

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

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

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I. PROCEDURAL HISTORY

1. On 20 November 2008, the International Co-Prosecutor (“ICP”) filed the *Co-Prosecutors’ Third Introductory Submission* (“Third Introductory Submission”) opening a judicial investigation against Yim Tith.¹ On 18 July 2011, 24 April 2014 and 20 November 2015, the ICP filed Supplementary Submissions with additional allegations against Yim Tith regarding persecution of the Khmer Krom and forced marriage.² On 13 June 2017, the International Co-Investigating Judge (“International CIJ”) reduced the scope of the investigation pursuant to Internal Rule 66 *bis*,³ and the Co-Investigating Judges (“CIJs”) jointly issued the *Notice of Conclusion of Judicial Investigation against Yim Tith*.⁴ Following a number of further investigative requests, the CIJs issued a *Second Notice of Conclusion of Judicial Investigation against Yim Tith* on 5 July 2017.⁵ The National Co-Prosecutor (“NCP”) filed her Final Submission on 31 May 2018, requesting that allegations against Yim Tith be dismissed on the grounds that Yim Tith does not fall within the personal jurisdiction of the ECCC.⁶ The ICP subsequently submitted his Final Submission on 4 June 2018, requesting indictment on the charges set out therein.⁷
2. On 28 June 2019, the CIJs issued two separate Closing Orders in Case 004. In his Closing Order, the National Co-Investigating Judge (“National CIJ”) dismissed the case against Yim Tith, finding that the ECCC did not have personal jurisdiction over him as a senior leader nor as one of those most responsible for crimes committed during the Khmer Rouge period.⁸ Having dismissed all charges against Yim Tith, the National CIJ

¹ Case File No. 004, **D1**, Co-Prosecutors’ Third Introductory Submission, 20 November 2008 [hereinafter “Third Introductory Submission”].

² Case File No. 004, **D65**, Co-Prosecutor’s Supplementary Submission Regarding Sector 1 Crimes Sites and Persecution of Khmer Krom, 18 July 2011 [hereinafter “First Supplementary Submission”]; Case File No. 004, **D191**, Co-Prosecutors’ Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence, 24 April 2014 [hereinafter “Second Supplementary Submission”]; 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 [hereinafter “Third Supplementary Submission”]; *see also* Case File No. 004, **D196/1**, Response to Forwarding Order D196, 23 June 2014 (clarifying the inclusion of five crime sites within the scope of investigation).

³ Case No. 004, **D359**, Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 *bis*, 13 June 2017.

⁴ Case No. 004, **D358**, Notice of Conclusion of Judicial Investigation against Yim Tith, 13 June 2017.

⁵ Case No. 004, **D368**, Second Notice of Conclusion of Judicial Investigation against Yim Tith, 5 September 2017.

⁶ Case No. 004, **D378/1**, Final Submission Concerning Yim Tith Pursuant to Internal Rule 66, 31 May 2018, paras. 34, 36.

⁷ Case No. 004, **D378/2**, International Co-Prosecutor’s Rule 66 Final Submission against Yim Tith, 4 June 2018, paras. 1155-1183.

⁸ Case File No. 004, **D381**, National Co-Investigating Judge’s Closing Order, 28 June 2019.

did not examine the admissibility of the Civil Party applications in Case 004, and rejected all applicants.⁹ Conversely, the International CIJ held that the ECCC has jurisdiction over Yim Tith in his Closing Order (“ICIJ Closing Order”),¹⁰ and rendered substantive admissibility decisions in a separate order (“Admissibility Order”),¹¹ in which he rejected a number of Civil Party applications in Case 004. Annex B to the Admissibility Order details the grounds upon which the International CIJ found 901 Civil Party applications to Case 004 inadmissible.¹² An English-language translation of the National CIJ’s Closing Order was notified to the Parties on 5 September 2019, while a Khmer-language translation of the ICIJ’s Closing Order was notified to the Parties on 14 August 2019. Khmer-language translations of the ICIJ’s Admissibility Order and Annex B to the Admissibility Order were notified to the Parties on 28 June 2019 and 19 July 2019, respectively.

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

II. STANDARD OF APPEAL

4. Internal Rule 77 *bis* provides for an expedited appeals process for Civil Party admissibility decisions. As per Internal Rule 77 *bis*, “[w]ithin 10 days of the notification of the decision on admissibility, an Appellant shall file an appeal, containing reasons why the [CIJs] are alleged to have erred in fact and/or law in determining the admissibility of the Civil Party application pursuant to Rule 23 *bis*.”¹³
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.”¹⁴

⁹ Case File No. 004, **D383**, Order Rejecting Civil Party Applications, 28 June 2019, para. 13.

¹⁰ Case File No. 004, **D382**, Closing Order, 28 June 2019 [hereinafter “ICIJ Closing Order”].

¹¹ Case File No. 004, **D384**, International Co-Investigating Judge’s Order on Admissibility of Civil Party Applicants, 28 June 2019 [hereinafter “Admissibility Order”].

¹² Case File No. 004, **D384.2**, Annex B: List of Civil Party Applications Inadmissible, 28 June 2019.

¹³ ECCC Internal Rule (Rev. 9) 77 *bis*.

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. 34.

III. ADMISSIBILITY OF THE APPEAL

6. The Case 004 Parties were notified of the Admissibility Order on 28 June 2019. On 26 July 2019, Case 004 Civil Party Co-Lawyer Chet Vanly filed a request for an extension of time and page limits for her Internal Rule 77 *bis* appeals and sought permission to file in a single language.¹⁵ Additional Civil Party Co-Lawyers filed a second, nearly identical, request on 2 August 2019.¹⁶ On 22 August 2019, the Pre-Trial Chamber (PTC) granted the time and page extension requests sought in these requests, extending the deadline for appeals against Civil Party inadmissibility in Case 004 to 30 days from the notification of the ICIJ's Closing Order and Annex B to the Admissibility Order in Khmer, increasing the page limit to 45 pages in English or 90 pages in Khmer and authorizing a single language filing.¹⁷
7. The Appeal is timely submitted within the 30-day period from the notification of Khmer translations of the ICIJ Closing Order and Annex B of the Admissibility Order and conforms to the 45-page limit in English granted by the PTC. With leave of the PTC, the Appeal is submitted in English. Khmer translations of the Appeal and its Annexes will be filed as soon as they become available.

IV. PRELIMINARY SUBMISSIONS

8. The Civil Party Co-Lawyers offer two preliminary submissions.
9. First, the fundamental rights of victims enshrined in the ECCC's core documents, namely Internal Rules 21 and 23 *bis*, and the important role of Civil Parties in the pursuit of national reconciliation must guide the PTC in its review of the Admissibility Order and the present Appeal.
10. 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.¹⁸ As such, Internal Rule 23 *bis* must be read in conjunction with Internal Rule 21, which sets out the fundamental principles of the

¹⁵ Case File No. 004, **D384/1**, Civil Party Co-Lawyer's Urgent Request for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004, 26 July 2019.

¹⁶ Case File No. 004, **D384/3**, Civil Party Co-Lawyers' Urgent Request for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004, 2 August 2019.

¹⁷ Case File No. 004, **D384/4**, Decision on Civil Party Co-Lawyers' Urgent Request for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004, 22 August 2019.

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 62.

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.¹⁹ Moreover, Internal Rule 23 *bis* must be interpreted in accordance with the Court's broader principles and aims as set out in the ECCC Agreement and the Law on the Establishment of the ECCC.²⁰ As the PTC recognized in Case 002, "the [ECCC] Agreement provides that one of the fundamental principles for the establishment of [the] ECCC is 'national reconciliation.' This guides the Judges and Chambers of [the] ECCC to not only seek the truth about what happened in Cambodia, but also to pay special attention and assure a meaningful participation for the victims of the crimes committed as part of its pursuit for national reconciliation."²¹ Indeed, the PTC has consistently held that "the inclusion of civil parties in proceedings is in recognition of the stated pursuit of national reconciliation."²²

11. Second, the PTC should clarify the status of all Civil Party applicants in Case 004 given the CIJs' disagreement on jurisdiction and their attendant divergent treatment of Civil Party applications.
12. The Admissibility Order creates two sets of Civil Party applicants: (1) Civil Party applicants whose applications were admitted by the International CIJ and not examined by the National CIJ;²³ and (2) Civil Party applicants whose applications were rejected by the International CIJ and not examined by the National CIJ.²⁴ Because the National CIJ declined to examine any of the applications for Civil Party status, there is no substantive agreement between the CIJs as to the basis for Civil Party admissibility in Case 004.
13. The Civil Party Co-Lawyers recall that, pursuant to Internal Rule 23 *bis* (2), Civil Party applications benefit from a presumption of admissibility "unless and until" they are

¹⁹ 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.

²⁰ Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian Law of crimes committed during the period of Democratic Kampuchea, 6 June 2003 ("Agreement"); Law on the Establishment of the Extraordinary Chambers, with the inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1003/006), ("ECCC Law").

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 65 (citing the Preamble to the Agreement).

²² Decision on Civil Party Participation in Provisional Detention Appeals, **C11/53**, 20 March 2008, para. 37; *see also* Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 65.

²³ Case File No. 004, **D384.1**, Annex A: List of Civil Party Applications Admissible, 28 June 2019.

²⁴ Case File No. 004, **D384.2**, Annex B: List of Civil Party Applications Inadmissible, 28 June 2019.

affirmatively rejected by the CIJs.²⁵ 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.”²⁶ Accordingly, any uncertainty regarding a Civil Party application should be resolved in favor of its admissibility.

14. The PTC should affirm that the first set of Civil Party applicants are admitted as Civil Parties given the presumption of admissibility and the International CIJ’s decision to admit them as Civil Parties. The Civil Party Co-Lawyers submit that this presumption of admissibility continues to hold true for each and every one of these Civil Parties “unless and until” there is a reasoned supra-majority decision to the contrary by the PTC.
15. Similarly, the PTC should find that the presumption of admissibility for Civil Party applicants is not displaced by the decision of a single CIJ. As a result, the second set of Civil Party applicants, whose applications were rejected by the International CIJ and not examined by the National CIJ, should continue to exercise the rights of Civil Parties “unless and until” there is a reasoned supra-majority decision to the contrary by the PTC.
16. In the alternative, if the PTC finds that the International CIJ can unilaterally reject the Appellants’ Civil Party applications, the Civil Party Co-Lawyers submit that the Admissibility Order erred in law and fact as set out in the Principal Submissions below.

V. PRINCIPAL SUBMISSIONS

17. The International CIJ manifestly erred in law and fact in rejecting Appellants’ Civil Party applications. First, despite the fact that the policies of the Communist Party of Kampuchea (“CPK”) were implemented nationwide, the International CIJ impermissibly delimited Civil Party admissibility of victims of the four nationwide

²⁵ Internal Rule 23 *bis* (2) (“[...]. The Co-Investigating Judges may reject Civil Party applications at any time until the date of the Closing Order. Such orders shall be open to expedited appeal to the Pre-Trial Chamber by the Civil Party applicant as prescribed by Practice Direction. Such appeals shall not stay the proceedings. Unless and until rejected, Civil Party applicants may exercise Civil Party rights.”).

²⁶ 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.

CPK policies (JCE A) exclusively to crimes allegedly committed in the Northwest Zone.²⁷ In doing so, the International CIJ disregarded the allegations that Yim Tith took part in a national joint criminal enterprise (JCE) and misinterpreted the presumption of collective injury, which extends to all members of a targeted group regardless of their location. The fact that the International CIJ did not limit the geographic scope of crimes committed related to the elimination of the Khmer Krom (JCE B),²⁸ further demonstrates the national nature of these JCE policies, particularly as they relate to targeted groups or communities. Second, the Admissibility Order erred in excluding Civil Party applicants who experienced harms at crime sites initially part of the Case 004 investigation that were later excluded under Internal Rule 66. As detailed in the Third and Fourth Grounds of Appeal, respectively, the Admissibility Order also fails to provide a reasoned decision for the rejection of Civil Party applications and errs in rejecting applicants for failure to provide sufficient information and related grounds. Finally, the severance of Cases 004/1 and 004/2 from Case 004 should not limit Civil Party admissibility (Ground 5).

A. First Ground of Appeal: The International CIJ erred in law and fact by finding that the nexus requirement for JCE A (four CPK policies) under Internal Rule 23 bis (1)(b) is met only by victims of crimes committed in the Northwest Zone

18. The International CIJ erred in law and fact by failing to find that victims of nationwide CPK policies outside the Northwest Zone also suffered direct injury as a result of the crimes alleged against Yim Tith.²⁹ The decision to limit Civil Party admissibility to crimes committed in the Northwest Zone is inconsistent with the PTC's interpretation

²⁷ See ICIJ Closing Order, para. 1016 (utilizing the "JCE A" and "JCE B" terminology). See also Admissibility Order at para. 37 (specifying the following four relevant policies for civil party admissibility of victims in the Northwest Zone: "i) the establishment and operation of cooperatives and worksites, implemented through the enslavement of the population; ii) the regulation of marriage, implemented through, *inter alia*, forced marriage of the inhabitants in the Northwest Zone; iii) the re-education of so-called 'bad elements' through imprisonment, forced labour, and subjection to inhumane conditions, or the killing of 'enemies' and 'bad elements' both inside and outside the CPK ranks; and iv) the targeting of specific groups."). The Admissibility Order also lists three separate categories of applicants that satisfy the Civil Party nexus requirement: 1) victims of the nationwide policy to eliminate the Khmer Krom between 1976 and 6 January 1979 (JCE B); 2) victims of ECCC crimes alleged at Wat Pratheat Security Center between September–October 1975 and 6 January 1979; and 3) victims of ECCC crimes alleged at six security centers and execution sites in the Southwest Zone: Wat Pratheat Security Centre, Kraing Ta Chan Security Centre, Preil Village Execution Site, Wat Angkun Execution Site, Slaeng Village Forest Execution Site, or Prey Sokhon and Wat Ang Serei Muny Execution Site). Admissibility Order at para. 38.

²⁸ Admissibility Order, para. 38.

²⁹ Admissibility Order, para. 37.

of the required nexus between victims and alleged crimes as set out in Internal Rule 23 *bis* (1)(b).

19. Internal Rule 23 *bis* (1)(b) requires that a Civil Party applicant show “physical, material or psychological injury” arising “as a direct consequence of at least one of the crimes *alleged* against the Charged Person.”³⁰ In the Admissibility Order, the International CIJ acknowledges the PTC’s jurisprudence that the causal link requirement should be interpreted “broadly,” such that it should allow “for the admission of applicants whose alleged harm did not necessarily stem from crimes committed specifically in the locations identified in the OCP submissions, or in the Closing Order.”³¹ The Admissibility Order nevertheless fails to abide by the PTC’s jurisprudence on the matter by denying Civil Party status to victims of crimes committed pursuant to coordinated national policies that were carried out through a common criminal plan or JCE. Similarly, the Admissibility Order fails to apply the PTC’s presumption of collective injury, which extends Civil Party status to members of the same targeted group or community regardless of their location. Finally, the Admissibility Order inexplicably overlooks Civil Party applicants who suffered harms from policies and crimes carried out *within* the crimes sites and zone enumerated in the ICIJ Closing Order.

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

20. The Admissibility Order disregards the PTC’s prior determinations on Civil Party admissibility by focusing on CPK policy-related crimes committed in the Northwest Zone, despite the allegations in the ICIJ Closing Order, Third Introductory Submission and Supplementary Submissions that Yim Tith participated in and implemented policies under a JCE that was national in scope. Internal Rule 23 *bis* (1)(b) is explicit—and the PTC has made clear—that the requisite link lies not between the injury and facts investigated by the CIJs, but between the injury and *the alleged crimes*.³² This important

³⁰ IR 23 *bis* (1)(b) (Emphasis added).

³¹ Admissibility Order, para. 36; Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, paras 49, 66, 68-69, 72, 77.

³² Internal Rule 23 *bis* (1)(b) (emphasis added); Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, paras. 49, 66, 68-69, 72, 77.

distinction is one of law and fact, with a crime “being the legal characterization of the facts investigated.”³³

21. In Case 002, the Chamber concluded that the CIJs 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.³⁴ 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.’”³⁵ 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 [CIJs].”³⁶
22. In instances where the Closing Order determines that attacks against the civilian population were widespread or systematic, Civil Party applicants “do not necessarily have to relate their injury to only one crime site or even to only those crime sites identified” in the Closing Order, especially when “crimes and the underlying CPK policies forming the basis of the indictments were allegedly implemented throughout Cambodia.”³⁷ 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 [*sic*] policies in respect of which the individual liability alleged against each of the accused also takes collective dimensions due to allegations for acting together as part of a joint criminal enterprise.”³⁸

³³ 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).

³⁴ 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.

³⁵ Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, para. 42 (internal citations omitted).

³⁶ 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.

³⁷ 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).

³⁸ 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

23. The PTC's position in Case 002 applies with equal force in Case 004. According to the ICIJ Closing Order, Third Introductory Submission and Supplementary Submissions, Yim Tith participated in a national JCE whose goal was the implementation of CPK policies throughout Cambodia, well beyond the Northwest Zone.³⁹ The CPK maintained a well-organized system for implementation of its national policies via a network of regional enterprises which included the regions under Yim Tith's command. The entire operation was designed to further the *national goal* of restructuring all of Cambodian society.⁴⁰ As the ICIJ Closing Order alleges, "Yim Tith was one of the primary persons responsible for implementing CPK policy in his areas of responsibility and, thus, fully aware that implementing the four CPK policies was to be achieved through the charged crimes."⁴¹ Yim Tith made multiple "attestations expressing his commitment to carry out the plans of *Angkar*."⁴² In the ICP's Supplementary Submissions, Yim Tith is named among the senior leaders most responsible for these nationwide policies.⁴³ Yim Tith's involvement in national level policies of the JCE is highlighted by the International CIJ's assertion that "the *de facto* or *de jure* Secretary of one of the strategically most important Zones in DK, [Yim] Tith would have become a member of the CPK Central Committee at the 5th Party Congress."⁴⁴ Yim Tith's close

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.

³⁹ ICIJ Closing Order, para. 1016 ("Yim Tith... and other trusted Southwest Zone cadres carried out an operation in the Northwest Zone of DK to implement the CPK's policies on the establishment and operation of cooperatives and worksites; the regulation of marriage implemented through *inter alia* the forced marriage of the population; the re-education of so called 'bad elements' and the killing of 'enemies' and 'bad elements' both inside and outside the CPK ranks; and the targeting of specific groups."); Third Introductory Submission, para. 6; Supplementary Submission Regarding Forced Marriage and Sexual or Gender-Based Violence, para. 14.

⁴⁰ ICIJ Closing Order, para. 276 ("The CPK sought to transform Cambodia from a market-based economy into an autarkic socialist state based on an agrarian economy. This goal was to be achieved through a number of measures including, critically, the establishment of cooperatives and worksites throughout Cambodia and the forced relocation of the entire population to work on them."); *id.* at para. 287 ("The policy [of destroying 'enemies' or 'bad elements'] was authorized under Article 10 of the DK Constitution, which stated that '*dangerous activities in opposition to the people's State must be condemned to the highest degree*'"); *id.* at para. 295 ("The CPK policy to arrest and kill enemies was implemented with extreme intensity during a series of '*purges*' of the ranks of the CPK and of the general population."); *id.* at para. 298 ("Yim Tith played a central role in implementing the CPK's economic and agricultural policies in the Northwest Zone, which aimed to increase DK's national production through the establishment of worksites and cooperatives."); *id.* at para. 314 (explaining that the "Marriage Policy" was implemented to "achieve the objectives of increasing the population and building ideologically pure families."); *id.* at para. 1019 ("Yim Tith was aware of all CPK activities in his areas of control. This knowledge was obtained through meetings and the system of communication and reporting he maintained with his superiors and subordinates.").

⁴¹ ICIJ Closing Order, para. 1020.

⁴² ICIJ Closing Order, para. 1022.

⁴³ First Supplementary Submission, paras. 21, 23; Second Supplementary Submission, para. 14; Third Supplementary Submission, para. 14.

⁴⁴ Third Introductory Submission para 95.

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collaboration with other DK leaders including Ta Mok in the “shared [...] common objective to implement in specific areas of DK a nationwide plan for the elimination in whole or in part of the Khmer Krom” further demonstrates his engagement in the nationwide implementation of JCE policies.⁴⁵

24. The ICIJ Closing Order further alleges that Yim Tith held “several prominent positions during his tenure in the Southwest Zone,” including as the “de facto second-in-command to Ta Mok,” and was “the second most powerful man in the Northwest Zone.”⁴⁶ Yim Tith was Ta Mok’s brother-in-law and “[a]s a member of the Mok family, ... quickly rose through the ranks” being appointed Secretary of Kirivong District in the Southwest Zone and generally acting as “second in command” to Ta Mok.⁴⁷ Starting in mid-1977, Yim Tith “and other senior CPK leaders planned and initiated a massive purge of the Northwest Zone, which began with the arrival of Southwest Zone forces... in June 1977.”⁴⁸ Yim Tith regularly chaired meetings alone and with other leaders, including with zone Secretary Ta Mok, as well as monitored worksites, visited security centers and, later, held authority over military units, personnel matters, security and economic policy in sectors where he held office.⁴⁹ Yim Tith “acted as a *de facto* leader of the Northwest Zone” until June 1978, at which point he “formally assumed the positions of Secretary of Sector 1 of the Northwest Zone and Deputy Secretary of the Northwest Zone Committee,” following the arrest of former Northwest Zone Secretary Muol Sambath *alias* Ruos Nheum.⁵⁰ From his position as Secretary, Yim Tith “had authority over civil and military affairs” and was “directly responsible” for security centres in the Northwest Zone.⁵¹ Based on Yim Tith’s position and the impact of his actions, the International CIJ concluded that his “role and actions easily compare with those of Ao An or Meas Muth, for example, and certainly with those of Kaing Guek Eav *alias* ‘Duch’: they even exceed some of those significantly.”⁵²
25. The Third Introductory Submission and Supplementary Submissions detail how, as a result of his alleged leadership position, Yim Tith was tasked with implementing national CPK policies at the regional level, including: (i) enslaving the population in

⁴⁵ ICIJ Closing Order, para. 1016; *see also* First Supplementary Submission, para. 11.

⁴⁶ ICIJ Closing Order, paras. 327, 380, 994.

⁴⁷ ICIJ Closing Order, para. 994; Third Introductory Submission, paras. 3, 91.

⁴⁸ Third Introductory Submission, para. 94.

⁴⁹ ICIJ Closing Order, paras. 364-67, 374.

⁵⁰ Third Introductory Submission, para. 94.

⁵¹ Third Introductory Submission, para. 96.

⁵² ICIJ Closing Order, para. 999.

cooperatives or forced labor sites; (ii) re-educating or eliminating enemies of the CPK through a network of security centers and executions sites; (iii) targeting suspect groups such as East Zone evacuees and Vietnamese; and (iv) forced marriage (collectively, JCE A).⁵³ The ICIJ Closing Order found that Yim Tith implemented and made a “significant contribution” to these four nationwide policies;⁵⁴ as well as to the two additional JCEs of (i) eliminating in whole or in part the Khmer Krom (JCE B) and (ii) furthering a system of ill-treatment at Wat Pratheat Security Centre (JCE C).⁵⁵

26. Despite the manifest “collective dimensions” of Yim Tith’s liability, the International CIJ focused on crimes committed in the Northwest Zone to determine Civil Party admissibility for victims of JCE A (four CPK policies). This was in error. Rather, the International CIJ should have considered relevant to the Civil Party admissibility analysis crimes committed outside of the Northwest Zone where they also formed part of the national JCE to which Yim Tith is alleged to have belonged. The International CIJ’s decision to limit Civil Party admissibility to the geographic locations where Yim Tith had full administrative control cannot be reconciled with the findings in his Closing Order. The Admissibility Order fails to give a reasoned decision for the geographic limitations on Civil Party admissibility, impeding victims’ right to information and to effective appellate review.
27. As detailed in Annexes B (Harm to Civil Party Applicants Resulting from Selected Policies of JCE A) and C (Harm to Civil Party Applicants Resulting from the Targeting Policy of JCE A), Appellants suffered harms as a direct consequence of the implementation of the national JCE in which Yim Tith is alleged to have participated. Among those denied Civil Party status in Case 004 are victims who suffered harm as a consequence of the four national policies implemented to advance the common criminal plan of JCE A (cooperatives and worksites, regulation of marriage, targeting of specific groups and reeducation and killing of enemies). Illustrative examples of the harm experienced under these national policies by Civil Party applicants deemed inadmissible include:

⁵³ Third Introductory Submission, paras. 16-17; First Supplementary Submission, paras. 21, 23; Second Supplementary Submission, para. 14; Third Supplementary Submission, para. 14.

⁵⁴ ICIJ Closing Order, paras. 1021-24; *see also id.* at para. 1016 (describing the four nationwide policies as: “the establishment and operation of cooperatives and worksites; the regulation of marriage implemented through *inter alia* the forced marriage of the population; the re-education of so called ‘bad elements’ and the killing of ‘enemies’ and ‘bad elements’ both inside and outside the CPK ranks; and the targeting of specific groups.”).

⁵⁵ ICIJ Closing Order, para. 1016.

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- (1) Civil Party applicant **On Daravuth** (17-VSS-00043) was just 8 years old when he and his family of seven were forced out of Kampong Som City with just the possessions they could carry, witnessing chaos, illness and death along the way. During the trek, the applicant and his family were separated from his father, a former Lon Nol intelligence officer and linguist, whom they never saw again. Once the applicant and his family arrived in the countryside, the family was categorized as “new people.” Everyone in the applicant’s family was forced into hard labor. The applicant was given just a bowl of thin rice porridge to eat at midday, so he would look for other things to eat in the fields and forests while tending the livestock. In these days, the applicant saw many people get beaten with sticks or shovels, tied up and taken away. He and the other youth were profoundly affected by this. For them, this was just the way life was; it was all he knew. After just three months, the applicant was placed in a children’s mobile unit, separated from his family, moved to a hut in the jungle about 10-20 miles from the village and made to clear the forest to make farmland. The work was extremely difficult. He had to help chop down and root out 2-3 trees per day all the while being brainwashed with Khmer Rouge propaganda and fed only 2 bowls of thin rice gruel. The applicant became swollen from malnutrition and was often injured or bitten by scorpions or leeches in the forests. Sometimes, Khmer Rouge cadre tied him to a tree for hours or even a full day as punishment for stealing unharvested food that was left behind in the surrounding fields. Other children in his unit were beaten or even killed in front of the group by Khmer Rouge leaders who accused them of being enemies of the state. In 1976, the applicant was shipped away with thousands of other people from his area to Kampong Chhnang province on a cargo train. The train ride was slow and crowded and the applicant and other passengers were not given any food or water, leading many to become exhausted, confused and even die in the course of the journey. When the applicant arrived, he was put in a youth work camp where the treatment was even harsher and more people, especially the educated and wealthy, were killed; he would see their dead bodies along the road to his workplace or in shallow graves, their bodies dismembered by wild animals. By this time, the applicant’s family members were mostly sick—too hungry to move and without energy; to him, they seemed to be waiting to be killed or die from malaria or another illness. Within the next 6-12 months, the applicant’s

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mother, sister and grandfather all died from starvation. The applicant believes he survived because he was sent to clear land, where he could supplement his diet with whatever he could find in nature. Even so, some of the other children working in his unit became so weak they just dropped dead while working. In the end, their large work camp of thousands was reduced to just a few hundred and the applicant was assigned to help carry the bodies of the dead. Only the applicant and one of his brothers survived the Khmer Rouge regime. Eventually, they ran away to the refugee camps, but they lived difficult lives as young orphans.⁵⁶

- (2) In the Pol Pot regime, **SEV Heam** (13-VSS-00282) and his family lived and worked in M-4 Cooperative located in Tang Se Village, Mom Buon Commune, District-21, Ratanak Kiri Province. In 1977, Khmer Rouge soldiers were sent to find 13 women to marry off. They tried to force his younger sisters, Sev Dvan (18 years old) and Sev Baenh (16 years old), to marry men whom they did not know. Both sisters refused the marriages and were arrested and held at a house where they were raped and later killed. The others, who didn't refuse, were forced to marry at Regiment 33, Division 801 located near Ta Bouk river, Ta Veang District, Ratanak Kiri Province. About ten days later, Khmer Rouge cadre came to the M4 Cooperative and told everyone there that any women who refused to marry according to *Angkar's* orders would be killed. Later, in December 1978, Khmer Rouge cadre tried to force the applicant's younger brother, Sev Yeunh, to marry a woman whom he had never met before, but he refused and was arrested at M-4 Cooperative and killed. The applicant's father and uncle were both killed in 1978 on the accusation that they were "Yuong puppets." The applicant's father refused to confess to these charges and was badly beaten, breaking his waist, and tied up like an animal and carried off to an unknown location from which he never returned. After that, the applicant lived in "perpetual fear and great suffering" with his mother and younger brother until the liberation day.⁵⁷
- (3) Between 1975 and 1977, CPK cadre forcibly relocated Civil Party applicant **Pèn Hoern** (11-VSS-00094) to at least five different areas in Kampong Cham

⁵⁶ See Case File No. 004, **D5/1982**, Civil Party Application of ON Daravuth, 3 March 2018 at 01425448-50.

⁵⁷ See Case File No. 004, **D5/1116**, Civil Party Application of SEV Heam, 31 July 2014 at 01186277-79.

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Province where he was made to work long hours from 7:00 a.m. to 8:00 p.m. building dams and dikes while their Khmer Rouge overseers provided him and other workers only watery porridge to eat. In March 1977, his father, Pèn Chên, was arrested on the accusation that he had provided rice to the Khmer Sâ (Khmer Krom “white scarves” movement). Initially, his father was detained at the district security center at Prey Chhor District, Kampong Cham Province and forced to build dams and ponds but, after telling the applicant’s sister that he was being transferred to the regional security center, his father disappeared and was presumed killed. Likewise, four of the applicant’s uncles, Heang Phat, Heang Yây, Heang Chhat and Heang Kan were arrested and sent to Tuol Beng Security Center in Kampong Siem District, Kampong Cham Province and later transferred to another security center in Prey Chhor District, Kampong Cham Province where they were executed for allegedly betraying *Angkar* and joining the Khmer Sâ.⁵⁸

28. Civil Party applicants identified in Annex B (Harm to Civil Party Applicants Resulting from Selected Policies of JCE A) and Annex C (Harm to Civil Party Applicants Resulting from the Targeting Policy of JCE A) suffered harms as a direct consequence of the implementation of the national JCE in which Yim Tith is alleged to have participated. In light of the foregoing, the Civil Party Co-Lawyers respectfully request that the PTC admit these applicants as Civil Parties.

2. The PTC should admit as Civil Parties victims of specific targeted groups who suffered from a collective injury that extended beyond the areas identified in the Admissibility Order

29. The Admissibility Order also erred in limiting the geographic scope of Civil Party admissibility to victims of JCE A living in areas over which Yim Tith had administrative control because members of specific targeted communities and groups living outside these areas also suffered harm from a collective injury.
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.⁵⁹ Under this presumption, “as long

⁵⁸ See Case File No. 003, **D5/169**, Civil Party Application of Pèn Hoeurn, 11 January 2010 at 00563743-44, 00563748-49.

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, paras. 83-93.

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[.]”⁶⁰ 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.*”⁶¹ 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.”⁶² 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 could be both personal and collective in nature.”⁶³ 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[.]”⁶⁴ 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*[.]”⁶⁵ Numerous human rights bodies have also recognized that collectives bear rights and have the ability to suffer harm warranting reparations.⁶⁶

⁶⁰ 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).

⁶¹ 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).

⁶² 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.

⁶³ *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.

⁶⁴ 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.

⁶⁵ 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).

⁶⁶ 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,

32. According to the ICIJ Closing Order, Third Introductory Submission, and a Supplementary Submission, Yim Tith is responsible for attacks targeting specific groups or communities in the Northwest Zone and six crime sites in the Southwest Zone, including targeted attacks against persons of Vietnamese ethnicity,⁶⁷ “17 April People” or “new people,”⁶⁸ people from the East Zone,⁶⁹ former Khmer Republic and Lon Nol associates,⁷⁰ CPK cadres thought to be traitorous (including cadres from the East and Northwest Zones),⁷¹ Chinese,⁷² former Buddhist monks,⁷³ Khmer Krom,⁷⁴ suspected CIA and KGB “spies”⁷⁵ and disfavored classes.⁷⁶ As per the PTC’s reasoning, a presumption of collective injury arising from the harm suffered by direct victims in the Northwest Zone and Southwest Zone extends to *all* members of these specifically targeted groups or communities irrespective of their locations.
33. In the Admissibility Order, the International CIJ acknowledges the PTC’s principle of collective injury as it relates to Civil Party admissibility, stating that “[i]ndirect victims may suffer such harm regardless of the absence of a familial relationship with the direct victim where they were both members of the same targeted group or the same community.”⁷⁷ Further, the International CIJ recognized that victims of one of the status-based crime, the JCE to eliminate the Khmer Krom (JCE B), need not be geographically restricted to the specific locations identified in the Admissibility Order.⁷⁸ The International CIJ nevertheless fails to apply the principle of collective

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).

⁶⁷ ICIJ Closing Order, paras. 308, 311; Third Introductory Submission, paras. 17, 59.

⁶⁸ ICIJ Closing Order, paras. 308, 311, 1022; Third Introductory Submission, paras. 17, 59.

⁶⁹ ICIJ Closing Order, paras. 312-13; 1022; Third Introductory Submission, para. 59; First Supplementary Submission, paras. 11-20.

⁷⁰ ICIJ Closing Order, paras. 310, 1022.

⁷¹ ICIJ Closing Order, paras. 312-16, 1022; Third Introductory Submission, paras. 17, 98.

⁷² ICIJ Closing Order, paras. 308, 311.

⁷³ ICIJ Closing Order, para. 311.

⁷⁴ ICIJ Closing Order, paras. 196-275; First Supplementary Submission, paras. 11-20.

⁷⁵ ICIJ Closing Order, para. 311.

⁷⁶ ICIJ Closing Order, para. 308 (noting that CPK cadre and the general public were to be vigilant to and report on “enemies” including “capitalists” and “feudalists,” so that they could be dealt with by Khmer Rouge leaders).

⁷⁷ Admissibility Order, para. 34.

⁷⁸ Admissibility Order, para. 28 (declaring admissible “[t]hose applicants who have suffered harm as a consequence of the charged nation-wide common plan... to eliminate the Khmer Krom.”). Compare Third Introductory Submission, para. 6 (“A common criminal plan existed among CPK leaders to establish a classless,

injury to the other targeted groups or communities identified in the ICIJ Closing Order. Instead, the International CIJ erroneously imposes a requirement that those with a shared membership in these targeted groups or communities (persons of Vietnamese ethnicity,⁷⁹ “17 April People” or “new people,”⁸⁰ people from the East Zone,⁸¹ former Khmer Republic and Lon Nol associates,⁸² CPK cadres thought to be traitorous,⁸³ Chinese,⁸⁴ former Buddhist monks,⁸⁵ suspected CIA and KGB “spies”⁸⁶ and disfavored classes)⁸⁷ be physically located in the Northwest Zone or the six specified locations in the Southwest Zone, thereby essentially disregarding the collective nature at the heart of the principle. The ICIJ offers no reasoning for his disparate application of the PTC’s jurisprudence on the principle of collective injury.

34. Among those denied Civil Party status in Case 004 are victims who are members of targeted groups or communities identified in the ICIJ Closing Order. Illustrative examples of Civil Party applicants harmed by the targeting of these specific groups or communities include:

- (1) **CHEA Soeun** (14-VSS-00061) was ordained as a monk at Wat Choutanaram in an area called Boeng Kuch. In 1973, the Khmer Rouge moved the applicant and 25 other monks who were still ordained to stay at Wat Lpeak in Srak Commune, Kampong Siem District for one night. Khmer Rouge cadre instructed and indoctrinated the monks, telling them that monks were like the intestinal worms of society and that they had to be defrocked and made to labor like ordinary

atheistic and ethnically homogenous society”); *id.* para. 8 (“The CPK enforced its illegal policies through a **nationwide network** of security centres.”) (emphasis added); ICIJ Closing Order, para. 1019 (“Yim Tith was one of the primary persons responsible for implementing CPK policy in his areas of responsibility and was thus fully aware that implementing the four CPK policies was to be achieved through the charged crimes.”). *See also id.* at para. 289 (including Khmer Krom among several status-based targeted groups: “The CPK identified and targeted particular categories of people perceived as potential threats to the DK regime or to have views otherwise incompatible with CPK doctrine, including CPK cadres accused of ‘traitorous activities’; people connected to the former Lon Nol regime; alleged CIA, KGB or Vietnamese (‘Yvon’) spies; the Khmer Krom; and people supposedly belonging to the ‘capitalist’, ‘feudalist’, ‘landowner’ or ‘bourgeois’ classes.”). *See also* ICIJ Closing Order, para. 1016 (ii).

⁷⁹ ICIJ Closing Order, paras. 308, 311; Third Introductory Submission, paras. 17, 59.

⁸⁰ ICIJ Closing Order, paras. 308, 311, 1022; Third Introductory Submission, paras. 17, 59.

⁸¹ ICIJ Closing Order, paras. 312-13; 1022; Third Introductory Submission, para. 59; First Supplementary Submission, paras. 11-20.

⁸² ICIJ Closing Order, paras. 310, 1022.

⁸³ ICIJ Closing Order, paras. 312-16, 1022; Third Introductory Submission, paras. 17, 98.

⁸⁴ ICIJ Closing Order, paras. 308, 311.

⁸⁵ ICIJ Closing Order, para. 311.

⁸⁶ ICIJ Closing Order, para. 311.

⁸⁷ ICIJ Closing Order, para. 308 (noting that CPK cadre and the general public were to be vigilant to and report on “enemies” including “capitalists” and “feudalists,” so that they could be dealt with by Khmer Rouge leaders).

laypeople. The applicant began moving from one pagoda to another in order to avoid being defrocked. At one point, Khmer Rouge cadre ordered him to study the regime's "revolutionary documents," to join the meeting about theories for living and to defrock, but the applicant fled to the Vihear Thum and Rokar Kory areas where Khmer Rouge cadre ordered the applicant to help construct the Ta Man Dam, to dig the canal at Thmei U Village and to move dirt—all while he was still a monk. When the applicant returned to Vihear Thum in 1975, Khmer Rouge leaders finally insisted that he defrock and assigned him to a mobile unit. At that point, all the monks living at the Vihear Thum Pagoda had been defrocked, the pagoda was being used by the Khmer Rouge to store cow dung, the Buddha statues had been destroyed and the pagoda school was used as storerooms and barracks for Khmer Rouge cadre. Toward the end of 1975, the applicant was tied up and sent to Prey Char District for reeducation on the accusation that he favored Buddhism and sided with the monks against the regime. The applicant was released one day later and warned not to talk about Buddhism or the philosophy of the monks anymore. Later, in 1976, the applicant was tied up and beaten with a bicycle chain for sneaking out to find food. And, in 1977, the applicant was forced to marry Bau Sambath with 65 other couples under the watchful eye of local Khmer Rouge leaders.⁸⁸

- (2) **Nut Sarun** (11-VSS-00152), his wife and his three children lived in Khnaor Khang Tbpoung Village, Svay Angk Sub-district, Svay Chrum District, Svay Rieng Province. From April to July 1975, the applicant was assigned to build Sandor Tuek Dam, which stood one meter high and stretched two kilometers in length. He was also made to build various dikes in rice paddy fields and farm rice paddy in near his village. In late July 1975, the village chief, So Chhun, had the applicant arrested by four to six militia members on the accusation of being a CIA or KGB agent, or Vietnamese and was imprisoned at Meun Chey Thmei District, Svay Rieng Province. At that time, the applicant was sent to be detained in Wat Chas Security Center with eight other prisoners, one of whom was his brother, NUT Sim. For the first three days, the applicant was starved, and given nothing to eat. Then, he was interrogated by the militia members and beaten until he fell

⁸⁸ See Case File No. 004, **D5/1486**, Civil Party Application of CHEA Soeun, 18 September 2015 at 001145578-80.

unconscious. From January to June 1976, the applicant and 27 other prisoners were forced into hard labor, including digging the very long Srok canal from Kien Ta Siv Village, Svay Yea Sub-district to Boeng Rey in Kraol Kou Sub-district (both in Svay Chrum District, Svay Rieng Province). This canal was five meters wide and three meters deep. The applicant and other prisoners were forced to work from 6:00 a.m. to 5:00 p.m. each day and then were sent back to Wat Chas Security Center where they were shackled all night and fed only one ladle of watery porridge per day. Finally, in late June 1976, the applicant and five other prisoners were released and made to labor at various work sites throughout the district. The applicant's brother, Nut Sim, was not released and instead died of torture in Wat Chas Security Center in 1976.⁸⁹

- (3) When the Khmer Rouge took over the country, **Ter Koem Seang** (11-VSS-00015) with her husband and two sons lived in Kampong Siem District, Kampong Cham Province. In 1976, she was transferred to another district for forced labor, but later was sent back to her home district while pregnant. During this time, she was forced into heavy labor hauling dirt at Boeng Thum work site while only receiving two bowls of watery porridge per day. At four months pregnant, the applicant miscarried her child. Later, after a brief period of recovery, she was made to carry number one fertilizer for the cooperative. The applicant managed to survive until 1979, but her two sisters, Chè Huoy and Chè Ki and their husbands and children did not. In 1977, Southwest Zone cadre accused the applicant's two sisters and their families of being CIA agents and Sino-Chinese. First, her sister, Ki, and her six family members were arrested and sent to Phum Ti Prammuoy Village, Kaoh Sotin Sub-District, Kaoh Sotin District, Kampong Cham Province, where they were all killed by the river next to Wat Tnaot. Later, her sister, Huoy, brother-in-law and four children were arrested, put in a car and taken to be killed near Sântok mountain in Kampong Thom Province. The applicant's younger brother was also killed in Kampong Siem District, Kampong Cham Province, while her nephew was forced to marry with 71 other couples at Kouk Kream Village, Vihear Thum Sub-district, Kampong Siem District, Kampong Cham Province.⁹⁰

⁸⁹ See Case File No. 004, **D5/310**, Civil Party Application of NUT Sarun, 16 October 2009 at 00558827-29.

⁹⁰ See Case File No. 004, **D5/225**, Civil Party Application of TER Koem Seang, 7 June 2011 at 00552356-57.

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(4) In April 1975, Khmer Rouge forcibly transferred **SIENG Chanthy** (13-VSS-00396), her family members and other people from their village near Svay Rieng Provincial Town to Chhuk Sa Village, Chheu Teal Commune, Svay Chrum District, Svay Rieng Province. At Chhuk Sa Village, the base people were hostile to the applicant and her family because they were considered “new people” and “feudalists.” Also, the applicant’s and his family members’ white skin led the locals to accuse them of being “Yvon puppets.” In May 1975, the applicant and her family were sent to work at Russei Prey Village in Svay Chrum District. There, the Khmer Rouge leaders overworked the applicant and his family, prohibited them from getting adequate rest and provided them, as new people, only half the food ration given to base people. They were forced to build dikes in rice paddy fields, dig canals and excavate dirt. The applicant was tormented by the fear of being raped before being killed, as the young daughters of the only other Vietnamese families in the village had been. Others in the cooperative ostracized the family for fear of being accused of wrongdoing just for associating with someone Vietnamese. The applicant's family tried to work extra hard and never complained about their miserable circumstances and suffering because they were mixed blood Cambodian-Vietnamese and were terrified that they would be taken away and killed at any moment, especially if they made any trouble. Nonetheless, in June 1976, applicant's older brother, Chrouk Chanthan was detained at a security center located at Ta Chey pagoda in Kampong Chamlang Commune, Svay Chrum District and later at Chheu Teal pagoda and Sla pagoda for five or six months. He was released briefly and lamented through tears to his family that he was forced to perform hard labor, was beaten like an animal, interrogated and starved while imprisoned. On his third day home, the Khmer Rouge cadre ordered Chanthan to come with him to be a porter for the militia, but a week later the family was informed that Chanthan had been killed. In mid-December 1976, another of the applicant’s older brothers, Chrouk Chantha was arrested, detained at Ta Suos pagoda in Ta Suos Commune of Svay Chrum District and later transferred and, after there had been a Vietnamese incursion in the area in late 1977, executed at Ta Chey for being a traitor to *Angkar*. In 1978, the applicant’s father, Chrouk Thoeun, was accused of being a “Yvon enemy” and was threatened with execution. He could not bear the thought of allowing the Khmer Rouge to kill him, so he committed suicide by hanging himself. The applicant’s mother, Hem Nhim, was

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arrested later in 1978 and accused of betraying *Angkar*. After the death of her husband and children, the applicant's mother wouldn't leave the house for months and attempted to commit suicide. The applicant feared she and her siblings would be left orphaned and she pleaded with her mother to stay alive. Even after the fall of the regime, the applicant would find her mother staring off into the distance, dazed, or crying silently and alone in her room.⁹¹

- (5) Under Khmer Rouge rule in 1975, **Seang Ry** (12-VSS-00669) was transferred to Andoung Pou Village, Krala Sub-district, Kampong Siem District, Kampong Cham Province where he was assigned to farm rice paddies, help construct Sruoch Chek Dam and build canals from dawn to dusk without adequate food. The applicant was often under accusation for not being able to complete his assigned tasks. Later in the regime, the applicant's brothers became the victims of internal CPK purges. First, in 1977, the applicant's older brother Seang Soeun, chief of the Sugar Unit, was accused of being Khmer Sâr, and was arrested at 6.00 p.m. in Andoung Pou Village, Krala Sub-district and has disappeared ever since. Then, another older brother, SEANG Roeun, who was a member of the Khmer Rouge militia, was accused of being a Khmer Sâr or part of Ta Thuch's East Zone network and was arrested by the chief of Chamraeun Phal Village, Ta Ong Sub-district, Kampong Siem District and also was taken away without a trace.⁹²
- (6) Before 1975, **Pin Dân** (11-VSS-00027) was a monk in Phnom Penh. On 17 April 1975, he was ordered to leave the pagoda and exit the city on national road number 6, eventually arriving in Toul Trach Village, Vihear Thum Sub-district, Kampong Siem District, Kampong Cham Province. There, the applicant was designated as a "new person," defrocked in Wat Phoum Vihear and first sent with his parents to Kong Moha Village and then on to S'ang Village, Prey Chhor District, Kampong Cham Province. There, he was forced to carry dirt and build large dams and dikes in the rice paddy fields. The applicant found life very painful, especially because food was rationed so that just three cans of rice were meant to sustain 20-30 people. In 1977, the applicant was forced to marry a woman named Va Lin Horn along

⁹¹ See Case File No. 004, **D5/1234**, Civil Party Application of SIENG Chanthy, 19 January 2016 at 01192659-62; Case File No. 004, **D5/1234/4/4.1**, Transcript of Hearing on the Substance in Case 002/02, 29 February 2016 at 01454524, 01454529-30, 01454535; Case File No. 004, **D219/792.1.4**, Transcript of Hearing on the Substance in Case 002/02, 1 March 2016 at 01452771-79.

⁹² See Case File No. 004, **D5/673**, Civil Party Application of SEANG Ry, 7 March 2012 at 00911551-52.

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with other 4 couples. The applicant was surrounded by killing—at one point, more than 150 people in a mobile unit were tied up and taken to be killed in Kork Pring—and lost several family members who were accused of being disloyal to *Angkar* or enemies because of their affiliation with the Lon Nol regime. The applicant’s father, who complained of hunger and poor working conditions was blindfolded and taken to be killed at Prey Toul Prich located in Kong Moha Village. His older brother, Mao Chorn, who had been a nurse, was accused of being a former Lon Nol soldier and was also killed at Prey Toul Prich. While, his younger cousin, Chhoun San, who had once worked as a Lon Nol soldier, was taken to be killed in Krasang Pul Village, Mien Sub-district, Prey Chhor District, Kampong Cham Province.⁹³

- (7) On 10 October 1978 **CHEA Choeng’s** (12-VSS-00503) wife and two children were called to the sub-district office in Kbal Chuor Village, Sambok Sub-district, Kracheh District, Kratie Province by Sat, the cooperative chief, and then they were “sent to meet *Angkar*.” The applicant’s wife was raped and killed and his children were killed by Khmer Rouge cadre because they were all believed to be Vietnamese. The applicant learned that militiamen sliced open his wife’s and childrens’ stomachs and stuffed them with grass.⁹⁴
- (8) In April 1975, **PHAT Horn** (12-VSS-00805) was forced to flee Phnom Penh with her parents, ten siblings and grandparents and walk to her mother’s hometown in Sra Ngae Sub-district, Treang District, Takeo Province. There, the applicant and her family members were divided into work groups. Her mother and grandmother were assigned to work in an elderly unit to look after children while her father was assigned to work in a plowing unit. The applicant’s grandfather died of sickness and no access to medicines or medical treatment. The applicant and other children were assigned to work in a children’s unit at a dam site at Baray Pagoda in Baray Village, Prey Sloek Sub-district, Treang District, Takeo Province. Because of starvation and forced labour, the applicant became thin and weak. She missed her family and repeatedly ran away from her work sites to try to visit them, only to be sent for reeducation or harsher work conditions when she returned to her work

⁹³ See Case File No. 004, **D5/230**, Civil Party Application of PIN Dân, 14 January 2010 at 00864764; Case File No. 004, **D219/17**, Written Record of Interview of PIN Dân, 16 September 2014 at 01047083-84.

⁹⁴ See Case File No. 004, **D5/483**, Civil Party Application of CHEA Choeng, 23 November 2012 at 00528048.

group. On one such occasion, she returned home to find her sister dying from acute vomiting and diarrhea. Then, in the rainy season of 1976, the applicant learned that her father had died, but she dared not ask for permission to see him because she was afraid of being taken to be killed; she could only hide and cry. A Khmer Rouge militia member caught her crying and she was again taken for reeducation. This time, she was starved and tied to a pillar and hit with a stick. After this, the applicant was questioned, as a “17 April person,” about her grandmother and father’s background, but the applicant said nothing. In the same year, her younger sister, Mom, became ill and died for lack of medical attention. In mid-1977, her mother was arrested by the Khmer Rouge for having stolen some salt but was released because she was known of being a skilled midwife. The applicant was again given even harsher work assignments because she had cried immediately after she heard of her mother's arrest. At that time, her younger brother Phal Ol died from starvation. By the end of the regime, she had lost eight relatives.⁹⁵

- (9) In 1975, **LIM Seang Keang** (11-VSS-00020) and her family lived in Kouk Kream Village, Vihear Thum Sub-district, Kampong Siem District, Kampong Cham Province. After the Khmer Rouge took control, they sent the applicant and her family to labor in six different locations in Kampong Siem District, Kampong Cham Province, and then back to their hometown. The work was back-breaking: clearing the trees from the land and farming rice day and night with only corn or rice porridge to eat. In late 1976, the Khmer Rouge from the Southwest zone registered her family to be reeducated under the supervision of a new unit chief after the former unit chief was killed. By luck, the new unit chief, Im, knew her husband, so her family members were spared. In early 1977, the unit chief ordered her family to sift stones and dirt at Wat Tboung in Prasat Village, Vihear Thum Sub-district, Kampong Siem District, Kampong Cham Province. Three months later, the Khmer Rouge tried to kill the applicant and her family, but the sound of gunfire rang out, which gave them and other villagers the opportunity to run away to Prey Boeng in Vihear Thum Sub-district, Kampong Siem District, Kampong Cham Province. Eventually, the Khmer Rouge began to arrest her relatives on the accusation that they were related to “17 April people.” In 1977, her aunt and uncle, Kim and Tieng, and their six children were killed because they were 17 April

⁹⁵ See Case File No. 004, **D5/805**, Civil Party Application of PHAT Horn, 23 May 2013 at 00484884-85.

people. Two more pairs of the applicant's aunts and uncles and their children were later killed as well as two of the applicant's older brothers, Cheav and Phiev, and their families.⁹⁶

- (10) **TEP Chanra's** (11-VSS-00226) mother told her in 1975 that her five older brothers and an older sister in-law had been arrested by the Khmer Rouge and were forced to become Khmer Rouge soldiers. One of her older brothers, Chhaen, had been a Buddhist monk in Wat Prey Kokir in Trapeang Bon Village, Prey Kokir Sub-district, Chantrea District, Svay Rieng Province before 17 April 1975, but the Khmer Rouge defrocked him and the other monks in the Wat after they took control. In the same year, her family was forcibly transferred to Doun Tey Village, Tuol Sdei Sub-district, Chantrea District, Svay Rieng Province. Later, in 1978, the applicant's family and all the other residents were forcibly transferred westward by the Khmer Rouge and replaced by people from the Southwest Zone. During the forced transfer, the applicant's five brothers and sister in-law who were Khmer Rouge cadre were separated from her family and disappeared, never to be found again. The rest of her family members were forcibly transferred several more times, as the fighting with Vietnam waged on. Around that same time, the applicant's relatives, Vong Phaen, his wife and their children were forcibly transferred from Svay Rieng Province to Battambang Province and also disappeared.⁹⁷

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

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

36. Inexplicably, several Civil Party applicants were deemed inadmissible despite suffering harms derived from policies and crimes imputable to Yim Tith *within* the Northwest Zone and six specified sites in the Southwest Zone during the periods when he exercised authority in these areas. As detailed in Annex D (Civil Party Applicants Harmed by

⁹⁶ See Case File No. 004, **D5/228**, Civil Party Application of LIM Seang Keang, 7 June 2011 at 00552401-03.

⁹⁷ See Case File No. 004, **D5/165**, Civil Party Application of TEP Chanra, 29 June 2011 at 00397969-70.

Conduct at Zones and Crime Sites within the Scope of Case 004), 66 Appellants meet the Admissibility Order's own narrow (and erroneous) criteria for admissibility.

37. In addition, while not specifically enumerated as one of the six sites in the Southwest Zone, 268 Applicants suffered harms in the Southwest Zone in areas over which Yim Tith had authority and thus should have been admitted as Civil Parties according to the Admissibility Order's own narrow criteria, which specifically contemplates "admission of applicants whose alleged harm did not necessarily stem from crimes committed specifically in the locations identified in the OCP submissions, or in the Closing Order."⁹⁸
38. Yim Tith held wide powers within both the Kirivong District and Sector 13 Committees of the Southwest Zone. The International CIJ and the International Co-Prosecutor allege that he was Deputy Secretary and later Secretary of the Kirivong District Committee for the full duration of the DK regime and sat on and then led the Sector 13 Committee from as early as 1976 through the fall of the regime.⁹⁹ The ICIJ Closing Order alleges that, notwithstanding his official titles in these areas, Yim Tith held broad *de facto* authority not just in Kirivong District or Sector 13, but for "the wider Southwest Zone."¹⁰⁰ This is supported by the fact that he traveled widely, took on responsibilities well beyond his official titles and was viewed by many as acting as a proxy for Ta Mok, Southwest Zone and, later, Northwest Zone Secretary.¹⁰¹ Witnesses report Yim Tith was often seen traveling throughout the zone, attending zone level meetings, greetings visitors and guests, and inspecting worksites with Ta Mok.¹⁰² He was seen working at the Southwest Zone office and is alleged to have had responsibility for a number of zone-level functions, including the zone messenger unit and management of zone supplies.¹⁰³ Even after moving from the Southwest Zone to the Northwest Zone, the ICIJ Closing Order alleges that Yim Tith frequently traveled back and forth and exercised "concurrent authority and responsibility in both zones."¹⁰⁴ In sum, in keeping with the PTC's jurisprudence on the matter, Appellants who suffered harms as a direct

⁹⁸ Admissibility Order at para. 35, *citing* Case File No. 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, paras. 49, 66, 68, 69-72, 77.

⁹⁹ ICIJ Closing Order, paras. 327-32.

¹⁰⁰ ICIJ Closing Order, paras. 348-350; *see also* heading preceding para. 348.

¹⁰¹ ICIJ Closing Order, paras. 332, 334-35.

¹⁰² ICIJ Closing Order, paras. 348-50.

¹⁰³ ICIJ Closing Order, para. 350.

¹⁰⁴ ICIJ Closing Order, para. 352.

consequence of the four national policies implemented to advance the common criminal plan of JCE A (section V(A)(1) *supra*) as well as those that suffered a collective injury as victims of specific targeted groups or communities (section V(B)(2) *supra*) should be admitted as Civil Parties. The location of Appellants' harms within the crime sites and/or zones enumerated in the International CIJ Closing Order provides an *additional* linkage between their harms and Yim Tith's criminal activities. As detailed in Annex D (Civil Party Applicants Harmed by Conduct at Zones and Crime Sites within the Scope of Case 004), 66 Appellants were injured as a result of policies and crimes imputable to Yim Tith within the Northwest Zone and six specified sites in the Southwest Zone and 268 Appellants were injured as a result of crimes and policies imputable to Yim Tith throughout Southwest Zone.

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

39. By limiting the geographic scope of Civil Party admissibility, the International CIJ excluded victims who would be otherwise admissible prior to the CIJs' *Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 bis*. This result runs counter to the explicit statements in the Admissibility Order and those previously made by the CIJs that the reduction in the scope of the investigation had no impact on the admissibility of Civil Party applicants.¹⁰⁵ The International CIJ therefore erred in his refusal to take into account crimes alleged in the Case 004 submissions taking place outside of the Northwest Zone or six specified sites in the Southwest Zone, thereby causing severe prejudice to Appellants.
40. On 4 March 2016, the International CIJ issued a *Request for Comments Regarding Alleged Facts Not to be Investigated Further*, highlighting thirteen facts alleged in the Third Introductory Submission and Supplementary Submissions that the judges did not intend to further investigate.¹⁰⁶ On 13 June 2017, the International CIJ issued the *Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 bis*, in which he excluded factual allegations, pursuant to Internal Rule 66 *bis*, relating

¹⁰⁵ See Admissibility Order, para. 39 ("Facts excluded on the basis of Internal Rule 66 *bis* alleged by civil party applicants may still form the basis of a decision of admissibility, should they fulfil the remaining conditions.")

¹⁰⁶ Case File No. 004, **D302**, Request for Comments Regarding Alleged Facts not to be Investigated Further, 4 March 2016, paras 7, 10 (excluding facts 1 through 13 and inviting the parties to file submissions as to whether they consider dismissal pursuant to Internal Rule 67 and/or the application of Internal Rule 66 *bis* to be appropriate).

to (a) Damnak Reang Execution Site, (b) forced marriage near Kang Hat Dam, (c) sites in Sector 5, Northwest Zone,¹⁰⁷ (d) Anlong Vil Breng and Related Execution Site; (e) Phnom Tra Chek Chet Worksite; (f) Banteay O Ta Krey Execution Site; (g) Wat Kandal Security Centre; (h) Wat Banteay Neang Security Centre; and (i) Wat Thoamayutt Security Centre.¹⁰⁸ Under Internal Rule 66 *bis* (3), the CIJs must determine the effect of the decision to reduce the scope of the judicial investigation on the “status of Civil Parties and right of Civil Party applicants to participate in the judicial investigation.”¹⁰⁹ In doing so, the International CIJ explicitly stated that the exclusion of the above facts pursuant to Internal Rule 66 *bis* would “not affect the status of Civil Parties or the right of Civil Party applicants to participate in the judicial investigation.”¹¹⁰ The Admissibility Order similarly states that the facts excluded on the basis of Internal Rule 66 *bis* “may still form the basis of a decision of admissibility.”¹¹¹

41. Despite the repeated statements that the Internal Rule 66 *bis* decision would not impact Civil Party status, the Admissibility Order nevertheless limits Civil Party admissibility in Case 004 to “applicants who have suffered harm in the Northwest Zone from early 1977 until at least 6 January 1979;”¹¹² “applicants who have suffered harm as a consequence of the charged nation-wide common plan, alleged from at least 1976 until 6 January 1979, to eliminate the Khmer Krom, in whole or in part;”¹¹³ “any applicant who has suffered harm as a consequence of the... crimes alleged at Wat Pratheath Security Centre between at least September-October 1975 until 6 January 1979;”¹¹⁴ and “any application who has suffered harm... at Wat Pratheath Security Centre, Kraing Ta Chan Security Centre, Preil Village Execution Site, Wat Angkun Execution Site, Slaeng Village Forest Execution Site, or Prey Sokhon and Wat Ang Serei Muny Execution Site[s].”¹¹⁵ The full scope of the crimes originally alleged in Case 004, however,

¹⁰⁷ These sites are: Phnom Trayoung Security Centre and Worksite; Spean Spreng and Prey Roneam Dam worksites; Wat Preah Net Preah and related detention and execution sites; Phnum Chakrey Security Centre and Execution Site; Prey Taruth Execution Site; Wat Chamkar Khnol Execution Site; and Trapeang Thma Dam Worksite. See Case File No. 004, **D359**, Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 *bis*, 13 June 2017, para. 4.

¹⁰⁸ Case File No. 004, **D359**, Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 *bis*, 13 June 2017, para. 15.

¹⁰⁹ Internal Rule 66 *bis* (3).

¹¹⁰ Case File No. 004, **D359**, Decision to Reduce the Scope of Judicial Investigation Pursuant to Internal Rule 66 *bis*, 13 June 2017, para. 14.

¹¹¹ Admissibility Order, para. 39.

¹¹² Admissibility Order, para. 37.

¹¹³ Admissibility Order, para. 38 (a).

¹¹⁴ Admissibility Order, para. 38 (b).

¹¹⁵ Admissibility Order, para. 38 (c).

spanned a much greater geography. The decision to place geographic restrictions on Civil Party admissibility effectively bars otherwise previously qualified Civil Party applicants from continuing to participate in the proceedings.

42. For example, as detailed in Annex E (Civil Party Applicants Found Inadmissible Due to the Reduction of Scope of Trial), the Admissibility Order declared ten Civil Party applicants inadmissible, despite evidence that these applicants had suffered harms at the Trapeang Thma Dam worksite, a relevant crime site identified in the Third Introductory Submission that was later excluded in the International CIJ's Internal Rule 66 *bis* order.¹¹⁶
43. The International CIJ disregarded the broader allegations in the original case against Yim Tith and examined only those he considered to be within the newly restricted purview of Case 004. Civil Party applicants cannot be denied their right to participate in the Case 004 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.
44. Furthermore, the International CIJ's interpretation of the impact of the reduction of the scope of the judicial investigation runs counter to the rights of victims, which require that the Court take a broad view of Civil Party admissibility. The PTC has made clear that, according to fundamental principles of the ECCC, the Internal Rules shall always be interpreted so as to safeguard the interests and rights of the victims.¹¹⁷ 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."¹¹⁸ The Admissibility Order does precisely the opposite by unreasonably limiting the scope of Civil Party admissibility in Case 004.

¹¹⁶ The ten Appellants include: VINH SaMinh (13-VSS-00026), MOUK Samay (13-VSS-00057), CHEN Savey (13-VSS-00073), KHUT Khonh (13-VSS-00085), CHHIM Sam Poeung (13-VSS-00542), PIK Oeup (13-VSS-00543), MLIS Kim Chhat (13-VSS-00545), KHVEK Pach (13-VSS-00548), CHROUK Phors (13-VSS-00335) and ORM Chhai Lang (13-VSS-00358).

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 65. *See also* Preliminary Submissions *supra*.

45. In light of the foregoing, Civil Party Co-Lawyers request the PTC to find that the Admissibility Order erroneously rejected Civil Party applicants identified in Annex B (Annex E: Civil Party Applicants Found Inadmissible Due to the Reduction of the Scope of Trial), who suffered harms as a consequence of the crimes alleged at Damnak Reang Execution Site, Kang Hat Dam Worksite, Phnom Trayoung Security Centre and Worksite, Trapeang Thma Dam Worksite and Anlong Vil Breng and related execution site in the Third Introductory Submission and the First and Third Supplementary Submissions that were later excluded under Internal Rule 66 *bis*.

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

46. The Admissibility Order fails to meet the minimum standards set out by the PTC for a reasoned decision. The PTC has cautioned the CIJs that they must issue a reasoned decision on each Civil Party application in order to respect fundamental principles of legality, including transparency and legal certainty.¹¹⁹ 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.”¹²⁰ In particular, the right to appellate review provided by the Internal Rules is rendered meaningless if Civil Parties are not informed of the reasoning behind the decision they are appealing. Similarly, the PTC is unable to conduct a proper and effective appellate review of the rejection without a sufficient understanding of the underlying reasoning, if any.¹²¹

¹¹⁹ 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”.

¹²⁰ 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.

¹²¹ 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.

47. In Case 002, the PTC found that the CIJs' rejection of Civil Party applications did not comport with the reasoned decision requirement.¹²² 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."¹²³ Further, the PTC observed that the annexed table that contained the CIJs' additional reasoning was itself limited to a maximum of two sentences per applicant, with the length of each sentence between five and fifteen words and the substance not specific to the individual.¹²⁴
48. The PTC's decision applies with equal force to the Admissibility Order here. The National CIJ's inquiry ended at a jurisdictional threshold, without any evaluation of the underlying merits of the Civil Party applications. The International CIJ ruled on the admissibility of Civil Party applications but rejected a vast number of them *en masse* without proper individual consideration. As in Case 002, the reasoning, or lack thereof, for the rejections was limited to a few short, recycled statements. Specifically, the Admissibility Order rejects nearly two-thirds 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 was more likely than not to be true that the applicant suffered as a consequence of one of the crimes charged."¹²⁵ In three cases, the International CIJ merely restates the facts without providing reasons for rejection.¹²⁶ The Admissibility Order does not provide any clarification as to the meaning of these grounds for dismissal or specifically what the International CIJ found lacking in the application. The lack of specificity as to the reasons for rejecting each Civil Party applicant does not allow Appellants to meaningfully exercise their appellate rights.
49. As detailed in Annex F (Grounds for Inadmissibility of Civil Party Applicants), Civil Party Co-Lawyers request that the PTC overturn the Admissibility Order in all cases where the Civil Party application was found inadmissible for being "outside the scope of the case file" (ground 1), where it was purportedly "not shown that it is more likely

¹²² 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.

¹²³ 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.

¹²⁴ 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.

¹²⁵ Case File No. 004, **D384.2**, Annex B: List of Civil Party Applications Inadmissible, 28 June 2019.

¹²⁶ These cases include Civil Party applicants CHHUN Samân (12-VSS-00582), NHIM Kol (12-VSS-00672) and Y Moy (13-VSS-00707).

than not to be true that the victim suffered as a consequence of the crimes charged” (ground 3) or where the International CIJ failed to provide any reasoning in support of the rejection of a Civil Party application (ground 9) on the basis that rejection of these Civil Party applications was not issued by a reasoned order.

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

50. The Admissibility Order erred in dismissing Civil Party applicants for failing to provide sufficient information. As detailed in Annex G(1) (Admissibility Arguments for Civil Party Applicants Found Inadmissible for Insufficiency of the Evidence or Related Grounds (Foreign-National Legal Teams)) and G(2) (Admissibility Arguments for Civil Party Applicants Found Inadmissible for Insufficiency of the Evidence or Related Grounds (National Legal Teams)), the standard of proof and sufficiency of information required by the Internal Rules (read along with the mitigating factors detailed by the International CIJ in the Admissibility Order) were met by these applicants.
51. 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.¹²⁷ 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.”¹²⁸ Information is deemed sufficient when it allows the CIJs to be satisfied that the facts alleged are more likely than not to be true.¹²⁹
52. 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.¹³⁰ The location of Internal Rule 23 *bis* within the General Provisions sub-section of the Procedure section of the Internal Rules indicates that it

¹²⁷ Internal Rules 23 *bis* (1) and (4); ECCC Practice Direction on Victims Participation (Rev. 1), art. 3.2.

¹²⁸ Internal Rules 23 *bis* (4).

¹²⁹ 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.

¹³⁰ 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.

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.¹³¹

53. The CIJs must determine whether there are *prima facie* credible grounds indicating that the applicant suffered harm related to the facts under investigation on the basis of the elements in the case file. The PTC has noted that due to the gravity of the crimes addressed at the ECCC, “it would be unrealistic to see the injury caused from alleged mass atrocities only on an individual basis because it encompasses individual parameters.”¹³² Acknowledging that mass atrocities stem from systematic and widespread policies directed towards particular groups and individuals, as well as an entire community, the PTC has determined that “individual applications to be joined as a Civil Party must be seen in the special circumstances of the conflict.”¹³³
54. In the Admissibility Order the International CIJ acknowledged three factors that further mitigate the required proof of harm for Civil Party applicants, namely:
- a) The passage of time and the effect that this may have on an applicant’s ability to provide documentary evidence in regards to harm suffered, including medical records where physical harm is alleged;
 - b) The capacity, following the DK period, to extensively and accurately identify, respond, or record the impact that the conditions of the DK period had on the psychological health of the population; [and]
 - c) The evacuation, movement, and resettlement of the population in different regions, and the effect that this had on an applicant’s ability to provide proof of ownership where loss of property is alleged, and the ability to provide proof of income where loss of income is alleged.¹³⁴

¹³¹ 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*.

¹³² 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.

¹³³ 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.

¹³⁴ Admissibility Order, para. 41.

55. Further, the fact that the CIJs failed to keep victims properly and timely informed throughout the proceedings, in violation of Internal Rule 21(1)(c), should serve as an additional factor mitigating the required proof of harm.¹³⁵ Access to information is particularly crucial during the pre-trial phase to victims who may seek to join as Civil Parties. As victims do not have access to the case file, they are fully dependent on the information released by the CIJs in deciding whether or not to apply as Civil Parties. Here, while the 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,¹³⁶ and did not specify the crime sites related to Yim Tith until 9 December 2015.¹³⁷ Even then, 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.¹³⁸ The PTC should take this breach of victims’ rights into consideration when determining the sufficiency of Appellants’ evidence, since the CIJs’ failure to disclose critical information in a timely manner hindered Appellants’ ability to conduct timely investigations, properly analyze relevant evidence and provide details concerning relevant harm.

¹³⁵ Under Internal Rule 21 (1)(c), “[t]he ECCC shall ensure that victims are kept informed and that their rights are respected *throughout* the proceedings” (emphasis added). 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*. 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 (emphasizing 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.’”).

¹³⁶ 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>.

¹³⁷ Statement by the International Co-Investigating Judge Regarding Case 004, 9 December 2015, available at <https://www.eccc.gov.kh/sites/default/files/media/ECCC%20PR%209%20Dec%202015%20Eng.pdf>.

¹³⁸ 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> (“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.”).

56. The Admissibility Order rejected Civil Party applications under four grounds related to the sufficiency or quality of the information provided in the Civil Party Application: (i) it is 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); (ii) the applicant falls outside the temporal scope of the case file (ground 5); (iii) insufficient time frames and locations to establish that application should be admitted to the case file (ground 6); (iv) or the testimony cannot be reconciled with evidence or is inconsistent (ground 7). In doing so, the International CIJ committed numerous errors of law and fact. For instance, in dismissing one Civil Party under ground 5, the International CIJ erred by limited the facts considered to only executions that took place in 1973 and 1974, ignoring evidence of several other crimes within the scope of Case 004 that took place between 1975 and 1979.¹³⁹ In other cases under ground 6, the International CIJ erroneously identified key dates and locations as “unspecified” when they are actually sufficiently detailed in the documents that comprise the Civil Party’s application so as to meet the standard of proof required for admissibility.¹⁴⁰ Likewise, several Civil Parties were found inadmissible in part under ground 7 where the precise inconsistency identified by the International CIJ is not apparent, a proper reading of the evidence demonstrates that there is no inconsistency, or the purported inconsistency is minor or immaterial such that it should not be determinative of admissibility.¹⁴¹
57. The Civil Party Co-Lawyers submit that the International CIJ erred in relying on these grounds to reject the Civil Party applications of the victims identified in Annexes G(1) and G(2) (Admissibility Arguments for Civil Party Applicants Found Inadmissible for Insufficiency of the Evidence or Related Grounds). The individual error is identified alongside each Civil Party Applicant in these Annexes, and for the

¹³⁹ See, e.g., the International CIJ’s reasoning for his finding of inadmissibility for Civil Party applicant Yan San (11-VSS-00178) and Co-Lawyers for submissions in their Annex F. Case File No. 043, **D384.2**, Annex B: Civil Party Applications Inadmissible, 28 June 2019; Co-Lawyers for Civil Parties, Appeal Against Order on Civil Party Applicants Admissibility, Annex F: Admissibility Arguments for Civil Party Applicants Found Inadmissible for Insufficiency of the Evidence or Related Grounds (filed as an attachment to this appeal brief) [hereinafter “Annex F”].

¹⁴⁰ See, e.g., the International CIJ’s reasoning for his finding of inadmissibility for Civil Party Applicant SAO Kim Seang (16-VSS-00077) and Co-Lawyers for Civil Parties submissions in their Annex F. Case File No. 004, **D384.2**, Annex B: Civil Party Applications Inadmissible, 28 June 2019; Annex F.

¹⁴¹ See, e.g., the International CIJ’s reasoning for his finding of inadmissibility for Civil Party Applicant MOM Mony (13-VSS-00566), Prom Sãn (11-VSS-00264) and Long Chhoeum (11-VSS-00308) and Co-Lawyers for Civil Parties submissions in their Annex F. Case File No. 004, **D384.2**, Annex B: Civil Party Applications Inadmissible, 28 June 2019; Annex F.

reasons indicated therein, Civil Party Co-Lawyers request that the PTC overturn the International CIJ's finding of inadmissibility and grant these victims Civil Party status.

E. Fifth Ground of Appeal: Severance of Cases 004/02 and 004/1 from Case 004 should not limit Civil Party admissibility

58. The International CIJ misconstrued the Cases 004/2 and 004/1 Severance Orders as limiting his ability to consider crimes alleged in the broader Case 004 pre-severance file, including those committed outside the Northwest Zone, thereby causing severe prejudice to Appellants.
59. On 16 December 2016, the CIJs issued the *Order for Severance of Ao An*, severing Ao An from Case 004 and establishing Case 004/2.¹⁴² 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.”¹⁴³ Similarly, on 5 February 2016, the CIJs issued the *Order for Severance of Im Chaem from Case 004* (collectively with the Ao An Severance Order, the “Severance Orders”), finding it “in the interest of all parties to sever Im Chaem from Case 004.”¹⁴⁴ As evidenced by the Impugned Order, however, the scope for Civil Party admissibility in Case 004 in the wake of the Severance Orders was confined solely to “applicants who have suffered harm in the Northwest Zone from early 1977 until at least to 6 January 1979,” the nationwide policy to eliminate the Khmer Krom, the policy of ill-treatment at Wat Pratheat Security Centre and the six crime sites identified in the Southwest Zone.¹⁴⁵ 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.
60. The International CIJ's interpretation of the impact of the Severance Orders on the scope of the relevant alleged crimes runs counter to the rights of victims, which require

¹⁴² 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].

¹⁴³ Severance Order Case 004/2, para. 4 (emphasis added).

¹⁴⁴ Case File 004/07-09-2009-ECCC-OCIJ, D286/7, Order for Severance of Im Chaem from Case 004, 5 February 2016, para. 5 [hereinafter “Severance Order Case 004/1”].

¹⁴⁵ Case File No. 004, **D384**, International Co-Investigating Judge's Order on Admissibility of Civil Party Applicants, 28 June 2019, para. 37.

that the Court take a broad view of Civil Party admissibility. The PTC has made clear that, according to fundamental principles of the ECCC, the Internal Rules shall always be interpreted so as to safeguard the interests and rights of the victims.¹⁴⁶ 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."¹⁴⁷ The Impugned Order does precisely the opposite by severely limiting the scope of Civil Party admissibility in Case 004.

61. Notably, the CIJs provided no prior indication that the Severance Orders 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 Orders, despite Internal Rule 66 *bis*, which requires that parties be granted an opportunity to make submissions on the matter.¹⁴⁸ The Severance Orders do not include any reasoned decision by the CIJs regarding their potential impact on the Civil Parties nor 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.¹⁴⁹ 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 Orders on Civil Parties was the distinct deadlines for applications triggered by the conclusion of the investigations.¹⁵⁰

¹⁴⁶ 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.

¹⁴⁷ 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*.

¹⁴⁸ 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.").

¹⁴⁹ 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.").

¹⁵⁰ The Severance Orders 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

62. The Impugned Order's *en masse* rejection of applicants who would have, but for the Severance of Cases 004/2 and 004/1, qualified as Civil Parties in Case 004 belies the Severance Orders' own pronouncements that their issuance would cause no prejudice to the rights of any of the parties¹⁵¹ and that the severance would be in the interest of all parties.¹⁵² Instead, the Severance Orders became determinative of Civil Party admissibility for large swaths of applicants, including Appellants. As a result of the Severance Orders, the International CIJ disregarded the broader allegations in the original Case 004, including additional crime sites in the Central, Northwest and Southwest Zones, and examined only those allegations he considered to be within the newly restricted purview of Case 004.¹⁵³ Civil Party Applicants should not be denied their rightful place in the Case 004 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.
63. In light of the foregoing, Civil Party Co-Lawyers request that the PTC find that the International CIJ's interpretation of the Severance Orders impermissibly prejudiced the rights of Appellants and overturn the International CIJ's admissibility decisions. As detailed in Annexes B, C, and E, a number 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.

VI. CONCLUSION

64. Civil Party Co-Lawyers submit that the Admissibility Order erred in law and fact in rejecting the Civil Party Appellants identified in Annex A.
65. 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, including those in Annex A, continue to exercise Civil Party Rights in the

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.

¹⁵¹ Severance Order Case 004/2, para. 4.

¹⁵² Severance Order Case 004/1, para. 5.

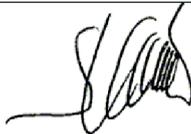
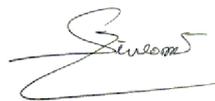
¹⁵³ Admissibility Order, para. 37 (limiting admissibility to four policies perpetrated in the Northwest Zone for which Yim Tith was allegedly responsible).

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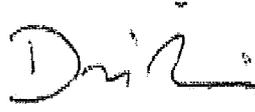
absence of a decision by a supra-majority of the PTC to the contrary; or, in the alternative,

- (2) Overturn the Admissibility Order as erroneous in law and fact and reconsider the Appellants' Civil Party applications in Annex A in light of the proper admissibility standards, including taking into account the relevance of alleged crimes committed outside the Northwest Zone and six specified Southwest Zone sites;
- (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 as "Complainants."

Respectfully submitted,

Date	Name	Place	Signature
13 September 2019	CHET Vanly	Phnom Penh, Cambodia	
13 September 2019	HONG Kimsuon	Phnom Penh, Cambodia	
13 September 2019	LOR Chuntly	Phnom Penh, Cambodia	
13 September 2019	SAM Sokong	Phnom Penh, Cambodia	
13 September 2019	SIN Soworn	Phnom Penh, Cambodia	
13 September 2019	TY Srinna	Phnom Penh, Cambodia	
13 September 2019	VEN Pov	Phnom Penh, Cambodia	

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13 September 2019	Martine JACQUIN	Phnom Penh, Cambodia	
13 September 2019	Daniel MCLAUGHLIN	San Francisco, United States	
13 September 2019	Nushin SARKARATI	San Francisco, United States	