

**BEFORE THE SUPREME COURT CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

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**CIVIL PARTY LAWYERS' REQUEST FOR NECESSARY MEASURES TO BE  
TAKEN BY THE SUPREME COURT CHAMBER TO SAFEGUARD THE CIVIL  
PARTIES' FUNDAMENTAL RIGHT TO LEGAL REPRESENTATION BEFORE  
THE CHAMBER IN CASE 004/2**

**Filed by:**

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**Before:**

**Supreme Court Chamber**

|                             |
|-----------------------------|
| Judge KONG Srim, President  |
| Judge C. N. JAYSASINGHE     |
| Judge SOM Sereyvuth         |
| Judge MONG Monichariya      |
| Judge Maureen HARDING CLARK |
| Judge YA Narin              |

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## I. INTRODUCTION

1. Considering the International Co-Prosecutor's ("ICP") Immediate Appeal, and its distribution through the case file notification system with the assigned case number 004/2/19-05-2020-ECCC/SC(04),<sup>1</sup> AO An's Response to the ICP's Immediate Appeal,<sup>2</sup> and the ICP's Reply,<sup>3</sup> the Civil Party Lawyers request clarification from the Supreme Court Chamber ("SCC") as to who represents Civil Parties at this stage of the proceedings. The present request is filed by Civil Party Lawyers ("CPLs") as the Civil Party Lead Co-Lawyers ("CPLCLs") are without access to the Case File.
2. On 30 March 2020, CPLs were compelled to raise with the Pre-Trial Chamber ("PTC") 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 in light of the procedural uncertainty surrounding Case 004/2 and its particular impact on the fundamental rights of victims.<sup>4</sup> That filing detailed the numerous occasions wherein neither the CPLs, nor the CPLCLs, were copied on filings and communications made by the parties, the PTC and the Trial Chamber ("TC") despite their clear relevance to the rights of the Civil Parties.<sup>5</sup> The CPLs lament that these serious and repeated violations continue, and that there has not been as of yet a clear resolution to these violations before any chamber of the ECCC.

<sup>1</sup> Case File No. 004/2/07-09-2009-ECCC ("Case 004/2"), **E004/2.1**, Appeal Register, 19 May 2020 ("*formally notif[ing]* the Supreme Court Chamber and parties of the Immediate Appeal, to ensure that receipt and filing of the Immediate Appeal is not further delayed"); Case 004/2, **E004/2.1**, International Co-Prosecutor's Immediate Appeal of the Trial Chamber's Effective Termination of Case 004/2, 4 May 2020.

<sup>2</sup> Case 004/2, **E004/2/1/1**, Response to International Co-Prosecutor's Immediate Appeal of the Trial Chamber's Effective Termination of Case 004/2, 14 May 2020.

<sup>3</sup> Case 004/2, **E004/2/1/1/1**, International Co-Prosecutor's Reply to Ao An's Letter Regarding her Immediate Appeal of the Trial Chamber's Effective Termination of Case 004/2, 26 May 2020.

<sup>4</sup> Case 004/2, **D359/33 & D360/42**, 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, 30 March 2020 ("Civil Party PTC Safeguard Request").

<sup>5</sup> *See, e.g.*, Civil Party PTC Safeguard Request, p. 5-7. For instance, no Civil Party Lawyers were copied on the 26 and 30 December letters from the International Co-Prosecutor and Ao An to the Trial Chamber. 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); 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). Similarly, the Civil Party Lawyers were not copied on the 21 January e-mail from the greffier of the Trial Chamber to the PTC judges, the Office of Administration, Ao An, and the Co-Prosecutors, or the 10 February e-mail from the greffier of the Trial Chamber to the co-prosecutors and Ao An defense. Case 004/2, **D359/27.1.2**, Email from Mr. Suy Hong Lim Greffier of the Trial Chamber, Subject: Information, 21 January 2020; 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 February 2020.

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3. The situation is further complicated now that matters are before the Supreme Court Chamber. The Internal Rules envisage the CPLCLs as representing the consolidated group of Civil Parties during the trial phase and beyond – indeed, individual CPLs did not have standing to make independent submissions before the Trial Chamber in Case 002<sup>6</sup> – and Internal Rule 106(4) clearly states that Civil Parties are to be represented by the CPLCLs before the SCC with respect to immediate appeals and appeals against judgments. However, according to information received by the CPLs, the CPLCLs do not have access to the Case 004/2 Case File, and have been told by the Office of Administration that their mandate does not extend to this case.<sup>7</sup> As a result, the Civil Parties are left without any clear legal representation before the SCC through which to advocate for the respect of their fundamental rights on the critical issues currently before the Chamber.
4. In the interest of expedience, CPLs request leave to file the instant request in English with Khmer translation to follow as soon as available.<sup>8</sup>

## II. PROCEDURAL BACKGROUND

5. On 31 March 2020, eight CPLs filed their Request for Necessary Measures to be Taken by the Pre-Trial Chamber to Safeguard the Rights of Civil Parties to Case 004/2.<sup>9</sup> The PTC has yet to issue a decision on the request.
6. On 4 May 2020, the International Co-Prosecutor filed her Immediate Appeal of the Trial Chamber's Effective Termination of Case 004/2.<sup>10</sup>
7. On 14 May 2020 (but stamped by the Case File Officer on 26 May 2020), the AO An Defense responded to the International Co-Prosecutor's Immediate Appeal of the Trial Chamber's Effective Termination of Case 004/2.<sup>11</sup>

<sup>6</sup> See Case File No. 002/19-09-2007/ECCC/TC ("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, 8 April 2011, p. 2 (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").

<sup>7</sup> Email from Megan Hirst International Civil Party Lead Co-Lawyer, Subject: Re: Courtesy copy of ICP Immediate Appeal of the TC's Effective Termination of Case 004/02, 5 May 2020 [Authority 2] (noting that Ms. Hirst's "status in these proceedings is still unclear" and that she has "no access to the Case 004/02 case file").

<sup>8</sup> Email from Mr. Panhean REATH, Translator, Interpretation and Translation Unit, Subject: Estimated Timeline for Translation, 22 June 2020 [Authority 3] (estimating that, if submitted for translation on 25 June 2020, the present submission would be completed by 3 July 2020 before close of business).

<sup>9</sup> Civil Party PTC Safeguard Request.

<sup>10</sup> Case 004/2, E004/2/1, International Co-Prosecutor's Immediate Appeal of the Trial Chamber's Effective Termination of Case 004/2, 4 May 2020.

<sup>11</sup> Case 004/2, E004/2/1/1, Response to International Co-Prosecutor's Immediate Appeal of the Trial Chamber's Effective Termination of Case 004/2, 14 May 2020.

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8. On 26 May 2020, the International Co-Prosecutor filed her reply to the AO An response.<sup>12</sup>
9. On 29 May 2020, the Office of the Co-Investigating Judges issued a memorandum informing “all parties in Case 004/2 and the SCC that we will hold our decision on the [Defense request of 17 March 2020 to seal and archive Case File 004/2] in abeyance pending the decision of the SCC on the immediate appeal.”<sup>13</sup>

### III. APPLICABLE LAW

10. Internal Rule 21(1) provides,

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

- a) ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties....

[...]

- c) The ECCC shall ensure that victims are kept informed and that their rights are respected throughout the proceedings...

[...]

11. Internal Rules 12 and 23 detail the bifurcated structure that governs Civil Party representation before the ECCC.

12. Internal Rule 12 provides,

The Office of Administration shall establish a Victims Support Section and a Civil Party Lead Co-Lawyers’ Section. The Civil Party Lead Co-Lawyers Section shall be autonomous with regard to all substantive matters pertaining to Civil Parties set out in these IRs. The Office of Administration may enter into contracts with Civil Party lawyers. It also provides necessary administrative support to the Civil Party Lead Co-Lawyers’ Section and all Civil Party lawyers.

13. Internal Rule 12*ter* (1) provides that “[t]he Civil Party Lead Co-Lawyers shall ensure the effective organization of Civil Party representation during the trial stage *and beyond*, whilst

<sup>12</sup> Case 004/2, E004/2/1/1/1, International Co-Prosecutor’s Reply to Ao An’s Letter Regarding her Immediate Appeal of the Trial Chamber’s Effective Termination of Case 004/2, 26 May 2020.

<sup>13</sup> Case 004/2, D364, Memorandum from the Co-Investigating Judges, Subject: Defense Request of 17 March 2020 to seal and archive Case File 004/2 – D363 (“Request”), 1 June 2020, p. 1.

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balancing the rights of all the parties and the need for an expeditious trial within the unique ECCC context.” (emphasis added). Internal Rule 12*ter* (4) provides that “[t]he Civil Party Lead Co-Lawyers shall comprise a national and international lawyer, who are selected and funded by the ECCC, supported by such other staff as necessary. Their functions shall commence once the Trial Chamber is seized of the case...” Internal Rule 12*ter* (5) provides that the CPLCLs core functions include “[r]epresenting the interests of the consolidated group of Civil Parties, as outlined in IR 23(1) and (2)” and have the “[u]ltimate responsibility to the court for the overall advocacy, strategy and in-court presentation of the interests of the consolidated group of Civil Parties during the trial stage and beyond.”

14. Internal Rule 23(1) provides that “[t]he purpose of the Civil Party action is to: a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution.”

15. Internal Rule 23(3) provides that “[a]t the pre-trial stage, Civil Parties participate individually. Civil Parties at the trial stage and beyond shall comprise a single, consolidated group, whose interests are represented by the Civil Party Lead Co-Lawyers as described in IR 12 *ter*. The Civil Party Lead Co-Lawyers are supported by the Civil Party Lawyers in described in IR *ter* (3)...”

16. Internal Rule 23*ter* (1) provides in relevant part that:

From the issuance of the Closing Order onwards, in order to participate in proceedings, Civil Parties shall at all times be represented by a Civil Party lawyer. As soon as practicable but at the latest by the issuance of the Closing Order, the Co-Investigating Judges shall make appropriate orders for this purpose.

17. As regards access to the Case File, Internal Rule 69(3) provides that “[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.”

18. As regards appeals to the SCC, Internal Rule 106(1) provides that “[t]he Greffier of the Trial Chamber shall immediately notify all other parties and their lawyers in the case of the filing of an appeal or an immediate appeal.” While Internal Rule 106(3) provides in relevant part, “[t]he Civil Parties shall be represented by the Civil Party Lead Co-Lawyers.”

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19. Civil Parties are parties to the proceedings.<sup>14</sup> Internal Rule 23*bis* (2) provides that “[u]nless and until rejected, Civil Party applicants may exercise Civil Party Rights.”
20. The SCC has held that the rights contained in Article 14(1) of the ICCPR apply to Civil Parties.<sup>15</sup> 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.”<sup>16</sup>

#### IV. SUBMISSIONS

21. The Civil Parties in Case 004/2 are currently without any clear legal representation before the SCC through which to defend their fundamental rights in the pending appeal.
22. There can be no doubt from the content of the ICP’s Immediate Appeal before the SCC that by that document the ICP intended to and purported to file an immediate appeal. This is also clear from the email by which the ICP sent the Immediate Appeal to some of the parties on 4 May 2020.<sup>17</sup> Although the Defense have formatted their response in the style of a letter, this cannot change the fact that the matters before the Chamber must be judicially determined: the Chamber must at least determine the question of the *admissibility* of the ICP’s Immediate Appeal. Despite claiming that the Chamber “has not been lawfully seised,” the Defense has put forward arguments regarding the admissibility of the appeal before the judges.<sup>18</sup> The Chamber is clearly seised, at the very least, with the question of admissibility.
23. However, to date, Civil Parties have not had a genuine opportunity to be heard on this matter, owing to a lack of clarity regarding their legal representation. Pursuant to the Internal Rules, CPLs are not empowered to appear before the Supreme Court Chamber. The court has not recognized the CPLCLs mandate Case 004/2 and the CPLCLs have been

<sup>14</sup> 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).

<sup>15</sup> Case 002, F26/2/2, Decision on Co-Prosecutors and Civil Party Lead Co-Lawyers’ Request for Additional Time for Examination of SCW-5, 30 June 2015, para. 7 (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”).

<sup>16</sup> International Convention on Civil and Political Rights, 16 December 1966, 999 U.N.T.S. 171, article 14 (1).

<sup>17</sup> See Email from Brenda Hollis, International Co-Prosecutor, Subject: Courtesy Copy of ICP immediate appeal to SCC of TC’s effective termination of Case 004/02, 4 May 2020 [Authority 1]. The email stated *inter alia* that: “The Immediate Appeal is filed in hard copy, as the Court Management System’s electronic filing system does not yet provide for filings to the Trial Chamber or Supreme Court Chamber in this case.”

<sup>18</sup> Case 004/2, E004/2/1/1, Response to International Co-Prosecutor’s Immediate Appeal of the Trial Chamber’s Effective Termination of Case 004/2, 14 May 2020, pages 2-6.

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denied access to the Case File.<sup>19</sup> The consequence of these circumstances is that the Civil Parties are left without any legal representation in proceedings in which they clearly have a right to be heard and an interest in the outcome.

24. The CPLs submit that:

- (A) Civil Parties have a right to be heard in the Case 004/2 proceedings before the SCC;
- (B) The Civil Parties' right to be heard implies a right to legal representation, including clarity regarding their legal representation;
- (C) Pursuant to the Internal Rules, the CPLCLs are the proper Civil Party representatives to make submissions to the SCC and should be recognized as such by the Chamber;
- (D) Pursuant to the Internal Rules, the CPLCLs should be granted access to the Case 004/2 case file;
- (E) In the alternative, if the CPLCLs are not duly recognized and given access to the Case 004/2 Case File, CPLs must be recognized as having standing to make a submission before the SCC;
- (F) Civil Parties must be granted sufficient time to be heard following the resolution of this matter.

**A. Civil Parties have a right to be heard in Case 004/2 proceedings before the Supreme Court Chamber.**

25. Civil Parties are rights-bearing parties to ECCC proceedings, and specifically hold the rights provided for in Article 14(1) of the ICCPR. In Case 001, Judge Lavergne recognized that "unless the Rules explicitly exclude Civil Parties from participating or explicitly restrict their rights, logically, it must be assumed that Civil Parties have the same rights and obligations as all the other parties."<sup>20</sup> He also noted that many of these procedural rights flow from the principle of adversarial proceedings stated in Internal Rule 21,<sup>21</sup> central to which is the opportunity for all parties *to be heard* on a matter before a decision is rendered

<sup>19</sup> See Email from Megan Hirst International Civil Party Lead Co-Lawyer, Subject: Re: Courtesy copy of ICP Immediate Appeal of the TC's Effective Termination of Case 004/02, 5 May 2020 [Authority 2]. Notably, as with the national and international co-prosecutors, there is no indication in the ECCC legal framework that the CPLCLs' mandate was intended to be case-specific.

<sup>20</sup> Case File No. 001/18-07-2007-ECCC ("Case 001"), E72/3, Decision on Civil Party Co-Lawyers' Joint Request for a Ruling on the Standing of Civil Party Lawyers to Make Submissions on Sentencing and Directions Concerning the questioning of the Accused, Experts and Witnesses Testifying on Character, 9 October 2009, Dissenting Opinions of Judge Lavergne, para. 13. See also Case 002, F10/2, Decision on Civil Party Lead Co-Lawyers' Requests Relating to the Appeals in Case 002/01, 26 December 2014, paras. 12-14.

<sup>21</sup> *Id.*, para. 17.



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on it.<sup>22</sup> Internal Rule 21 also requires that proceedings before the ECCC must protect the rights of victims, and preserve a balance of rights as between the parties.

26. Internal Rule 106(3) explicitly provides for the participation of Civil Parties in both appeals from judgments and immediate appeals. Indeed, the SCC has previously ruled specifically that Civil Parties may make submissions on appeals from judgments submitted by the Defense where the grounds of appeal directly affect Civil Party rights and interests.<sup>23</sup> Similarly, Civil Parties have been permitted to be heard in response to an immediate appeal by the OCP, including on questions of admissibility.<sup>24</sup> Therefore, it is well established before this court that Civil Parties are entitled, by right, to be heard on an appeal which affects their rights or interest.

27. The ICP Immediate Appeal deals with the reasons why Case 004/2 should move forward to trial. This is a question which fundamentally affects the interests and participatory rights of Civil Parties in the case. In Case 001, this Chamber recognized the reparative aspects of this Court's work:

[A]lthough 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 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.<sup>25</sup>

28. If Case 004/2 does not proceed, the possibility for Civil Parties to obtain these forms of reparation are lost. Civil Parties' right to be heard on matters affecting their participatory rights must naturally include the right to be heard on matters which would *extinguish* these participatory rights.<sup>26</sup>

<sup>22</sup> Case 002, **E163/5/1/13**, Decision on the Co-Prosecutors' Immediate Appeal of the Trial Chamber Decision Concerning the Scope of Case 002/01, 8 February 2013, paras. 44, 50, note 110.

<sup>23</sup> Case 002, **F10/2** Decision on Civil Party Lead Co-Lawyers' Requests Relating to the Appeals in Case 002/01, 26 December 2014; Case 002, **F52/1**, Decision on Requests Concerning the Civil Party Lead Co-Lawyers Response to KHIEU Samphân Appeal, 8 January 2020. *See also* Case 001, **F28**, Appeal Judgment, 3 February 2012, para. 488.

<sup>24</sup> *See e.g.*, Case 002, **E163/5/1/13**, Decision on the Co-Prosecutors' Immediate Appeal of the Trial Chamber Decision Concerning the Scope of Case 002/01, 8 February 2013.

<sup>25</sup> Case 001, **F28**, Appeal Judgment, 3 February 2012, para. 661 (emphasis added).

<sup>26</sup> *See e.g.*, Case 002, **E163/5/1/13**, Decision on the Co-Prosecutors' Immediate Appeal of the Trial Chamber Decision Concerning the Scope of Case 002/01, 8 February 2013, paras. 44, 50, note 110.

**B. The Civil Parties' right to be heard implies a right to legal representation, including clarity regarding their legal representation.**

29. In order to give meaningful effect to the Civil Parties' right to be heard before the SCC, it is necessary that they are legally represented.
30. Internal Rule 23ter(1) makes legal representation compulsory after the issuance of a Closing Order. Internal Rule 23ter(2) likewise makes clear that, from that point in time, Civil Parties may not self-represent: a Civil Party's rights are to be exercised through his or her lawyer. Civil Party submissions must therefore always be made either by Civil Party Lawyers or CPLCLs.<sup>27</sup>
31. The Supreme Court Chamber has itself ruled that Civil Parties' representation by lawyers is among the procedural rights afforded to Civil Parties.<sup>28</sup> However, the ECCC has established a complex system for legal representation of Civil Parties. As a result, although all Civil Parties are represented by one or more CPL for the purpose of proceedings before the ECCC, these lawyers do not have standing before all parts of the Court or in all proceedings. At the trial and appeal stages, for example, an umbrella structure is used in which the CPLCLs have exclusive power to file written submissions on behalf of Civil Parties.
32. In order for this system to achieve meaningful representation of Civil Parties so that their right to be heard is realized, it is essential that there is clarity regarding which lawyers are empowered to represent Civil Parties in a given proceeding. The lack of clarity with regard to their representation is currently preventing Civil Parties from effectively and meaningfully participating in the proceedings, muting their right to be heard and disrupting the balance of rights amongst *all* the parties. It is therefore essential that clear directions are given regarding the legal representation of Civil Parties in these proceedings before the SCC. Civil Parties, as victims of crimes within the scope of the Closing Order, have a clear and direct right to be heard on both the admissibility and the substance of the ICP's Immediate Appeal. The issue of *who* asserts their rights and interests cannot be allowed to

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<sup>27</sup> Even before Internal Rule 23ter was added to the Internal Rules in 2010 a series of rulings by the Pre-Trial Chamber in Case 002 held that civil parties may not make submissions other than through a lawyer. *See* Case 002, C22/I/46, Decision on Preliminary Matters Raised by the Lawyers for the Civil Parties in IENG Sary's Appeal Against Provisional Detention Order, 1 July 2008, para. 8; Case 002, C22/I/54, Written Version of Oral Decision of 1 July 2008 on the Civil Party's Request to Address the Court in Person, 3 July 2008; Case 002, C22/I/68, Decision on Application for Reconsideration of Civil Party's Right to Address Pre-Trial Chamber in Person, 28 August 2008; Case 002, C22/I/69, Directions on Unrepresented Civil Parties' Right to Address the Pre-Trial Chamber in Person, 29 August 2008.

<sup>28</sup> Case 001, F28, Appeal Judgment, 3 February 2012, paras. 488-89.

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prevent this right from being realized. This question must therefore be resolved on an urgent basis.<sup>29</sup> The CPL's submissions as for the preferable resolution of this question are set out below.

**C. Under the Internal Rules, the CPLCLs should be duly recognized as the proper representatives to make filings before the SCC and be given access to the Case 004/2 Case File.**

33. Although the ECCC internal rules recognize the rights of victims in all stages of the proceedings before the Court, the bifurcated structure of the ECCC has resulted in an illogical gap in the representation of victims before the SCC on matters appealed in the pre-trial stage. Pre-Trial proceedings occur before the OCIJ, with appeals to the PTC.<sup>30</sup> Thereafter, trial proceedings occur before the TC, with appeals to the SCC.<sup>31</sup> Amendments introduced to Civil Party representation in 2008 directed Civil Parties to seek individual representation by Civil Party Lawyers in the pre-trial stage, (therefore, before the OCIJ or PTC)<sup>32</sup> and once proceedings move to the TC (or on appeal from it, to the SCC) submissions are made by the CPLCLs.<sup>33</sup> However, these amendments to the Internal Rules did not foresee the circumstances of the current proceedings, in which a matter is brought before the SCC while some contend that the pre-trial stage is still ongoing.
34. On its face, Internal Rule 106(3) appears to be clear: where an immediate appeal has been filed and notified under rule 106(1), "Civil Parties shall be represented by the Civil Party Lead Co-Lawyers." There is no qualification in the Internal Rules that this is only the case if the TC has already been formally recognized as seized of the case. It is implicit in the system established by the Internal Rules that whereas Civil Party Lawyers act directly

<sup>29</sup> The Civil Party Lawyers respectfully submit that the absence of a timely SCC decision on the underlying appeal would similarly violate the rights of the Civil Parties since, pursuant to Internal Rule 108(4)bis(b), it would have the effect of affirming the Trial Chamber decision. As detailed in the annexed proposed submission, the effective termination of Case 004/2 would violate the Civil Parties' rights to legal certainty, transparency and access to justice. *See* Annex A.

<sup>30</sup> Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 73, Rule 74, 16 January 2015; *see also id.* Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rules 23bis(2) and (3), 29(8), 31(10), 58(6), 59(5), 63(4), 16 January 2015.

<sup>31</sup> Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 104, Rule 105, 16 January 2015; *see also* Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 29(8), Rule 82(6), 16 January 2015.

<sup>32</sup> Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 23(3), 16 January 2015.

<sup>33</sup> Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 12 *ter* (4), Rule 23(3), 16 January 2015.

before the OCIJ and PTC, CPLCLs act before the TC and SCC. That Civil Party Lawyers cannot ordinarily file before the TC has already been made clear.<sup>34</sup>

35. It is true that Internal Rule 23(3) states that the representational role of the CPLCLs begins at the trial stage.<sup>35</sup> However, it also makes clear that Civil Parties only participate individually at the pre-trial stage.<sup>36</sup> This rule, therefore, cannot resolve the question of *who* represents Civil Parties in proceedings where the stage of proceedings—pre-trial or trial—is itself the matter in dispute.
36. For these reasons, the CPLs consider that the present proceedings properly fall within the remit of the CPLCLs. However, difficulties have arisen because of the Court's continued refusal to recognize and grant case file access to the CPLCLs. This is particularly shocking because even if the view is taken that the CPLCLs do not have standing to file submissions, Internal Rule 69(3) explicitly requires that they be able to access the case file even before trial proceedings begin, in order that advance preparation for trial can occur.
37. As previously submitted before the PTC,<sup>37</sup> failure to recognize CPLCLs in a timely manner jeopardizes victims' ability to participate meaningfully and effectively in the proceedings. Internal Rule 69(3) rightly anticipates the need for CPLCLs to familiarize themselves with the case file from the time a Closing Order is issued, to ensure they are fully prepared to effectively represent Civil Parties once pre-trial appeals conclude. It is inconceivable that any lawyers could act within the deadlines set out in Internal Rules 80 and 89 for the filing of the first submissions in the trial stage, when they have had less than a month to read thousands of pages of evidence and prior submissions and familiarize themselves with the situations and interests of hundreds or thousands of Civil Parties. In the present case, the Civil Parties' right to effective representation before the TC and SCC by CPLCLs who are properly familiar with the case file has been violated.

**D. The interests of justice require that Civil Party legal representatives be granted leave to file their submissions before the SSC.**

38. The general atmosphere of procedural irregularity, unreliable communication and confusion that is described in this and other Civil Party submissions,<sup>38</sup> continues to prevail

<sup>34</sup> Case 002, E74, Trial Chamber Response to Motions E67, E57, E56, E58, E23, E59, E20, E33, E71 and E73 following Trial Management Meeting of 5 April 2011, 8 April 2011, p. 2.

<sup>35</sup> Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 12 *ter* (4), Rule 23(3), 16 January 2015.

<sup>36</sup> Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), Rule 23(3), 16 January 2015.

<sup>37</sup> Civil Party PTC Safeguard Request, paras 39-40.

<sup>38</sup> See *e.g.*, Civil Party PTC Safeguard Request.

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in Case 004/2 and in the proceedings now before the SCC. Consequently, the interests of Civil Parties to be heard and enjoy equal and fair participation as parties to the proceedings have been gravely prejudiced, including their ability to receive notice of and respond to filings made by the other parties and chambers of the court. In consideration of these circumstances, it is in the interests of justice that, notwithstanding any deadlines that the SCC may find applicable to the CPLs' or CPLCLs' proposed submissions,<sup>39</sup> that the chamber rely on its inherent jurisdiction and/or Internal Rule 33 to grant the Civil Parties leave to file these documents before the chamber and have the Civil Parties heard.<sup>40</sup>

**E. Civil Parties must be granted sufficient time to make a submission on the issues before the SCC following a determination on their legal representation.**

39. In view of the lack of clarity of their standing to make submissions before the SCC, should the chamber decide that the CPLCLs have standing in these proceedings before it, the CPLCLs will require a reasonable extension to file their submission on the issues on appeal, affording them 10 days from the SCC's decision on the present submission. The CPLs note that such an accommodation would not disadvantage the other parties or cause undue delay, as it would ensure a balancing and respect for the rights and interests of Civil Parties in this case and it would add only a short amount of time to the proceedings.

**V. REQUEST**

40. In light of the court's continuing failure to protect and guarantee the rights of Civil Parties in these proceedings, the fact that proceedings are already before the SCC and the shared interest of all parties in avoiding further delay, the CPLs respectfully request that the Supreme Court Chamber:

- A. **Recognize** the CPLCLs as the proper Civil Party representatives to make submissions before the Supreme Court Chamber;
- B. **Order** the Office of Administration to grant CPLCLs access to the Case 004/2 Case File; and
- C. **Grant** the CPLCLs a reasonable extension for their submission to within 10 days of the SCC's decision on the present request.

<sup>39</sup> See Annex 1.

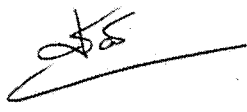
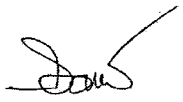

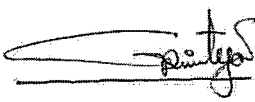



<sup>40</sup> See Case 004/1, D308/3/1/8, Decision on the National Civil Party Co-Lawyer's Request Regarding the Filing of Response to the Appeal Against the Closing Order and Invitation to File Submissions, 29 August 2017, p. 5 (Pre-Trial Chamber relying on its inherent jurisdiction and on Internal Rule 33 to allow Civil Party submissions on a specific issue impacting Civil Party rights before the chamber on appeal).

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D. Or, in the alternative, **recognize** the CPLs as having standing to make submissions before the Supreme Court Chamber, if the CPLCLs are not duly recognized and given access to the Case 004/2 Case File; and

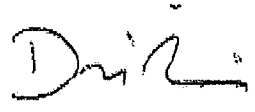
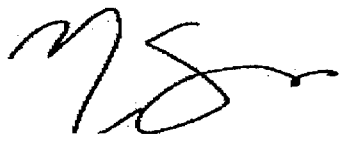
E. **Permit** the CPLs to file their proposed submission, annexed herewith in the interest of efficiency, before the SCC in English, with the Khmer translation to follow.<sup>41</sup>

Respectfully submitted,

| Date         | Name            | Place                | Signature   |
|--------------|-----------------|----------------------|---|
| 10 July 2020 | CHET Vanly      | Phnom Penh, Cambodia |    |
| 10 July 2020 | HONG Kimsuon    | Phnom Penh, Cambodia |    |
| 10 July 2020 | LOR Chuntly     | Phnom Penh, Cambodia |  |
| 10 July 2020 | SAM Sokong      | Phnom Penh, Cambodia |  |
| 10 July 2020 | TY Srinna       | Phnom Penh, Cambodia |  |
| 10 July 2020 | VEN Pov         | Phnom Penh, Cambodia |  |
| 10 July 2020 | Emmanuel JACOMY | Phnom Penh, Cambodia |  |
| 10 July 2020 | Martine JACQUIN | Phnom Penh, Cambodia |  |

<sup>41</sup> See Annex 1. If so ordered by the SCC, the CPLs will re-file the proposed submission as a stand-alone document through the ECCC's filing system along with its Table of Authorities and the Khmer translation, when complete.

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|              |                      |                         |   |
|--------------|----------------------|-------------------------|---|
| 10 July 2020 | Daniel<br>MCLAUGHLIN | Phnom Penh,<br>Cambodia |  |
| 10 July 2020 | Nushin<br>SARKARATI  | Phnom Penh,<br>Cambodia |   |