

Declassified to Public
07 September 2018

**BEFORE THE OFFICE OF 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:** Co-Lawyers for Civil Parties

Filed to: Pre-Trial Chamber

Original Language: English

Date of Document: 17 August 2018

CLASSIFICATION

Classification of the Document

Suggested by the Filing Party: Public

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 20-Aug-2018, 08:00
CMS/CFO: Sann Rada

Classification by PTC: សម្ងាត់/Confidential

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

**CIVIL PARTY CO-LAWYERS' URGENT REQUEST FOR AN EXTENSION
OF TIME AND PAGES TO APPEAL THE CIVIL PARTY ADMISSIBILITY
DECISIONS IN CASE 004/2**

Filed by:

Co-Lawyers for Civil Parties

CHET Vanly

Daniel MCLAUGHLIN

SAM Sokong

Nushin SARKARATI

Before:

Pre-Trial Chamber

Judge PRAK Kimsan

Judge Olivier BEAUVALLET

Judge NEY Thol

Judge BAIK Kang Jin

Judge HUOT Vuthy

004/2/07-09-2009-ECCC-OCIJ (PTC)

Distribution to:**Co-Investigating Judges**YOU Bunleng
Michael BOHLANDER**Co-Prosecutors**CHEA Lang
Nicholas KOUMJIAN**Co-Lawyers for Ao An**MOM Luch
Richard ROGERS
Göran SLUITER**Co-Lawyers for Civil Parties**HONG Kimsuon
KIM Mengky
LOR Chunty
POV Ven
SIN Soworn
TY SrinnaLaure DESFORGES
Isabelle DURAND
Emmanuel JACOMY
Martine JACQUIN
Lyma NGUYEN

004/2/07-09-2009-ECCC-OCIJ (PTC)

I. INTRODUCTION

1. Civil Party Co-Lawyers respectfully request that the Pre-Trial Chamber grant an extension of time, pursuant to Internal Rule 39(4), to appeal the International Co-Investigating Judge's Order on Admissibility of Civil Party Applicants (Admissibility Order) issued on 16 August 2018.¹ The Co-Lawyers also respectfully request an increase in the page limit and permission to file in a single language for appeals to Civil Party admissibility decisions in Case 004/02.
2. The request for an extension of time is justified by compelling reasons. As discussed below, addressing the sheer number of Civil Party dismissals rendered *en masse* in the Case 004/02 is made even more onerous by the deeply reduced staff and resources available to civil party lawyers, and the Co-Lawyers cannot meaningfully address each of the rejected applications in the 10 days available for an expedited appeal. Nor would an extension of time unnecessarily risk the efficiency of the proceedings in this matter. Given the unprecedented split between the International and National Co-Investigating Judge's Closing Orders, the Pre-Trial Chamber will surely be seized with the question of the Court's personal jurisdiction over Ao An. A review of the Court's jurisdiction must precede a determination on civil party admissibility, and an appeal on the Admissibility Order is rendered moot without, first and foremost, jurisdiction over the Accused. Accordingly, a delay in appeals relating to civil party admissibility will not unduly harm the interest of the parties.
3. In the interest of expedience, Civil Party Co-Lawyers request leave to file the instant urgent request in English with Khmer translation to follow as soon as possible.

II. PROCEDURAL HISTORY

4. On 16 August 2018, the International Co-Investigating Judge issued his admissibility order on civil party applicants to Case 004/02 ("Admissibility Order" or "the Order"), which sets out the standards for admissibility of Civil Party applicants in Case 004/02.² In a separate

¹ International Co-Investigating Judge's Order on Admissibility of Civil Party Applicants, Case File No. 004/2/07-09-2009-ECCC/OCIJ, **D362**, 16 August 2018.

² International Co-Investigating Judge's Order on Admissibility of Civil Party Applicants, Case File No. 004/2/07-09-2009-ECCC/OCIJ, **D362**, 16 August 2018.

004/2/07-09-2009-ECCC-OCIJ (PTC)

closing order, the National Co-Investigating Judge dismissed all charges against Ao An for lack of personal jurisdiction, and thereby did not examine the admissibility of the Civil Party applications in Case 004/2. This decision was issued in Khmer only, with no translation in English or French.³

5. Annex B to the Order documents the grounds upon which the International Co-Investigating Judge found approximately 1,400 Civil Party applications to Case 004/02 inadmissible.⁴

III. APPLICABLE LAW

6. The Internal Rules provide that the Co-Investigating Judges (“CIJs”) may make determinations on Civil Party admissibility throughout the investigative stage, but that upon issuance of the Closing Order, the CIJs “shall decide on the admissibility of all remaining Civil Party Applications by a separate order.”⁵ Civil Party applicants enjoy a right of appeal to the Co-Investigation Judge’s admissibility decision without the effect of staying the proceedings.⁶ Appeals on Civil Party admissibility are subject to the court’s expedited appeals regime which requires that the appeal is submitted “within 10 days of the notification of the decision on admissibility,” a timeframe to which extensions are not envisaged.⁷
7. The rights of victims to fair and meaningful participation in proceedings before the ECCC is set out in both the Internal Rules and jurisprudence of the court as well as general principles of victim participation enshrined in international law and recognized by the court. Internal Rule 21 establishes the fundamental principles that guide the operation of the court, including that the rules, procedures and practice directions of the ECCC “shall be interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused and *Victims*...in light of the *inherent specificity* of the ECCC.”⁸ The PTC has found that the interpretation and application of ECCC law must be made consonant with the inherent

³ National Co-Investigating Judge’s Closing Order, Case File No. 004/2/07-09-2009-ECCC/OCIJ, **D359**, 16 August 2018.

⁴ Annex B: Civil Party Applications Declared Inadmissible, Case File No. 004/2/07-09-2009-ECCC/OCIJ, **D362.2**, 18 August 2018.

⁵ ECCC Internal Rules (Rev. 9), Rule 23*bis*(3).

⁶ ECCC Internal Rules (Rev. 9), Rule 23*bis*(2)-(3).

⁷ ECCC Internal Rules (Rev. 9), Rule 77*bis*(2).

⁸ ECCC Internal Rules (Rev. 9), Rule 21(1) (emphasis added).

004/2/07-09-2009-ECCC-OCIJ (PTC)

- specificity of the court, including its context, object and purpose which includes ensuring the victim's right to "meaningful participation" in the proceedings and to access to redress.⁹ Rule 21 also requires that the rights of victims are "respected throughout the proceedings."¹⁰
8. Moreover, where procedural rules are unclear or a question of law touches on the rights of victims in proceedings before the ECCC, "guidance may be sought in procedural rules established at the international level" and in "general principles on victims in international law."¹¹ These principles call for judicial mechanisms for victim redress that are "expeditious, fair,... and accessible."¹² They also require that the judicial process is "responsive" to victims by "[a]llowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused."¹³

IV. DISCUSSION

9. It is in the interest of justice that the Civil Party applicants are provided a reasonable, fair, accessible and meaningful opportunity, through their lawyers, to express their views and concerns in response to the International Co-Investigating Judge's denial of their application to participate in Case 004/2 proceedings as Civil Parties.
10. The Civil Party procedures outlined in Internal Rule 23 *bis* envision that the Co-Investigating Judges can rule upon applications throughout the pendency of the investigation on a rolling basis. Those Civil Party admissibility decisions can then be appealed individually on an expedited basis as per Rule 77 *bis*. Where, however, as here, all Civil Party applications are ruled upon at one time in the Closing Order, it forces Civil Party

⁹ Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, Case File No. 002/19-09-2007-ECCC/OCIJ (PTC), **D404/2/4**, 24 June 2011 at paras. 58-65 [hereinafter "PTC CP Admissibility Decision Case 002"].

¹⁰ ECCC Internal Rules (Rev. 9), Rule 21(1)(c).

¹¹ Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, 27 October 2004 at art. 33 *new*; PTC CP Admissibility Decision Case 002, *supra* note 9 at para. 32.

¹² Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UNGA Res. 40/34, 29 November 1985 at principle 5 [hereinafter "UN Declaration on Abuse of Power"]; *see also* Declaration of 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, UNGA Res. 60/147, 16 December 2005 at principle 11 [hereinafter "UN Basic Principles on Right to Remedy"].

¹³ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UNGA Res. 40/34, 29 November 1985 at principle 6(a)-(b) [hereinafter "UN Declaration on Abuse of Power"].

004/2/07-09-2009-ECCC-OCIJ (PTC)

Lawyers into an impossible position of handling expedited appeals for thousands of clients. The Co-Investigating Judges may reject Civil Party applications at any time. Given the breadth of dismissals in the admissibility order, and the severely diminished resources available to lawyers representing civil party applicants, Civil Party Co-Lawyers request an extension of 30 days to address the Admissibility Order. Such an extension will provide adequate time to consult with clients, obtain additional information or documentation necessary to support the appeal, and prepare arguments for submission to the Pre-Trial Chamber.

11. The extension of the window for appeals to the order on admissibility for Case 004/2 to 30 days would provide far greater opportunity for Co-Lawyers to reach their clients, a large number of which are dispersed in far-flung locations throughout the country and overseas, and have meaningful consultation with them in order to put a well-founded challenge to the International Co-Investigating Judge's finding of inadmissibility. At this critical stage of the proceedings, when the victims' right to full participation hangs in the balance, such consultation is essential if the court is to meet its duty to safeguard the interests of victims and respect their right to meaningful participation through an accessible appeals process.
12. Furthermore, a decision by the Pre-Trial Chamber to grant Co-Lawyers for Civil Party applicants additional time will not prejudice the rights of the other parties nor diminish the efficiency of the Case 004/2 proceedings. As a preliminary matter, the jurisdictional split between the National and International Co-Investigating Judges and its impact, if any, on the status of all Civil Party applicants in Case 004/2 must be resolved by the Pre-Trial Chamber before the admissibility of Civil Party applicants is addressed. Given that the Civil Party applicants retain their right to participate in the proceedings until a final decision on their admissibility is rendered, there is little incentive or need for the Court to decide appeals on Civil Party admissibility at this stage.
13. At the ECCC, victims are entitled to the full measure of protection and consideration afforded to them by the fundamental principles of law, the rules of the court, and general principles of international law. In a procedural matter such as the period permitted for making an appeal, judges of the Pre-Trial Chamber have noted "the most fundamental importance...to ensure respect of [] procedural guarantees which are designed to secure

004/2/07-09-2009-ECCC-OCIJ (PTC)

‘procedural justice’ rather than ‘results-oriented justice.’”¹⁴ By granting the request for an extension of time, the Pre-Trial Chamber will ensure that civil party applicants are afforded procedural justice in respect to their appeals on admissibility.

V. REQUEST

14. For the reasons set out above, Co-Lawyers for Civil Parties respectfully request the Pre-Trial Chamber to:

- a. **EXTEND** the filing deadline for appeals to civil party admissibility decisions by 30 days;
- b. **INCREASE** the page limit for appeals filings on Civil Party admissibility to 45 pages; and
- c. **PERMIT** Co-Lawyers for Civil Parties to submit their appeals in a single language, Khmer or English, with translations to soon follow.

Respectfully submitted,

Date	Name	Place	Signature
17 August 2017	SAM Sokong Cambodian Civil Party Co-Lawyer	Phnom Penh, Cambodia	
	Nushin SARKARTI, International Civil Party Co-Lawyer	Phnom Penh, Cambodia	
	Daniel MCLAUGHLIN, International Civil Party Co-Lawyer	Phnom Penh, Cambodia	
	CHET Vanly, Cambodian Civil Party Co-Lawyer	Phnom Penh, Cambodia	

¹⁴ Opinion of Judges Lahuis and Downing, Considerations of the Pre-Trial Chamber regarding the Appeal against Order on the Admissibility of Civil Party Applicant Robert Hamill, Case File 003/07-09-2009-ECCC/OCIJ (PTC 02), D11/2/4/4, 24 October 2011 at para. 10.