33</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 42.

<sup>34</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 72 (internal emphasis omitted).

<sup>35</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 78. Notably, an accused may be held criminally liable for participation in a JCE “even if his significant contributions to the enterprise occurred only in a much smaller geographical area” so long as “he had knowledge of the wider purpose of the common design.” *Prosecutor v. Sesay, Kallon and Gbao*, SCSL-04-15-T, Judgement, 2 March 2009, para. 262.

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the waters and islands off the coast of DK.<sup>36</sup> The CPK maintained a well-organized system for implementation of its national policies via a network of regional enterprises which included the regions under Meas Muth's command. The entire operation was designed to further the *national goal* of restructuring all of Cambodian society.<sup>37</sup> As stated in the Second Introductory Submission, Meas Muth was heavily involved in the development of national policies and "frequently attended General Staff meetings of the Secretaries and Deputy Secretaries" of the RAK divisions, where he, along with "[t]hirteen RAK Secretaries and Deputy Secretaries voiced [] approval" of a plan to conduct purges of "traitorous links" within the RAK throughout the country.<sup>38</sup> The Second Introductory Submission further notes Meas Muth's frequent correspondence with "top leaders" of the CPK including Pol Pot, Nuon Chea, Ieng Sary and Son Sen regarding the execution of Thai and Vietnamese arrestees and the purging of RAK members.<sup>39</sup> This correspondence demonstrates that Meas Muth's participation in the national JCE was known to and coordinated with the highest levels of CPK leadership with a national reach.

24. As alleged in the ICIJ Closing Order, Meas Muth held an "elevated role in the DK hierarchy, working at the highest level of the DK military command structure below the national political leadership."<sup>40</sup> Meas Muth was the Commander of Division 164, the largest division of the DK military that included both the Navy and land forces. From this position, as well as his positions as "reserve member of the General Staff Committee, and as Son Sen's Deputy," Meas Muth "was aware of all CPK activities in his areas of

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<sup>36</sup> ICIJ Closing Order, para. 562 ("Meas Muth... and other senior RAK cadres shared the common purpose of implementing the following CPK policies: i) establishing cooperatives and forced labour worksites; ii) re-educating 'bad elements' and killing 'enemies' both inside and outside the military; iii) targeting specific groups, in particular those of Vietnamese and Thai ethnicity or nationality (both real and perceived) as well as former military personnel, and civilians; and iv) implementing the forced marriage of civilians and soldiers of the RAK"); Second Introductory Submission, paras. 33, 97; Case File No. 003, **D120**, International Co-Prosecutor's Supplementary Submission Regarding Crime Sites Related to Case 003, 31 October 2014, paras. 20, 26.

<sup>37</sup> ICIJ Closing Order, paras. 175 ("The goal of the CPK was to transform DK into a modern agricultural society"); *id.* at para. 181 ("The policy [of destroying 'enemies' or 'bad elements'] was authorized under Article 10 of the DK Constitution, which stated that '*dangerous activities in opposition to the people's State must be condemned to the highest degree*'"); *id.* at para. 200 (explaining that the "Marriage Policy" was implemented to "achieve population growth and to avoid marriages between 'bad elements' and those with 'good' backgrounds," and "as a means to advance the socialist revolution").

<sup>38</sup> Second Introductory Submission, para. 88.

<sup>39</sup> Second Introductory Submission, paras. 92-93.

<sup>40</sup> ICIJ Closing Order, para. 461.

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responsibility.”<sup>41</sup> Additionally, Meas Muth was the Secretary of Kampong Som Autonomous Sector, which afforded him administrative control over civilian activities.<sup>42</sup> The ICIJ Closing Order found that Meas Muth “was discharging tasks and duties at a significantly higher level than Ao An, who was also found to have been one of the most responsible” by the International CIJ in Case 004/2.<sup>43</sup> Based on Meas Muth’s position and the impact of his actions, the International CIJ concluded that his level of responsibility “clearly surpass[es] those of Ao An, Im Cheam, and Kaing Guak Eav alias Duch.”<sup>44</sup>

25. The Second Introductory Submission and Supplementary Submission detail how, as a result of his alleged leadership position, Meas Muth was tasked with implementing national CPK policies at the regional level, including: (i) enslaving the population in cooperatives or forced labor sites; (ii) re-educating or eliminating enemies of the CPK through a network of security centers and executions sites; (iii) targeting suspect groups such as the Thai and Vietnamese; and (iv) forced marriage.<sup>45</sup> The ICIJ Closing Order found that Meas Muth implemented and made a “significant contribution” to these four nationwide policies.<sup>46</sup>
26. Specifically, as part of the common criminal plan or JCE, Meas Muth “unlawfully detained [undesirable elements] and used [them] as forced labor.”<sup>47</sup> The Second Introductory Submission details Meas Muth’s role in identifying “enemies or traitors” among the RAK and to “purge the RAK of all undesirable elements.”<sup>48</sup> The ICIJ Closing Order identifies a broad range of groups targeted by CPK leaders, including the Vietnamese and the Thai, CPK cadre thought traitorous, soldiers from the East

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<sup>41</sup> ICIJ Closing Order, para. 565.

<sup>42</sup> ICIJ Closing Order, paras. 159-61.

<sup>43</sup> ICIJ Closing Order, para. 461; Case File No. 004/2, **D360**, Closing Order (Indictment), 16 August 2018, para. 699.

<sup>44</sup> ICIJ Closing Order, para. 460.

<sup>45</sup> Second Introductory Submission, paras. 33-34; Case File No. 003, **D120**, International Co-Prosecutor’s Supplementary Submission Regarding Crime Sites Related to Case 003, 31 October 2014, paras. 20-24.

<sup>46</sup> ICIJ Closing Order, paras. 566-68, 570; see also ICIJ Closing Order para. 171 (describing the four nationwide policies as: “establishing cooperatives and forced labour worksites”; “re-educating ‘bad elements’ and killing ‘enemies’ both inside and outside the military”; targeting of specific groups; and forced marriage of civilians and members of the RAK).

<sup>47</sup> Second Introductory Submission, para. 4; see also ICIJ Closing Order, paras. 330-442 (listing security centers and labor sites); Case File No. 003, **D120**, International Co-Prosecutor’s Supplementary Submission Regarding Crime Sites Related to Case 003, 31 October 2014, paras. 6-11, 15-19.

<sup>48</sup> Second Introductory Submission, paras. 4, 33.

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Zone, “new people” or “17 April people,” those affiliated with the Khmer Republic or Lon Nol regime, Khmer Krom, and suspected CIA or KGB members.<sup>49</sup> Forced marriage was also part of a “nationwide policy” of the CPK.<sup>50</sup> The CPK enforced these policies through a “*nationwide* network of detention and security centers” and “repeated purges” and killing of perceived enemies and “bad elements” from inside and outside the CPK ranks.<sup>51</sup> According to the ICIJ Closing Order, the crimes alleged were “systematic” and created through “centralised planning, organisation, and implementation, involving all levels of the RAK and parts of the civilian administration.”<sup>52</sup>

27. The ICIJ Closing Order, Second Introductory Submission and Supplementary Submission are replete with allegations of Meas Muth’s participation in a national JCE that encompass alleged crimes beyond those solely committed within the Kampong Som Autonomous Region and the waters and islands off of the coast of DK, including his key role in purging East Zone cadres and cadres located in Kratie.<sup>53</sup> The purging of CPK cadre or civilians who were perceived as “enemies” was so central to the CPK’s nationwide common plan that it was reported in the party’s “Revolutionary Flag” magazine, according to the ICIJ Closing Order.<sup>54</sup> Additionally, groups that Meas Muth specifically targeted for attack mirrored those nationwide and included “CPK cadres accused of ‘traitorous activities’, ‘17 April people’, soldiers from the East Zone, and the Vietnamese and Thai.”<sup>55</sup> Notably, two of the charges in the International CIJ’s Closing Order allege that Meas Muth was responsible for sending captured Thai and Vietnamese civilians to S-21, which is located outside of the areas under Meas Muth’s administrative control.<sup>56</sup> As acknowledged by the International CIJ Closing Order, “[t]he fact that Meas Muth was not himself at S-21 does not detract from his responsibility since he planned the crimes that occurred at S-21 from Kampong Som.”<sup>57</sup>

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<sup>49</sup> ICIJ Closing Order, paras. 190, 349, 419.

<sup>50</sup> ICIJ Closing Order, para. 475; Case File No. 003, **D120**, International Co-Prosecutor’s Supplementary Submission Regarding Crime Sites Related to Case 003, 31 October 2014, para. 26.

<sup>51</sup> Second Introductory Submission, para. 10-11 (emphasis added).

<sup>52</sup> ICIJ Closing Order, para. 476.

<sup>53</sup> ICIJ Closing Order, paras. 273-75.

<sup>54</sup> ICIJ Closing Order, para. 183.

<sup>55</sup> ICIJ Closing Order, para. 568.

<sup>56</sup> ICIJ Closing Order, pgs. 257-58.

<sup>57</sup> ICIJ Closing Order, para. 571.

28. Despite the manifest “collective dimensions” of Meas Muth’s liability, the International CIJ focused exclusively on crimes committed in the Kampong Som Autonomous Sector and the waters and islands off the coast of DK to determine Civil Party admissibility. This was in error. Rather, the International CIJ should have considered relevant to the Civil Party admissibility analysis crimes committed outside of those regions where they also formed part of the national JCE to which Meas Muth is alleged to have belonged. The International CIJ’s Admissibility Order’s decision to limit Civil Party admissibility to the two geographic locations where Meas Muth had full administrative control cannot be reconciled with the findings in his Closing Order. The Admissibility Order fails to give a reasoned decision for the geographic limitations on Civil Party admissibility, impeding victims’ right to information and to effective appellate review.
29. As detailed in Annexes C (Harm to Civil Party Applicants Resulting from Targeting) and D (Harm to Civil Party Applicants Resulting from Other Policies of the JCE), Appellants suffered harms as a direct consequence of the implementation of the national JCE in which Meas Muth is alleged to have participated. Among those denied Civil Party status in Case 003 are victims who suffered harm as a consequence of the four national policies implemented to advance the common criminal plan of the JCE, as described below.
- (1) In 1975, Civil Party applicant **Keo Theary** (11-VSS-00030) and her family were forcibly transferred from Phnom Penh to Kampong Cham Province where they were forced to live in a cooperative and work for the whole of the Khmer Rouge period. The applicant worked from morning until night carrying dirt, farming rice and building a dam—work which caused permanent injuries to her shoulder and knee that persist even today. Several of her family members died while enslaved at the cooperatives and worksites. The applicant’s father, Keo Pân, died in 1976 from starvation and lack of medical care and her younger brother, Keo Sophal, was killed by Khmer Rouge cadre in 1977 on the accusation of having eaten cassava without permission. Another younger brother, Keo Sisophal, was killed while working in a mobile unit. Her uncle, a former Lon Nol soldier, was killed at Phnum Pros Phnum Srey under the accusation that he was Vietnamese. In late 1977, the chief of unit forced the applicant to marry a stranger, Sok Hoeung, along with 57 other couples in a ceremony stripped of all Khmer traditions. For

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seven days, she and her new spouse were closely monitored by Khmer Rouge cadre who would kill couples that did not sleep together.<sup>58</sup>

- (2) After the Khmer Rouge took power in 1975, Civil Party applicant **Sam Sitha** (13-VSS-00370) lived in Prey Veng province, where she was forced to carry dirt, dig canals and harvest rice while being deprived of adequate rest and food. On 25 December 1975, Khmer Rouge cadre instructed her to put on good clothes and report to an unspecified meeting. There, she was forced to marry a 24-year-old doctor, Long, with 16 other couples in a meeting hall in Prey Veng Province. The applicant could not refuse the marriage, although she was not happy with it. After the wedding, seven couples, including she and Long, were assigned to stay in small huts prepared on site so that Khmer Rouge cadre could monitor them, while the remaining couples returned to the village. Those couples under surveillance who refused to have sex with their mate would be taken for reeducation and killed by *Angkar*. Fearing death, she had sex with her husband, and they were returned to the village three days later and put to work separately. In 1977, Khmer Rouge leaders accused her husband of being an enemy of the regime, no longer allowed him to work as a doctor and forced him to transport bundles of rice instead. After the fall of the Khmer Rouge, in around April 1980, the applicant divorced her husband and, because of the suffering caused by her forced marriage, she has never remarried.<sup>59</sup>
- (3) On April 19, 1975, Civil Party applicant **Seng Kheang** (15-VSS-00138) was a monk at Domrei Sar Pagoda in Battambang city when Khmer Rouge soldiers ordered him and the other monks and novices to pack a few belongings and forced them to relocate to Phnum Thom pagoda in what is now Banteay Meanchey Province. Once there, they were defrocked and forced to work from morning until late in the evening farming. Because he had been transferred, the Khmer Rouge considered the applicant a “17 April” or “new” person and he was subject to monitoring by “old” or “base” people. The applicant was later transferred to

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<sup>58</sup> See Case File No. 003, **D11/226**, Civil Party Application of Keo Theary, 15 January 2010 at 00864750; Case File No. 003, **D11/226.2**, Annex 2: Supplementary Information of Civil Party Applicant, 5 April 2010 at 00842816.

<sup>59</sup> See Case File No. 003, **D11/334**, Civil Party Application of SAM Sitha, 30 January 2010 at 00974598-99.

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another location in the Northwest Zone and, in late 1975, he began losing weight while others suffered swollen bodies and died of starvation. Living conditions in the cooperative became worse in 1976 when food rations were reduced to ten cans of rice mixed with water lily for 300 workers while workers were expected to work long hours to meet the Khmer Rouge's established production quota of three to four tons of rice per hectare of rice paddy. At times, the applicant was assigned to a team of just four workers to farm rice paddies of forty square meters. Workers who fell sick under the strain were accused of having "consciousness illness." After another forced transfer in 1977, the applicant was put to work making natural fertilizer from early morning until 6:00 p.m. and then digging canals until midnight. Instead of cows or water buffalos, the applicant saw workers forced to pull plows in the fields to achieve the "super great leap forward." When he fell ill, the applicant was sent to Phnom Touch hospital, where patients died for lack of hygiene and medical assistance. Later, in early 1978, the climate of fear worsened when cadre from the East were sent to purge local Khmer Rouge leaders, including the chief of the cooperative, numerous cadres working at the dining hall and others. The applicant, who was separated from his family throughout the Democratic Kampuchea period, lost his entire immediate family—his mother, father and brother.<sup>60</sup>

- (4) Civil Party applicant **Se Sokhorn** (17-VSS-00021) and her family suffered under the hard living and working conditions of a cooperative in Battambang province. In 1975, the applicant, who was pregnant at the time, was placed in a female-only forced labor camp called "0-21" and separated from her husband, who was placed in a men-only work camp. One night, the applicant's husband snuck out of the men's camp to bring her medicine. The Khmer Rouge caught him sneaking out and killed him by beating him with a stick. The applicant only later found out about his death from the leader of her work camp, who told her in secret. Her husband, who was Buddhist, was not able to receive a proper Khmer-Buddhist burial. After the applicant gave birth in November 1976, the Khmer Rouge took her baby away so that she could continue to work under harsh conditions in the

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<sup>60</sup> See Case File No. 003, **D11/496**, Civil Party Application of Seng Kheang, 5 January 2015 at 00520594-96.



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labor camp. The baby was put in the care of older people in the camp who were unable to properly care for her and she died ten months later from malnutrition. The applicant was not allowed to cry about either of these deaths, because those who cried were beaten or killed. In 1977, the Khmer Rouge forced the applicant to marry her second husband.

- (5) Civil Party applicant **Tan Sok** (11-VSS-00120), her family and other villagers were called to a meeting with a Khmer Rouge cadre in Svay Rieng Province in 1975. There, the cadre collected information on everyone's background, searching for those who had been government officials or soldiers during the Khmer Republic period. The applicant's husband, Roth Puth, a former soldier, her father, Torn Oem, and another twenty people were noted in the list prepared by the Khmer Rouge cadres. Everyone on the list was taken to be "reeducated." After that, the applicant's husband, father, brother and the others disappeared and were presumably killed. After the arrest and disappearance of these men, their families were persecuted by being forcibly relocated numerous times to different worksites and cooperatives without provisions. They were given heavy work assignments, such as constructing roads, building dikes and canals and farming and husking rice (30 tau per day) over long work days. They were provided only two ladles of watery rice porridge to eat. Eventually, in 1977, the Khmer Rouge ordered the applicant to marry, along with eight other couples. In the ceremony, the couples vowed to obey *Angkar*'s orders and were instructed to have children. At night, the Khmer Rouge monitored the applicant to determine whether she and her husband "got on well with each other" or not. Those who did not were taken to be killed. The morning after the marriage, the cooperative chief asked the applicant if she had had sex with her husband and, out of fear of reprisal, she said that she had.<sup>61</sup>

30. Civil Party applicants identified in Annexes C (Harm to Civil Party Applicants Resulting from Targeting) and D (Harm to Civil Party Applicants Resulting from Other Policies of the JCE) suffered harms as a direct consequence of the implementation of the national JCE in which Meas Muth is alleged to have participated. In light of the foregoing, the

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<sup>61</sup> See Case File No. 003, **D11/269**, Civil Party Application of Tan Sok, 7 January 2008 at 00516240-42; Case File No. 003, **D11/260.1**, Annex 1: Additional Information on Crime Committed, 17 March 2010 at 00581330-32.

Civil Party Co-Lawyers respectfully request that the PTC admit these applicants as Civil Parties.

2. **The PTC should admit as Civil Parties victims of specific targeted groups who suffered from a collective injury that extended beyond the areas identified in the Admissibility Order**
31. The Admissibility Order also erred in limiting the geographic scope of Civil Party admissibility to victims living in areas over which Meas Muth had administrative control given that members of specific targeted communities and groups living outside these areas also suffered harm from a collective injury.
  32. In Case 002, the PTC recognized a “presumption of collective injury” that extends to members of the same persecuted group or community when mass atrocity crimes like genocide and crimes against humanity are alleged.<sup>62</sup> Under this presumption, “as long as [an] applicant submits that he/she was a member of the same targeted group or community as the direct victim and such is more likely than not to be true, psychological harm suffered by the indirect victim *arises out of the harm* suffered by the direct victim[.]”<sup>63</sup> The PTC reasoned that “[w]hen the indirect victim is a member of a group or community targeted by the implementation of CPK policies, *no distinction between what happened to the individual and the collective can be made.*”<sup>64</sup> It further opined, “[i]t would be unrealistic to see the injury caused from alleged mass atrocities only on [an] individual basis [...] Mass atrocities result from a systematic and widespread implementation of policies directed towards the whole of the community as well as particular groups and individuals within the community.”<sup>65</sup> In light of the collective nature of the injuries, the PTC thus eschewed any requirement of physical proximity between members of the same targeted groups or communities.

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<sup>62</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, paras. 83-93.

<sup>63</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 93 (emphasis added).

<sup>64</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 88 (emphasis added).

<sup>65</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 70.

33. The ECCC's endorsement of a "collective injury" principle comports with international practice. The ICC's Appeals Chamber has recognized "there may clearly be harm that could be both personal and collective in nature."<sup>66</sup> The United Nations' 1985 Basic Principles of Justice for Victims of Crime and Abuse of Power define "victims" as "persons who, individually or collectively, have suffered harm[.]"<sup>67</sup> According to the 2005 Basic Principles, "contemporary forms of victimization, while essentially directed against persons, may nevertheless also be directed *against groups of persons who are targeted collectively*[.]"<sup>68</sup> Numerous human rights bodies have also recognized that collectives bear rights and have the ability to suffer harm warranting reparations.<sup>69</sup>
34. According to the ICIJ Closing Order, Second Introductory Submission and Supplementary Submission, Meas Muth is responsible for attacks in the Kampong Som Autonomous Sector and the waters and islands off the coast of DK targeting specific groups or communities, including persons of Vietnamese ethnicity, Thai ethnicity, "new people," former Khmer Republic and Lon Nol associates, CPK cadres thought to be traitorous (including cadres from the East Zone), Khmer Krom and suspected CIA and KGB "spies."<sup>70</sup> As per the PTC's reasoning, a presumption of collective injury arising from the harm suffered by direct victims in the Kampong Som Autonomous Sector and

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<sup>66</sup> *Prosecutor v. Thomas Lubanga Dyilo*, ICC-01/04-01/06-1432, Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008, para. 35.

<sup>67</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, U.N.G.A Res. 40/34, 29 November 1985, Annex A.1.

<sup>68</sup> Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, U.N.G.A. Res. 60/147, 16 December 2005, preamble (emphasis added).

<sup>69</sup> See e.g., African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, No. 276/03, 25 November 2009, para. 248 (indicating that states bear "a higher duty in terms of taking positive steps to protect groups and communities like the Endorois"); Committee on Economic, Social and Cultural Rights, *General Comment No. 21, Right of everyone to take part in cultural life*, E/C.12/GC/21, 21 December 2009, para. 37 ("Indigenous peoples have the right to act collectively to ensure respect for their right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions [...] States parties should respect the principle of free, prior and informed consent of indigenous peoples in all matters covered by their specific rights"); Inter-American Court of Human Rights, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Judgment (Merits and Reparations), 27 June 2012, paras. 231-32, 284 (affirming that "international law on indigenous or tribal communities and peoples recognizes rights to the peoples as collective subjects of international law and not only as members of such [...]"; subsequently finding Ecuador in violation of "the right to communal property of the Sarayaku People" and liable to them as the injured party).

<sup>70</sup> ICIJ Closing Order, paras. 190, 273, 277, 279, 349-50, 390, 413, 419; Second Introductory Submission, paras. 53-54, 59-60; Case File No. 003, **D120**, International Co-Prosecutor's Supplementary Submission Regarding Crime Sites Related to Case 003, 31 October 2014, para. 6.

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the waters and islands off the coast of DK extends to *all* members of these specifically targeted groups or communities irrespective of their locations.

35. In the Admissibility Order, the International CIJ acknowledges the PTC's principle of collective injury as it relates to Civil Party admissibility, stating that "[i]ndirect victims may suffer such harm regardless of the absence of a familial relationship with the direct victim where they were both members of the same targeted group or the same community."<sup>71</sup> Despite this, the International CIJ erroneously imposes a requirement that those with shared membership in the targeted group or community be physically located in the Kampong Som Autonomous Sector or the waters and islands off the coast of DK, thereby essentially disregarding the collective nature at the heart of the principle.
36. Among those denied Civil Party status in Case 003 are victims who are members of targeted groups identified in the International CIJ Closing Order, as detailed below.
- (1) Khmer Rouge cadre forced Civil Party applicant **Leng Nan** (11-VSS-00070) to marry her husband, Tè Yang, in 1976 along with four other couples. The local Khmer Rouge leader, Ta Seng, informed her that *Angkar* had arranged a marriage for her and she felt she could not resist, because if she did so she would be sent for reeducation. During the wedding, neither her parents nor any of her other relatives were permitted to attend and, later, she and her husband were separately sent away to work in Kampong Cham Province. After the birth of her daughter, her family was forcibly relocated back to Kampong Thom Province in 1977, where local Khmer Rouge leaders classified them as "parasitic" people. Later, in November of the same year, five of the applicant's family members—her husband, father-in-law, brother-in-law and two sisters-in-law—were killed by the local militia chief and security chief of the village for being members of a "Vietnamese network" in part because their names "looked Vietnamese." One of applicant's sisters-in-law, Tè Than, was raped before she was killed. After her family members were killed, the applicant was

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<sup>71</sup> Admissibility Order, para. 33.

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treated with suspicion and two Khmer Rouge militias, Noeum and Kuy, closely monitored her activities.<sup>72</sup>

- (2) In 1975, Civil Party applicant **Ven Vân** (11-VSS-00276) was married to an ethnic Vietnamese wife and with whom he shared children. Under the Khmer Rouge, the applicant and his wife were assigned to fish and cook at the Bak Chenhchien Cooperative in Pursat province. In 1975, Vietnamese people living in the area had been sent back to Vietnam, but his wife resisted leaving so she could stay with her family. In early 1976, the applicant was accused by the Khmer Rouge of “having a Khmer body and a Vietnamese head” because he did not catch enough fish. He and all but his youngest child were separated from his wife. Their children were forced to choose whether to stay with the applicant or join their Vietnamese mother. All except the baby stayed with the applicant. His wife was later assigned to plant rice in another village and she was allowed to meet the rest of the family only twice every month. In 1977, the applicant’s wife and their baby were killed at Tuol Kokoh with five other families on the accusation that they had connections to or were themselves Vietnamese enemies or spies.<sup>73</sup>
- (3) During Democratic Kampuchea, several of Civil Party applicant **Chhun Yean’s** (11-VSS-00143) family members were killed by CPK cadre. In July 1977, Khmer Rouge cadre arrested and killed her father, Chhân, and her uncle and former village chief, Yuong Seng, on the accusation that they were Vietnamese. The applicant’s father was sent to Wat Kor in Kokor Village, Kokor Sub-district, Kampong Cham Province where her older cousin, Chhun Dong, who worked as a security guard there, told her that her father was tortured by electrocution until he died. Khmer Rouge cadre also killed the applicant’s uncle, Yuon Seng, because he allegedly stole cassava to eat.<sup>74</sup>

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<sup>72</sup> See Case File No. 003, **D11/202**, Civil Party Application of Leng Nan, 21 December 2009 at 00473548, 00473553; Case File No. 003, **D11/202.1**, Annex 1: Supplementary Information of Civil Party Applicant, 5 April 2010 at 00588514-15.

<sup>73</sup> See Case File No. 003, **D11/120**, Civil Party Application of VEN Vân, 30 July 2014 at 00426923; *see also* Case File No. 003, **D11/120/3**, Written Record of Interview of Civil Party Applicant VEN Vân, 27 February 2014 at 00986178, 00986180-82.

<sup>74</sup> See Case File No. 003, **D11/279**, Civil Party Application of Chhun Yean, 8 December 2009 at 00472014, 00472020.

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- (4) After the Khmer Rouge gained control of the country, Civil Party applicant **Teng Vannak** (15-VSS-00139) was separated from his parents and enslaved in a children's unit, weeding rice paddies, without proper clothes or adequate food. Four of his sisters succumbed to starvation in the cooperative. Later, numerous of the applicant's immediate family members were killed by Khmer Rouge cadre on the accusation of being Khmer Krom. In 1978, his mother, Pang and an infant sister were killed because Khmer Rouge cadre believe they were Khmer Krom. In 1978, Khmer Rouge militiamen also attempted to take the applicant and his elder brother, Moa Vanna, to be killed for the same reason, but his father was able to rescue them in the middle of the night and take them back to the village where he was staying. Ultimately, in 1978, all the applicant's mother's remaining relatives living in another village—20 in total—were exterminated because they were Khmer Krom.<sup>75</sup>
- (5) Between 1975 and 1977, CPK cadre forcibly relocated Civil Party applicant **Pèn Hoern** (11-VSS-00094) to at least five different areas in Kampong Cham Province where he was made to work long hours from 7:00 a.m. to 8:00 p.m. building dams and dikes while their Khmer Rouge overseers provided him and other workers only watery porridge to eat. In March 1977, his father, Pèn Chên, was arrested on the accusation that he had provided rice to the Khmer Sâ (Khmer Krom "white scarves" movement). Initially, his father was detained at the district security center at Prey Chhor District, Kampong Cham Province and forced to build dams and ponds but, after telling the applicant's sister that he was being transferred to the regional security center, his father disappeared and is presumed killed. Likewise, four of the applicant's uncles, Heang Phat, Heang Yây, Heang Chhat and Heang Kan were arrested and sent to Tuol Beng Security Center in Kampong Siem District, Kampong Cham Province and later transferred to another security center in Prey Chhor District, Kampong Cham Province where they were executed for allegedly betraying *Angkar* and joining the Khmer Sâ.<sup>76</sup>

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<sup>75</sup> See Case File No. 003, **D11/497**, Civil Party Application of Teng Vannak, 21 January 2010 at 01337239-40.

<sup>76</sup> See Case File No. 003, **D11/178**, Civil Party Application of Pèn Hoern, 11 January 2010 at 00563743-44, 00563748-49.

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- (6) Civil Party applicant **Pang Srey** (13-VSS-00730) and her family, including her father who was a former Lon Nol soldier, were ordered out of Phnom Penh in April 1975. For the remainder of that year, the applicant and her family lived as “new people” in a community of “base people” in Angkor Chey District, Kampot Province until they were forced to move to Koah Andaet District, Takeo Province in 1976. There, the commune chief ordered the family to farm the land surrounding the stone bridge, providing them only watery porridge and, sometimes, boiled red corn to eat. Regardless, the applicant’s father completed all his assigned tasks without complaint because he feared that CPK cadre would discover he had once served as a Lon Nol soldier. Although her father had evaded the fate of other former Lon Nol soldiers who were detained at check points during the forced transfer out of Phnom Penh, later, in 1978, Comrade Yat, who was on the commune committee, told the applicant’s father, “Comrade Pang Heng! You used to serve as a soldier, so you are required to go to Ta Man Detention Center to have your biography documented.” Three days later, Comrade Muth ordered a Khmer Rouge militiaman, Sing Ngan, to take my father by horse cart to Kraing Ta Chan Detention Center. In November 1978, base people told the applicant’s family that all the former soldiers sent to Kraing Ta Chan would be killed. The applicant’s mother lost all hope then and the applicant remains anguished by her father’s death at the hands of the Khmer Rouge.<sup>77</sup>
- (7) Civil Party applicant **Touch Chhy** (17-VSS-00026) was forcibly evacuated from his home in Pailin Province to a worksite in Battambang Province. The applicant, who was a former Lon Nol soldier, witnessed the killing of many other former Lon Nol soldiers in front of him by the Khmer Rouge forces. To hide his military status, he wore civilian clothing and lied about his background. The applicant was forced to work in the jungle without food or medicine and witnessed many innocent people die of starvation or be taken by the Khmer Rouge and killed. In July or August of 1976, the Khmer Rouge soldiers discovered the applicant’s former military status and sent him to Bavel jail. At the jail, the applicant was tortured for two months through electric shock and asphyxiation. He was given little food or water and was

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<sup>77</sup> See Case File No. 003, **D11/362**, Victim Information Form of Pang Srey, 24 November 2013 at 01195350.

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kept in a room with ten other people with his hands tied behind his back and his legs tied together. He witnessed the Khmer Rouge soldiers shoot fellow inmates in front of him daily. After the two months, he was released and returned to his worksite to continue the forced labor. Later, the Khmer Rouge forced the applicant to marry his wife.<sup>78</sup>

- (8) Prior to April 1975, Civil Party applicant **Mak Vanna** (13-VSS-00734) lived with her father, a policeman, her mother and her seven siblings in Phnom Penh. The applicant and her family were forcibly evacuated from Phnom Penh city and made to walk to Angkor Chey District, Takeo Province, live among the “base people” there and eat and work collectively. Later she was separated from her family and, in 1977, the Commune Committee ordered the applicant to work in a women’s mobile unit building a dam at Tnaot Chang Bridge. She was overworked transporting the dirt used to build the dam on long work shifts that stretched from day to night, while only receiving a shared ladle of gruel or boiled red corn for her food ration. After six months, the women's mobile unit chief sent the applicant back to the commune at Kaoh Andaet to transplant rice seedlings day and night and pedal the waterwheel to irrigate the fields. In 1978, on a rare visit to see her parents, they whispered to the applicant that the Khmer Rouge village chief and militiamen had asked them whether her father had worked for the Lon Nol government and told them that, if he had, they would arrange work for him. Her father admitted to them that he had been a lieutenant major in with Lon Nol’s police force. On 8 July 1978, the applicant witnessed a Khmer Rouge cadre, Seng Gnan transporting four people by ox-cart to Ta Man’s office for interrogation; her father, MAK Chen, was among them. The applicant’s father was killed as was her younger brother, Mak Chanthi, who was targeted for his relationship to the applicant’s father, a former Lon Nol soldier.<sup>79</sup>
- (9) Civil Party applicant **Sung Seang** (15-VSS-00137) was a young boy living with his parents and eight siblings in what is now Kandieng District, Pursat Province when the Khmer Rouge took power on 17 April 1975. After the applicant’s family was forcibly transferred to another village in 1976, three Khmer Rouge cadre, Li (male),

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<sup>78</sup> See Case File No. 003, **D11/643**, Victim Information Form of Touch Chhy, 27 January 2017 at 01425408.

<sup>79</sup> See Case File No. 003, **D11/365**, Victim Information Form of Mak Vanna, 24 November 2013 at 01195375-77.



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Lonh (male) and Pheng (female), took the applicant's father, a former Lon Nol soldier, to be executed at a nearby guava field. The applicant began to run after him when the cadre were taking him away, but his aunt Nob held the applicant back and saved his life. The same cadres later took three of the applicant's elder siblings, who had also been Lon Nol soldiers, to slaughter like cows. They were stabbed with bayonets and one of their murderers later showed the applicant the weapon with his brothers' fresh red blood still on it, warning him "If you don't behave well, you will be taken and executed!" Soon after, the applicant's aunt Nob was arrested and murdered by these cadres under the accusation that her husband had been a Lon Nol soldier. To this day, the applicant finds the memory of these lost family members too much to bear.<sup>80</sup>

- (10) After the Khmer Rouge took power in April 1975, Civil Party applicant **Hem Chaut** (15-VSS-00136), his wife, his daughter, his two sons and the other occupants of his village in Bakan District, Pursat Province were forced to transfer to another area where they had to construct their own shelters and work at the cooperative. The applicant was separated from his family and made to join the army in Front Line Soldier Unit 27 under Ta Khlaeng's, Ta Keu's, Ta Nhea's and Ta Rann's leadership. The applicant was assigned to supervise four cooperatives, while his wife was assigned to be the chief of a plantation unit. Khmer Rouge cadres were instructed to spy on their subordinate units and each other and, when cadre did not follow *Angkar's* rules and policies or were otherwise perceived as disloyal, they were arrested and often executed. Accordingly, when the applicant decided to "refashion" instead of execute Comrade Moeun Proem, who had been accused with immorality, the applicant was himself arrested for "protecting and enemy" and sent to Trach Kraol Prison located in Bakan District, Pursat Province where he was tortured and interrogated by prison guards. Two days later, the applicant was sent to perform heavy labor, like digging up tree roots, on the prison grounds while shackled. Living conditions in the prison were terrible: the applicant remained shackled day and night, ate while shackled, slept with both his hands and feet shackled on a rice sack half the size of his body while lined up on the floor with other prisoners in a shared prison

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<sup>80</sup> See Case File No. 003, **D11/495**, Victim Information Form of Sung Seang, 27 January 2010 at 01236287.

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cell and was closely monitored by a guard who was assigned to him and three other prisoners. The applicant survives because the prison chief, Chek, who was an old friend that had joined the RAK at the same time as him, learned of his detention and ordered his release. Released after six days of detention, the applicant was not returned to a leadership role and lived in constant fear of being killed.<sup>81</sup>

- (11) Civil Party applicant **Nân Yem** (13-VSS-00601) and her family were “base people” living Kaoh Thum District, Kandal Province when the Khmer Rouge gained power in 1975. The applicant’s older brother, Nân Sran, had joined the Khmer Rouge army in 1974 and was stationed at the Vietnamese border. The applicant was forced to work under the supervision of a Khmer Rouge overseer in a women’s mobile unit where she was ordered to carry earth, dig canals, build dams and turn the waterwheel to irrigate the rice fields in an endless cycle of work assignments. In 1977, someone ran to the applicant’s worksite in the jungle about five kilometers away from her cooperative to tell her that there was a mob outside the place where her family stayed. When the applicant ran back to the cooperative, she found her brother, Sran, there. He had deserted his station for some reason and the Khmer Rouge army had followed him home. When he refused to return to his unit, the other soldiers threatened to set off a grenade in front of the building and then tied up Sran and led him away to be detained at Office 15 in Pou Tonie Commune, Kaoh Thum District. After that, there was no news from him and the applicant’s family wondered if had been killed or taken somewhere. Eventually, the applicant learned that her brother, Sran, was sent to Tuol Sleng Prison in Phnom Penh, where he was executed.<sup>82</sup>

- (12) Civil Party applicant **Mey Saveoun** (11-VSS-00042) initially joined the Cambodian National United Front when King Sihanouk called on the public to fight the Lon Nol regime. In 1976, Khmer Rouge forces disarmed him and other “Sihanouk troops” and sent them to Prey Veng Province for “tempering.” In Prey Veng, he was made to do hard labor digging canals, building dikes and constructing a dangerous road where workers were killed every day due to explosives remaining from the Lon Nol era. After that, when East Zone Chairman Sao Phim called upon the people of the

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<sup>81</sup> See Case File No. 003, **D11/494**, Victim Information Form of Hem Chaut, 13 January 2008 at 01337245-49.

<sup>82</sup> See Case File No. 003, **D11/342**, Victim Information Form of Nân Yem, 13 January 2008 at 01210437.

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East Zone to resist Pol Pot's soldiers, the applicant joined in the fighting on Sao Phim's side. When Sao Phim shot himself after three days of fighting, the applicant fled but was arrested and imprisoned. Khmer Rouge cadre took him to Wat Kranhong in Romeas Haek District, Prey Veng Province where he was imprisoned for seven days. The applicant's hands were bound and his eyes blindfolded, he was deprived of food and water and he and other detainees were dragged behind bicycles, beaten and interrogated about their participation in the fighting. Those who confessed that they had fought against Pol Pot's troops were tied to a coconut tree, shot dead and thrown into a pond. Because the applicant did not confess, he was returned to a cooperative in the East Zone. There, the applicant was forced to marry in a ceremony with sixty-one other couples. A few days later, in July or August 1978, Khmer Rouge cadre forcibly evacuated the applicant, all his relatives and thousands of other East Zone people on foot, boat and train to Pursat Province where they were given blue and white scarves that they were required to wear to identify them as East Zone people. The applicant and his family were taken to a cooperative and put to work in separate units from each other and designated for people from the East Zone. In late 1978 or early 1979, the Khmer Rouge began systematically killing all the people from the East Zone in his cooperative. One day, the applicant and his family were herded toward a corral and killed on accusation of being "Vietnamese enemies." In the chaos, the applicant and a few others fled the scene and, although he was shot in the arm by Khmer Rouge cadre, he ultimately survived to see liberation day. However, at least 50 of the applicant's relatives were killed, including his wife and four of his siblings that day.<sup>83</sup>

- (13) Civil Party applicant **Chea Marie** (17-VSS-00001) and her family were forcibly evacuated from Phnom Penh on 7 April 1975. The applicant and her husband and brother were forced to move to Thmei Serei Sameki Village, where they were treated harshly by the Khmer Rouge due to their status as "new people." The Khmer Rouge wanted to smash all new people and would tell the applicant "to keep you is no gain,

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<sup>83</sup> See Case File No. 003, **D11/206/3**, Written Record of Interview of Civil Party Applicant Mey Saveoun, 11 October 2013 at 00978752-55, 00978757-60, 00978760, 00978763; Case File No. 003, **D11/260.1**, Annex 1: Supplemental Information, 17 June 2010 at 01194873-75; see also Case File No. 003, **D11/260**, Civil Party Application of Mey Saveoun, 23 January 2010 at 01313274-75.

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to lose you is no loss.” At the village, the applicant was forced to work particularly hard while being deprived of any medical care. She worked at a dam site during the day and was forced to collect human feces and dirt to make manure at night. Only the applicant and a Cham woman were forced to collect manure and because of this work they had to eat alone and remain separate from the others. Her husband and brother were sent to separate work sites and she would only see them every three or four months. Eventually, the applicant became sick and fell unconscious while working. She was sent to Wat Thla, an execution site where she witnessed many people being killed, particularly other new people. She was given injections and forced to drink black liquid without any information on what they contained. The applicant was very afraid because she witnessed many patients fall unconscious after taking this medicine. Applicant was freed after the Vietnamese invaded and she went to Phnom Penh to find her relatives. Unfortunately, she learned from her aunt that the Khmer Rouge had killed her brothers and father and that her mother and three sisters were killed when the Vietnamese invaded. In total, she lost 25 paternal family members and 9 maternal family members.<sup>84</sup>

- (14) Civil Party applicant **Yann Nhâr** (11-VSS-00262) and her family were forcibly transferred out of Phnom Penh at gunpoint in the days following 17 April 1975. They walked for two months to arrive at the first location where they were ordered to live and, after just three months there, they were ordered to move on to Kiri Vong District, in Takeo Province. There, Khmer Rouge leaders labeled the applicant and her family members “17 April people.” As such, they were persecuted and treated with suspicion. Khmer Rouge cadres gave them much harder work assignments than the “base people” in the cooperative, but only half their food rations. By 1976, the Khmer Rouge sent the applicant and her family to yet another new village and, once there, her husband was accused of being both a Lon Nol soldier and a CIA agent. He asked the applicant to flee with him to Vietnam, but the applicant begged her husband not to go, because she feared that the family members they left behind would be killed in retribution. In June of 1976, the applicant’s husband was arrested

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<sup>84</sup> Case File No. 003, **D11/590**, Victim Information Form of Chea Marie, 17 January 2017 at 01377877-78; Case File No. 002, **E3/5085a**, Supplemental Information for Civil Party Marie Chea, 25 April 2015.

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and detained at Voat Prey Rumdeng Pagoda. The applicant learned that over a three-day period her husband was tortured, beaten with a pole, had his throat cut and, then, was burned alive. After her husband was killed, the cadres ordered the applicant to complete twice the amount of work that she had been doing before. In spite of her pain and mourning for her murdered husband, the applicant did her best to comply with these demands, so that her life would be spared. As a result, the applicant became so skinny that her bones were visible through her clothes. Then, in early 1978, her unit chief forced the applicant to marry another man, even though she had tried to refuse the marriage several times by insisting that both she and the still infant child she had had with her late husband were too young for her to be remarried.<sup>85</sup>

- (15) Civil Party applicant **Long Phan's** (11-VSS-00182) brother, Long Pean, was arrested at a worksite in Kratie Province because he was unable to complete a task assigned to him. He was taken to Koun Ngèt security office Snuol District, Kratie Province on the accusation that he had “a Cambodian body with a Vietnamese mind” and that he was a KGB agent. The applicant’s brother was subjected to torture in an effort to get him to confess to these accusations. During this time, the head of the security center would not allow his mother to visit him. In 1978, after about three months of detention, Long Pean was taken to Koh Sda Execution Site located in Kracheh District, Kratie Province with his hands tied behind his back and blindfolded. A month later the applicant heard that her brother had been killed by the Khmer Rouge because he would not confess to being a KGB spy.<sup>86</sup>
- (16) Civil Party applicant **Sek Phalla** (14-VSS-00163) lived in Thala Barivat District, Stung Treng Province when the Khmer Rouge came to power, while her husband, Srei Bun Thon, was sent away to work in another area. The applicant was forced to work without adequate food rations. In 1977, CPK cadre accused the applicant and her husband of being “Youn CIA spies” and they feared their imminent execution. Their lives were only spared because the cooperative chief was replaced by a new leader, Phann. Twice, once in 1977 and again in 1978, Comrade Khan Bin took the

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<sup>85</sup> See Case File No. 003, **D11/59**, Victim Information Form of Yann Nhâr, 24 July 2009 at 00873677-78; Case File No. 003, **D11/59.1**, Supplementary Information, 22 June 2010 at 00865122.

<sup>86</sup> See Case File No. 003, **D11/290**, Civil Party Application of Long Phan, 17 August 2009 at 00556746-47.

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applicant's uncle to the Division 801 offices in Ratanakiri Province. The second time, Khmer Rouge leaders made a cautionary example of her uncle by killing him for having undermined *Angkar* by having accidentally allowed the water buffalo he was tending to eat rice seedlings. After his killing, the Khmer Rouge did not allow the applicant's family to mourn her uncle's death with a funeral ceremony. The applicant learned from her cousin that another cousin, Em Heng, a former Lon Nol soldier, was arrested by the Khmer Rouge and detained and executed at Office S-21 (Tuol Sleng Prison) in Phnom Penh. Also, in 1978, the applicant's younger sister, Sek Sokha Va, was forced to marry Khiet Khan with eight other couples in Stung Treng Province.<sup>87</sup>

37. The Appellants listed in Annex C (Harm to Civil Party Applicants Resulting from Targeting) have all provided information sufficient to show their membership in one or more of the specifically targeted groups or communities identified in the submissions. On this basis, the PTC should overturn the Admissibility Order and admit these Appellants as Civil Parties.

**3. The Admissibility Order further erred in law and fact by excluding victims directly linked to crimes alleged in the International CIJ Closing Order**

38. Several Civil Party applicants were deemed inadmissible despite suffering harms derived from policies and crimes imputable to Meas Muth *within* the Kampong Som Autonomous Sector. This is inconsistent with the criteria for admissibility set out in the Admissibility Order, which specifically contemplates “admission of applicants whose alleged harm did not necessarily stem from crimes committed specifically in the locations identified in the OCP submissions, or in the Closing Order.”<sup>88</sup>
39. In addition to his role as an RAK commander, Meas Muth was also Secretary of the Kampong Som Autonomous Sector, which included among other areas, Kampong Som

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<sup>87</sup> See Case File No. 002, **D22/1177**, Civil Party Application of SEK Phalla, 19 July 2008 at 00839961-62 (citing to applicant's original VIF on Case File 002 because, in spite of the applicant's written request in D11/401 to have her Case 002 application documents transferred to the Case File 003, they do not appear there); Case File No. 003, **D11/401**, Victim Information Form of Sek Phalla, 10 March 2015 at 01373305; Case File No. 003, **D11/401/3**, Supplementary Information, 24 June 2015 at 01185681.

<sup>88</sup> Admissibility Order at para. 35, *citing* Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, paras. 49, 66, 68, 69-72, 77.

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town, Ream and the islands off the coast of DK.<sup>89</sup> As Secretary, Meas Muth had administrative control over civilian activities, including “rice farming, food supply, health, arrests, deaths, and ‘enemy situations.’”<sup>90</sup> From 1975 to 1978, Meas Muth had an estimated 17,000 civilians and division personnel under his control.<sup>91</sup> Due to Meas Muth’s administrative authority over the Kampong Som Autonomous Sector, Civil Party applicants who suffered harms within that sector should be declared admissible, even if their harms did not occur at one of the specified crime sites in the ICIJ Closing Order.

40. As detailed in Annex B (Civil Party Applicants Harmed by Conduct at Crime Sites within the Scope of Case 003), Appellants Kong Sâmngang (11-VSS-00301),<sup>92</sup> Prum Samon (14-VSS-00017),<sup>93</sup> On Daravuth (17-VSS-00043),<sup>94</sup> Heng Navy (14-VSS-00014)<sup>95</sup> and Mao Sophâl (14-VSS-00012)<sup>96</sup> were injured as a result of crimes alleged against Meas Muth committed in the Kampong Som Autonomous Sector. The location of Appellants’ harms within the crime sites and region enumerated in the International CIJ Closing Order provides an *additional* linkage between their harms and Meas Muth’s criminal activities.

**B. Second Ground of Appeal: Facts excluded from the investigation pursuant to Internal Rule 66 bis can be considered in determining Civil Party admissibility**

41. By limiting the geographic scope of Civil Party admissibility, the International CIJ excluded victims who would be otherwise admissible prior to the CIJs’ *Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 bis*. This result runs counter to the explicit statements in the Admissibility Order and those previously

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<sup>92</sup> Appellant Kong Sâmngang’s uncle, a former Lon Nol soldier, and his family were forcibly transferred to Veal Renh Sub-district, Prey Nob District, Kampong Som Province.

<sup>93</sup> Appellant Prum Samon’s family was forcibly transferred to Tuek L’ak Commune, Prey Nob District, Kampong Som Province, and then transferred to Ream Village, Ream Commune, Prey Nob District, Kampong Som Province, where they were forced to work under harsh conditions. Appellant also witnessed relatives tied up and brought to the Durian Plantation at Ream Village.

<sup>94</sup> Appellant On Daravuth and his family were evacuated by the Khmer Rouge from Kampong Som town to a village in Prey Nob Commune, Prey Nob District, Kampong Som Province, where they were forced to work under harsh conditions.

<sup>95</sup> Appellant Heng Navy was transferred to work in a mobile unit at Kampong Smach Worksite in Veal Renh Sub-district, Prey Nob District, Kampong Som Province sometime after July 1976. Later, in 1977, her parents were transferred to work in Preaek Thnoat Village, Preaek Toal Commune or Village in Prey Nob District, Kampong Som Province.

<sup>96</sup> Appellant Mao Sophâl was sent to help build a dam at Veal Renh Commune, Prey Nob District, Sihanouk Ville Province in 1976 and 1977.

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made by the CIJs that the reduction in the scope of the investigation had no impact on the admissibility of Civil Party applicants.<sup>97</sup> The International CIJ therefore erred in his refusal to take into account crimes alleged in the Case 003 submissions taking place outside of the Kampong Som Autonomous Sector and the waters and islands off the coast of DK, thereby causing severe prejudice to Appellants.

42. On 16 March 2016, the CIJs issued a *Request for Comments Regarding Alleged Facts not to be Investigated Further*, highlighting seven facts alleged in the Second Introductory Submission that the judges did not intend to further investigate.<sup>98</sup> On 10 January 2017, the International CIJ issued the *Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 bis*, in which he excluded factual allegations, pursuant to Internal Rule 66 bis, relating to (a) the S-22 Security Center, (b) the Kampong Chhnang Airport Construction Site, (c) the Stung Tauch Execution Site, and (d) the RAK involvement in the “purges” of the Central Zone, the New North Zone and the East Zone, other than the alleged “purges” of members of the RAK units located in those areas.<sup>99</sup> Under Internal Rule 66 bis (3), the CIJs must determine the effect of the decision to reduce the scope of the judicial investigation on the “status of Civil Parties and right of Civil Party applicants to participate in the judicial investigation.”<sup>100</sup> In doing so, the International CIJ explicitly stated that the exclusion of the above facts pursuant to Internal Rule 66 bis would “not affect the status of Civil Parties or the right of Civil Party applicants to participate in the judicial investigation.”<sup>101</sup> The Admissibility Order similarly states that the facts excluded on the basis of Internal Rule 66 bis “may still form the basis of a decision of admissibility.”<sup>102</sup>
43. Despite the repeated statements that the Internal Rule 66 bis decision would not impact Civil Party status, the Admissibility Order nevertheless limits Civil Party admissibility in

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<sup>97</sup> See Admissibility Order, para. 39 (“Facts excluded on the basis of Internal Rule 66 bis alleged by civil party applicants may still form the basis of a decision of admissibility, should they fulfil the remaining conditions.”)

<sup>98</sup> Case File No. 3, **D184**, Request for Comments Regarding Alleged Facts not to be Investigated Further, 16 March 2016, para. 3 (dismissing facts 3 to 5 under Internal Rule 67 and discontinuing the investigation into facts 1, 2, 6 and 7 under Internal Rule 66 bis).

<sup>99</sup> Case File No. 003, **D226**, Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 bis, 10 January 2017, para. 4.

<sup>100</sup> Internal Rule 66 bis (3).

<sup>101</sup> Case File No. 003, **D226**, Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 bis, 10 January 2017, para. 12.

<sup>102</sup> Admissibility Order, para. 39



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Case 003 to “applicants who have suffered harm in the Kampong Som Autonomous Sector or in the waters and islands off the coast of DK between 17 April 1975 and 6 January 1979.”<sup>103</sup> The full scope of the crimes originally alleged in Case 003, however, spanned a much greater geography. The decision to place geographic restrictions on Civil Party admissibility effectively bars otherwise previously qualified Civil Party applicants from continuing to participate in the proceedings.

44. For example, as detailed in Annex B, the Admissibility Order declared eight Civil Party applicants inadmissible, despite evidence that these applicants had suffered harms at the Kampong Chhnang Airport Construction Site and Stung Tauch Execution Site, two of the relevant crime sites identified in the Second Introductory Submission that were later excluded in the International CIJ’s Internal Rule 66 *bis* order.<sup>104</sup>
45. The International CIJ disregarded the broader allegations in the original case against Meas Muth and examined only those he considered to be within the newly restricted purview of Case 003. Civil Party applicants cannot be denied their right to participate in the Case 003 proceedings on this basis. To rule otherwise is to permit a routine procedural act, intended to expedite the proceedings, to deprive victims of their right to meaningfully participate in proceedings directly addressing alleged crimes and policies under which they suffered tremendous harm.
46. Furthermore, the International CIJ’s interpretation of the impact of the reduction of the scope of the judicial investigation runs counter to the rights of victims, which require that the Court take a broad view of Civil Party admissibility. The PTC has made clear that, according to fundamental principles of the ECCC, the Internal Rules shall always be interpreted so as to safeguard the interests and rights of the victims.<sup>105</sup> Particularly in light of the ECCC’s goal of national reconciliation, ECCC Judges and Chambers “must pay special attention and assure a meaningful participation for the victims of the crimes

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<sup>103</sup> Admissibility Order, para. 36.

<sup>104</sup> Appellants Sou Yim (11-VSS-00130), Neang Lay (13-VSS-00499), Ngov Nhâ (13-VSS-00602), Om Nieng (14-VSS-00129), Sok Pich (13-VSS-00517) and Kong Siek (16-VSS-00054) or their family members all suffered harms at the Kampong Chhnang Airport Construction Site. Appellants Aun Han (13-VSS-00452) and Mann Rây (13-VSS-00453) both had family members who suffered harms at the Stung Tauch Execution Site.

<sup>105</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para 61.

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committed.”<sup>106</sup> The Admissibility Order does precisely the opposite by unreasonably limiting the scope of Civil Party admissibility in Case 003.

47. In light of the foregoing, Civil Party Co-Lawyers request the PTC to find that the Admissibility Order erroneously rejected Civil Party applicants identified in Annex B, who suffered harms as a consequence of the crimes alleged at Kampong Chhnang Airport Construction Site and Stung Tauch Execution Site in the Second Introductory Submission and the Supplementary Submission that were later excluded under Internal Rule 66 *bis*.

**C. Third Ground of Appeal: The International CIJ erred in law by failing to provide reasoned decisions for the rejections of Civil Party applications**

48. The Admissibility Order fails to meet the minimum standards set out by the PTC for a reasoned decision. The PTC has cautioned the CIJs that they must issue a reasoned decision on each Civil Party application in order to respect fundamental principles of legality, including transparency and legal certainty.<sup>107</sup> While the CIJs need not detail every factor in their decision-making process, they must, at a minimum, “implicitly disclose the material which has been taken into account by the judges when making a decision.”<sup>108</sup> In particular, the right to appellate review provided by the Internal Rules is rendered meaningless if Civil Parties are not informed of the reasoning behind the decision they are appealing. Similarly, the PTC is unable to conduct a proper and

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<sup>106</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para 65. *See also* Preliminary Submissions *supra*.

<sup>107</sup> Case File No. 002, **D411/3/6**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, paras. 37-38. Similarly, the Appeals Chamber of the ICTY has held that the right to a reasoned decision is an element of the right to a fair trial and that only on the basis of a reasoned decision will proper appellate review be possible. *See Prosecutor v. Momir Nikolic*, Judgment on Sentencing Appeal, 8 March 2006, Case No. IT-02-60/1-A, para. 96. The Appeals Chamber of the ICTY held that “as a minimum, the Trial Chamber must provide reasoning to support its findings regarding the substantive considerations relevant to its decision.” *Prosecutor v. Milutinovic et al.*, Decision on Interlocutory Appeal from Trial Chamber Decision Granting Nebojsa Pavkovic’s Provisional Release, 1 November 2005, Case No. IT-05-87-AR65.1, para. 11. *See also Prosecutor v. Lubanga*, ICC-01/04-01/06 -774, Judgment on the appeal of Mr. Thomas Lubanga Dyilo against the decision of Pre-Trial Chamber I entitled “Second Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81”, 14 December 2006, para. 30: “only on the basis of a reasoned decision will proper appellate review be possible”.

<sup>108</sup> Case File No. 002, **D411/3/6**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 39.

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effective appellate review of the rejection without a sufficient understanding of the underlying reasoning, if any.<sup>109</sup>

49. In Case 002, the PTC found that the CIJs' rejection of Civil Party applications did not comport with the reasoned decision requirement.<sup>110</sup> There, the CIJs erred by rejecting Civil Party applicants on the basis of generic grounds, such as "the necessary causal link between the alleged harm and the facts under investigation was not established."<sup>111</sup> Further, the PTC observed that the annexed table that contained the CIJs' additional reasoning was itself limited to a maximum of two sentences per applicant, with the length of each sentence between five and fifteen words and the substance not specific to the individual.<sup>112</sup>
50. The PTC's decision applies with equal force to the Admissibility Order here. The National CIJ's inquiry ended at a jurisdictional threshold, without any evaluation of the underlying merits of the Civil Party applications. The International CIJ ruled on the admissibility of Civil Party applications but rejected an overwhelming proportion of them *en masse* without proper individual consideration. As in Case 002, the reasoning, or lack thereof, for the rejections was limited to a few short, recycled statements. Specifically, the Admissibility Order rejects nearly 99 percent of the Appellants on the generic grounds that (a) the facts described "fall outside the scope of the case file;" (b) it was not shown that "it was more likely than not to be true that the applicant suffered as a consequence of one of the crimes charged;" or (c) the facts "do not relate to any matter which would permit the applicant to be joined as a Civil Party;"<sup>113</sup> The Admissibility Order does not provide any clarification as to the meaning of these grounds for dismissal or how they may differ from one another. The lack of specificity as to the reasons for rejecting each Civil Party applicant does not allow Appellants to meaningfully exercise their appellate rights.

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<sup>109</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 38.

<sup>110</sup> Case File No. 002, **D411/3/6**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 37.

<sup>111</sup> Case File No. 002, **D411/3/6**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 37.

<sup>112</sup> Case File No. 002, **D411/3/6**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 37.

<sup>113</sup> Case File No. 003, **D269.2**, Annex B: Civil Party Applications Declared Inadmissible, 28 November 2018.

51. As detailed in Annex E (Grounds for Finding Civil Party Applicants Inadmissible), Civil Party Co-Lawyers request that the PTC overturn the Admissibility Order in all cases where the Civil Party application was found inadmissible for being “outside the scope of the case file” (ground 1), where it was purportedly “not shown that it is more likely than not to be true that the victim suffered as a consequence of the crimes charged” (ground 3) or where the facts purportedly did not “relate to any matter which would permit the applicant to be joined as a Civil Party” (ground 8) on the basis that rejection of these Civil Party applications was not issued by a reasoned order.

**D. Fourth Ground of Appeal: The International CIJ erred in law and fact by rejecting Appellants for failure to provide sufficient information, despite having met the standard of proof required under the Internal Rules and mitigating factors.**

52. The Admissibility Order erred in dismissing Civil Party applicants for failing to provide sufficient information. As detailed in Annex F (Admissibility Arguments for Civil Party Applicants Found Inadmissible for Insufficiency of the Evidence or Related Grounds), the standard of proof and sufficiency of information required by the Internal Rules (read along with the mitigating factors detailed by the International CIJ in the Admissibility Order) were met by these applicants.

53. Internal Rules 23 *bis* (1) and (4) and article 3.2 of the Practice Direction provide that Civil Party applications must contain sufficient information to ensure verification of their compliance with the Internal Rules.<sup>114</sup> Specifically, applications must include details of the identity and status as a victim, the alleged crime and any evidence of the harm suffered or information “tending to show the guilt of the alleged perpetrator.”<sup>115</sup> Information is deemed sufficient when it allows the CIJs to be satisfied that the facts alleged are more likely than not to be true.<sup>116</sup>

54. The object and purpose of Internal Rule 23 *bis* as recognized by the PTC is to set criteria for admissibility of Civil Party applications, not to restrict or limit the concept of Civil

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<sup>114</sup> Internal Rules 23 *bis* (1) and (4); ECCC Practice Direction on Victims Participation (Rev. 1), art. 3.2.

<sup>115</sup> Internal Rules 23 *bis* (4).

<sup>116</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para 94.

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Party action at the ECCC.<sup>117</sup> The location of Internal Rule 23 *bis* within the General Provisions sub-section of the Procedure section of the Internal Rules indicates that it must be read in conjunction with Internal Rule 21, which sets out the fundamental duty to safeguard the interests of the victims and ensure legal certainty and transparency.<sup>118</sup>

55. The CIJs must determine whether there are *prima facie* credible grounds indicating that the applicant suffered harm related to the facts under investigation on the basis of the elements in the case file. The PTC has noted that due to the gravity of the crimes addressed at the ECCC, “it would be unrealistic to see the injury caused from alleged mass atrocities only on an individual basis because it encompasses individual parameters.”<sup>119</sup> Acknowledging that mass atrocities stem from systematic and widespread policies directed towards particular groups and individuals, as well as an entire community, the PTC has determined that “individual applications to be joined as a Civil Party must be seen in the special circumstances of the conflict.”<sup>120</sup>
56. In the Admissibility Order the International CIJ acknowledged three factors that further mitigate the required proof of harm for Civil Party applicants, namely:
- a) The passage of time and the effect that this may have on an applicant’s ability to provide documentary evidence in regards to harm suffered, including medical records where physical harm is alleged;
  - b) The capacity, following the DK period, to extensively and accurately identify, respond, or record the impact that the conditions of the DK period had on the psychological health of the population; [and]
  - c) The evacuation, movement, and resettlement of the population in different regions, and the effect that this had on an applicant’s ability to provide proof of ownership where loss of property is alleged, and the ability to provide proof of income where loss of income is alleged.<sup>121</sup>

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<sup>117</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para 62.

<sup>118</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para 61. *See also* Preliminary Submissions *supra*.

<sup>119</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para 70.

<sup>120</sup> Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para 70.

<sup>121</sup> Admissibility Order, para. 41.

57. The fact that the CIJs failed to keep victims properly and timely informed throughout the proceedings, in violation of Internal Rule 21(1)(c), serves as an additional mitigating factor.<sup>122</sup> Access to information is particularly crucial during the pre-trial phase to victims who may seek to join as Civil Parties. As victims do not have access to the case file, they are fully dependent on the information released by the CIJs in deciding whether or not to apply as Civil Parties. Here, while the Second Introductory Submission was filed on 20 November 2008, the CIJs did not disclose the relevant crime sites to the victims until 9 May 2011—two and a half years later.<sup>123</sup> The PTC should take this breach of victims’ rights into consideration when determining the sufficiency of Appellants’ evidence, since the CIJs’ failure to disclose critical information in a timely manner hindered Appellants’ ability to conduct timely investigations, properly analyze relevant evidence and provide details concerning relevant harm.
58. The Admissibility Order rejected Civil Party applications under three grounds related to the sufficiency or quality of the information provided in the Civil Party Application: (i) the applicant falls “outside the temporal scope of the case file” (ground 5); (ii) the application contains insufficient time frames or locations (ground 6); or (iii) the testimony cannot be reconciled with evidence or is inconsistent (ground 7). For instance, in dismissing one Civil Party under ground 5, the International CIJ erred by limited the facts considered to only executions that took place in 1973 and 1974, ignoring evidence of several other crimes within the scope of Case 003 that took place between 1975 and 1979.<sup>124</sup> In other cases under ground 6, the International CIJ erroneously identified key dates and locations as “unspecified” when they are actually sufficiently detailed in the documents that comprise the Civil Party’s application so as to meet the standard of proof

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<sup>122</sup> Under Internal Rule 21 (1)(c), “[t]he ECCC shall ensure that victims are kept informed and that their rights are respected *throughout* the proceedings” (emphasis added).

<sup>123</sup> Statement by the International Co-Prosecutor Regarding Case File 003, 9 May 2011, available at <https://www.eccc.gov.kh/sites/default/files/media/ECCC%20INT-OCJP%209%20May%202011%20ENG.pdf>.

<sup>124</sup> See, e.g. the International CIJ’s reasoning for his finding of inadmissibly for Civil Party applicant Yan San (11-VSS-00178) and Co-Lawyers for submissions in their Annex F. Case File No. 003, **D269.2**, Annex B: Civil Party Applications Declared Inadmissible, 28 November 2018; Co-Lawyers for Civil Parties, Appeal Against Order on Civil Party Applicants Admissibility, Annex F: Admissibility Arguments for Civil Party Applicants Found Inadmissible for Insufficiency of the Evidence or Related Grounds (filed as an attachment to this appeal brief) [hereinafter “Annex F”].

required for admissibility.<sup>125</sup> Likewise, several Civil Parties were found inadmissible in part under ground 7 where the precise inconsistency identified by the International CIJ is not apparent, a proper reading of the evidence demonstrates that there is no inconsistency, or the purported inconsistency is not determinative of the finding on admissibility.<sup>126</sup>

59. The Civil Party Co-Lawyers submit that the International CIJ erred in relying on these grounds to reject the Civil Party applications of the victims identified in Annex F. The individual error is identified alongside each Civil Party Applicant in these Annexes, and for the reasons indicated therein, Civil Party Co-Lawyers request that the PTC overturn the International CIJ's finding of inadmissibility and grant these victims Civil Party status.

## VI. CONCLUSION

60. Civil Party Co-Lawyers submit the Admissibility Order erred in law and fact in rejecting the Civil Party Appellants identified in Annex A.
61. In light of the foregoing, the Civil Party Co-Lawyers respectfully request that the Pre-Trial Chamber:
- (1) Hold, as a preliminary matter, that all Civil Party applicants in Case 003, including those in Annex A, continue to exercise Civil Party Rights in the absence of a decision by a supra-majority of the PTC to the contrary; or, in the alternative,
  - (2) Overturn the Admissibility Order as erroneous in law and fact and reconsider the Appellants' Civil Party applications in Annex A in light of the proper admissibility standards, including taking into account the relevance of alleged crimes committed outside the Kampong Som Autonomous Sector or the waters and islands off the coast of DK;

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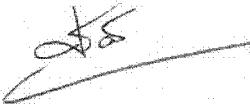




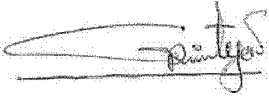


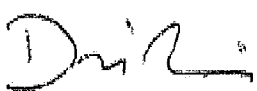
<sup>125</sup> See, e.g. the International CIJ's reasoning for his finding of inadmissibility for Civil Party Applicant Chea Marie (17-VSS-00001) and Co-Lawyers for Civil Parties submissions in their Annex F. Case File No. 003, **D269.2**, Annex B: Civil Party Applications Declared Inadmissible, 28 November 2018; Annex F.

<sup>126</sup> See e.g. the International CIJ's reasoning for his find of inadmissibility for Civil Party Applicants Soeung Khien (11-VSS-00214), Prom Sâh (11-VSS-00264) and Long Chhoeum (11-VSS-00308) and Co-Lawyers for Civil Parties submissions in their Annex F. Case File No. 003, **D269.2**, Annex B: Civil Party Applications Declared Inadmissible, 28 November 2018; Annex F.


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- (3) Admit any supplementary information submitted by Civil Party Co-Lawyers;
- (4) Grant all Appellants the status of Civil Parties; and
- (5) In the alternative, recognize Appellants not granted Civil Party status in Case 003 as “Complainants.”

Respectfully submitted,

| <b>Date</b>  | <b>Name</b>          | <b>Place</b>                    | <b>Signature</b>  |
|--------------|----------------------|---------------------------------|---|
| 7 March 2019 | CHET Vanly           | Phnom Penh,<br>Cambodia         |                          |
| 7 March 2019 | HONG Kimsuon         | Phnom Penh,<br>Cambodia         |                          |
| 7 March 2019 | LOR Chunty           | Phnom Penh,<br>Cambodia         |                         |
| 7 March 2019 | SAM Sokong           | Phnom Penh,<br>Cambodia         |                        |
| 7 March 2019 | SIN Soworn           | Phnom Penh,<br>Cambodia         |                        |
| 7 March 2019 | TY Srinna            | Phnom Penh,<br>Cambodia         |                        |
| 7 March 2019 | VEN Pov              | Phnom Penh,<br>Cambodia         |                        |
| 7 March 2019 | Martine<br>JACQUIN   | Phnom Penh,<br>Cambodia         | <br>Me Martine JACQUIN |
| 7 March 2019 | Daniel<br>MCLAUGHLIN | San Francisco,<br>United States |                        |



|              |                     |                                 |  |
|--------------|---------------------|---------------------------------|--|
| 7 March 2019 | Nushin<br>SARKARATI | San Francisco,<br>United States |  |
|--------------|---------------------|---------------------------------|--|