

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

FILING DETAILS

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

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Before:

Pre-Trial Chamber

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Distribution to:**Co-Investigating Judges**

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I. INTRODUCTION

1. The 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 28 June 2019.¹ 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.
2. The request for an extension of time is justified by compelling reasons. *First*, addressing the sheer number of Civil Party dismissals rendered *en masse* in the Case 004 Admissibility Order is made even more onerous by the deeply reduced staff and resources available to Civil Party Co-Lawyers, rendering them unable to meaningfully address each of the rejected applications in the 10 days available for an expedited appeal. *Second*, an extension of time for filing appeals to the Admissibility Order is further justified on the basis that the International Co-Investigating Judge's Case 004 Closing Order ("ICIJ Closing Order"),² in which the scope of trial is set and discussed in detail, has been made available to the parties in the English language only. Without a Khmer language version of both the Admissibility Order and the ICIJ Closing Order, including Annex B to the Admissibility Order, the Cambodian Civil Party Co-Lawyers are placed at a distinct disadvantage with respect to the information available to them to formulate their appeals to the Admissibility Order. *Third*, a similar request for an extension of time and page numbers was granted by the Pre-Trial Chamber in Cases 004/2 and 003.³
3. An extension of time would not risk the efficiency of the proceedings in this matter, given that the split between the International and National Co-Investigating Judges' Closing Orders

¹ International Co-Investigating Judge's Order on Admissibility of Civil Party Applicants, Case File No. 004/07-09-2009-ECCC/OCIJ, **D384**, 28 June 2019 [hereinafter "Admissibility Order"].

² Closing Order, Case File No. 004/07-09-2009-ECCC/OCIJ, **D382**, 28 June 2019 [hereinafter "ICIJ Closing Order"].

³ Decision on Civil Party Requests for Extension of Time and Page Limits, Case File No. 004/2/07-09-2009-ECCC/OCIJ (PTC 58), **D362/4**, 27 August 2018; Decision on Civil Party Co-Lawyers' Urgent Request for Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 003, Case File No. 003/07-09-2009-ECCC/OCIJ, **D269/2**, 8 February 2019. In addition, Cambodian Civil Party Lawyer CHET Vanly filed a request for an extension of time and of pages to appeal the admissibility decision for 113 of her civil parties whose applications were denied by the ICIJ in Case 004. Civil Party Lawyer's Urgent Request for Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004, Case File No. 004/07-09-2009-ECCC/OCIJ PTC, **D384/1**, 26 July 2019. On July 29, 2019, the Civil Party Lawyer's request was granted by the Pre-Trial Chamber.

requires the Pre-Trial Chamber to address the question of the Court's personal jurisdiction over Yim Tith prior to considering an appeal on the Admissibility Order. Accordingly, a delay in appeals relating to Civil Party admissibility will not unduly harm the interests of the parties.

4. 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

5. On 28 June 2019, the International Co-Investigating Judge issued his Closing Order ("ICIJ Closing Order"), which indicts Yim Tith for genocide of the Khmer Krom, crimes against humanity, war crimes and homicide.⁴ On the same day, the International Co-Investigating Judge also issued his Admissibility Order, which sets out the standards for admissibility of Civil Party applicants in Case 004.⁵ Annex B to the Admissibility Order documents the grounds upon which the International Co-Investigating Judge found 901 total Civil Party applications to Case 004 inadmissible.⁶ Annex B was initially issued in English only, and the Khmer translation was placed on the case file on 19 July 2019. The ICIJ's Closing Order, which numbers 487 pages, was issued in the English language only, without translation into a second language. In a separate closing order, the National Co-Investigating Judge dismissed all charges against Yim Tith for lack of personal jurisdiction ("NCIJ Closing Order"), and, consequently, issued an order rejecting all Civil Party applications in Case 004.⁷ These decisions, which numbered 571 pages, were issued in Khmer only, with no translation in English or French.

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

⁴ ICIJ Closing Order.

⁵ Admissibility Order.

⁶ Annex B: Civil Party Applications Declared Inadmissible, Case File No. 004/07-09-2009-ECCC/OCIJ, **D384**, 28 June 2019.

⁷ National Co-Investigating Judge, Order Dismissing the Case Against Yim Tith, Case File No. 004/07-09-2009-ECCC/OCIJ, **D381**, 28 June 2019 [hereinafter "NCIJ Closing Order"]; National Co-Investigating Judge, Order Rejecting Civil Party Applicants, Case File No. 004/07-09-2009-ECCC/OCIJ, **D383**, 28 June 2019.

applications by a separate order.”⁸ Civil Party applicants enjoy a right of appeal to the CIJs’ admissibility decision without the effect of staying the proceedings.⁹ Appeals on Civil Party admissibility are subject to the court’s expedited appeals regime, which requires that the appeal be submitted “within 10 days of the notification of the decision on admissibility,” a timeframe to which extensions are not envisaged.¹⁰ The Practice Direction on the Filing of Documents establishes that time limits for filings commence on the first day following the notification of the document on the Case File “in Khmer and one other official language of the ECCC.”¹¹

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.”¹² The PTC has found that the interpretation and application of ECCC law must be made consonant with the inherent 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 redress.¹³ Internal Rule 21 and article 12(2) of the ECCC Agreement also guarantee fairness of proceedings and require that the rights of victims are “respected throughout the proceedings.”¹⁴
8. The Pre-Trial Chamber, in granting Civil Party Co-Lawyers’ request for extension of time to appeal the admissibility decisions in Case 004/2, recognized that where procedural rules are unclear or a question of law touches on the rights of victims in proceedings before the ECCC, “[g]uidance can be sought from the general principles on victims as found in international

⁸ ECCC Internal Rules (Rev. 9), Rule 23bis(3).

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

¹⁰ ECCC Internal Rules (Rev. 9), Rule 77bis(2).

¹¹ Practice Direction on Filing of Documents before the ECCC (Rev. 8) art. 8.5, January 2007.

¹² ECCC Internal Rules (Rev. 9), Rule 21(1) (emphasis added).

¹³ 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**, 24 June 2011 at paras. 58-65 [hereinafter “PTC CP Admissibility Decision Case 002”].

¹⁴ ECCC Internal Rules (Rev. 9), Rule 21(1); Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, 6 June 2003 at art.12(2).

law,’ including the UN basic principles on victims.”¹⁵ These principles call for judicial mechanisms for victim redress that are “expeditious, fair... and accessible.”¹⁶ 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.”¹⁷

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 the Case 004 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*. However, where, as here, all Civil Party applications are ruled upon at one time in the Closing Order, it forces Civil Party Co-Lawyers into the impossible position of handling expedited appeals for hundreds of clients all at once. The Co-Investigating Judges may reject Civil Party applications at any time. In granting a similar request in Cases 004/2 and 003, the Pre-Trial Chamber acknowledged that failing to extend the short deadline under Rule 77 *bis* would “impede victims’ meaningful participation, in violation of Internal Rule 21 and international principles safeguarding victims’ interests.”¹⁸ Given the breadth of dismissals in the Admissibility Order, and the severely diminished

¹⁵ Decision on Civil Party Requests for Extension of Time and Page Limits, Case File No. 004/2/07-09-2009-ECCC/OCIJ (PTC58), **D362/4**, 27 August 2018, para. 7 *quoting* 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, **D404/2/4**, 24 June 2011, para. 32.

¹⁶ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, UNGA Res. 40/34, 29 November 1985 at principle 11 [hereinafter “UN Declaration on Abuse of Power”]; *see also* Declaration of Basic Principles and Guidelines on the Right to 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”].

¹⁷ UN Declaration on Abuse of Power, at principle 6(a)-(b).

¹⁸ Decision on Civil Party Requests for Extension of Time and Page Limits, Case File No. 004/2/07-09-2009-ECCC/OCIJ (PTC58), **D362/4**, 27 August 2018, para. 9; Decision on Civil Party Co-Lawyers’ Urgent Request for Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 003, Case File No. 003/07-09-2009-ECCC/OCIJ, **D269/2**, 8 February 2019, para. 3.

resources available to lawyers representing Civil Party applicants, Civil Party Co-Lawyers request an extension of 30 days from the notification of the Khmer language translation of the ICIJ Closing Order to file their appeal to the Admissibility Order.

11. The ICIJ's Closing Order sets out and describes in precise detail the scope of the indictment upon which determinations of Civil Party admissibility to Case 004 are based. The Civil Party Co-Lawyers' ability to effectively advocate for the right of their clients to participate in Case 004 proceedings through the admissibility appeals process depends on their having a clear understanding of the scope of the indictment. To permit the time limit for appeals on Civil Party admissibility to run while there is only an English language version of the ICIJ Closing Order available to Cambodian Civil Party Co-Lawyers threatens to place them and their clients at a tremendous disadvantage in the proceedings and violate fundamental principles of procedural fairness that guide proceedings before the ECCC. This is particularly true given that a number of Cambodian Civil Party Co-Lawyers represent their clients without an English-speaking co-counsel. Accordingly, in order to preserve the fairness of the Civil Party admissibility appeals process and safeguard the interests of the victims in the proceedings, the time limit for appeals on Case 004 admissibility decision should not begin to run until the Khmer language translation of the ICIJ Closing Order is made available.
12. The extension of the window for appeals to the order on admissibility for Case 004 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. This time will allow Co-Lawyers to have meaningful consultation with their clients 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.
13. 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 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 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 Pre-Trial Chamber to decide appeals on Civil Party admissibility at this stage. The Defence has likewise filed a request for an extension of time for any notice of appeal to the Closing Orders, seeking an additional 14 days from the notification of the translations of both Closing Orders.¹⁹

14. At the ECCC, victims are entitled to the full measure of protection and consideration afforded to them by 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 ‘procedural justice’ rather than results-oriented justice.”²⁰ 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

15. 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 in Case 004 to 30 days after the notification of the Khmer language translation of the ICIJ Closing Order;
 - 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.

¹⁹ Yim Tith’s Request for Extension of Deadline for Notice of Appeal of Closing Orders, Case File No. 004/07-09-2009-ECCC/OCIJ (PTC), **D381/1**, 8 July 2019.

²⁰ 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.

Respectfully submitted,

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