

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

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**CIVIL PARTY LAWYERS' REQUEST FOR NECESSARY MEASURES TO BE
TAKEN BY THE PRE-TRIAL CHAMBER TO SAFEGUARD THE RIGHTS OF
CIVIL PARTIES TO CASE 004/2**

Filed by:

Lawyers for Civil Parties

HONG Kimsuon

LOR Chunthy

SAM Sokong

SIN Soworn

Emmanuel JACOMY

Martine JACQUIN

Daniel MCLAUGHLIN

Nushin SARKARATI

Before:

Pre-Trial Chamber

Judge PRAK Kimsan

Judge Olivier BEAUVALLET

Judge NEY Thol

Judge BAIK Kang Jin

Judge HUOT Vuthy

Distribution to:**Co-Investigating Judges**

YOU Bunleng
Michael BOHLANDER

Co-Prosecutors

CHEA Leang
Brenda HOLLIS

Co-Lawyers for Ao An

MOM Luch
Richard ROGERS
Gôran SLUITER

Lawyers for Civil Parties

CHET Vanly
KIM Mengkhy
TY Srinna
VEN Pov

Laure DESFORGE
Isabelle DURAND
Lyma NGUYEN

INTRODUCTION

1. The Civil Party Lawyers in Case 004/2 (“CPLs”) hereby respectfully request that the Pre-Trial Chamber urgently consider Civil Party rights and interests in their deliberations following the issuance of the International Pre-Trial Chamber Judge’s Memorandum of 12 March 2020 (“Memorandum of 12 March”)¹ and the Pre-Trial Chamber Presiding Judge’s Memorandum of 16 March 2020 (“Memorandum of 16 March”) in his individual capacity.²
2. The CPLs are obliged to raise the serious and repeated violations of the rights of Civil Parties to be heard, to representation, to legal certainty, and to the transparency and publicity of these proceedings. The violations of these rights are elaborated below.
3. Despite clear and convincing legal rules dictating the transfer of the Case 004/2 Indictment and underlying case file to the Trial Chamber (“TC”) in the absence of a supramajority decision by the Pre-Trial Chamber (“PTC”), the necessary administrative steps have not been taken by the Office of Administration. As a result, Case 004/2 has been caught in procedural limbo between the PTC and the TC with no clear path to resolution – a circumstance causing grave harm to the rights of the Civil Parties.
4. The CPLs respectfully submit that the procedural uncertainty surrounding Case 004/2 has created an untenable situation that disregards the fundamental rights of the victims. As a preliminary matter, the plain language of the ECCC Agreement, interpreted in light of its object and purpose, makes clear that the International Co-Investigating Judge’s Closing Order indicting Ao An should continue to the TC absent a PTC supermajority decision to the contrary. To date, and despite the administrative steps taken by the International Judges of the PTC outlined in their Memorandum of 12 March 2020, the Office of Administration has declined to administratively transfer Case 004/2 to the TC absent an “authoritative clarification” or an “actionable instruction” from the chamber.³ As a result, Case 004/2 is caught in procedural limbo with devastating impacts on the rights of victims enshrined in ECCC legal texts. Neither the

¹ Case File No. 004/2/07-09-2009-ECCC (“Case 004/2”), **D359/31.1.2**, Interoffice Memorandum issued by Judge Olivier BEAUVALLET and Judge Kang Jin BAIK, International Judges of the Pre-Trial Chamber, Subject: Transfer of Case File 004/2, 12 March 2020.

² Case 004/2, **D359/31.1.1**, Interoffice Memorandum issued by Judge PRAK Kimsan, President of the Pre-Trial Chamber, Subject: Re-Confirmation of the Decision on Case File 004/2, 16 March 2020.

³ Interoffice Memorandum issued by Tony KRAHN, Acting Director of Administration, and Knut ROSANHAUG, Deputy Director of Administration, Subject: Request for Clarification Under Internal Rule 10(2), para. 13, 31 January 2020 (*see* Attachment 7 to Case 004/2, **D359/31.1.2**, Interoffice Memorandum issued by Judge Olivier BEAUVALLET and Judge Kang Jin BAIK, International Judges of the Pre-Trial Chamber, Subject: Transfer of Case File 004/2, 12 March 2020).

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CPLs nor the Civil Party Lead Co-Lawyers (“CPLCLs”)—who have yet to even be recognized in the case—have been notified of all submissions in Case 004/2, or copied on all email correspondence, rendering them unable to provide meaningful representation to the Civil Parties. The CPLs request that the PTC promptly take all necessary measures to protect the rights of the Civil parties by:

- a. Issuing or ordering issued by the appropriate ECCC body a clear public statement on the status of Case 004/2 and anticipated next steps to resolve the current procedural deadlock;
- b. Order that the CPLCLs be granted access to the Case 004/2 case file at this stage;
- c. Ordering that parties, chambers, and all other bodies of the ECCC distribute to Case 004/2 CPLs⁴ all previous communications and filings concerning Case 004/2 proceedings which were not previously distributed to them, including filings and communications to the Trial Chamber; and
- d. Ordering that, henceforth, parties, chambers, and all other bodies of the ECCC must distribute all communications and filings concerning Case 004/2 proceedings to the Case 004/2 CPLs unless and until the ECCC has officially recognized CPLCLs in Case 004/2.

PROCEDURAL HISTORY

5. The Civil Party Lawyers recall the procedural history raised by the International Pre-Trial Judges in their memorandum of 12 March 2020⁵ and by the Presiding Judge in his individual capacity in his memorandum of 16 March 2020,⁶ and further wish to highlight procedural developments as follows.
6. On 16 August 2018, the Co-Investigating Judges (“CIJs”) issued two separate Closing Orders in Case 004/2.⁷ The National CIJ held that Ao An did not fall under the ECCC’s personal jurisdiction as either a senior leader or as most responsible and dismissed the

⁴ All national and international CPLs that represent clients in Case 004/2 are listed by name under the “filed by” and “distributed to” headings on the cover pages of this filing.

⁵ See Case 004/2, **D359/31.1.2**, Interoffice Memorandum issued by Judge Olivier BEAUVALLET and Judge Kang Jin BAIK, International Judges of the Pre-Trial Chamber, Subject: Transfer of Case File 004/2, 12 March 2020.

⁶ See Case 004/2, **D359/31.1.1**, Interoffice Memorandum issued by Judge Kimsan PRAK, President of the Pre-Trial Chamber, Subject: Re-Confirmation of the Decision on Case File 004/2, 16 March 2020.

⁷ Case 004/2, **D360**, International Co-Investigating Judge’s Closing Order, 16 August 2018; Case 004/2, **D359**, National Co-Investigating Judge’s Closing Order, 16 August 2018.

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case against Ao An (“Dismissal Order”).⁸ Conversely, the International CIJ held that the ECCC did have jurisdiction over Ao An and indicted him on numerous charges (“Indictment”).⁹ In conjunction with the Indictment, the International CIJ rendered substantive admissibility decisions in a separate order, in which he rejected a number of Civil Party applications in Case 004/2.¹⁰

7. On 29 November 2018, the CPLs filed their submissions on appeal against the *Order on Admissibility of Civil Party Applicants* (“Civil Party Admissibility Appeal”).¹¹
8. On 19 December 2019, the PTC issued its *Considerations on Appeals Against Closing Orders* (“Considerations”) but failed to reach a supermajority decision on whether to uphold the Indictment or Dismissal Order.¹² ***The PTC has yet to issue a decision on the Civil Party Admissibility Appeal.***
9. On 26 December 2019, the International Co-Prosecutor (“ICP”) sent a letter to the TC requesting an extension on the 15-day deadline to submit her list of witnesses and requesting that the TC convene a trial management meeting.¹³ On 30 December 2019, Ao An sent a letter to the TC requesting that the TC confirm it was not seized of Case 004/2 or, alternatively, that the TC provide guidance as to the filing of preliminary objections.¹⁴ ***Neither the CPLs nor the CPLCLs were copied on either of these communications. To the best of the CPL’s knowledge, the TC did not convene a trial management meeting or provide guidance as to the filing of preliminary objections.***
10. The ICP and Ao An Defense have since made at least five filings to the TC in hard copy through the Court Management Section.¹⁵ Although these filings purport to be

⁸ Case 004/2, **D359**, National Co-Investigating Judge’s Closing Order, 16 August 2018.

⁹ Case 004/2, **D360**, International Co-Investigating Judge’s Closing Order, 16 August 2018.

¹⁰ Case 004/2, **D362**, International Co-Investigating Judge’s Order on Admissibility of Civil Party Applicants, 16 August 2018.

¹¹ Case 004/2, **D362/5**, Appeal Against Order on the Admissibility of Civil Party Applications, 29 November 2018.

¹² Case 004/2, **D359/24 & D360/33**, Considerations on Appeals Against Closing Orders, 19 December 2019.

¹³ Case 004/2, International Co-Prosecutor’s Request for Extension to File her Witness and Expert List, filed 26 December 2019 (CPLs have not been provided access to this document and, therefore, this citation is based on footnote 6, p. 1 of Case 004/2, International Co-Prosecutor’s Rule 80 Witness and Expert List, filed 13 January 2020).

¹⁴ Case 004/2, **D359/27.1.1**, Request for confirmation that the Trial Chamber has not been lawfully seized of Case 004/02; in the alternative, request for time extension and guidance for filing preliminary objections under Internal Rule 89, 30 December 2019 (we learned of this filing because it appeared in annex of another filing).

¹⁵ Case 004/2, International Co-Prosecutor’s Response to Ao An’s Request Regarding the Seizure of Case 004/2, filed 6 January 2020; Case 004/2, International Co-Prosecutor’s Rule 80 Witness and Expert List, filed 13 January 2020; Case 004/2, Summary of AO An’s Preliminary Objections under IR 89(1), filed 20 January 2020; Case 004/2, AO An’s Rule 80 Witness and Expert List Submission with Confidential Annex 1 and his Response to the International Co-Prosecutor’s Rule 80 Witness and Expert List Submission, filed 28 January 2020; Case 004/2, International Co-Prosecutor’s Request that the Trial Chamber Take Action to Obtain Access

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distributed to “All Civil Party Lawyers in Case 004/2,” the filings were not posted to Zylab or formally notified in any way¹⁶ and the CPLs did not receive copies. The CPLs only learned of the filings through the CPLCLs, who were sent informal “courtesy copies” by the ICP and Ao An’s defense counsel.¹⁷ *The CPLs have no means of confirming that no other filings have been made by the parties in Case 004/2.*

11. On 21 January 2020, the Greffier of the TC sent an e-mail informing the PTC judges, the Office of Administration, Ao An, and the Co-Prosecutors that, although they were aware of the considerations, neither the Case 004/2 Indictment nor the underlying case file had been administratively transferred to the TC and, therefore, they were not able to take action on the case.¹⁸ On 10 February 2020, the greffier of the TC sent an e-mail to the co-prosecutors and Ao An defense, reiterating that “[t]he *Trial Chamber* has still not been *formally notified* by the Pre-Trial Chamber of the Considerations. The case file has not been forwarded. It is up to the Pre-Trial Chamber to initiate both actions.”¹⁹ *Once again, neither the CPLs nor the CPLCLs were copied on these communications. The CPLs have had no means of verifying whether they have been omitted from the list of recipients to other Case 004/2 communications from the TC Greffier or other ECCC officials, though the PTC’s Memorandum of 12 March 2020, detailed below, suggests this has been the case.*
12. On 4 February 2020, the ICP filed the *International Co-Prosecutor’s Request for All Required Affirmative Actions to be Taken to Forward Case File 004/2 (Ao An) to the Trial Chamber* with the PTC.²⁰ On 18 February and 24 February 2020, respectively, Ao An filed a response to the ICP’s request for action²¹ and a *Request for Confirmation*

to the Case 004/02 AO An Indictment and Case File, filed 4 February 2020 (CPLs have not been provided access to this document and, therefore, this citation is based on paragraph 14 and footnote 18 of Case 004/2, **D359/26**, Response to International Co-Prosecutor’s Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (AO An) to the Trial Chamber, 18 February 2020).

¹⁶ The Civil Party Lawyers note that it is permissible to manually file documents in hard copy. See Practice Direction on Filing of Documents Before the ECCC (Rev. 8), arts. 2.1, 2.5, 2007.

¹⁷ Email from Ms. Megan HIRST, International Lead Co-Lawyer, Subject: ECCC email accounts and Case 004/02, 3 February 2020 (describing Case 004/2 documents courtesy copied to the Civil Party Lead Co-Lawyers; Email from Ms. Megan HIRST, International Lead Co-Lawyer, Subject: Courtesy copy of ICP Request to Trial Chamber to Take Action to Obtain Access to Case 004/2 (Ao An) Indictment and Case File, filed 4 February 2020 (courtesy copy of filing was not attached to this email and CPLs have not been provided access to this document by the prosecution).

¹⁸ Case 004/2, **D359/27.1.2**, Email from Mr. Suy-Hong Lim, Greffier of the Trial Chamber, Subject: Information, 21 January 2020.

¹⁹ Case 004/2, **D359/27.1.3**, Email from Mr. Suy-Hong Lim, Greffier of the Trial Chamber, Subject: ICP request dated 4 February 2020, 10 Feb. 2020 (emphasis in the original).

²⁰ Case 004/2, **D359/25**, International Co-Prosecutor’s Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (AO An) to the Trial Chamber, 4 February 2020.

²¹ Case 004/2, **D359/26**, Response to International Co-Prosecutor’s Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (AO An) to the Trial Chamber, 18 February 2020.

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*that all Required Administrative Actions Have Been Taken to Archive Case File 004/2 with the PTC.*²² On 3 March 2020, the ICP filed a Reply to Ao An's Response.²³ These are the only filings that the CPLs were officially notified of after 19 December 2019.

13. On 3 March 2020, the TC Greffier sent an e-mail to the PTC judges, the Office of Administration, Ao An, the Co-Prosecutors, and the CPLs, referring the parties to the Trial Chamber's 21 January and 10 February e-mails, which the CPLs did not receive, and noting that "the key issue raised is being litigated by the international Co-Prosecutor before the pre-Trial Chamber."²⁴ *The e-mail also referred to a 13 February communication by the ICP, which Civil Parties have not received.*²⁵
14. In response to a further attempted filing by the ICP on 3 March 2020, the Trial Chamber again emailed the parties on 4 March 2020. *Most, but not all, CPLs in Case 004/2 were copied on the correspondence.*
15. On 12 March 2020, the international judges of the PTC issued an interoffice memorandum via email on "Transfer of Case File 004/2" and accompanying attachments *to which only one CPL was copied.*²⁶ The attachments detailed numerous steps taken and often contradictory communications made by the judges and greffiers of the PTC concerning the transfer of the Case 004/2 case file to the TC.²⁷ *CPLs were not copied to these exchanges and remained unaware of most of these developments until the Memorandum of 12 March was issued.*
16. On 16 March 2020, Judge Kimsan PRAK, President of the Pre-Trial Chamber, in his individual capacity, issued an interoffice memorandum via email on "Re-Confirmation of the Decision on Case File 004/2."²⁸ The Memorandum of 16 March stated that no further administrative action was required to be taken by the PTC. *Only a small subset of CPLs were copied on the correspondence.*

²² Case 004/2, **D359/27**, Request for Confirmation that all Required Administrative Actions Have Been Taken to Archive Case File 004/2, 24 February 2020.

²³ Case 004/2, **D359/28**, International Co-Prosecutor's Reply to Ao An's Response to the ICP's Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (Ao An) to the Trial Chamber, 3 March 2020.

²⁴ Email from Mr. Suy-Hong LIM, Greffier of the Trial Chamber, Subject: Concerning ICP communication dated 13 February 2020, 3 March 2020.

²⁵ *Id.*

²⁶ Case 004/2, **D359/31.1.2**, Interoffice Memorandum issued by Judge Olivier BEAUVALLET and Judge Kang Jin BAIK, International Judges of the Pre-Trial Chamber, Subject: Transfer of Case File 004/2, paras. 5-20, 12 March 2020.

²⁷ Attachments 1-8 to Case 004/2, **D359/31.1.2**, Interoffice Memorandum issued by Judge Olivier BEAUVALLET and Judge Kang Jin BAIK, International Judges of the Pre-Trial Chamber, Subject: Transfer of Case File 004/2, 12 March 2020.

²⁸ Case 004/2, **D359/31.1.1**, Interoffice Memorandum issued by Judge Kimsan PRAK, President of the Pre-Trial Chamber, Subject: Re-Confirmation of the Decision on Case File 004/2, 16 March 2020.

SUBMISSIONS

A. Civil Parties are Parties to the Proceedings and Their Rights Must be Respected.

17. Civil parties are parties to the proceedings.²⁹ Internal Rule 23*bis*(2) provides that “[u]nless and until rejected, Civil Party applicants may exercise Civil Party rights.”³⁰

18. Article 12(2) of the ECCC Agreement provides that:

The Extraordinary Chambers shall exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights, to which Cambodia is a party. In the interest of securing a fair and public hearing and credibility of the procedure, it is understood that representatives of Member States of the United Nations, of the Secretary-General, of the media and of national and international non-governmental organizations will at all times have access to the proceedings before the Extraordinary Chambers. Any exclusion from such proceedings in accordance with the provisions of Article 14 of the Covenant shall only be to the extent strictly necessary in the opinion of the Chamber concerned and where publicity would prejudice the interests of justice.³¹

19. Article 34 *new* of the Law on the Establishment of the ECCC provides that:

Trials shall be public and open to representatives of foreign States, of the Secretary-General of the United Nations, of the media and of national and international non-government organizations unless in exceptional circumstances the Extraordinary Chambers decide to close the proceedings for good cause in accordance with existing procedures in force where publicity would prejudice the interests of justice.³²

20. Rule 21(1) of the Internal Rules provides that:

The applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations shall be interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused and Victims and so as to ensure legal certainty and transparency of proceedings, in light of the

²⁹ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Glossary, 16 January 2015 (defining “Party” to include the Co-Prosecutors, the Charged Person/Accused and Civil Parties).

³⁰ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), 16 January 2015.

³¹ 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 Phnom Penh, 11 June 2003.

³² Law on the Establishment of the Extraordinary Chambers of the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, 19 Aug. 2001, with inclusion of amendments as promulgated on 27 October 2004 (NS RKM 1004 006).

inherent specificity of the ECCC, as set out in the ECCC Law and the Agreement. In this respect:

...

(c) The ECCC shall ensure that victims are kept informed and that their rights are respected throughout the proceedings[.]³³

21. The Supreme Court Chamber has held that the rights contained in Article 14(1) of the International Covenant on Civil and Political Rights apply to civil parties.³⁴ Article 14(1) provides “[a]ll persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”³⁵

B. The Fundamental Rights of Victims Enshrined in ECCC Core Documents and International Law Must Guide These Proceedings.

22. Despite the clear need for the transfer of the Case 004/2 Indictment and underlying case file to the TC, the Court Management Section has yet to effectuate the transfer. As a result, Case 004/2 is caught in procedural limbo between the PTC and the TC, which has caused—and continues to cause—substantial prejudice to the rights of the Civil Parties.
23. Respect for the rights of victims is an essential component of national reconciliation, a goal identified as “one of the fundamental principles for the establishment of [the] ECCC[.]”³⁶ As the PTC recognized in Case 002/2, the principle of national reconciliation “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.”³⁷ Whether or not the case is allowed to move to trial fundamentally affects the rights and interests of civil parties – if the case does not

³³ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), 16 January 2015.

³⁴ Case File No. 002/19-09-2007-ECCC/SC, **F26/2/2**, Decision on Co-Prosecutors and Civil Party Lead Co-Lawyers’ Request for Additional Time for Examination of SCW-5, para. 7, 30 June 2015 (recognizing that Civil Parties “enjoy fair trial rights defined in Article 14(1) of the ICCPR” and “have a specific and limited role in the proceedings, as set out in the ECCC’s Internal Rules”).

³⁵ International Covenant on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171.

³⁶ Case File No. 002/19-09-2007-ECCC/OCIJ (“Case 002”), **D404/2/4**, Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, para. 65, 24 June 2011.

³⁷ *Id.*

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proceed, their rights before the ECCC are extinguished, including the right to participate in all stages of the proceedings going forward and have their legal interests represented, their right to a judicial decision, as well as their right to reparation for the harm suffered if the accused is convicted. The Civil Parties must be given the right to be heard on the matters that may serve to extinguish their participatory rights.

24. Internal Rule 21 further sets out the fundamental principles of the ECCC, including that the core ECCC documents must always be interpreted to “safeguard the interests” of the victims and to ensure that their rights are respected throughout the proceedings.³⁸ Likewise, Internal Rule 29 mandates that the ECCC “ensure the protection of [v]ictims who participate in the proceedings,” and that the officers of the Court “take account of the needs of victims” when fulfilling their duties.³⁹ In pursuit of these aims, the ECCC provides a unique mechanism for victim participation – the Civil Party action.⁴⁰ This is echoed by the international judges of the PTC who cite to the fundamental rights embodied in Internal Rule 21(1) in their Memorandum of 12 March to warn that “No rights will be preserved, if the Pre-Trial Chamber does not clarify the possibility for the parties to access the competent judges, namely the Trial Chamber.”⁴¹
25. Treaty and customary international law also enshrine the obligation to protect victims and entitle victims to rights, including the right to a remedy and access to justice. Victims’ rights were the subject of a U.N. General Assembly resolution asserting that victims of serious crimes have the right to “[e]qual and effective access to justice; [a]dequate, effective and prompt reparation for harm suffered; [and a]ccess to relevant

³⁸ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 21, 16 January 2015; Case 002, **D404/2/4**, Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, para. 61, 24 June 2011.

³⁹ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 29, 16 January 2015.

⁴⁰ Case 002, **D404/2/4**, Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, para. 96, 24 June 2011; Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 23(1)(b) *quinquies*, 16 January 2015.

⁴¹ Interoffice Memorandum issued by Judge Kang Jin BAIK and Judge Olivier BEAUVALLET, International Judges of the Pre-Trial Chamber, Subject: Notification of the Pre-Trial Chamber’s Considerations in Case 004/2, 3, 29 January 2020 (see Attachment 6 to Case 004/2, **D359/31.1.2**, Interoffice Memorandum issued by Judge Olivier BEAUVALLET and Judge Kang Jin BAIK, International Judges of the Pre-Trial Chamber, Subject: Transfer of Case File 004/2, 12 March 2020. See also Case File No. 001/18-07-2007-ECCC/SC, **F28**, Appeal Judgment, para. 661, 3 February 2012 (“this Chamber is of the view that although collective and moral reparations may not reinstate the victims of human rights abuses either physically or economically, other general purposes of reparations are fulfilled before the ECCC to the extent that the reparation responds to ‘the psychological, moral, and symbolic elements of the violation.’ This is achieved through the ‘verification of the facts and full and public disclosure of the truth’ as fostered by the findings of the Co-Investigating Judges and three Chambers, **through the access and participation of victims to proceedings**, and through victims’ identification and individual recognition in the final judgement that represent a public acknowledgement of their suffering...”) (emphasis added).

information concerning violations and reparation mechanisms.”⁴² Other international treaties and tribunals, including the International Criminal Court, have recognized that the fundamental right to a remedy and to effective participation in ongoing proceedings “lie at the heart of victim’s rights.”⁴³

26. This language, taken together, requires the ECCC to take particular care to assure the effective and meaningful participation of victims and protect their right to seek justice as part of the broader national pursuit of truth and reconciliation. These fundamental principles must guide all parties in all proceedings before the court, including when rendering judicial decisions, filing documents, and communicating with parties.

C. Victims’ Rights to be Heard, to Representation, to Information, to Legal Certainty, and to the Safeguard of their Dignity and Well-being Must Be Respected in Proceedings before the ECCC.

27. The continued uncertainty surrounding the status of Case 004/2 and the exclusion of Civil Parties from filings and communications in this case violates victims’ rights to be meaningfully heard and prevents Civil Parties from effectively and meaningfully participating in the proceedings. All parties and entities of the ECCC must conduct themselves in a manner that safeguards the dignity and well-being of the victims and ensures that their rights are respected.

- (1) Civil Parties’ right to legal certainty requires that the PTC render a reasoned decision and provide Civil Parties timely and clear information on the status of Case 004/2.**

⁴² 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, para.11, 16 December 2005, U.N.G.A. Res. 60/147.

⁴³ Decision on Victims’ Participation in Proceedings Related to the Situation in the Republic of Kenya, ICC-01/09-24, para. 5, 3 November 2010; *see* Rome Statute of the International Criminal Court, arts. 68, 75, 17 July 1998, 2187 U.N.T.S. 90. *See also* American Convention on Human Rights, art. 25(1), 22 November 1969, 1144 U.N.T.S.123. (“[e]veryone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention”); Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights, art. 27(1), 9 June 1998, OAU Doc. OAU/LEG/MIN/AFCHPR/PROT.1 rev.2 (1997) (“[i]f the Court finds that there has been violation of a human or peoples’ rights, it shall make appropriate orders to remedy the violation, including the payment of fair compensation or reparation”); Universal Declaration of Human Rights, art. 8, 8 December 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71; International Covenant on Civil and Political Rights, art. 2, 16 December 1966, 999 U.N.T.S. 171; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14, 10 December 1984, 1465 U.N.T.S. 85.

28. All parties, including victims, have a right to legal certainty and transparency throughout the ECCC proceedings. Under Internal Rule 21, the core ECCC documents must always be interpreted to “ensure legal certainty and transparency of proceedings.”⁴⁴ In this court and others, the principles of transparency and legal certainty require that the court issue reasoned decisions in the matters that come before them.⁴⁵ Under international standards of criminal justice, legal certainty and transparency also encompass the court’s obligation to keep victims informed of the “scope, timing, and progress of proceedings,...especially where serious crimes are involved” and to “avoid[] unnecessary delay in the disposition of cases[.]”⁴⁶
29. In Case 002, the PTC cautioned that the Co-Investigating Judges must issue reasoned decisions on the admissibility of Civil Parties in order to respect fundamental principles of legality, including transparency and legal certainty.⁴⁷ In its *Considerations on Appeals Against Closing Orders*, the PTC once more recognized the importance of legal certainty as one of the “fundamental pillars of law.”⁴⁸ The chamber noted that the Royal Government of Cambodia and the United Nations secured the principle of legal certainty through procedures “to conclusively resolve such disagreements in order to avoid procedural stalemates that would, inter alia, hamper the effectiveness of proceedings.”⁴⁹ The PTC itself found that the issuance of split Closing Orders

⁴⁴ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 21, 16 January 2015.

⁴⁵ 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, paras. 37-38, 24 June 2011. 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, para. 96, 8 March 2006, Case No. IT-02-60/1-A. 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, para. 11, 1 November 2005, Case No. IT-05-87-AR65.1. 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,” para. 30, 14 December 2006 (noting that “only on the basis of a reasoned decision will proper appellate review be possible”).

⁴⁶ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, paras. 6(a), (e), 29 November 1985, U.N.G.A. Res. 40/34, Annex A.1; see also 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, para. 14, 16 December 2005, U.N.G.A. Res. 60/147.

⁴⁷ Case 002, **D411/3/6**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, paras. 37-38, 24 June 2011.

⁴⁸ Case 004/2, **D359/24 & D360/33**, Considerations on Appeals Against Closing Orders, paras. 68, 95, 205, 19 December 2019.

⁴⁹ Case 004/2, **D359/24 & D360/33**, Considerations on Appeals Against Closing Orders, para. 111, 19 December 2019.

constitutes an “affront to the principle of legal certainty[.]”⁵⁰ and creates an “unprecedented legal predicament” that violates the principles of the ECCC.⁵¹

30. The PTC’s issuance of its *Considerations* did not provide legal certainty to Civil Parties. Despite the ECCC’s legal framework that mandates the Case 004/2 Indictment should proceed to trial absent a supermajority decision to the contrary, opposing directives from the national and international judges of the PTC to the case file officer have resulted in procedural deadlock and the failure to transfer the Case 004/2 case file to the TC, effectively bringing the proceedings to a halt without any clear process for resolving the stalemate. Since the *Considerations* were issued, neither the PTC nor any other body of the ECCC has issued a clear, public explanation regarding the status of Case 004/2 or the way forward. The additional conflicting inter-office memoranda issued by the international judges of the PTC on 12 March 2020 and by the Presiding Judge of the PTC in his individual capacity on 16 March 2020 have simply continued the deadlock. The lack of clarity inherent in this outcome constitutes a clear violation of victims’ right to legal certainty, leaving Civil Parties unclear as to the status of Case 004/2 and their rights going forward.

(2) Victims’ right to participate in the proceedings and to access information requires that their representatives have access to filings and communications regarding this case and adequate time and resources to prepare for proceedings.

31. Victims have fundamental rights to meaningful and fair participation in all stages of the ECCC proceedings.⁵² The right to fair and balanced treatment is set out in the court’s Internal Rules as well the international instruments that inform them.⁵³ To further facilitate the realization of these rights, Internal Rules 12, 23, and 23 *ter* provide for the representation of victims as Civil Parties through their respective CPLs at the pre-trial

⁵⁰ Case 004/2, **D359/24 & D360/33**, *Considerations on Appeals Against Closing Orders*, para. 205, 19 December 2019.

⁵¹ Case 004/2, **D359/24 & D360/33**, *Considerations on Appeals Against Closing Orders*, paras. 101-24, 19 December 2019.

⁵² *See supra* at paras. 17-26.

⁵³ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 21(1)(a), 16 January 2015 (establishing that “ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties.”); 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, para. 11(a), 16 December 2005, U.N.G.A. Res. 60/147 (setting the standard of “equal and effective access to justice” for victims); Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, paras. 4-7, U.N.G.A. Res. 40/34, 29 November 1985, Annex A.1 (detailing a variety of victim rights that should be respected in judicial proceedings under the heading “Access to Justice and Fair Treatment”).

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stage and the CPLCLs at the trial stage.⁵⁴ The Internal Rules stipulate that the purpose of the CPLCLs is to ensure the effective organization of Civil Party representation and to represent the interests of the consolidated group of Civil Parties.⁵⁵

32. Effective victim participation can only be guaranteed by ensuring Civil Parties have timely access to all relevant information. Internal Rule 21 requires that “[t]he ECCC shall ensure that victims are kept informed and that their rights are respected throughout the proceedings.”⁵⁶ The PTC has established that the duty to keep victims informed must be timely, noting that Rule 21 “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.’”⁵⁷
33. The publicly available information related to these proceedings is limited to the following:
- a. On 22 December 2019, the Co-Lawyers for AO An made a statement to the press expressing the position that AO An cannot be tried at the ECCC and that proceedings in Case 004/02 must be terminated.⁵⁸
 - b. On 24 December 2019, the National and International Co-Prosecutors issued a press release containing their separate views on the procedural consequences of the PTC Considerations.⁵⁹ The press release was covered by the Phnom Penh Post.⁶⁰

⁵⁴ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 23 *ter*, 16 January 2015.

⁵⁵ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 12 *ter*, 16 January 2015.

⁵⁶ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 21, 16 January 2015; *see also* 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, Preamble, 16 December 2005, U.N.G.A. Res. 60/147; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, paras. 6(a), U.N.G.A. Res. 40/34, 29 November 1985, Annex A.1 (setting out the victim’s right to be informed of “their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information”).

⁵⁷ Case 002, **D404/2/4**, Pre-Trial Chamber Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, para. 52, 24 June 2011.

⁵⁸ Chheng NIEM, ECCC Urged to dismiss AO An’s Case, Phnom Penh Post, 22 December 2019, available at <https://www.phnompenhpost.com/national-kr-tribunal/eccc-urged-dismiss-ao-ans-case> (referencing a press release issued made by the Ao An’s defense which does not appear to be online).

⁵⁹ ECCC Press Release, Statement by the International Co-Prosecutor on Case 004/2, 24 December 2019, available at <https://eccc.gov.kh/sites/default/files/media/INTERNATIONAL%20AND%20NATIONAL%20OCP%27S%20STATEMENT%2024%20DEC%202019.pdf> (last accessed 18 March 2020); ECCC Press Release, National Co-Prosecutor’s Press Statement on the Charged Person Ao An of Case 004/2, 24 December 2019, available at <https://eccc.gov.kh/sites/default/files/media/INTERNATIONAL%20AND%20NATIONAL%20OCP%27S%20STATEMENT%2024%20DEC%202019.pdf> (last accessed 18 March 2020).

⁶⁰ Chheng NIEM, Prosecutors divided in ECCC Case 004/02, Phnom Penh Post, 26 December 2019, available at <https://www.phnompenhpost.com/national-kr-tribunal/prosecutors-divided-eccc-case-00402> (last accessed 18 March 2020).

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- c. On 24 December 2019, the National and International Co-Prosecutors issued a press release containing their separate views on the procedural consequences of the PTC Considerations.⁶¹ The press release was covered by the Phnom Penh Post.⁶²
 - d. On 4 February 2020, the ICP filed the *International Co-Prosecutor's Request for All Required Affirmative Actions to be Taken to Forward Case File 004/2 (Ao An) to the Trial Chamber* with the PTC.⁶³
 - e. On 18 February and 24 February 2020, respectively, Ao An filed a response to the ICP request for action⁶⁴ and a *Request for Confirmation that all Required Administrative Actions Have Been Taken to Archive Case File 004/2* with the PTC.⁶⁵
 - f. On 3 March 2020 and 5 March 2020 respectively, the ICP replied to Ao An's response relating to their request and responded to Ao An's request.⁶⁶
34. These were the first submissions that the CPLs were officially notified of after 19 December 2019. Due to the lack of an administrative framework to do so, submissions before the TC have not abided by the requirements of the case file, the systems for classification of documents, or the notification of the participants in the proceedings. Filings before the PTC have also failed to be properly distributed to the parties,

⁶¹ ECCC Press Release, Statement by the International Co-Prosecutor on Case 004/2, 24 December 2019, available at <https://eccc.gov.kh/sites/default/files/media/INTERNATIONAL%20AND%20NATIONAL%20OCP%27S%20STATEMENT%2024%20DEC%202019.pdf> (last accessed 18 March 2020); ECCC Press Release, National Co-Prosecutor's Press Statement on the Charged Person Ao An of Case 004/2, 24 December 2019, available at <https://eccc.gov.kh/sites/default/files/media/INTERNATIONAL%20AND%20NATIONAL%20OCP%27S%20STATEMENT%2024%20DEC%202019.pdf> (last accessed 18 March 2020).

⁶² Chheng NIEM, Prosecutors divided in ECCC Case 004/02, Phnom Penh Post, 26 December 2019, available at <https://www.phnompenhpost.com/national-kr-tribunal/prosecutors-divided-eccc-case-00402> (last accessed 18 March 2020).

⁶³ Case 004/2, **D359/25**, International Co-Prosecutor's Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (AO An) to the Trial Chamber, 4 February 2020.

⁶⁴ Case 004/2, **D359/26**, Response to International Co-Prosecutor's Request for All Required Administrative Actions to be Taken to Forward Case File 004 2 AO An to the Trial Chamber, 18 February 2020;

⁶⁵ Case 004/2, **D359/27**, Request for Confirmation that all Required Administrative Actions Have Been Taken to Archive Case File 004/2, 24 February 2020.

⁶⁶ Case 004/2, **D359/28**, International Co-Prosecutor's Reply to Ao An's Response to the ICP's Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (Ao An) to the Trial Chamber, 3 March 2020; Case 004/2, **D359/30**, International Co-Prosecutor's Response to Ao An's Request for Confirmation that All Required Administrative Actions have Been Taken to Archive Case File 004/2, 5 March 2020; Case 004/2, **D360/37**, International Co-Prosecutor's Reply to Ao An's Response to the ICP's Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (AO An) to the Trial Chamber, 3 March 2020; Case 004/2, **D360/39**, International Co-Prosecutor's Response to Ao An's Request for Confirmation that All Required Administrative Actions Have Been Taken to Archive Case File 004/2, 5 March 2020.

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- particularly the Civil Parties. In all, there has been little compliance with the Practice Direction on the Filing of Documents or with the broader rules relating to open justice.
35. The International PTC Judges made clear via their Memorandum of 12 March that they did not anticipate an additional PTC decision would resolve the deadlock in Case 004/2 in the near future,⁶⁷ a position echoed by the Memorandum of 16 March.
36. Following the issuance of the PTC's *Considerations*, the failure of the PTC or any other body of the ECCC to provide an explanation on the status of Case 004/2 violates the victims' right to be informed concerning the proceedings. This violation has been exacerbated by the continual exclusion of the CPLs from the ongoing filings and communications among parties and chambers in this case, which renders it impossible for victims to meaningfully or effectively participate through their CPL representatives. As described in detail in the Procedural History section, multiple communications and filings have failed to name and/or be distributed to any civil party representative whatsoever. In some cases, filings list CPLs under "distributed to," but the documents are not available on Zylab and were not otherwise distributed to the CPLs. In other cases, the CPLCLs were included in the distribution instead of the CPLs.
37. The current state of affairs with respect to Civil Party participation is both ineffective and contrary to the system envisioned in the Internal Rules and violates the Civil Parties' right to effective representation. The Office of Administration and the PTC do not recognize the court's only CPLCLs in Case 004/2, which leaves the CPLs as the only Civil Party representatives recognized by the organs of the ECCC in Case 004/2. CPLs do not have automatic standing to make submissions before the TC, as only the CPLCLs have been permitted to do so at the trial stage and beyond.⁶⁸ Nevertheless, owing to the procedural confusion caused by the *Considerations*, in some instances the CPLCLs were included in distribution lists instead of the CPLs, while in others only a small subset of CPLs were included. In yet other instances, no Civil Party representatives of any sort were copied.

⁶⁷ Case 004/2, **D359/31.1.2**, Interoffice Memorandum issued by Judge Olivier BEAUVALLLET and Judge Kang Jin BAIK, International Judges of the Pre-Trial Chamber, Subject: Transfer of Case File 004/2, para. 3, 12 March 2020.

⁶⁸ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rules 23(3), 12 *ter*, 16 January 2015; Case 002, **E74**, Trial Chamber Response to Motions E67, E57, E56, E58, E23, E59, E20, E33, E71 and E73 Following Trial Management Meeting of April 2011, p. 2, 8 April 2011 (noting that changes to the Internal Rules enacted since Case 001 permit the Civil Party Lead Co-Lawyers to assign roles to civil party lawyers, but that "civil party lawyers have no automatic right of audience before the Trial Chamber").

38. In this way, CPLs have been forced to learn of important filings on an entirely *ad hoc* basis through information provided to the CPLCLs, informal conversations with third parties, and/or the appendices to the most recent Case 004/2 filings. In the absence of the court's recognition of CPLCLs in Case 004/2 and until a formal announcement of this fact to the parties, the rights of Civil Parties require that CPLs be provided with all filings and communications they have already been excluded from and that they be included in all communications and filings concerning Case 004/2 proceedings going forward. This is their right as a full party to the proceedings and is the only course that will enable the representation to which Civil Parties are entitled to under law.
39. The court's failure to recognize CPLCLs in a timely manner further jeopardizes victims' ability to participate meaningfully and effectively in the proceedings. A plain reading of the Internal Rules makes clear that the CPLCLs are intended to intervene in case proceedings at such a time that will allow them adequate and equal opportunity to prepare for trial proceedings. It is in this context that Internal Rule 69(3) provides "[t]he filing of an appeal against a Closing Order does not prevent access by the Trial Chamber and Civil Party Lead Co-Lawyers to the case file for the purposes of advance preparation for trial."⁶⁹ This provision clearly anticipates the involvement of the CPLCLs, through access to the case file, even prior to it having been forwarded to the TC. This is logical: the Internal Rules allow only 15 days from the seizure of the Trial Chamber for the OCP to file lists of proposed witnesses, experts and civil parties (rule 80(1)); only 30 days from such seizure for the LCL themselves to file their lists (rule 80(2)). Preliminary objections are filed only 30 days after a closing order becomes final (rule 89). Such time periods would be prohibitively short for CPLCLs if they had not previously been able to access the casefile for advance preparation pursuant to rule 69(3).
40. The dangers of the delayed intervention of the CPLCLs is evident at this stage of proceedings in Case 004/2. Already, the ICP and Ao An defense have filed Rule 80 Witness and Expert Lists and Preliminary Objections⁷⁰—work that, in the case of Civil Parties and for practical and legal reasons, requires the leadership, coordination, and resources available through the office of the CPLCLs. As noted above, there has been

⁶⁹ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 69, 16 January 2015.

⁷⁰ Case 004/2, International Co-Prosecutor's Rule 80 Witness and Expert List, filed 13 January 2020; Case 004/2, Summary of AO An's Preliminary Objections under IR 89(1), filed 20 January 2020; Case 004/2, AO An's Rule 80 Witness and Expert List Submission with Confidential Annex 1 and his Response to the International Co-Prosecutor's Rule 80 Witness and Expert List Submission, filed 28 January 2020.

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substantial confusion among the Parties as to which lawyers are coordinating the representation of Civil Parties at this point, leading parties to copy the CPLCLs to filings and communications, while omitting the CPLs, effectively leaving Civil Parties without legal representation as key advances in the proceedings take place. It is all but certain that at such time as proceedings before the Trial Chamber do occur, CPLCLs will need to request delays if they have not been given an opportunity to familiarize themselves with the case file in advance.

41. Where Civil Parties have learned of filings directed to the TC and might wish to respond, the Internal Rules render them unable to do so, as CPLs lack standing before the Trial Chamber (and the court does not recognize the current CPLCLs in Case 004/2). These circumstances have placed Civil Parties at a substantial disadvantage vis-à-vis the other parties, who have begun trial preparations over the past three months, and have violated the rights of Civil Parties to meaningful and effective participation in the proceedings, to be treated fairly, and to have their interests balanced with those of the other parties to the proceedings.
42. To ensure that these violations cease to occur, Civil Parties request that the PTC order that parties distribute all communications and filings concerning Case 004/2 proceedings, past and present, to the CPLs representing Civil Parties in this case unless and until the court has officially recognized CPLCLs in Case 004/2 and granted them access to the case file pursuant to Internal Rule 69(3). Only these steps will ensure that the Civil Parties may begin preparation for trial under the CPLCLs' coordination.

(3) The court's duty to protect the dignity and well-being of victims participating in the proceedings necessitates that it grants the requests of Civil Parties.

43. It is a fundamental principle of proceedings before the ECCC that the interests of victims be safeguarded.⁷¹ Undergirding the entire regime of victim participation at the ECCC are principles of international law recognizing and responding to the vulnerabilities and trauma experienced by victims of crime and mass atrocity and intended to prevent harm to such victims as a consequence of their participation in the justice process. International norms governing judicial processes call for victims to be treated with sensitivity, compassion, and respect for their dignity, to be given special

⁷¹ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 21, 16 January 2015.

consideration and care to prevent their re-traumatization, and to be protected from physical and psychological harm.⁷²

44. As detailed elsewhere in this filing, the obstacles to meaningful and effective victim participation, the inadequacy of information sharing with victims, and the lack of transparency and legal certainty embodied in the ongoing deadlock in Case 004/2 before the PTC cause lasting and impermissible harm to victims. If allowed to persist, these circumstances would not only constitute a grave and ongoing violation of victim rights, but would risk re-traumatizing victims, undermining their trust and confidence in the judicial process, jeopardizing the contributions to national reconciliation that the ECCC may make, and *sending the particularly damaging messages that the court does not respect victim rights, value victim participation, or understand victim suffering*.
45. The PTC has the power to mitigate or avoid perpetuating these unnecessary harms to victims by granting the requests made in this filing and carrying them out promptly.

D. Pursuant to the ECCC Framework, the Case 004/2 Indictment Should Proceed to Trial.

46. Civil Parties support the position articulated by the ICP in her filings arguing that the Case 004/2 Indictment stands and urging the TC to initiate trial proceedings post haste.⁷³ Civil Parties incorporate by reference and through Annexes 1 and 2 to this filing their own submissions on this matter made in Case 004, but whose legal basis and

⁷² See 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, para. 10, 16 December 2005, U.N.G.A. Res. 60/147; Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, paras. 4, 16, 29 November 1985, U.N.G.A. Res. 40/34, Annex A.1; Rome Statute of the International Criminal Court, arts. 68, 75, 17 July 1998, 2187 U.N.T.S. 90.

⁷³ See Case 004/2, **D359/3/1**, International Co-Prosecutor's Appeal of the Order Dismissing the Case Against Ao An (D359), paras. 100-108, 112, 20 December 2018; Case 004/2, **D360/9**, International Co-Prosecutor's Response to Ao An's Appeal of the Case 004/2 Indictment, paras. 5-15, 120, 22 February 2019; Case 004/2, **D359/25**, International Co-Prosecutor's Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (Ao An) to the Trial Chamber, 4 February 2020; Case 004/2, **D360/34**, International Co-Prosecutor's Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (Ao An) to the Trial Chamber, 4 February 2020; Case 004/2, **D359/28**, International Co-Prosecutor's Reply to Ao An's Response to the ICP's Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (AO An) to the Trial Chamber, 3 March 2020; Case 004/2, **D360/37**, International Co-Prosecutor's Reply to Ao An's Response to the ICP's Request for All Required Administrative Actions to be Taken to Forward Case File 004/2 (AO An) to the Trial Chamber, 3 March 2020; Case 004/2, **D359/30**, International Co-Prosecutor's Response to Ao An's Request for Confirmation that All Required Administrative Actions have Been Taken to Archive Case File 004/2, 5 March 2020; Case 004/2, **D360/39**, International Co-Prosecutor's Response to Ao An's Request for Confirmation that All Required Administrative Actions Have Been Taken to Archive Case File 004/2, 5 March 2020.

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arguments are equally applicable here, in Case 004/2.⁷⁴ Civil Parties are available to further brief the matter before the PTC, or any other judicial organ of the ECCC, as requested, including the Office of the Co-Investigating Judges and/or the TC.

CONCLUSION

56. The victims' rights to transparency, legal clarity, participation, fair and balanced treatment, and the safeguard of their dignity and well-being must be respected in proceedings before the ECCC. These rights are set out in the foundational documents of the ECCC and supported by international instruments on the treatment of victims of crime and human rights violations.
57. As argued by the International Co-Prosecutor and Civil Party Lawyers, the ECCC must uphold an indictment and advance the case file to the TC in the absence of a supermajority decision of the PTC dismissing a case. This standard is borne out by the plain meaning of the ECCC Agreement and its accompanying Law, the object and purpose of the tribunal in adjudicating mass atrocities of the Khmer Rouge, and domestic and international law principles emphasizing victims' rights and the duty to prosecute.
58. Accordingly, Co-Lawyers for Civil Parties request that the Pre-Trial Chamber:
- a. Issue or order issued by the appropriate ECCC body a clear public statement on the status of Case 004/2 and anticipated next steps to resolve the current procedural deadlock;
 - b. Order that the CPLCLs be granted access to the Case 004/2 case file at this stage;
 - c. Order that parties, chambers, and all other bodies of the ECCC distribute to Case 004/2 CPLs⁷⁵ all previous communications and filings concerning Case 004/2 proceedings which were not previously distributed to them, including filings and communications to the Trial Chamber; and
 - d. Order that, henceforth, parties, chambers, and all other bodies of the ECCC must distribute all communications and filings concerning Case 004/2 proceedings to







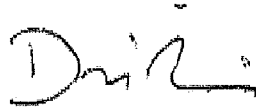
⁷⁴ Case File No. 004/07-09-2009-ECCC/OCIJ, **D381/20**, Civil Party Co-Lawyers' Appeal Against the National Co-Investigating Judge's Closing Order in Case 004, 6 December 2019; *see also* annexes 1 and 2 to this filing for the English and Khmer language versions of the Civil Party Co-Lawyers' appeal filing in Case 004.

⁷⁵ All national and international CPLs that represent clients in Case 004/2 are listed by name under the "filed by" and "distributed to" headings on the cover pages of this filing.

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the Case 004/2 CPLs unless and until the ECCC has officially recognized CPLCLs in Case 004/2.

Respectfully submitted,

Date	Name	Place	Signature
30 March 2020	HONG Kimsuon	Phnom Penh, Cambodia	
30 March 2020	LOR Chunthy	Phnom Penh, Cambodia	
30 March 2020	SAM Sokong	Phnom Penh, Cambodia	
30 March 2020	SIN Soworn	Phnom Penh, Cambodia	
30 March 2020	Emmanuel JACOMY	Singapore	
30 March 2020	Martine JACQUIN	Phnom Penh, Cambodia	
30 March 2020	Daniel MCLAUGHLIN	San Francisco, United States	
30 March 2020	Nushin SARKARATI	San Francisco, United States	