



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

អង្គបុរេជំនុំជម្រះ

Pre-Trial Chamber
Chambre Preliminaire

**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

D362/4

In the name of the Cambodian people and the United Nations and pursuant to the 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

Case File N° 004/2/07-09-2009-ECCC/OCIJ (PTC58)

Before:

Judge PRAK Kimsan, President
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Kang Jin BAIK
Judge HUOT Vuthy

Date:

27 August 2018

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SAMR PAPA	

PUBLIC

DECISION ON CIVIL PARTY REQUESTS FOR EXTENSION OF TIME AND PAGE LIMITS

Co-Prosecutors

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THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”) is seised of the “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 a group of Co-Lawyers for Civil Parties (“first group of Co-Lawyers”) on 17 August 2018 (“First Request”),¹ and the “Submission Joining and Providing Additional Support for ‘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 another group of Co-Lawyers for Civil Parties (“second group of Co-Lawyers”) on 21 August 2018 (“Second Request”).²

I. PROCEDURAL HISTORY

1. On 16 August 2018, the National Co-Investigating Judge issued his “Closing Order”³ in Khmer, dismissing the case against AO An, while the International Co-Investigating Judge issued his “Closing Order (Indictment)”⁴ in English. Neither document has been translated into any other official language of the ECCC.
2. On the same day, the National Co-Investigating Judge issued, in Khmer, his Order Rejecting Civil Party Applications,⁵ and the International Co-Investigating Judge issued his Order on Admissibility of Civil Party Applicants (“Admissibility Order”), in English and Khmer.⁶ In Annexes A and B to the Admissibility Order, the International Co-Investigating Judge set out the reasons for finding individual civil party applications admissible or inadmissible.⁷
3. On 17 August 2018, the first group of Co-Lawyers filed the First Request, and on 21 August 2018, the second group of Co-Lawyers filed the Second Request.

¹ Case 004/2/07-09-2009-ECCC/OCIJ (“Case 004/2”), Civil Party Co-Lawyers’ Urgent Request for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004/2, dated 17 August 2018, filed on 20 August 2018 and notified on 23 August 2018, D362/1 (“First Request (D362/1)”).

² Case 004/2, Submission Joining and Providing Additional Support for “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 on 21 August 2018 and notified on 23 August 2018, D362/2 (“Second Request (D362/2)”).

³ Case 004/2, Closing Order, issued on 16 August 2018 in Khmer only, D359.

⁴ Case 004/2, Closing Order (Indictment), issued on 16 August 2018 in English only, D360.

⁵ Case 004/2, Order Rejecting Civil Party Applications, issued on 16 August 2018 in Khmer only, D361.

⁶ Case 004/2, International Co-Investigating Judge’s Order on Admissibility of Civil Party Applicants, 16 August 2018, D362 (“Admissibility Order (D362)”).

⁷ Case 004/2, Annex A to Admissibility Order (D362): Civil Party Applications Declared Admissible, 16 August 2018, D362.1; Case 004/2, Annex B to Admissibility Order (D362): Civil Party Applications Declared Inadmissible, 16 August 2018, D362.2.



4. On 24 August 2018, the Pre-Trial Chamber instructed the parties by e-mail to file any responses to the Requests by 12:00 p.m. on 27 August 2018. On 27 August 2018, the International Co-Prosecutor filed a response stating he did not oppose the Requests.⁸

II. SUBMISSIONS

5. In the First Request, the first group of Co-Lawyers ask the Pre-Trial Chamber to (a) extend the filing deadline for appeals against civil party admissibility decisions by thirty days; (b) increase the page limit for appeals filings on civil party admissibility to forty-five pages; and (c) permit the Co-Lawyers to submit their appeals in a single language, Khmer or English, with translations to follow soon after.⁹ These Co-Lawyers argue that it is in the interests of justice that civil party applicants are provided a reasonable, fair, accessible and meaningful opportunity to respond to the International Co-Investigating Judge's denial of their applications to participate in Case 004/2 as civil parties.¹⁰ They contend that the procedures outlined in Internal Rules 23 *bis* and 77 *bis* envision appeals by individual civil party applicants, but where, as here, all civil party applications are ruled upon at once, "it forces Civil Party Lawyers into an impossible position of handling expedited appeals for thousands of clients."¹¹ In light of the large number of dismissals and the diminished resources available to the Co-Lawyers, an extension of thirty days will provide adequate time to reach clients for meaningful consultation in order to prepare the appeal, which is necessary to safeguard the victims' right to full participation.¹² The First Request concludes that, while granting an extension of time will not prejudice the rights of the other parties or diminish the efficiency of the proceedings, it will ensure that civil party applicants are afforded procedural justice in respect of their appeals on admissibility.¹³

6. The second group of Co-Lawyers purport to "join" the First Request by way of their submission.¹⁴ The Second Request reproduces the First Request's calls for an increased page limit and for permission to submit appeals in a single language with translations to follow; however, regarding the extension of time, the second group of Co-Lawyers request the Pre-Trial Chamber to extend the filing deadline for appeals against civil party admissibility

⁸ Case 004/2, International Co-Prosecutor's Response to the Civil Party Co-Lawyers' Two Requests Regarding Their Appeals of the ICIJ's Admissibility Order, 27 August 2018, D362/3.

⁹ First Request (D362/1), para. 14.

¹⁰ First Request (D362/1), para. 9.

¹¹ First Request (D362/1), para. 10; *see also* para. 6.

¹² First Request (D362/1), paras 10-11; *see also* paras 7-8.

¹³ First Request (D362/1), paras 12-13.

¹⁴ Second Request (D362/2), paras 1, 7.



decisions in Case 004/2 to thirty days after the notification of a Khmer-language translation of the Closing Order (Indictment).¹⁵ Noting Article 8.5 of the Practice Direction on the Filing of Documents Before the ECCC (“Practice Direction on Filing”), Internal Rule 21, and Article 12(2) of the ECCC Agreement,¹⁶ they argue that an extension of time is justified on the basis that the International Co-Investigating Judge’s Closing Order (Indictment) has been issued in English only.¹⁷ Since the determinations in the Admissibility Order are based on the indictment, the “Civil Party Co-Lawyers’ ability to effectively advocate for the right of their clients to participate in Case 004/2 proceedings through the admissibility appeals process depends on their having a clear understanding of the scope of the indictment.” Thus, to allow the appeals time limit to run while there is only an English-language version of the indictment available threatens to place Cambodian Civil Party Co-Lawyers and their clients at a disadvantage and violate fundamental principles of procedural fairness.¹⁸

III. DISCUSSION

A. EXTENSION OF TIME

7. The Pre-Trial Chamber has specifically found that “[g]uidance can be sought from the general principles on victims as found in international law,” including the UN basic principles on victims.¹⁹ These principles emphasise that victims should have fair and effective access to justice,²⁰ and that victims should be allowed to present their “views and concerns [...] at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system.”²¹

8. Moreover, Internal Rule 21(1) requires that the “applicable ECCC Law, Internal Rules, [and] Practice Directions [...] shall be interpreted so as to always safeguard the

¹⁵ Second Request (D362/2), para. 7.

¹⁶ Second Request (D362/2), para. 4.

¹⁷ Second Request (D362/2), para. 2.

¹⁸ Second Request (D362/2), paras 5-6.

¹⁹ Case 002/19-09-2007-ECCC/OCIJ (“Case 002”), Decision on Appeals Against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, D404/2/4 (“Case 002 Decision on Civil Party Admissibility Appeals (D404/2/4)”), para. 32 (footnote omitted) *referring to* UN General Assembly, *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 29 November 1985, U.N. Doc. A/RES/40/34 (“UN Declaration on Victims”); UN General Assembly, *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*, 21 March 2006, A/RES/60/147 (“UN Basic Principles”).

²⁰ *See generally* UN Declaration on Victims, Principles 4-6; UN Basic Principles, Principle 11.

²¹ UN Declaration on Victims, Principle 6(b).



interests of Suspects, Charged Persons, Accused and Victims and so as to ensure legal certainty and transparency of proceedings, in light of the inherent specificity of the ECCC". As the Pre-Trial Chamber has previously noted:

the [ECCC] Agreement provides that one of the fundamental principles for the establishment of [the] ECCC is "national reconciliation." This guides the Judges and Chambers of [the] ECCC to not only seek the truth about what happened in Cambodia, but also to pay special attention and assure a meaningful participation for the victims of the crimes committed as part of its pursuit for national reconciliation.²²

9. Although Internal Rule 77 *bis* prohibits extensions to the ten-day time limit for appeals against orders on civil party admissibility, the Pre-Trial Chamber is of the view that failing to extend this short deadline under the current circumstances – where the Civil Party Co-Lawyers have thousands of clients whose applications were denied at the same time – would impede victims' meaningful participation, in violation of Internal Rule 21 and international principles safeguarding victims' interests. An extension is necessary to allow the Civil Party Co-Lawyers to adequately consult with their clients whose interests are affected by the Admissibility Order in order to prepare any appeals.

10. As for the length of the extension, the Pre-Trial Chamber observes that the determinations in the Admissibility Order – which will be the impugned order in this case – are based on the findings in the Closing Order (Indictment),²³ which has been issued in English only. The Cambodian Civil Party Co-Lawyers may therefore not be able to meaningfully prepare any appeals until a Khmer-language version of the Closing Order (Indictment) is issued. In light of these circumstances, and pursuant to Internal Rule 39(2), the Pre-Trial Chamber therefore considers it fair and reasonable to extend the deadline to file any appeals of the Admissibility Order until thirty days after the notification of a Khmer-language version of the Closing Order (Indictment).

B. PAGE LIMIT

11. The Pre-Trial Chamber is also requested to increase the page limit for appeals on civil party admissibility to forty-five pages.²⁴ The Pre-Trial Chamber considers that an increased

²² Case 002 Decision on Civil Party Admissibility Appeals (D404/2/4), para. 65.

²³ See, e.g., Admissibility Order (D362), para. 37.

²⁴ First Request (D362/1), para. 14; Second Request (D362/2), para. 7.



page limit is appropriate, in accordance with Article 5.4 of the Practice Direction on Filing, in light of the large number of civil party applicants who may be appealing.²⁵

C. SINGLE-LANGUAGE FILING

12. Finally, the Civil Party Co-Lawyers request that the Pre-Trial Chamber permit them to submit their appeals in a single language, English or Khmer, with translations to follow soon after.²⁶ Pursuant to Article 7.2 of the Practice Direction on Filing, the Pre-Trial Chamber grants this request.

IV. DISPOSITION

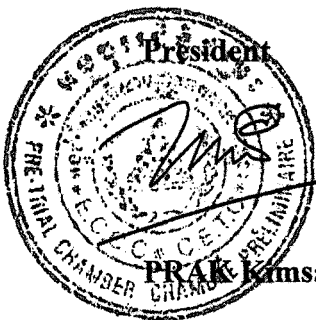
THEREFORE, THE PRE-TRIAL CHAMBER UNANIMOUSLY HEREBY:

- **EXTENDS** the filing deadline for appeals against civil party admissibility decisions in Case 004/2 to thirty (30) days from the notification of the Closing Order (Indictment) in Khmer;
- **INCREASES** the page limit for appeals submissions on civil party admissibility in Case 004/2 to forty-five (45) pages in English or French or ninety (90) pages in Khmer;
- **PERMITS** the Civil Party Co-Lawyers to submit their appeals in a single language, English or Khmer, with translations to follow soon after.

In accordance with Internal Rule 77(13), this decision is not subject to appeal.

Phnom Penh, 27 August 2018

Pre-Trial Chamber



PRAK Kimsan

Olivier BEAUVALLET

NEY Thol

Kang Jin BAIK

HUOT Vuthy

²⁵ Cf. Case 002, Decision on Civil Parties' Request for Extension of Page Limit for Appeal Against Order on the Admissibility of Civil Party Applicants from Current Residents of Kampong Speu Province, 22 September 2010, D411/3/2, para. 2.

²⁶ First Request (D362/1), para. 14; Second Request (D362/2), para. 7.