

**BEFORE THE OFFICE OF 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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Before:

Pre-Trial Chamber

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Judge BAIK Kang Jin
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I. PROCEDURAL HISTORY

1. On 20 November 2008, the International Co-Prosecutor filed the Third Introductory Submission opening a judicial investigation against Ao An, Im Chaem and Yim Tith (Case 004).¹ The International Co-Prosecutor subsequently filed Supplementary Submissions expanding the scope of the investigation in Case 004.² On 16 December 2016, the Co-Investigating Judges (CIJs) issued the *Order for Severance of AO An from Case 004*, thereby severing Ao An from Case 004 and establishing Case 004/2; the *Notice of Conclusion of Judicial Investigation Against AO An* was also issued at that time.³
2. On 16 August 2018, the CIJs issued two separate Closing Orders in Case 004/2.⁴ In his Closing Order, the National CIJ held that Ao An did not fall under the ECCC's personal jurisdiction as either a senior leader or as most responsible and dismissed the case against Ao An.⁵ Having dismissed all charges against Ao An for lack of jurisdiction, the National CIJ did not examine the admissibility of the Civil Party applications in Case 004/2. Conversely, the International CIJ held that the ECCC did have jurisdiction over Ao An,⁶ and rendered substantive admissibility decisions in a separate order, in which he rejected a number of Civil Party applications in Case 004/2 (Impugned Order).⁷ An English-language translation of the National CIJ's Closing Order was notified to the Parties on 2 November 2018, while a Khmer-language translation of the International CIJ's Closing Order was notified to the Parties on 30 October 2018.
3. The Civil Party Co-Lawyers represent Civil Party applicants whose applications were rejected in the Impugned Order (Appellants), identified in Annex A.

¹ Case File No. 004, D1, Co-Prosecutors' Third Introductory Submission, 20 November 2008.

² See e.g., Case File No. 004, D65, Co-Prosecutors' Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom, 18 July 2011, para. 23; Case File No. 004, D191, Co-Prosecutors' Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence, 24 April 2014, para. 14; Case File No. 004, D254/1, Response to Forwarding Order and Supplementary Submission Regarding Wat Ta Meak, 4 August 2015; Case File No. 004, D272/1, Response to Forwarding Order Dated 5 November 2015 and Supplementary Submission Regarding the Scope of Investigation into Forced Marriage in Sectors 1 and 4, 20 November 2015.

³ Case File No. 004/2/07-09-2009, D334, Notice of Conclusion of Judicial Investigation against Ao An, 16 December 2016; Case File No. 004/2/07-09-2009, D334/1, Order for Severance of Ao An from Case 004, 16 December 2016.

⁴ Case File No. 004/2, D360, International Co Investigating Judge's Closing Order (Indictment) (Redacted), 16 August 2018; Case 004/2, D359, National Co-Investigating Judge's Closing Order, 16 August 2018.

⁵ Case 004/2, D359, National Co-Investigating Judge's Closing Order, 16 August 2018

⁶ See generally International Co-Investigating Judge's Closing Order.

⁷ Case File No. 004/2, D362, International Co-Investigating Judge's Order on Admissibility of Civil Party Applicants, 16 August 2018 [hereinafter "Impugned Order"].

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 23bis.”
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.”⁸

III. ADMISSIBILITY OF THE APPEAL

6. The Case 004/2 Parties were notified of the Impugned Order on 16 August 2018. On 20 August 2018, the Civil Party Co-Lawyers in Case 004/2 filed a consolidated request for an extension of time and a page extension for their Internal Rule 77 *bis* appeals and sought permission to file in a single language.⁹ The Civil Party Co-Lawyers filed an additional submission supporting their consolidated request on 21 August 2018.¹⁰ On 27 August 2018, the Pre-Trial Chamber (PTC) granted the time and page extension requests, extending the deadline for appeals against Civil Party inadmissibility in Case 004/2 to 30 days from the notification of the International CIJ’s Closing Order (Indictment) in Khmer, increasing the page limit to 45 pages in English or 90 pages in Khmer and authorizing a single language filing.¹¹ The Appeal brief is submitted in the English and Khmer languages. Translations of the annexes to English or Khmer, as appropriate, will be filed as soon as they become available.

⁸ 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.

⁹ Case File No. 004/2, D362/1, Civil Party Co-Lawyers’ Urgent Request for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004/2, 20 August 2018.

¹⁰ Case File No. 004/2, D362/2, Submission Joining and Providing Additional Support for “Civil Party Co-Lawyers’ Urgent Request for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004/2”, 21 August 2018.

¹¹ Case File No. 004/2, D362/4, Decision on Civil Party Requests for Extension of Time and Page Limits, 27 August 2018.

7. The Appeal is timely submitted within the 30-day period from the notification of the International CIJ's Closing Order (Indictment) in Khmer and conforms to the 45-page limit in English and 90-page limit in Khmer granted by the PTC.

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.¹² 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.¹³ Given that a fundamental principle animating the establishment of the ECCC is national reconciliation, the PTC has stated that this must guide the ECCC Judges “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.”¹⁴ The fundamental rights of victims enshrined in the ECCC's core documents, namely Internal Rules 21 and 23 *bis*, must guide the PTC in its review of the Impugned Order and the present Appeal.
10. Second, the PTC should clarify the status of all Civil Party applicants in Case 004/2 given the CIJs' disagreement on jurisdiction and their attendant divergent treatment of Civil Party applications.
11. The Impugned 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;¹⁵ and (2) Civil Party applicants whose applications were rejected by the International CIJ and not examined by the National CIJ.¹⁶ Because the National CIJ declined to examine any of the applications for Civil Party status, there is no

¹² 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.

¹³ 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.

¹⁴ 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.

¹⁵ Case File No. 004/2, D362.1, Annex A: Civil Party Applications Declared Admissible, 18 August 2018.

¹⁶ Case File No. 004/2, D362.2, Annex B: Civil Party Applications Declared Inadmissible, 18 August 2018.

substantive agreement between the CIJs as to the basis for Civil Party admissibility in Case 004/2.

12. 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.¹⁷ 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.”¹⁸ Accordingly, any uncertainty regarding a Civil Party application should be resolved in favor of its admissibility.
13. 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.
14. 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.
15. 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 Impugned Order erred in law and fact as set out in the Principal Submissions below.

V. PRINCIPAL SUBMISSIONS

¹⁷ ECCC Internal Rule (Rev. 9) 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.”).

¹⁸ 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.

16. The International CIJ manifestly erred in law and fact in rejecting Appellants' Civil Party applications. First, the International CIJ impermissibly delimited the crimes determinative of Civil Party admissibility exclusively to crimes allegedly committed in the Central (Old North) Zone. In doing so, the International CIJ both disregarded the allegations that Ao An 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 or community regardless of their location. Second, the International CIJ misconstrued the Case 004/2 Severance Order as further limiting his ability to take into account alleged crimes committed outside the Central (Old North) Zone, thereby causing severe prejudice to Appellants. As detailed in the Third and Fourth Grounds of Appeal, respectively, the Impugned 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. Finally, the CIJs violated the rights of the victims more broadly by failing to keep them properly and timely informed throughout the proceedings.

A. First Ground of Appeal: The International CIJ erred in law and fact by identifying only those crimes committed in the Central (Old North) Zone as relevant to the nexus requirement under Internal Rule 23 bis (1)(b)

17. To participate as a Civil Party, Internal Rule 23 bis (1)(b) requires that an applicant show "physical, material or psychological injury" arising "as a direct consequence of at least one of the crimes alleged against the Charged Person." The International CIJ's admissibility enquiry examined only alleged crimes committed in the Central (Old North) Zone and is thus flawed in two critical respects: (a) it disregards Ao An's alleged participation in a national JCE that extends beyond the Central (Old North) Zone; and (b) it fails to properly take into account the presumption of collective injury, which extends to members of the same targeted group or community regardless of their location.

a. Ao An allegedly participated in a national JCE whose goal was the implementation of CPK policies across Cambodia, including through crimes outside the Central (Old North) Zone

18. The Impugned Order disregards the PTC's prior determinations on Civil Party admissibility by focusing exclusively on crimes committed in the Central (Old North) Zone, despite the allegations in the Closing Order, Third Introductory Submission and the Supplementary Submissions that Ao An participated in 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*.¹⁹ This important distinction is one of law and fact with a crime “being the legal characterization of the facts investigated.”²⁰

19. 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 the investigated factual incidents set out in the Closing Order.²¹ 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.’”²² 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][.]”²³
20. 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.”²⁴ 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

¹⁹ Internal Rule 23 *bis* (1)(b) (emphasis added).

²⁰ 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).

²¹ 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.

²² 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).

²³ 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.

²⁴ 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).

also takes collective dimensions due to allegations for acting together as part of a joint criminal enterprise.”²⁵

21. The PTC’s position in Case 002 applies with equal force here in Case 004/2. According to the Closing Order, Third Introductory Submission and the Supplementary Submissions, Ao An participated in a national JCE whose goal was the implementation of CPK policies throughout Cambodia—not solely within the Central (Old North) Zone.²⁶ The CPK maintained a well-organized system for implementation of its national policies via a network of regional enterprises which included that of Ao An’s Central (Old North) Zone. As stated in the Third Introductory Submission, “[t]he repeated pattern of arrests and disappearances seen throughout the Central Zone after the arrival of [Ao An] and the Southwest Zone cadre [...] establishes that this was an organized effort planned by [Ao An] and *other leaders of the CPK* [but] implemented by [Ao An] and his cadre from the Southwest Zone.”²⁷ The Closing Order alleges that Ao An received instructions from Pol Pot himself, highlighting that his participation in the national JCE was known to and coordinated with the highest levels of CPK leadership.²⁸ The entire operation was designed to further the *national goal* of restructuring all of Cambodian society.²⁹ Indeed, the Southwest Zone was seen as “the

²⁵ 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.

²⁶ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, para. 824 (“Ao An and other CPK cadres shared the common purpose of implementing four CPK policies in the Central Zone of DK”); *see also id.* at paras. 195-197, 210, 211, 218, 220 (noting the role of Ao An in implementing the four national level policies of the CPK: 1) to establish cooperatives and worksites “throughout Cambodia,” 2) to arrest and execute enemies through a “nationwide network of security centres and execution sites” involving “all levels of the civilian administration and RAK,” 3) to purge “traitorous” Central and East Zone cadres, and 4) to “regulate” marriage “throughout Cambodia”). Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, para. 111; *see also id.* at paras. 16, 109; Case File No. 004, D65, Supplementary Submission regarding Sector I Crime Sites and Persecution of Khmer Krom, 15 June 2011, para. 21; Case File No. 004, D191, Co-Prosecutors’ Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence, 24 April 2014, para. 14.

²⁷ Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, para. 90(b) (emphasis added).

²⁸ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, para. 825 (alleging that “Ao An became a member of this JCE no later than when he attended a meeting in Phnom Penh with senior leaders of the CPK on his way from the Southwest Zone to the Central Zone at a point between late 1976 and February 1977, during which he was instructed by Pol Pot to purge the Central Zone, and remained a member until 6 January 1979.”).

²⁹ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, para. 196 (“The CPK sought to transform Cambodia from a market-based economy into an autarkic socialist state based on an agrarian economy”); *id.* at para. 208 (“The CPK’s objective [of eliminating ‘bad elements’ and ‘enemies’] was ... to create a politically and ideologically pure party and society”); *id.* at 224 (“The CPK’s policy on marriage was designed to ... increas[e] the population and build[] ideologically pure families”); Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, paras. 9, 10.

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model for reshaping” Cambodia and the purge of the Central Zone by the Southwest cadre arose from a perceived failure of the existing cadre “to achieve CPK goals.”³⁰ The Closing Order and Third Introductory Submission enumerate and discuss some of the security centres, prisons and execution sites that operated in the Central (Old North) Zone under Ao An’s control as part of the broader national scheme.³¹

22. The Supplementary Submissions describe how the perpetration of crimes in the Central (Old North) Zone was intended to further the nationwide common criminal plan of which Ao An, among others, was a part:

The crimes described in [the Khmer Krom Supplementary Submission] and in the Third Introductory Submission were committed in furtherance of a common criminal plan or [JCE] of CPK senior leaders [...]. The members of this [JCE] included, but were not limited to, the members of the CPK Standing and Central Committees, the heads of Ministries and the Secretaries of Zones, Sectors and Party Centre Military Divisions. The common criminal plan was knowingly implemented by various persons, including CPK district secretaries and chairman of security offices, each of whom were also members of a [JCE] within their district or security centre. Each of these individuals, by their acts or omissions, contributed to achieving the shared objectives of the [JCE] and intended the results thereof.³²

Likewise, the Closing Order highlights how the perpetration of crimes in the Central (Old North) Zone and Ao An’s involvement in those alleged crimes were carried out in furtherance of the CPK’s nationwide common criminal plan. For instance, in the context of the policy of killing enemies, Ao An allegedly made “multiple attestations expressing his commitment to carry out the plans of ‘*Angkar*.’”³³ The Closing Order finds that Ao An made a “significant contribution” to each of the four national level CPK policies.³⁴

23. The Closing Order, Third Introductory Submission and the Supplementary Submissions are replete with allegations of Ao An’s participation in a national JCE that encompasses alleged crimes beyond those solely committed within the Central (Old North) Zone,

³⁰ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, para. 213; Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, paras. 9, 10.

³¹ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, paras. 356-589; Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, paras. 23-53.

³² Case File No. 004, D65, Supplementary Submission regarding Sector I Crime Sites and Persecution of Khmer Krom, 18 July 2011, para. 21.

³³ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, para. 828 (“Ao An and other CPK cadres shared the common purpose of implementing four CPK policies in the Central Zone of DK”).

³⁴ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, paras. 827-829, 831.

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including his key role in the purge of East Zone cadres and civilians.³⁵ The purpose of the crimes in the Central Zone “was to purge the Central (old North) Zone and execute all perceived enemies of the [CPK] in that Zone.”³⁶ The purges of CPK cadre in the Central Zone were so central to the CPK’s common plan that they were reported in the party’s “Revolutionary Flag” magazine, according to the Closing Order.³⁷ Groups specifically targeted for attack mirrored those nationwide and included “the Cham ethnic and religious minority and persons of Vietnamese ethnicity.”³⁸

24. Further, as alleged in the Closing Order and Third Introductory Submission, Ao An “held an elevated role”³⁹ in perpetrating the national policies, serving as the “second highest ranking member of the CPK in the Central Zone” and “*de facto* Zone secretary.”⁴⁰ The Introductory Submission also identifies Ao An as a member of the “CPK Central Committee at the 5th Party Congress”⁴¹ and one of the “few...senior region leaders” to have survived the DK period.”⁴²
25. The Third Introductory Submission and Supplementary Submissions discuss how, as a result of his alleged leadership position, Ao An was tasked with implementing nationwide policies, including: enslaving the population in cooperatives or forced labour sites; identifying and eliminating enemies of the CPK through a network of security offices and executions sites; targeting suspect groups such as the Cham and

³⁵ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, para. 307; *see also* Case File No. 004, D65, Supplementary Submission regarding Sector I Crime Sites and Persecution of Khmer Krom, 18 July 2011, para. 23 (stating that the International Co-Prosecutor “[had] reason to believe” Ao An and others operating outside the Central (Old North) Zone, including Yim Tith, Im Chaem, Nuon Chea, Ieng Sary, Khieu Samphan, and Ieng Thirith, “committed the specific criminal acts described” therein and in the Third Introductory Submission as part of “a common criminal plan or [JCE][.]”); Case File No. 004, D254/1, Response to Forwarding Order and Supplementary Submission Regarding Wat Ta Meak, 4 August 2015, para. 8 (same); Case File No. 004, D272/1, Response to Forwarding Order Dated 5 November 2015 and Supplementary Submission Regarding the Scope of Investigation into Forced Marriage in Sectors 1 and 4, 20 November 2015, para. 14. (same); Case File No. 004, D191, Co-Prosecutors’ Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence, 24 April 2014, para. 14 (alleging that the enumerated acts “were part of a common criminal plan or [JCE]”); *see also*, Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, para. 17 (alleging the existence of another, related, regional JCE comprised of Ta Mok, Ta Tith, Im Chaem and others with features nearly identical to the Central Zone, but with the object of purging the neighboring Northwest Zone).

³⁶ Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, para. 16 (emphasis added).

³⁷ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, para. 216 (citing to CPK Magazine entitled: “Revolutionary Flag, Special Issue, October-November 1977, D6.1.740).

³⁸ Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, para. 16; *see also* Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, para. 218.

³⁹ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, para. 700.

⁴⁰ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, paras. 250, 255, 705; Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, para. 86.

⁴¹ Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, para. 86.

⁴² Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, para. 89 (internal quotations omitted).

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Vietnamese; and forced marriage.⁴³ The Closing Order implicates Ao An in the implementation of the same four nationwide policies: the establishment and “forced relocation of the entire population to work on [cooperatives and worksites]”; the “re-education of ‘bad elements’ and killing of ‘enemies’ both inside and outside the CPK ranks”; the targeting of specific groups; and forced marriage.⁴⁴ The Third Introductory Submission details Ao An’s role in participating in the common plan or JCE to “‘target local cadre’, their families and ‘connections,’ and people with connections to the ‘old society,’ new or ‘1975 people.’”⁴⁵ The CPK’s criminal policies also included the “evacuation of cities”⁴⁶ and the killing and persecution of “all perceived enemies or traitors in the population or amongst the CPK cadre...[specifically] “new people,” persons of Vietnamese ethnicity and...the Cham.”⁴⁷ The Closing Order identifies a similarly broad range of groups targeted by CPK leaders, including ‘17 April people,’ “people connected to the Lon Nol regime,” CPK cadre thought traitorous, the Vietnamese and Cham, alleged CIA and KGB spies, “people from the East Zone,” disfavored classes such as capitalists, feudalists, landowners and the bourgeois, and the families of targeted persons.⁴⁸ The CPK enforced these policies through a “*nationwide* network of security centres,” and “purges” and killing of cadres, perceived enemies or “traitors,” and “bad elements” from inside and outside the CPK ranks.⁴⁹ The Supplementary Submissions also detail allegations of forced marriage, sexual violence, and rape,⁵⁰ as well as persecution and genocide of the Khmer Krom as crimes committed by CPK leaders, including Ao An, in furtherance of this common criminal plan or JCE implemented nationwide.⁵¹

⁴³ Case File No. 004, D65, Co-Prosecutors’ Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom, 18 July 2011, para. 21; Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, para. 16; Co-Prosecutors’ Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence, 24 April 2014, para. 14; Response to Forwarding Order Dated 5 November 2015 and Supplementary Submission Regarding the Scope of Investigation into Forced Marriage in Sectors 1 and 4, 20 November 2015, para. 14.

⁴⁴ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, paras. 195-196.

⁴⁵ Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, para. 16.

⁴⁶ Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, para. 7.

⁴⁷ Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, para. 7.

⁴⁸ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, para. 218 (including heading 6.2.3).

⁴⁹ Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008, paras. 8, 12 (emphasis added); Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, paras. 204, 208.

⁵⁰ Case File No. 004, D191, Co-Prosecutors’ Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence, 24 April 2014, paras. 13-14.

⁵¹ Co-Prosecutors’ Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence, 24 April 2014, para. 14; Response to Forwarding Order Dated 5 November 2015 and Supplementary Submission Regarding the Scope of Investigation into Forced Marriage in Sectors 1 and 4, 20 November 2015, para. 14; Case File No. 004, D65, Co-Prosecutors’ Supplementary Submission Regarding Sector 1 Crime Sites and Persecution of Khmer Krom, 18 July 2011, paras. 21, 23.

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26. Despite the manifest “collective dimensions” of Ao An’s liability, the International CIJ focused exclusively on crimes committed in the Central (Old North) Zone 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 the Central (Old North) Zone where they also formed part of the national JCE to which Ao An is alleged to have belonged.
27. Among those denied Civil Party status in Case 004/2 are victims who suffered harm as a consequence of the four policies implemented to advance the common criminal plan of the JCE, as described below.
- (1) Civil Party applicant **Chhom Hun** (13-VSS-00633) and his family suffered under the hard living and working conditions of a cooperative in Battambang province. As a family of new people they were forcibly relocated with other new people from Kien Svay District, Kandal Province to Tras Village, Se Commune, Moung Ruessei District, Battambang Province. Once there, the new people were ordered to build huts away from base people. The families harvested rice day and at night, but each family was given only two cans of rice to eat per day. By early in the dry season of 1976, the new people began to get sick, so the applicant and his brother fish at night or extra food. They were caught by Khmer Rouge cadre, accused of being enemies of the regime, and his older brother was bound and beaten unconscious at the commune office while the applicant begged the cadre to stop. The applicant’s brother died that night and, soon after, the applicant’s mother and father both died of untreated illnesses. His other brother died when he found out their mother had died. Of the original seventy people in their cooperative, only about thirty remained by the rice planting season in 1976. The rest had died from overwork and disease, or had been outright murdered. The Khmer Rouge leaders ordered the survivors to carry rice seedlings, dig canals and build dikes and dam from 4:00 a.m. until 5:00 p.m. with one hour lunch break and then from 7:00 p.m. until 11:00 p.m. after the dinner break. By early 1978, Khmer Rouge cadre arrested “wrong doers” and “enemies” every night.⁵²

⁵² See Case File No. 004/2, D5/1407, Civil Party Application of Chhom Hun, 29 August 2014 at 01057540-42; see also Case File No. 004/2, D219/503, Written Record of Interview of Civil Party Applicant Chhom Hun, 14 September 2015.

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- (2) Khmer Rouge leaders ordered Civil Party applicant **Dân Nat** (13-VSS-00316) to marry in 1975 with Kung Bau. Although the applicant was terribly disappointed with her fate and initially resisted, she eventually relented under threat that she would be killed or married to a disabled man. The wedding was officiated by the cooperative chief, Ta Nath, and attended by three or four other team leaders. The applicant was married to Kung Bo, a Khmer Rouge soldier, at 7:00 a.m. with five other couples. The couples' parents and relatives were not allowed to participate in or attend the wedding. At night, each couple was assigned to sleep in a room that was monitored by Khmer Rouge cadre who sought to ensure that each marriage was consummated. Those couples that did not consummate the marriage were taken to be reeducated.⁵³
- (3) In 1978, Civil Party applicant **Kâp Nhen** (13-VSS-00477) was ordered by *Angkar* to marry Sâ Kim, whom she did not love at all, but lived with until 1981. In 1986, Kâp Nhen remarried Ren Prak, with whom she still lives today. The marriage, which included six other couples, took place in the applicant's village in Prey Veng Province. To the applicant's distress, her relatives were not allowed to participate or attend the ceremony, nor were traditional marriage rituals, clothes or customs allowed.⁵⁴
- (4) Due to starvation, Civil Party applicant **In Sopheap's** (13-VSS-00193) parents asked a local villagers for rice in July 1977. Khmer Rouge cadre who saw this arrested the applicant and her other family members and imprisoned them at Krang Ta Chan Security Centre in Takeo Province for reeducation. There, they were shackled and brutally beaten with bamboo poles. The applicant's older brother sustained a serious head injury while being beaten and had been starved, so he died. The other family members were later transferred to Ta Morn Security Center in Kampot Province where their arms and legs were shackled when they were not performing forced labor. At the time of liberation in 1979, they were still undergoing reeducation in Cheung Chab Security Centre where they had little food and were again forced to work. They remained imprisoned until 1979 when they were freed.⁵⁵

⁵³ See Case File No. 004/2, D5/1336, Civil Party Application of Dân Nat, 29 August 2014 at 01143710-11.

⁵⁴ See Case File No. 004/2, D5/1527, Civil Party Application of Kâp Nhen, 15 September 2014 at 01081266-67, 01133157-58.

⁵⁵ See Case File No. 004/2, D5/1137, Civil Party Application of IN Sopheap, 22 August 2014 at 01143305-06.

28. As detailed in Annexes E (targeted groups) and F (other JCE policies), Appellants suffered harms as a direct consequence of the implementation of the national JCE in which Ao An is alleged to have participated. In light of the foregoing, the Civil Party Co-Lawyers respectfully request that the PTC admit Appellants as Civil Parties.

b. The presumption of collective injury extends to all members of the specific groups or communities targeted in the Central (Old North) Zone regardless of their location

29. The Impugned Order also erred in limiting the admissibility analysis to Central (Old North) Zone crimes given that victims outside that zone were members of the same targeted communities and groups as those victimized inside the Central (Old North) Zone.

30. 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.⁵⁶ 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[.]”⁵⁷ 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.*”⁵⁸ 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.”⁵⁹ 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.

31. 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

⁵⁶ 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.

⁵⁷ 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).

⁵⁸ 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).

⁵⁹ 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.

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could be both personal and collective in nature.”⁶⁰ 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[.]”⁶¹ 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*[.]”⁶² Numerous human rights bodies have also recognized that collectives bear rights and have the ability to suffer harm warranting reparations.⁶³

32. According to the Closing Order, Third Introductory Submission and the Supplementary Submissions, Ao An is responsible for attacks in the Central (Old North) Zone targeting specific groups or communities, including persons of Vietnamese ethnicity, the Cham ethnic and religious minority, the Khmer Krom, “new people,” former Lon Nol associates, people thought to belong to disfavored classes (capitalists, feudalists, landowners, and the bourgeois), suspected CIA and KGB “spies,” CPK cadres thought to be traitorous, and people from the East Zone.⁶⁴ As per the PTC’s reasoning, a presumption of collective injury arising from the harm suffered by direct victims in the Central (Old North) Zone extends to *all* members of these specifically targeted groups or communities irrespective of their locations.

⁶⁰ *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.

⁶¹ 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.

⁶² 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).

⁶³ 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).

⁶⁴ Case File No. 004/2, D360, Closing Order (Indictment), 16 August 2018, para. 218; Case File No. 004, D1, Co-Prosecutors’ Third Introductory Submission, 20 November 2008 paras. 7, 16-17; see also Case File No. 004, D65, Supplementary Submission regarding Sector I Crime Sites and Persecution of Khmer Krom 18 July 2011, para. 21.

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33. In the Impugned Order, the International CIJ purportedly 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."⁶⁵ Despite this, the International CIJ nevertheless erroneously imposes a requirement that those with shared membership in the targeted group or community be physically located in the Central (Old North) Zone, thereby essentially disregarding the collective nature at the heart of the principle.
34. Among those denied Civil Party status in Case 004/2 are victims who are members of targeted groups identified in the Closing Order, as detailed below.
- (1) 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.⁶⁶
 - (2) Civil Party applicant **Chin Sokhom** (13-VSS-00647) was put to work in a children's unit where he was required to build rice paddy dikes 25 meters long. At one point, the applicant was arrested and imprisoned on the accusation that he was a Vietnamese spy. In 1978, he and his relatives were sent with seventy other Khmer Krom families to Khnar Totueng Commune, Bakan District, Pursat

⁶⁵ Impugned Order, para. 34.

⁶⁶ See Case File No. 004/2, D5/111, Civil Party Application of VEN Vân, 30 July 2014 at 00426923; see also Case File No. 004/2, D118/192, Written Record of Interview of Civil Party Applicant VEN Vân, 27 February 2014 at 00986178, 00986180-82.

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Province. Once there, they were ordered to attend a meeting in which participants were divided with Khmer families standing to one side and Khmer Krom families on the other. The Khmer Rouge cadre took the families identified as Khmer Krom away to be killed on the accusation of being Vietnamese. The applicant and his mother escaped being killing, but his father, sister, brother, uncle and others—totaling twenty relatives—were executed by Mei and Sambath at Prey Krabau execution site.⁶⁷

- (3) Civil Party applicant **El Meu** (13-VSS-00403), an ethnic Cham, and her family were forcibly relocated from their home village in Kampot province to cooperatives in Kampong Som and later in Kampong Speu Province. Cooperative leaders put her and her husband to work in the rice fields “all day and night.” They were provided with barely enough food to survive. In early 1976, applicant's husband, Som Nass, died of starvation and lack of medical treatment. The applicant was not allowed to visit her husband, who died in hospital, and she was refused permission to bury him and her three children, who died later from illness and starvation, according to Khmer customs. The applicant was forced to eat pork, which is against her religious beliefs. People around her who tried to practice their religion were executed. Later, in 1976, Khmer Rouge cadre took the applicant's three nephews to be killed for stealing potatoes when they were starving. All together, the applicant lost eight family members during the Khmer Rouge period.⁶⁸
- (4) Civil Party applicant **Man Sles** (16-VSS-00015), an ethnic Cham, was arrested with his father and others from his home village of Phum Ti Pram Village, Svay Khleang Commune, Krouch Chhmar District, Kampong Cham Province by the Khmer Rouge on the accusation of being enemies of the regime in April 1975. He and an estimated fifty to sixty other Cham villagers were tied up with rope and detained for about ten days. Eventually, he and all but five of the detained Cham were released. His father, Kão, who was the village chief; his cousin, Ly Mein; and two others were loaded into a horse-cart and taken to the district office. A man named Song later told the applicant that his father and the others were imprisoned at Ou Baknoem in Krouch Chhmar District, Kampong Cham

⁶⁷ See Case File No. 004/2, D5/1412, Civil Party Application of CHHIN Sokhom, 29 August 2014 at 01098658-59.

⁶⁸ See Case File No. 004/2, D5/1241, Civil Party Application of EL Meu, 22 August 2014 at 01145390.

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Province. They were never seen again and are presumed killed. After this, he and the other villagers were not allowed to practice their religion and arrests and detentions continued until the villagers staged an uprising against the Khmer Rouge and were all arrested and imprisoned at Wat Daemchrey and a medical storehouse in Krouch Chhmar District. In late 1975, after their release from detention, the applicant, his wife and his children were forcibly relocated to Soupheas Village, Soupheas Commune, Stueng Trang District, Kampong Cham Province. His other family members, including his mother and three younger siblings, were forcibly relocated to a separate village, where, in late 1976, they were loaded into a boat and sent to be killed at Boeng Kornchauch in Stueng Trang District, Kampong Cham Province.⁶⁹ Throughout the regime, the applicant was not allowed pray or speak his language and he was sometimes forced to eat pork.⁷⁰

- (5) Khmer Rouge leaders segregated Civil Party applicant **Kheav Ny** (13-VSS-00610) with other Khmer Krom in the Rumlech cooperative in Rumlech Village, Rumlech Commune, Bakan District, Pursat Province in 1975. From there, she was separated from her parents and sent to work in a Khmer Krom mobile unit and at other locations while her parents and siblings worked at the Khnar Totueng Cooperative located in Khnar Totueng Village, Khnar Totueng Commune, Bakan District, Pursat Province. In 1977, the applicant learned from an acquaintance recently returned from Khnar Totueng that the Khmer Krom were being sent for execution Prey Krabau and Tuol Seh Nhauv. One week later, her unit chief announced that anyone who had a Khmer Krom parent could reunite with them at Khnar Totueng and the applicant returned there where a Khmer Rouge cadre ordered her to stay and not rejoin her mobile unit. After about two weeks, the applicant saw Khmer Rouge soldiers begin to select Khmer Krom and Vietnamese for executions carried out at Tuol Seh Nhauv and Prey Krabau every day and night. Eventually, in 1978, the applicant's Khmer Krom father and two older brothers were sent to be killed at Prey Krabau. Approximately seventy of the applicant's relatives were executed at the Tuol Seh Nhauv and Prey Krabau execution sites.⁷¹

⁶⁹ See Case File No. 004/2, D5/1858, Civil Party Application of MAN Sles, 3 February 2016 at 01307057-59.

⁷⁰ Case File No. 004/2, D219/792.1.4, Transcript of Hearing on the Substance in Case 002/2, 29 February 2016 at 01452745-46.

⁷¹ See Case File No. 004/2, D5/1400, Civil Party Application of KHEAV Ny, 29 August 2014 at 01103617.

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- (6) Civil Party applicant **Son Em** (14-VSS-00170) lost his father, his uncle and thirty other relatives during the Khmer Rouge Regime. Around June 1977, the applicant's father, Sau Chèt, who was a Khmer Rouge cadre in charge of all the industrial factories in Battambang and his uncle, Say, who was the zone office chairperson, were arrested, sent to Phnom Penh and presumably killed in the purges of Northwest Zone cadre and their replacement with Southwest Zone cadre. Both men were accused of being traitors to the regime and CIA operatives. About two weeks after their arrest, the applicant, who was a Khmer Rouge messenger at Zone Office 560 in Battambang, was accused of also being a traitor, dismissed from his post and sent to Phnom Penh for reeducation and forced labor. At approximately the same time, his father's and his uncle's subordinates and relatives began to be targeted. The applicant's niece, Nèm Sarâng later informed him that approximately thirty of his relatives who lived in Koas Krala District, Battambang Province were executed and/or tortured as traitors or died from starvation.⁷²
- (7) Civil Party applicant **Tan Sok** (11-VSS-00120), her family and other villagers were called to a meeting with a Khmer Rouge cadre at Ta S'ang Village, Kampong Chamlang Sub-district, Svay Chrum District, Svay Rieng Province in 1975. There, the cadre collected information on everyone's background, searching for those who used to be government officials or soldiers in the Khmer Republic/Lon Nol 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 are presumed killed. After their arrest and disappearance, the families of the disappeared were forcibly relocated numerous times to different worksites and cooperatives without provisions. They were given very heavy work, 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

⁷² See Case File No. 004/2, D118/249, Written Record of Interview of Civil Party Applicant Son Em, 2 June 2014 at 01034083, 01034085, 01034090-93.

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Khmer Rouge monitored the applicant to determine whether she and her husband got on well with each other or not. Those who did not get on well with each other 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.⁷³

- (8) Under the Khmer Rouge, Civil Party applicant **Has Da** (11-VSS-00224) initially lived with his family in his home village of Trapeang Bon Village, Prey Kokir Sub-district, Chantrea District, Svay Rieng Province. In 1975, his family was forcibly relocated to Doun Tey Village, Tuol Sdei Sub-district, Chantrea District, Svay Rieng Province. In 1977, the applicant was forcefully transferred to Chrey Village Village, Chhveang Sub-district, Kraol Kou District, Svay Rieng Province where he was assigned to a children's unit. In 1978, the applicant was forced to walk, take a ferry and a train to Damnak Changrâm, Pursat Province where he spent two days and two nights before he was assigned to a children's unit and forced to carry dirt to build the 17 April canal while being deprived of adequate food. Around that time, the applicant's father, his pregnant mother and six of his eight siblings—all East Zone transferees—were killed at Damnak Changrâm in Pursat Province on the accusation of being “Cambodian bodies with Vietnamese minds.”⁷⁴
- (9) Civil Party applicant **Bun Sarin’s** (15-VSS-00063) brother, Tit Am was a Khmer Rouge military doctor stationed at Wat Niraoth Pagoda in Chbar Ampoev, Phnom Penh. In August 1978, Tit Am visited the applicant at Peay Neay Village, Krang Svay Commune, Preah Sdach District, Prey Veng Province. After that, the Khmer Rouge leaders began rounding up and killing all East Zone soldiers who they believe were linked to Sao Pim. Tit Am was killed at this time. Shortly after, another of the applicant’s brothers, Bun Paoy, and his family were forcibly relocated from Svay Rieng Province to Pursat Province. On 5 January 1979, the Khmer Rouge sent the East Zone transferees to be killed in the forest at Khdok Kla in Pursat Province. Khmer Rouge cadre

⁷³ See Case File No. 004/2, D5/260, Civil Party Application of Tan Sok, 7 June 2011 at 00516240-42; Case File No. 004/2, D5/260.1, Annex 1: Additional Information on Crime Committed, 7 June 2011 at 00581330-32.

⁷⁴ See Case File No. 004/2, D5/145, Victim Information Form of Has Da, 30 July 2014 at 00434318; Case File No. 004/2, D5/145.1, Annex 1: Additional Information on Crime Committed, 29 June 2011 at 00940132-33.

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killed Bun Paoy, his wife, his mother-in-law and two of his children on that day.⁷⁵

- (10) Civil Party applicant **Svay Neth** (14-VSS-00196) was forcibly transferred out of Phnom Penh with her husband and her seven children to her husband's birthplace at Angkor Phdiek Village, Chumreah Pen Commune, Samraong District, Takeo Province in April 1975. Upon arrival, her family was classified as “17 April people” and persecuted as a result. *Angkar* separated the new people from the base people and made them live in a cooperative for new people, Ta Poun Cooperative in Ta Poun Village, Samraong Commune, Samraong District. The applicant's husband was assigned to hard labor tasks in a mobile unit, including excavating large tracts of dirt, building dams and digging canals. Even though he worked very hard, he was allowed only one or two ladles of porridge per day. The applicant was forced to build dikes, dig canals, carry dirt and perform other labor. The applicant's children, though young, were worked as adults. By the rainy season of 1977, her living conditions deteriorated dramatically—she was forced to work during the day and on night shifts without rest and her food ration was reduced. Over the course of just one month in August 1977, her five children and her husband all died of starvation in Angkor Phdiek Village, Chumreah Pen Commune, Samraong District, Takeo Province. Before her husband's death, she visited him at the hospital. She was shocked to find that her husband's body had been reduced to “skin and bones” and his back was covered with open wounds. He told her he had been taken from the hospital and beaten and interrogated by Khmer Rouge cadre who had found his Lon Nol military identity card.⁷⁶
- (11) Civil Party applicant **Sao Seang Kim** (16-VSS-00077) describes walking past the bodies of men, women, children, and military personnel when she was forcibly evacuated from her home in Phnom Penh on 17 April 1975.⁷⁷ The Applicant was transferred to Preykrola Village, Tani Toukmeas, Kampot Province but her sixteen-year-old son and fourteen-year-old daughter were taken away and forced to join the forced labor work force for young men and women. Sao was forcibly transferred to another village, Koki Bek, in 1977 with

⁷⁵ See Case File No. 004/2, D5/1757, Civil Party Application of Bun Sarin, 5 January 2016 at 01236270-71.

⁷⁶ See Case File No. 004/2, D5/1773, Civil Party Application of Svay Neth, 27 May 2015 at 01187359-60.

⁷⁷ Case File No. 004/2, D5/1920, Civil Party Application of SAO Seang Kim, 30 December 2016 at 01374172.

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her father, aunt, cousin, and her five children.⁷⁸ Approximately half way through the year, Applicant witnessed her aunt, cousin, and three of her five children taken away to be executed. The Applicant met her sister-in-law in Sangke Village, Battambang in 1979, and learned that the Applicant's brother and nephew had been killed because of their association with the Lon Nol regime. Following their death, Applicant's sister-in-law and her three granddaughters fled Sangke Village in an attempt to hide their identities and affiliation with the Lon Nol regime. Khmer Rouge soldiers tortured her to try to get her to confess to being the wife of a high ranking military officer, beating her with a hoe handle, threatening to rape her granddaughters, and subjecting her to forced labor.⁷⁹

- (12) Prior to the Khmer Rouge regime, Civil Party applicant **So Kelvin Leng** (11-VSS-00319) was a national police inspector in Phnom Penh.⁸⁰ The Applicant and his family were forced to leave their home in Phnom Penh and were later sent to numerous locations within Kandal Province and Kampong Cham Province.⁸¹ Applicant's brother and uncle were taken to Kampong Cham Province and his brother was executed by the Khmer Rouge.⁸² While the Applicant was in Khal Tuck, in Prey Veng Province, he was beaten with an axe and interrogated by Khmer Rouge soldiers about his identity.⁸³ After confessing that he had been a member of the police he was threatened with a saw before falling unconscious. Applicant was then forcibly transferred to Kratie Province while he healed from the beating before being transferred to two additional forced labor cooperatives.⁸⁴ As a former police inspector and residents of Phnom Penh, the Applicant and his family were targeted for their association with the Lon Nol regime and considered "new people." They were subject to

⁷⁸ Case File No. 004/2, D5/1920, Civil Party Application of SAO Seang Kim, 30 December 2016 at 01374172.

⁷⁹ Case File No. 004/2, D5/1920, Civil Party Application of SAO Seang Kim 30 December 2016 at 01374172.

⁸⁰ See Case File No. 004/2, D5/1916, Civil Party Application of SO Kelvin Leng, 30 December 2016 at 00569722.

⁸¹ Case File No. 004/2, D5/1916, Civil Party Application of SO Kelvin Leng, 30 December 2016 at 00569722-23; *see also* Case File No. 004/2, D5/1916/1, Victim Support Section Summary.

⁸² Case File No. 004/2, D5/1916, Civil Party Application of SO Kelvin Leng, 30 December 2016, at 00569724; *see also* Case File No. 004/2, D5/1916/1, Victim Support Section Summary.

⁸³ Case File No. 004/2, D5/1916, Civil Party Application of SO Kelvin Leng, 30 December 2016, at 00569723; *see also* Case File No. 004/2, D5/1916/1, Victim Support Section Summary.

⁸⁴ Case File No. 004/2, D5/1916, Civil Party Application of SO Kelvin Leng, 30 December 2016 at 00569723-24; *see also* Case File No. 004/2, D5/1916/1, Victim Support Section Summary.

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forced labor, and some of them were executed consistent with nationwide CPK policies.

- (13) 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 (located in Preaek Kdei Village, Snuol Sub-district, 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 admit 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 centre located in Kantuot Sub-district, Kracheh District, Kratie Province with his hands tied behind his back and blindfolded. A month later the applicant heard that Long Pean had been killed by the Khmer Rouge because he would not confess to being a KGB spy.⁸⁵
- (14) Civil Party applicant **Hoeung Sovanna's** (13-VSS-00389) family members were targeted as enemies of the Khmer Rouge regime. The applicant's older brother-in-law, Taok Kak was imprisoned and killed on accusation of being an agent of the CIA in Damnak Rotesh Security Centre in late 1976. In early 1977, the applicant's older brother, Tao Thon Sambath, who had been a second-year student at Battambang University in 1975, was tortured on the accusation that he was a highly educated person. The applicant's father, Tao Hoeung, was initially assigned to guard a farm, but was later arrested and tortured on accusation of being an agent of the CIA, leading to his death only 18 days later.⁸⁶
- (15) Civil Party applicant **Chhay Yan's** (15-VSS-00022) family was also targeted by Khmer Rouge leaders for its connections to the old society and disfavored classes. In October 1976, the applicant's younger brother, Chhay Saly, his wife and two of their children were killed at Prey Khmeng Commune, Phnum Sruoch District, Kampong Speu Province by Khmer Rouge cadre after they found a photo of the brother showing that he had been a medical doctor. Later, in mid-1977, the applicant's other younger brother, Chhay Phoem, was sent to be killed

⁸⁵ See Case File No. 004/2, D5/281, Civil Party Application of Long Phan, 7 June 2011 at 00556746-47.

⁸⁶ See Case File No. 004/2, D5/1516, Civil Party application of Hoeung Sovanna, 15 September 2014 at 01133092.

at Tang Krouch Commune, Samraong Tong District, Kampong Speu Province because he had been a teacher during the Lon Nol regime.⁸⁷

35. The Appellants listed in Annex E 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 Impugned Order and admit these Appellants as Civil Parties.

B. Second Ground of Appeal: Severance of Case 004/02 from Case 004 should not be determinative of Civil Party admissibility

36. The International CIJ misconstrued the Case 004/2 Severance Order as limiting his ability to take into account crimes alleged in the broader Case 004 pre-severance file, including those committed outside the Central (Old North) Zone, thereby causing severe prejudice to Appellants.
37. On 16 December 2016, the CIJs issued the *Order for Severance of Ao An*, severing Ao An from Case 004 and establishing Case 004/2.⁸⁸ In their Severance Order, the CIJs asserted that they were “satisfied that severance will avoid undue delays in the proceedings against Ao An *without prejudicing the rights of any party*, while the remainder of the allegations in Case 004 remain under investigation.”⁸⁹ As evidenced by the Impugned Order, however, the scope for Civil Party admissibility in Case 004/2 in the wake of the Severance Order was confined solely to “applicants who have suffered harm in the Central Zone from approximately late 1976 to 6 January 1979[.]”⁹⁰ In doing so, the International CIJ greatly reduced the temporal and geographic scope originally covered by the alleged crimes in Case 004, effectively barring many otherwise previously qualified Civil Party applicants from continuing to participate in the proceedings.
38. The International CIJ’s interpretation of the impact of the Severance Order on the scope of the relevant alleged crimes 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

⁸⁷ See Case File No. 004/2, D5/1685, Civil Party Application of Chhay Yan, 20 March 2015 at 01156354-55.

⁸⁸ Case File No. 004/2, D334/1, Order for Severance of Ao An from Case 004, 16 December 2016 [hereinafter Severance Order Case 004/2].

⁸⁹ Severance Order Case 004/2, para. 4 (emphasis added).

⁹⁰ Case File No. 004/2, D362, International Co-Investigating Judge’s Order on Admissibility of Civil Party Applicants, 16 August 2018, para. 37.

interpreted so as to safeguard the interests and rights of the victims.⁹¹ 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 committed."⁹² The Impugned Order does precisely the opposite by severely limiting the scope of Civil Party admissibility in Case 004/2.

39. Notably, the CIJs provided no prior indication that the Severance Order would adversely impact the rights of Civil Party applicants, let alone in such a sweeping manner. As a preliminary matter, the CIJs failed to consult the Civil Parties or their lawyers in advance of the Severance Order, despite Internal Rule 66 *bis*, which requires that parties be granted an opportunity to make submissions on the matter.⁹³ The Severance Order itself does not include any reasoned decision by the CIJs regarding the Order's potential impact on the Civil Parties or any information regarding the CIJs' position on the respective scopes of Cases 004, 004/1 and 004/2, elements also required by the Internal Rules.⁹⁴ Administratively, the ECCC's Victim Support Section continued to log all Civil Party applicants as Case 004 applicants, without distinguishing among the severed cases. Indeed, until the issuance of the Impugned Order, the only apparent impact of the Severance Order on Civil Parties was the distinct deadlines for applications triggered by the conclusion of the investigations.⁹⁵
40. The Impugned Order's *en masse* rejection of applicants who would have, but for the Severance of Case 004/2, qualified as Civil Parties in Case 004 belies the Severance

⁹¹ 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.

⁹² 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*.

⁹³ Internal Rule 66 *bis* (2) ("Before reducing the scope of the judicial investigation, the Co-Investigating Judges shall notify the details of the intended reduction to the Co-Prosecutors and the lawyers for the other parties. The parties shall have 15 days to file submissions.").

⁹⁴ Internal Rule 66 *bis* (3) ("The Co-Investigating Judges shall determine the effect of the decision made pursuant to subrule (1) on the status of the Civil Parties and on the right of Civil Party applicants to participate in the judicial investigation.").

⁹⁵ The Severance Order further created procedural inequities among Civil Party applicants by triggering distinct deadlines for participation in the three distinct Case 004 proceedings. The CIJs concluded the investigation of and severed proceedings against Im Chaem from Case 004 on 5 February 2016. Case File No. 004/1, D286/7, Order for Severance of Im Chaem From Case 004, 5 February 2016 (hereinafter "Severance Order Case 004/1"). The deadline for Civil Party applications to Case 004/1 was 22 February 2016. *See* Internal Rule 23 *bis* (2) (providing that victims must apply for Civil Party status within 15 days of when the CIJs announce the closure of the investigation). In the case of Ao An (Case 004/2), the CIJs severed the proceedings and initially concluded their investigation of him on 16 December 2016. Case File No. 004, D334/1, Order of Severance of AO An from Case 004, 16 December 2016 [hereinafter "Severance Order Case 004/2"]. The deadline for Civil Party applications to Case 004/2 was 31 December 2016. In contrast, the CIJs did not conclude the investigation into Case 004 against the remaining charged person, Yim Tith, until 13 June 2017, which permitted victims to submit their Civil Party applications to this case through 28 June 2017.

Order's own pronouncement that its issuance would cause no prejudice to the rights of any of the parties.⁹⁶ In fact, the Severance Order became determinative of Civil Party admissibility for large swaths of applicants, including Appellants. As a result of the Severance Order, the International CIJ disregarded the broader allegations in the original Case 004, including crimes committed in the North West Zone and South West Zone, and examined only those allegations he considered to be within the newly restricted purview of Case 004/2.⁹⁷ Civil Party Applicants should not be denied their rightful place in the Case 004/02 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.

41. In light of the foregoing, Civil Party Co-Lawyers request that the PTC find that the Severance Order impermissibly prejudiced the rights of Appellants and overturn the International CIJ's admissibility decisions. As detailed in Annexes B, C, and D, each of the listed Appellants suffered an injury that is the direct consequence of an alleged crime that was otherwise in the scope of Case 004 pre-severance.

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

42. 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.⁹⁸ 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."⁹⁹ In

⁹⁶ Severance Order Case 004/2, para. 4.

⁹⁷ Impugned Order, paras. 37-38 (limiting admissibility to four policies perpetrated in the Central (Old North) Zone for which Ao An was allegedly responsible).

⁹⁸ 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".

⁹⁹ 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.

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 effective appellate review of the rejection without a sufficient understanding of the underlying reasoning, if any.¹⁰⁰

43. In Case 002, the PTC found that the CIJs' rejection of Civil Party applications did not comport with the reasoned decision requirement.¹⁰¹ 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."¹⁰² 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 being five to fifteen words and the substance not specific to the individual.¹⁰³
44. Similarly, the Impugned Order fails to meet the minimum standards set out by the PTC for a reasoned decision. 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 Impugned Order rejects nearly three-quarters of the Appellants on the generic grounds that: (a) the facts described fall outside the scope of the case file; or (b) it was not shown that it is more likely than not to be true that the applicant suffered as a consequence of one of the crimes charged.¹⁰⁴ In one other case, the Impugned Order recapitulates facts, but does state the reason the International CIJ rejected the Civil Party's application (ground 8). The Impugned Order does not provide any clarification as to the distinction between these two grounds for

¹⁰⁰ 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.

¹⁰¹ 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.

¹⁰² 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.

¹⁰³ 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.

¹⁰⁴ Case File No. 004/2, D362.2, Annex B: Civil Party Applications Declared Inadmissible, 18 August 2018.

dismissal. The lack of specificity as to the reasons for rejecting each Civil Party applicant does not allow Appellants to meaningfully exercise their appellate rights.

45. As detailed in Annex G, Civil Party Co-Lawyers request that the PTC overturn the Impugned Order in all cases where the Civil Party application was found inadmissible for being “outside the scope of the case file” (ground 1) or 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) on the basis that rejection of these Civil Party applications was not issued by reasoned order.

D. Fourth Ground of Appeal: The Co-Investigating Judges erred in fact by rejecting Appellants for failure to provide sufficient information as required under Internal Rule 23 *bis* (1) and (4) and related grounds.

46. 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.¹⁰⁵ 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.”¹⁰⁶ Information is deemed sufficient when it allows the CIJs to be satisfied that the facts alleged are more likely than not to be true.¹⁰⁷
47. 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 Party action at the ECCC.¹⁰⁸ 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.¹⁰⁹
48. 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

¹⁰⁵ Internal Rules 23 *bis* (1) and (4).

¹⁰⁶ Internal Rules 23 *bis* (4).

¹⁰⁷ 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.

¹⁰⁸ 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.

¹⁰⁹ 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*.

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.”¹¹⁰ Acknowledging that mass atrocities stem from systematic and widespread policies directed towards particular groups and individuals, as well as an entire community, they have determined that “individual applications to be joined as a Civil Party must be seen in the special circumstances of the conflict.”¹¹¹

49. In the Impugned 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.¹¹²
50. The CIJs have previously taken a flexible approach when it comes to proving the identity requirement.¹¹³ In the Impugned Order, the International CIJ acknowledged that it is difficult for many victims to provide documentary evidence to support their claims and affirmed the PTC’s position that “statements issued in a form or [the] other from the village elder or the communal chief[s]’ are enough to establish the applicants’ identities. I also accept that where the copy of the identity card or the thumbprint is missing, it is sufficient if the applicant can be identified via the data contained in the VIF.”¹¹⁴
51. The Impugned Order rejected Civil Party applications under four grounds related to the sufficiency or quality of the information provided in the Civil Party Application and under one ground on the basis that the applicant is ineligible for Civil Party status because he was a CPK cadre.

¹¹⁰ 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.

¹¹¹ 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.

¹¹² Impugned Order, para. 41.

¹¹³ Case File No. 002, D404, Order on the Admissibility of Civil Party Applicants residing outside the Kingdom of Cambodia, 6 September 2010, paras. 10-11.

¹¹⁴ Impugned Order, para. 48 (corrections reflect the original text in the source cited by the CIJ.)

52. The Civil Party Co-Lawyers submit that the International CIJ erred in rejecting the Civil Party applications of the victims identified in Annexes H(1) and H(2) for the reasons indicated therein and request that the PTC overturn the International CIJ's finding of inadmissibility and grant these victims Civil Party status.

E. Fifth Ground of Appeal: The Co-Investigating Judges violated victims' rights by failing to keep victims properly and timely informed throughout the proceedings in violation of Internal Rule 21(1)(c)

53. The PTC has held that the CIJs' conduct with regard to the broader set of victims' rights enshrined in Internal Rule 21(1)(c) is relevant to an admissibility appeal under Rule 77 *bis*.¹¹⁵ Internal Rule 21(1)(c) provides that the ECCC "shall ensure that victims are kept informed and that their rights are respected throughout the proceedings."¹¹⁶ The Internal Rules must be interpreted in a manner that protects the interests of the victims.¹¹⁷
54. Although the CIJs are bound by specific provisions of the Internal Rules on Confidentiality of Investigations, the PTC has made clear that such provisions "should, at all times, be read in conjunction with the provisions on the fundamental principles of procedure before the ECCC which require that 'victims are kept informed and their rights are respected *throughout* the proceedings.'"¹¹⁸ The PTC has emphasized that Internal Rule 21(1)(c) "does not leave room for interpretation, it does not say 'as soon as possible' or 'in any event, before the end of the judicial investigation.'"¹¹⁹
55. Proper and timely access to information throughout the pre-trial phase is particularly crucial to victims who may seek to be 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 Third Introductory Submission was filed on 20 November 2008, the CIJs did not disclose the relevant crime sites to the victims until 8 August 2011—almost three years later.¹²⁰ Even then,

¹¹⁵ 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. 51-54.

¹¹⁶ Internal Rule 21(1)(c).

¹¹⁷ 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.

¹¹⁸ 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. 52.

¹¹⁹ 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. 52.

¹²⁰ Office of the Co-Investigating Judges, Press Release by the Co-Investigating Judges Regarding Civil Parties in Case 004, 8 August 2011, available at <https://www.eccc.gov.kh/sites/default/files/media/ECCC%20PR%20OCIJ%208%20Aug%202011%20%28Eng%29.pdf>.

the CIJs decided to release crime site information only to counter speculative and erroneous information circulating in the absence of an official CIJ statement on the matter. In doing so, the CIJs pointedly noted their “serious doubts” about whether Case 004 would go forward, thereby sowing confusion and undercutting the victims’ faith in the outcome of the investigation. In their first disclosure on the Case 004 crime sites, the CIJs noted:

So far, the Office of the Co-investigating Judges did not notify the public of the crime sites in Case 004, because, unlike in Case 002, there are serious doubts whether the suspects are ‘most responsible’ according to the jurisdictional requirement of Article 2 ECCC Law. If the court had no jurisdiction, it would be inappropriate to encourage civil party applications further to the 200 already received in this case, as this could raise expectations which might not be met later on.

However, since there is an increasing amount of speculative and wrong information being published in the media and on a certain website, the following information is released without prejudice to the legal issues to be addressed in the Closing Order. [...]

At this stage of proceedings the Co-Prosecutors have no legal standing to inform the public of other crime sites, so that only information provided by the Co-Investigating Judges is relevant.¹²¹

56. Throughout the investigative phase, the CIJs violated the rights of victims to timely information, disregarding both the object and purpose of Internal Rule 21(1)(c). The PTC should find that the CIJs breached their obligations under Internal Rule 21 and that the fundamental rights of the victims have not been adequately safeguarded.
57. In turn, the PTC should take this breach of victims’ rights into consideration when reviewing the Impugned Order’s rejection of Appellants as Civil Parties. The CIJs’ failure to disclose critical information in a timely manner delayed investigations by Appellants and their attorneys, prevented them from properly analyzing relevant evidence, and ultimately limited their ability to provide details concerning relevant harm.

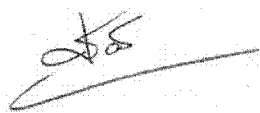




VI. CONCLUSION

¹²¹ Office of the Co-Investigating Judges, Press Release by the Co-Investigating Judges Regarding Civil Parties in Case 004, 8 August 2011 at <https://www.eccc.gov.kh/sites/default/files/media/ECCC%20PR%20OCIJ%208%20Aug%202011%20%28Eng%29.pdf>.

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58. Civil Party Co-Lawyers submit the Impugned Order erred in law and fact in rejecting the Civil Party Appellants identified in Annex A.
59. 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 004/2, 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 Impugned 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 Central (Old North) Zone;
 - (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 004/2 as "Complainants."

Respectfully submitted,

Date	Name	Place	Signature
29 November 2018	CHET Vanly	Phnom Penh, Cambodia	
29 November 2018	HONG Kimsuon	Phnom Penh, Cambodia	
29 November 2018	LOR Chuntly	Phnom Penh, Cambodia	
29 November 2018	SAM Sokong	Phnom Penh, Cambodia	
29 November 2018	SIN Soworn	Phnom Penh, Cambodia	

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29 November 2018	TY Srinna	Phnom Penh, Cambodia	
29 November 2018	VEN Pov	Phnom Penh, Cambodia	
29 November 2018	Emmanuel JACOMY	Phnom Penh, Cambodia	
29 November 2018	Martine JACQUIN	Phnom Penh, Cambodia	
29 November 2018	Daniel MCLAUGHLIN	Phnom Penh, Cambodia	
29 November 2018	Lyma NGUYEN	Phnom Penh, Cambodia	
29 November 2018	Nushin SARKARATI	Phnom Penh, Cambodia	