



អង្គជំនុំជម្រះវិសេសវិសេសសាលាដំបូងកម្ពុជា

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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Royaume du Cambodge
Nation Religion Roi
Kingdom of Cambodia
Nation Religion King

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

Case File No.: 003/07-09-2009-ECCC-OCIJ

Before: **YOU Bunleng**
Mark B. HARMON
Date: **26 February 2013**
Original: **English**
Classification: **PUBLIC (REDACTED VERSION)**

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Lawyer's Recognition Decision Concerning All Civil Party Applications on Case File No.003

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To be notified to:
Civil Party Lawyers
HONG Kimsuon,
KIM Mengkhy
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Nicole DUMAS
Isabelle DURAND
Françoise GAUTRY
Martine JACQUIN

To be copied to:
VSS
CHOUNG Chou Ngy
Mahdev MOHAN



1. **Noting** the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, dated 27 October 2004 (the "ECCC Law");
2. **Noting** Rules 21, 23, 23 *bis*, 23 *ter* and 72 of the ECCC Internal Rules, Rev.8 (the "Internal Rules");
3. **Noting** the International Co-Prosecutor's Second Introductory Submission, dated 20 November 2008, initiating Case File No.003,¹ which was placed on the Case File on 7 September 2009;²
4. **Noting** the resulting judicial investigation relating to alleged violations of the 1956 Penal Code, crimes against humanity and grave breaches of the Geneva Conventions of 12 August 1949, offences defined and punishable under Articles 3, 5, 6, 29 (new) and 39 (new) of the ECCC Law, and 500, 501, 503, 505, 506, 507 and 508 of the 1956 Penal Code of Cambodia;
5. **Noting** that, as of the date of this Decision, 321 Civil Party applications have been placed on the Case File, including Powers of Attorney designating a total of 16 Civil Party lawyers as their lawyers in Case No.003.³
6. **Noting** that, on 29 April 2011, the Civil Party application by [REDACTED]; represented by Mr. CHOUNG Chou-Ngy, was rejected by the CIJs⁴, and will thus remain on the confidential Case File as a complaint unless otherwise requested.
7. **Noting** further that, on 14 January 2013, Civil Party lawyer Silke Studzinsky, notified her resignation as international counsel for Civil Parties and the transfer of her legal representation of Civil Party applicants in Case No.003 to Ms Lyma NGUYEN (the "Studzinsky Resignation Letter");⁵
8. **Noting** that following a review of the rejected Civil Party applications by [REDACTED] , [REDACTED] and [REDACTED], the Reserve International Co-Investigating Judge admitted them as Civil Parties on 24 February 2012, 15 March 2012 and 3 April 2012, respectively,⁶ rendering the previous OCIJ and PTC decisions moot.⁷

¹ Case File No. 003/07-09-2009/ECCC/OCIJ-D1, *Co-Prosecutor's Second Introductory Submission Regarding the Revolutionary Army of Kampuchea*, 20 November 2008.

² Case File No. 003/07-09-2009/ECCC/OCIJ-D1/1, *Acting International Co-Prosecutor's Notice of Filing of the Second Introductory Submission*, 7 September 2009.

³ A certain number of Civil Party applicants have also designated a 17th lawyer, Mahdev MOHAN, as their international lawyer, however valid Powers of Attorney have not yet been received by the OCIJ greffiers.

⁴ ECCC, CIJ, 003/07-09-2009-ECCC-OCIJ, Doc. No. D11/1/3, *Order on the Admissibility of the Civil Party Application of [REDACTED]*, 29 April 2011; this rejection was upheld by the Pre-Trial Chamber since a super-majority could not be reached: ECCC, PTC (01), 003/07-09-2009-ECCC/OCIJ, Doc. No. D11/1/4/2, *Considerations of the Pre-Trial Chamber Regarding the Appeal Against Order on the Admissibility of Civil Party Applicant [REDACTED]*, 28 February 2012.

⁵ Case File No. 003/07-09-2009/ECCC/OCIJ-D57, *Silke Studzinsky, Resignation from all mandates in Cases 003 and 004 and Transferral of my legal representation for clients in Cases 003 and 004*, 14 January 2013.

⁶ ECCC, RICIJ, Case File No.003/07-09-2009-ECCC-OCIJ, Doc. No. D11/2/5/1, *Order on the Reconsideration of the Decision on Admissibility of Civil Party Applicant [REDACTED]*, 24 February 2012; ECCC, RICIJ, Case File No.003/07-09-2009-ECCC-OCIJ, Doc. No. D11/4/5, *Order on the Reconsideration of the Admissibility of the Civil Party Application of [REDACTED]*, 15 March 2012; and ECCC, RICIJ, Case File No.003/07-09-2009-ECCC-OCIJ, Doc. No. D11/3/5, *Order on the Reconsideration of the Admissibility of the Civil Party Application of [REDACTED]*, 3 April 2012.



9. **Noting** that, on 7 February 2013, Co-Investigating Judges You and Harmon signed a Written Record of Disagreement concerning the validity of documents placed on Case File No.003 since the resignation of International Co-Investigating Judge Siegfried Blunk and the current status of the judicial investigation in Case No.003.
10. **Noting** that, pursuant to Internal Rule 23 *bis* (2), Civil Party applicants may exercise Civil Party rights “*unless and until rejected*”, that there is no requirement in this Rule that formal charges be laid before this right may be exercised, and that Internal Rule 23 *ter* (1) enjoins the Co-Investigating Judges to make appropriate orders for the purpose of ensuring legal representation of Civil Parties as soon as practicable;
11. **Noting** that the investigatory discretion of the CIJs is subject to an express duty set out in Internal Rule 55(5) itself, to “*conduct their investigation impartially, whether the evidence is inculpatory or exculpatory*” and that this duty also safeguards the rights of the victims to a genuine investigation, as confirmed by Internal Rule 21 sub-rule (1)(a) and (c).
12. **Considering** that, in order to safeguard the interests of victims and Civil Parties and to ensure legal certainty⁸ and transparency of the proceedings pursuant to Internal Rule 21,⁹ pending decisions on admissibility or the review of previous admissibility decisions, it is important to clarify the state of legal representation for all Civil Party applicants and Civil Parties in Case No.003;
13. **Noting** that the following rights and obligations apply as a result of being designated as a Civil Party lawyer:
- **Participation in the judicial investigation:** recognized lawyers are authorised to represent their clients during participation in investigative action and Pre-Trial proceedings, as¹⁰ provided in the ECCC Internal Rules and any related rulings by the Co-Investigating Judges or the Pre-Trial Chamber;
 - **Access to the case file:** recognized lawyers have the right to examine and make copies of the original case file of the judicial investigation to which their client is a party, as well as the paper copies thereof, during working days and subject to the requirements of the proper functioning of the ECCC. Electronic access may be arranged with the assistance of the Victims Unit or the Case File Officer, but remains under the overall supervision of the

⁷ For persuasive jurisprudence on this point, see ECCC, PTC, Case File No.003/07-09-2009-ECCC/OCIJ (PTC 05), Doc. No. D11/3/4/2, *Considerations of the Pre-Trial Chamber Regarding the Appeal Against Order on the Admissibility of Civil Party Applicant* [REDACTED], 13 February 2013, para. 38-39.

⁸ The International Co-Investigating Judge notes that Civil Party lawyer Lyra Nguyen was given access to the Case File and the following Civil Party lawyers were recognized, but not fully informed of their rights and obligations: Silke Studzinsky, Hong Kimsuon, Kim Mengkhy, Philippe Canonne, Moch Sovannary, Fabienne Trusses, Ferdinand Djammen-Nzepa, Martine Jacquin and Barnabe Nekui (see ECCC, RICJ, Case File No.003/07-09-2009-ECCC-OCIJ, Doc. Nos. D11/39/4, 26 April 2012; D11/179/3, 26 April 2012; D11/192/3, 26 April 2012; and D11/243/4, 26 April 2012).

⁹ Concerning the need for “procedural justice” for all the parties under Internal Rule 21, including respect for the rights of civil party applicants to participate as parties to the judicial investigation “*unless and until rejected*” pursuant to Internal Rule 23 *bis* (2), see: ECCC, PTC, Case File No.003/07-09-2009/ECCC/PTC-D11/2/4/4, *Considerations of the Pre-trial Chamber Regarding the Appeal Against Order on the Admissibility of Civil Party Applicant* [REDACTED], Opinion of Judges Lahuis and Downing, 24 October 2011, paras.5 and 10.

¹⁰ The Zylab Request form, available on the ECCC Website, should be submitted to the OCIJ greffier and then forwarded to CFO/RAU for processing.



Greffiers of the Co-Investigating Judges or the Pre-Trial Chamber, as appropriate; Within reason, recognized lawyers may make, or request, copies of documents contained in the case file and take them to discuss with their client, but must not hand over such copies to the client or to any other person;

- **Professional and Judicial Confidentiality:** Through the client's participation as a Civil Party, both the recognized lawyers and their clients will have access to confidential information contained in the case file. Only the ECCC Judges and Prosecutors can decide to make such information public. The recognized lawyers are bound by the confidentiality of the judicial investigation and their own professional rules not to disclose any information that they have gained from consulting the case file.
- **Filing of documents:** All official documents must be filed through the Case File Officer, as set out in the Practice Direction on Filing of Documents; once electronic access has been organized, the recognized lawyers will receive electronic notification of documents placed on the case file, and should provide an email address to the OCIJ greffier for this purpose; Service of a hard copy will only be possible where a recognized lawyers does not have access to email;¹¹

14. **Noting** that on 22 February 2013, Co-Investigating Judges You and Harmon signed a Written Record of Disagreement concerning this Recognition Decision.

I, International Co-Investigating Judge Mark B. Harmon, hereby:

15. **Accredit and Recognize** the 14 lawyers duly admitted to the list of lawyers willing to represent victims before the ECCC, listed in Annex 1 (not including Ms. Silke Studzinsky and Mr. Choung Chou-Ngy), as the lawyers for the 10 Civil Party applicants set out therein, as well as for all other pending Civil Party applicants and admitted Civil Parties who have designated them, or who may do so in the future, for the purposes of the judicial investigation before the ECCC in Case No.003;

16. **Instruct** the OCIJ greffiers:

- to note such additional designations on the files of the Civil Parties and Civil Party applicants that are already in the Case File;
- to grant access to the Case File to the recognized lawyers as set out below;

17. **Instruct** the ECCC Victim Support Section:

- to expedite the forwarding to the OCIJ greffiers of any outstanding Civil Party applications in Case No.003 received since the previous Rule 66 notification on 29 April 2011; and


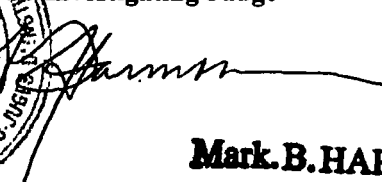
¹¹ The Internal Rules and practice directions relating to Civil Party participation before the ECCC can be consulted and downloaded from the Victims Unit web page (<http://www.eccc.gov.kh/>). If you need any further advice concerning the representation of clients in ECCC proceedings, please contact the Victims Unit.



- to continue to accept and forward to the OCIJ any new Civil Party applications they may receive up until 15 days after the issue of further Internal Rule 66 notification of the conclusion of the judicial investigation.

Dated the 26th day of February 2013 in Phnom Penh

លោកជំទាវម៉ាក ហាម៉ុង
International Co-Investigating Judge



Mark. B. HARMON

Annex A – Recognized Civil Party Lawyers (REDACTED VERSION)

VSS number	Civil Party Applicant Name	Power of Attorney Doc. No.	Name of appointed lawyer(s)	Date of designation by Civil Party Applicant	Date of acceptance by lawyer
11-VSS-00004	[REDACTED]	D11/39/2	HONG Kimsuon, <i>Silke STUDZINSKY</i> <i>(withdrawn and replaced by</i> <i>Lyma NGUYEN)</i>	6 May 2011	6 May 2011
11-VSS-00005	[REDACTED]	D11/6/3	KIM Mengkhy, Martine JACQUIN, Christine MARTINEAU	11 May 2011	11 May 2011
11-VSS-00008	[REDACTED]	D11/12/3	KIM Mengkhy, Martine JACQUIN, Ferdinand DJAMMEN- NZEPA	10 May 2011	10 May 2011
11-VSS-00012	[REDACTED]	D11/7/3	KIM Mengkhy, Martine JACQUIN, Annie DELAHAIE	11 May 2011	11 May 2011
11-VSS-00014	[REDACTED]	D11/233/3	KIM Mengkhy, Martine JACQUIN, Isabelle DURAND	11 May 2011	11 May 2011
11-VSS-00015	[REDACTED]	D11/234/3	KIM Mengkhy Martine JACQUIN, Nicole DUMAS	11 May 2011	11 May 2011
11-VSS-00019	[REDACTED]	D11/15/3	KIM Mengkhy, Martine JACQUIN, Barnabe NEKUI	11 May 2011	11 May 2011
11-VSS-00025	[REDACTED]	D11/29/3	KIM Mengkhy, Martine JACQUIN, Françoise GAUTRY	11 May 2011	11 May 2011
11-VSS-00074	[REDACTED]	D11/38/2	SAM Sokong, Nushin SARKARATI	16 May 2011	16 May 2011
11-VSS-00083	[REDACTED]	D11/183/3	KIM Mengkhy, Martine JACQUIN, Laure DESFORGES	11 May 2011	11 May 2011

Note: When each lawyer's name appears for the first time it is indicated in bold type