



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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.: 004/07-09-2009-ECCC-OCIJ

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Before: **Judge YOU Bunleng**
Judge Mark B. HARMON

Date: **01 April 2013**

Original: **English**

Classification: **PUBLIC (REDACTED VERSION)**

Lawyer's Recognition Decision Concerning All Civil Party Applications on Case File No.004

Distribution to:
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Annie DELAHAIE	Barnabe NEKUI
Laure DESFORGES	Lyma NGUYEN
Herve DIAKIESE	Philippine SUTZ

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 Third Introductory Submission, dated 20 November 2008, initiating Case File No.004,¹ which was placed on the Case File on 7 September 2009;²
4. **Noting** the judicial investigation relating to alleged violations of the **1956 Penal Code**, violations of the **Convention on the Prevention and Punishment of the Crime of Genocide and Crimes against Humanity**, punishable under Articles 3 (new), 4, 5, 29 (new) and 39 (new) of the ECCC Law; and Articles 209, 210, 500, 501, 503, 504, 505, 506, 507 and 508 of the 1956 Penal Code;
5. **Noting** that, as of the date of this Decision, 760 Civil Party applications have been received by the Co-Investigating Judges and are in the process of being placed on the Case File, including Powers of Attorney designating a total of 21 Civil Party lawyers in Case No.004, whom VSS has advised are qualified to appear before the ECCC.³
6. **Noting** that, on 29 April 2011, the Case File 004 Civil Party application by [REDACTED] was rejected by the CIJs⁴, and will thus remain on the confidential Case File as a complaint unless otherwise requested.
7. **Noting** that, also on 29 April 2011, the Case File 004 Civil Party application by [REDACTED], was rejected by the CIJs⁵. A request for reconsideration of the decisions on admissibility of [REDACTED] in both Cases 003 and 004 was filed on 30 December 2011 (the “[REDACTED] Reconsideration Request”).⁶ Following review, the Reserve International Co-Investigating Judge admitted him as a Civil Party in Case 003 on 24 February 2011, and stated that “*his Civil Party application in Case File 004 will be considered separately*”.⁷ Nevertheless, the [REDACTED] Reconsideration Request was not placed on Case File 004 at that time.

¹ Case File No. 004/07-09-2009/ECCC/OCIJ-D1, *Co-Prosecutor’s Third Introductory Submission*, 20 November 2008.

² Case File No. 004/07-09-2009/ECCC/OCIJ-D1/1, *Acting International Co-Prosecutor’s Notice of Filing of the Third Introductory Submission*, 7 September 2009.

³ A certain number of Civil Party applicants have also designated CHOUNG Chou-Ngy or Mahdev MOHAN, as their lawyer, however valid Powers of Attorney have not yet been received by the OCIJ greffiers for Case File 004.

⁴ ECCC, CIJ, 004/07-09-2009-ECCC-OCIJ, Doc. No. D5/1/3, *Order on the Admissibility of the Civil Party Application of [REDACTED]* [REDACTED], 29 April 2011; this rejection was upheld by the Pre-Trial Chamber since a super-majority could not be reached: ECCC, PTC (01), 004/07-09-2009-ECCC/OCIJ, Doc. No. D5/1/4/2, *Considerations of the Pre-Trial Chamber Regarding the Appeal Against Order on the Admissibility of Civil Party Applicant [REDACTED]*, 28 February 2012.

⁵ ECCC, CIJ, 004/07-09-2009-ECCC-OCIJ, Doc. No. D5/2/3, *Order on the Admissibility of the Civil Party Application of [REDACTED]* [REDACTED], 29 April 2011; this rejection was upheld by the Pre-Trial Chamber since a super-majority could not be reached: ECCC, PTC (02), 004/07-09-2009-ECCC/OCIJ, Doc. No. D5/2/4/3, *Considerations of the Pre-Trial Chamber Regarding the Appeal Against Order on the Admissibility of Civil Party Applicant [REDACTED]*, 14 February 2012.

⁶ *Request for Co-Investigating Judges to Reconsider Decision on Admissibility of Civil Party Applicant [REDACTED]* (D11/2/3) (Cases 003 and 004), 003/07-09-2009-ECCC/OCIJ, Doc. No. D11/2/5, 30 December 2011 (not on Case File 004).

⁷ ECCC, RICJ, 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, para.38.

8. **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.004 to Ms Lyma NGUYEN (the “Studzinsky Resignation Letter”);⁸
9. **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 Internal 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;
10. **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-rules (1)(a) and (c).
11. **Considering** that, in order to safeguard the interests of victims and Civil Parties and to ensure legal certainty 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 in Case No.004;
12. **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, as 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 will be granted *upon request* (see Annex B),¹⁰ with the assistance of the Victims Unit or the Case File Officer, but remains under the overall supervision of the 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

⁸ Case File No. 004/07-09-2009/ECCC/OCIJ-D125, 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.

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.004/07-09-2009/ECCC/PTC-D5/2/4/3, *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 is also available from the OCIJ greffier or CMS, should be submitted to the OCIJ greffier and then forwarded to the CFO/RAU for processing.

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

13. **Noting** that on 01 April 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:

14. **Accredit and Recognize** the 20 lawyers duly admitted to the list of lawyers willing to represent victims before the ECCC, listed in Annex 1 (not including Ms. Silke Studzinsky), as the lawyers for the 14 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 File No.004;

15. **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 upon receiving a Zylab request in due form, as set out above;

16. **Invite** the ECCC Victim Support Section 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 any Internal Rule 66 notification of the conclusion of the judicial investigation in Case File 004.

17. **Decide** to place the^[REDACTED] Reconsideration Request on Case File 004 and respond to it as soon as possible after having reviewed the admissibility criteria applicable in this case.

Done in Phnom Penh, on 01 April 2013



Mark B. Harmon

សហចៅក្រមស៊ើបអង្កេតអន្តរជាតិ

International Co-Investigating Judge
Co-Juge d'Instruction International



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.