



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des Tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

ការិយាល័យសហចៅក្រមស៊ើបអង្កេត
Office of the Co-Investigating Judges
Bureau des co-juges d’instruction

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Case File No.: 004/2/07-09-2009/ECCC/OCIJ

Before: **The Co-Investigating Judges**
Date: **16 August 2018**
Original Language: **Khmer**
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ORDER REJECTING CIVIL PARTY APPLICAITONS

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I. Procedural History

1. AO An was previously in Case 004 and now in Case 004/2. The disagreements between the Co-Investigating Judges (“CIJs”) in this case were registered on 22 February 2013, 5 April 2013, 22 January 2015, 21 October 2015, 16 January 2017, and 12 July 2018.
2. Since the beginning of the investigation into this case, 1,920 people have filed applications to become Civil Parties.
3. On 29 April 2011, the CIJs declared the Civil Party Applications of Robert Hamill and SENG Chantheary inadmissible.¹ The applicants appealed against the CIJs’ orders.²
4. On 14 and 28 February 2012, the Pre-Trial Chamber (“PTC”) was unable to reach the required majority to decide on the appeals by both applicants.³
5. On 15 November 2011, SENG Chantheary withdrew her application from the case file.⁴ The Greffier of the Office of the CIJs acknowledged this by letter on 29 May 2014.⁵
6. On 30 December 2011, Robert Hamill requested the CIJs to reconsider their order on his admissibility as a Civil Party.⁶ The CIJs did not issue a new order on his admissibility.

¹ Case 004/2, D5/1/3, *Order on the Admissibility of the Civil Party Application of SENG Chan Theary*, 29 April 2011; Case 004/2, D5/2/3, *Order on the Admissibility of the Civil Party Application of Rob Hamill*, 29 April 2011.

² Case 004/2, D5/1/4/1, *Appeal against Order on the Admissibility of Civil Party Application of SENG Chan Theary*, 18 May 2011; Case 004/2, D5/2/4/2, *Appeal against Order on the Admissibility of Civil Party Applicant Mr Robert Hamill*, 23 May 2011.

³ Case 004/2, D5/2/4/3, *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert Hamill*, 14 February 2011 [2012]; Case 004/2, D5/1/4/2, *Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant SENG Chan Theary*, 28 February 2012.

⁴ Case 004/2, D5/1/5, *Request to Withdraw Ms SENG Chantheary’s Civil Party Application 11-VSS-00001*, 3 March 2014.

⁵ Case 004/2, D5/1/6, *Letter of the Greffier of the Office of the Co-Investigating Judges to Mr Choung Chou-Ngy*, 29 May 2014; Case 004/2, D5/1/7, *Letter of the Greffier of the Office of the Co-Investigating Judges to Mr Sam Sokong*, 29 May 2014; Case 004/2, D5/1/8, *Letter of the Greffier of the Office of the Co-Investigating Judges to Lawyer Emmanuel Jacomy*, 29 May 2014.

⁶ Case 004/2, D5/2/5, *Request for Co-Investigating Judges to Reconsider Decision on Admissibility of Civil Party Applicant Mr. ROBERT Hamill (D11/2/3)*, 30 December 2011.

7. In the course of the investigations into Cases 003, 004, 004/1 and 004/2, the OCIJ was informed that 47 applicants to Case 004/2 were deceased.⁷ The successor of one deceased applicant expressed the wish to continue the action on behalf of the deceased.⁸ Three applicants withdrew their applications.⁹
8. In the course of the investigations into Cases 003, 004, 004/1 and 004/2, the OCIJ interviewed a number of applicants to Case 004/2, while in Cases 002 and 002/1 the Trial Chamber heard testimonies of Case 004/2 applicants.
9. On 30 November 2016 and 31 January 2017, the International Co-Investigating Judge (“ICIJ”) ordered assignment of lawyers¹⁰ to all Civil Party applicants to Cases 004 and 004/2, and additional powers of attorney were filed into the case file since then. Therefore, all Civil Party applicants have their lawyers.
10. On 28 April 2017, the ICIJ rejected all requests for protective measures¹¹ made by Civil Party applicants to Case 004/2.

II. Discussion

11. In order for Civil Party action to be admissible, the Civil Party applicant shall be clearly identified; and demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury upon which a claim of collective and moral reparation might be based.¹²

⁷ Annex D, *Victims Support Section’s Memorandum to OCIJ*, 9 January 2018; Annex E, *Victims Support Section, List of Civil Party Applicants who are deceased*; Case 004/2, D348.2, *Annex 2*, 1 May 2017; Case 004, D219/856, *Written Record of Investigation Action*, 31 October 2016; Case 004/1, D307, *Order on Admissibility of Civil Party Applications*, 22 February 2017, para. 7.

⁸ Case 004/2, D5/641/3, *Civil Party Lawyer’s letter regarding “[Request for] Successor of Deceased Civil Party to Continue Civil Reparation Claim, D5/641,”* 16 January 2016.

⁹ Case 004/2, D5/1114/3, *Email to the Lawyers*, 5 October 2015; Case 004/2, D5/1921/3, *Letter to the Lawyers concerning the Withdrawal of Mr Dy Dany from Case Files 003, 004, and 004/2*, 9 January 2018; Case 004/1, D307, *Order on Admissibility of Civil Party Applications*, 22 February 2017, para. 7.

¹⁰ Case 004/2, D330, *Order on the Assignment of Lawyers for All Civil Party Applicants*, 30 November 2016; Case 004/2, D346, *Order on the Recognition of Lawyers and Assignment of Lawyers to Civil Party Applicants*, 31 January 2017.

¹¹ Case 004/2, D348, *Decision on Civil Party Applicants’ Requests for Protective Measures*, 28 April 2017.

¹² Extraordinary Chambers in the Courts of Cambodia, Internal Rules (REV.9), Rule 23 *bis*; Extraordinary Chambers in the Courts of Cambodia, [Practice] Direction, Victim Participation (Rev.1), 27 October 2008, Article 3.2.

12. Internal Rule 23 *bis* prescribes that the CIJs shall make a determination on the admissibility of Civil Party applicants at the latest at the time of the Closing Order.
13. Today, we dismissed all charges in Case 004/2 against AO An because AO An, the only Charged Person in this case, does not fall under the ECCC's jurisdiction.

For the forgoing reasons, we hereby:

14. **REJECT** all Civil Party applications in Case 004/2.

Phnom Penh, 16 August 2018

YOU Bunleng
National Co-Investigating Judge