

BEFORE THE PRE-TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No.** 004/2/07-09-2009-ECCC/OCIJ (PTC) **Party Filing:** AO An**Filed to:** The Pre-Trial Chamber**Original language:** English**Date of document:** 21 August 2018**CLASSIFICATION****Classification of the document
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URGENT REQUEST FOR REDACTION AND INTERIM MEASURES

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The Pre-Trial Chamber
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The Co-Prosecutors
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All Civil Parties

1. AO An, through his Co-Lawyers (*Defence*), respectfully submits this urgent request pursuant to Rule 21 of the Internal Rules of the Extraordinary Chambers in the Courts of Cambodia (respectively, *IRs* and *ECCC*), Articles 3.12 and 3.14 of the Practice Direction on the Filing of Documents Before the ECCC (*Practice Direction on Filing*), and Articles 9.1, 9.2, and 9.3 of the Practice Direction on the Classification and Management of Case-Related Information (*Practice Direction on Classification*). The Defence files this request in English only with the Khmer translation to follow at the earliest opportunity.
2. This request is admissible because with the issuance of the Closing Orders, the Office of the Co-Investigating Judges (*OCIJ*) is *functus officio*.¹ Thus, even though no appeal is pending at this time and the parties are awaiting translations of the Closing Orders, the Pre-Trial Chamber (*PTC*) is the only Chamber before which the Defence can file such requests.²
3. The Defence urgently requests the PTC to: (1) redact AO An's personal address from page 409 of the *Closing Order (Indictment)* (*ICIJ Closing Order*);³ and (2) order the Office of Public Affairs to immediately remove the unredacted *ICIJ Closing Order* from the ECCC website.
4. Publishing personal information, such as AO An's address, provides no public benefit, is unnecessary and prejudicial to the integrity of the proceedings, and does not advance the interests of justice, the ECCC's legacy or the ECCC's educational goals in any way. Instead, it violates AO An's right to privacy⁴ (and his family's) and the presumption of innocence,⁵ and it enables potential media harassment or worse. Regardless of whether AO An's location has been previously disclosed by journalists, the ECCC judges have a duty and responsibility to protect AO An's fundamental rights and the confidentiality of the proceedings. The ICIJ has failed to balance the right of the public to be informed, the confidentiality of the investigation, and the rights of AO An. The Defence requests the PTC to act immediately to correct this error.

¹ Case 004/1/07-09-2009-ECCC/OCIJ (PTC 50), *Considerations on the International Co-Prosecutor's Appeal of Closing Order (Reasons)*, D308/3/1/20, 28 Jun. 2018, para. 33, attached as App. 1; Case 004/2/07-09-2009-ECCC/OCIJ, *Closing Order (Indictment)*, D360, 16 Aug. 2018, para. 19.

² The time limit for appeals does not begin to run until the Closing Orders have been issued in at least two of the Court's official languages. *Practice Direction on Filing*, Arts. 2.2, 8.5.

³ A redacted version is provided in **Annex A**.

⁴ Cambodian Constitution, Art. 40; International Covenant on Civil and Political Rights, Art. 17.

⁵ Cambodian Constitution, Art. 38; European Convention on Human Rights, Art. 6(2).

5. In support of this urgent request, the Defence points out that in criminal justice systems, especially those most relevant to the ECCC, like Cambodia and France, it is not permitted, or practice, to publish in pre-trial public court documents the full address of a suspect or charged person.⁶
6. Furthermore, the Defence notes that the ICIJ has also published the names of certain civil parties who have requested protective measures and who are alleged victims of sexual and gender-based violence, including rape and forced marriage.⁷ Although the Defence does not have standing to request redactions on the civil parties' behalf, it notes this error for the PTC, given that publishing such information is prohibited under ECCC law and in other international and national jurisdictions.⁸
7. IR 21(1) states that ECCC law, Internal Rules, Practice Directions and Administrative Regulations 'shall be interpreted so as to safeguard the interests of Suspects, Charged Persons, Accused and Victims and so as to ensure legal certainty and transparency of proceedings...'.⁹
8. Pursuant to Articles 3.12 and 3.14 of the Practice Direction on Filing and Articles 9.1, 9.2, and 9.3 of the Practice Direction on Classification, upon the request of a filing party, the PTC and Co-Investigating Judges may classify and re-classify documents with necessary redactions. Article 1.2 of the Practice Direction on Classification explains that this principle is based on 'the need to balance the confidentiality of judicial investigations and of other parts of judicial proceedings which are not open to the public with the need to ensure transparency of public proceedings and to meet the purposes of education and legacy.'
9. In Case 001, the Supreme Court Chamber held that 'classification of documents is to be determined by balancing the exigency of confidentiality with the demands of

⁶ See e.g. Code of Criminal Procedure of the Kingdom of Cambodia, Art. 121; French Code of Criminal Procedure, Art. 11, attached as App. 2; French Law on the Freedom of the Press of 29 July 1881, Art. 38, attached as App. 3.

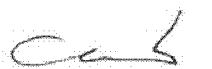
⁷ E.g. ICIJ Closing Order, para. 229, fns 534, 537 (Civil Party, ██████████ ██████████, is an alleged victim of forced marriage and requested protective measures in Case 004/01).

⁸ E.g. Rome Statute, Art. 68(1), (2); French Code of Criminal Procedure, Art. 306, attached as App. 4; see also *Prosecutor v. Dominic Ongwen, Decision on the 'Prosecution's Application for In-Court Protective and Special Measures*, ICC-02/04-01/15-612-Red, 29 Nov. 2016, para. 16, attached as App. 5.

transparency deriving from the fundamental principles that govern the procedure before the ECCC, in light of this Court's goals of education and legacy.⁹

10. Similarly, in Case 004/01, when considering reclassification and redactions of the *Closing Order (Reasons)*, the PTC acknowledged that it is necessary 'to balance the various interests at stake, including those of the charged person and of the victims, the transparency of the proceedings as enshrined in Internal Rule 21(1), and the interests of justice.'¹⁰
11. In Case 004/02, the ICIJ has failed to properly maintain this balance in the *ICIJ Closing Order*. He erred in publishing AO An's address without consideration for AO An's right to privacy or the confidentiality of the investigation. The publication of this private information is not necessary to ensure transparency or preserve the integrity of the proceedings. In fact, it has no public benefit and does not advance any interest of justice.
12. Therefore, the Defence respectfully request the PTC to:
 - a. Redact AO An's personal address from the public version of the *ICIJ Closing Order* (a redacted version is provided in **Annex A**); and
 - b. Order the Office of Public Affairs to immediately remove the unredacted public version of the *ICIJ Closing Order* from the ECCC website.

Respectfully submitted,



MOM Luch



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Göran SLUITER

Co-Lawyers for AO An

Signed 21 August 2018, Phnom Penh, Kingdom of Cambodia

⁹ Case No. 001/18-07-2007-ECCC/SC, *Decision on Guidelines for Reclassification of Documents on Case File*, F30/2, 26 Jul. 2012, para. 5, attached as App. 6.

¹⁰ Case 004/1/07-09-2009-ECCC/OCIJ (PTC 49), *Decision on the International Co-Prosecutor's Appeal on Decision on Redaction or, Alternatively, Request for Reclassification of the Closing Order (Reasons)*, D309/2/1/7, 8 Jun. 2018, para. 28, attached as App. 7.