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Case No.: 002/19-09-2007/ECCC/OCIJ

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

FILING DETAILS

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**RESPONSE TO DIRECTION ON RECONSIDERATION OF THE ADMISSIBILITY OF  
KHMER KROM CIVIL PARTY APPLCIATIONS**

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1. Pursuant to the Pre Trial Chamber's Direction on the Reconsideration of the Admissibility of Civil Party Applicants dated 23 June 2011 ("PTC Direction"),<sup>1</sup> the Co-lawyers for the Khmer Krom Civil Parties and Civil Party Applicants ("Co-Lawyers") wish to make the following submission in response to the Pre Trial Chamber's Decision on the Appeals against Orders of the Co-Investigating Judges on the Admissibility of the Civil Party Applications dated 24 June 2011 ("PTC Decision").<sup>2</sup>
2. The PTC Direction identifies 11 "Khmer Krom Civil Party Applicants" ("Khmer Krom Applications/Applicants") represented by the Co-Lawyers, and indicates that its previous decision on appeals PTC 47 & 48<sup>3</sup> ("the First PTC Admissibility Appeal Decision"),<sup>4</sup> "had the effect of excluding on erroneous legal basis" these Khmer Krom Applications. The PTC Direction adds that the Chamber is considering reconsidering its decision.
3. The Co-Lawyers submit that the First PTC Admissibility Appeal Decision correctly held that PTC 47 was admissible, but, as the Pre-Trial Chamber now acknowledges in its wisdom, its legal basis for rejecting the Khmer Krom Applications in question was flawed. The Co-Lawyers agree with the PTC Direction and submit that the Khmer Krom Applications must be reconsidered and admitted as a necessary corollary of the PTC Decision.
4. The First PTC Appeal Admissibility Appeal Decision of 27 April 2010 relating to Khmer Krom Applications should be reconsidered in light of the PTC Decision of 23 June 2011 and the "broader Civil Party admissibility criteria"<sup>5</sup> that the majority of the Pre-Trial Chamber has laid down therein. Simply put, the Khmer Krom Applications should benefit from the same *de novo* review which the majority of the Chamber correctly undertook in delivering the PTC Decision, and the new admissibility criteria which they applied.
5. The factual and legal reasons given in the PTC Decision for reversing the impugned orders issued by the Co-Investigating Judges ("CIJs") apply with equal force to the CIJs' Order on the Admissibility of Civil Party Applications related to request D250/3 dated 13 January 2010 ("CIJs' Admissibility Order")<sup>6</sup> which rendered the Khmer Krom Applications inadmissible, and which was affirmed by the First PTC Admissibility Appeal Decision.

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<sup>1</sup> D250/3/2/1/6.

<sup>2</sup> D411/3/6.

<sup>3</sup> Co-Lawyer's Appeals against the Co-Investigating Judges' Combined Order D250/3/3 and Order D250/3/2 dated 13 January 2010 on the Admissibility of Civil Party Applications, dated 12 February 2010, D274/4/1 and D250/3/2/1/1 ("PTC 48 and PTC 47" respectively).

<sup>4</sup> Decision on the Appeals against the Co-Investigating Judges' Combined Order D250/3/3 dated 13 January 2010 and Order D250/3/2 dated 13 January 2010 on the Admissibility of Civil Party Applications, 27 April 2010, D 250/3/2/1/5 ("First PTC Admissibility Appeal Decision")

<sup>5</sup> D411/3/6, page 48.

<sup>6</sup> D250/3/2 ("CIJs' Admissibility Order").

6. In particular, the CIJs' Admissibility Order erroneously rejected the Khmer Krom Applications on the ground that the "necessary causal link between the alleged injury and the facts under investigation were not established by the applicants" in question.<sup>7</sup> By affirming the merits of the CIJs' Order and rejecting the Khmer Krom Applications, the Pre Trial Chamber misdirected itself in its First PTC Admissibility Appeal Decision – a decision which no longer reflects good law following the PTC Decision, yet which continues to form part of the ECCC's legal record and legacy. This error should be immediately corrected.
7. Like the 1,728 Civil Party Applications that the majority of the Chamber has admitted by its PTC Decision, these 11 Khmer Krom Applications too fulfill the legal requirements identified in the PTC Decision and should similarly be found admissible. The Co-Lawyers adopt and incorporate in full the arguments made in their appeal PTC 47 and ask that the Khmer Krom Applicants in question be reconsidered and joined as Civil Parties in the interests of fairness and equal treatment of like cases.
8. Finally, fresh reconsideration by the Pre-Trial Chamber is the only way to redress the deleterious effect of the First PTC Admissibility Appeal Decision on the Khmer Krom Applicants. There are no further appeals that they can pursue in this regard. Nor can they raise the matter with the CIJs who have stated in their memoranda of 4 June 2010<sup>8</sup> and 25 June 2010<sup>9</sup> that they will not "reconsider the admissibility" of such civil party applications. The Pre Trial Chamber's reconsideration and admission is therefore necessary to vindicate the Khmer Krom Applicants' right to be joined as Civil Parties, acknowledge their suffering, and to ensure that justice is done and seen to be done.

**WE HEREBY ASK** the Pre-Trial Chamber,

- a. To reconsider its earlier decisions regarding the Khmer Krom Applications in light of the PTC Decision.
- b. To overturn the CIJ's Admissibility Order and correct its First PTC Admissibility Appeal Decision insofar as they relate to the rejection of the Khmer Krom Applications; to admit these applications and grant them the status of Civil Parties in Case 002.

Respectfully submitted,

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<sup>7</sup> D250/3/2, para 19.

<sup>8</sup> D250/3/2/4.

<sup>9</sup> D250/3/2/6.



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