

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

**FILING DETAILS**

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**REQUEST FOR SUSPENSION OF DEADLINE FOR APPEAL AGAINST ORDER ON  
ADMISSIBILITY OF CIVIL PARTY APPLICATION OF ROBERT HAMILL  
PENDING GRANT OF ACCESS TO CASE FILE 003 AND 004**

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Filed by:

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Ms. Lyima NGUYEN

**Pre-Trial Chamber**

Judge PRAK Kimsan  
Judge NEY Thol  
Judge HUOT Vuthy  
Judge Catherine MARCHI-UHEL  
Judge Rowan DOWNING

**Co-Investigating Judges**

Judge YOU Bunleng  
Judge Siegfried BLUNK

**Co-Prosecutors**

Ms. CHEA Leang  
Mr. Andrew T. CAYLEY

**Civil Party Co-Lawyers**

Mr. HONG Kimsuon

Ms. Silke STUDZINSKY  
Mr. CHOUNG Chou-Ngy

### URGENT REQUEST TO SUSPEND DEADLINE TO FILE SUBMISSION

1. On 29 April 2011, civil party applicant, Mr Rob HAMILL (11-VSS-00002) was deemed inadmissible in Case 003 by order of the Co-Investigating Judges (D11/2/3). He was also apparently rejected in Case 004 (D5/2/3, the Admissibility Order of which has neither been notified nor received by the Appellant or his lawyers).<sup>1</sup>
2. On 12 May 2011, Mr HAMILL received D11/2/3 through the post, at his address in New Zealand. He has not received D5/2/3.
3. Pursuant to Internal Rule (**IR**) 77*bis* (Revision 7), Civil Party Co-Lawyers intend to file an expedited appeal on behalf of the Civil Party Applicant (**Appeal**). Pursuant to IR 75, a Notice of Appeal has been submitted.<sup>2</sup>
4. This submission is a preliminary request concerning the civil party applicant's lawyers' access to the case file in Case(s) 003 (and 004). On 1 May 2011, international lawyer for Mr HAMILL sought access to the case file(s). To date, no access to Case 003 has been granted.<sup>3</sup>
5. In this submission, we request that the Judges of the Pre-Trial Chamber exercise discretion to suspend the deadline to file the Appeal to a reasonable time (such as 30 days) after the Appellants' legal representatives have been granted access to the Case File in Case 003 in order to analyze and describe about the fact, law and other documents in the appeal complaint.
6. This request is made on the basis of Internal Rule 23*bis*, which states that "[u]nless and until rejected, Civil Party applicants may exercise Civil Party rights."
7. As a basic procedural matter, Civil Party applicants cannot properly exercise their rights as Civil Parties until they have been granted access to the case file in order to know the scope of investigations and the nature and identity of alleged offenders. In Case 002,

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<sup>1</sup> On 9 May 2011, the Greffier of the OCIJ mentioned that there are two rejections: D11/2/3 for Case 003 and D5/2/3 for Case 004. D11/2/3 was received by the Appellant by post on 12 May 2011. As at that date, D5/2/3 has not been received by the Appellant or his lawyers.

<sup>2</sup> Notice of Appeal submitted on 12/5/2011 by Mr. SAM Sokong and Ms. Lyma NGUYEN. At the time of submission, a document number was not yet available.

<sup>3</sup> Email from International Civil Party Lawyer, Ms. Lyma NGUYEN to Greffier of the Office of Co-Investigating Judges, titled "Request for Access to Case File in Cases 003 and 004", dated 1 May 2011. On 4 May, staff of the OCIJ stated that they could not effectively assist with this request. On 4 May 2011, Ms. NGUYEN wrote directly to the Co-Investigating Judges and on 9 May 2011 and 12 May 2011, follow up communications were made, without any meaningful response.

lawyers for Civil Parties were given access to the Case File ahead of any rejections, and in circumstances where the identities of the charged persons and the scope of investigations were made public.<sup>4</sup>

8. This request is made in the interests of justice and on grounds of procedural fairness, as Civil Party applicants cannot form meaningful legal and/or factual grounds of appeal without knowledge of basic matters pertaining to the case file.
9. In addition, the deadline for the submission of investigative requests is 15 days after the announcement of the closing of the investigations.<sup>5</sup> Co-lawyers for Civil Parties submit that it is impossible to meaningfully exercise any Civil Party rights, such as the right to seek further investigations, without having access to the case file.
10. IR 21(c) provides specifically that “the ECCC shall ensure that victims are kept informed and that their rights are respected throughout the proceedings”.
11. To reject a civil claim without giving an applicant the right to know the underlying facts behind a rejection and thus to properly formulate arguments in support of their appeal would be contrary to international fairness principles and safeguards provided for in the ECCC Internal Rules, such as IR 21, which operate to ensure legal certainty and transparency of proceedings. It is also a violation of the *Basic Principles of Justice for Victims of Crime and Abuse of Power*.<sup>6</sup>
12. Civil Party Co-Lawyers also seek leave to submit additional legal and factual arguments at a reasonable time following any grant of access to the Case File.
13. Given the expedited nature of the Appeal (to be filed by 23 May 2011), we would be grateful for a response on our request as soon as possible.

## CONCLUSION

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<sup>4</sup> See OCIJ, “Press Release”, 5 November 2009, at [http://www.eccc.gov.kh/english/cabinet/press/138/ECCC\\_Press\\_Release\\_5\\_Nov\\_2009\\_Eng.pdf](http://www.eccc.gov.kh/english/cabinet/press/138/ECCC_Press_Release_5_Nov_2009_Eng.pdf).

<sup>5</sup> The deadline is effectively 18 May 2011, in accordance with the procedure under IR 39(3), on a calculation of the public holidays in Cambodia.

<sup>6</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by General Assembly resolution 40/34 of 29 November 1985.

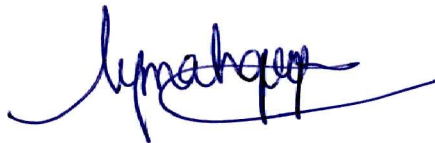
14. Civil Party Co-Lawyers respectfully request that Judges of the Pre-Trial Chamber:

- a. Declare this request admissible, and
- b. Exercise discretion to grant a suspension of the deadline for an appeal against a civil party rejection decision, and / or
- c. Grant leave for the Appellant's legal representatives to submit additional legal and factual arguments at a reasonable time following any grant of access to the Case File.

Respectfully submitted by:



Mr. SAM Sokong  
National Civil Party Co-Lawyer



Ms. Lyma NGUYEN  
International Civil Party Co-Lawyer

Signed in Phnom Penh, Kingdom of Cambodia on this 12th day of May 2011.