



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

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

អង្គបុរេជំនុំជម្រះ
Pre-Trial Chamber
Chambre Preliminaire

D384/4

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° 004/07-09-2009-ECCC/OCIJ (PTC61)

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

Date: 22 August 2019

ឯកសារដើម	
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):	
..... 22 / 08 / 2019	
ម៉ោង (Time/Heure):..... 13:00	
មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: SANN RADA	

PUBLIC

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

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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 Lawyer’s Urgent Request for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004”, dated 26 July 2019 (the “First Request”),¹ and the “Civil Party Co-Lawyers’ Urgent Request for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004” (the “Second Request”), dated 2 August 2019.² (collectively, the “Requests”)³

1. On 28 June 2019, the National Co-Investigating Judge issued his “Order Dismissing the Case against YIM Tith”,⁴ in Khmer only. On the same day, the International Co-Investigating Judge issued his “Closing Order”,⁵ in English only. The Khmer translation of the Closing Order was placed on the Case File on 14 August 2019.

2. On 28 June 2019, the National Co-Investigating Judge issued his “Order Rejecting Civil Party Applications”,⁶ in Khmer only. On the same day, the International Co-Investigating Judge issued his “Order on Admissibility of Civil Party Applications” (“Admissibility Order”).⁷ In Annex B to the Admissibility Order, which was issued in English only, he provided the grounds upon which 113 Civil Party applications to Case 004 were found inadmissible.⁸ The Khmer translation of Annex B was placed on the Case File on 19 July 2019.

3. On 26 July 2019, a Civil Party Lawyer filed the First Request. On 28 July 2019, the Pre-Trial Chamber instructed the Parties, *via* e-mail, to file any responses to the First Request by close of business on 5 August 2019. On 31 July 2019, the Reserve International Co-Prosecutor filed a response, stating that she does not oppose the First Request.⁹ On 2 August

¹ Case 004/07-09-2009-ECCC/OCIJ (“Case 004”), Civil Party Lawyer’s Urgent Request for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004, dated 26 July 2019, filed on 26 July 2019 and notified on 29 July 2019, D384/1 (“First Request (D384/1)”).

² Case 004, Civil Party Co-Lawyers’ Urgent Request for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004, dated 2 August 2019, filed on 19 August 2019 and notified on 20 August 2019, D384/3 (“Second Request (D384/3)”).

³ Requests (D384/1 and D384/3).

⁴ Case 004, Order Dismissing the Case against YIM Tith, 28 June 2019, D381.

⁵ Case 004, Closing Order, 28 June 2019, D382 (“Closing Order (D382)”).

⁶ Case 004, Order Rejecting Civil Party Applications, 28 June 2019, D383.

⁷ Case 004, Order on Admissibility of Civil Party Applications, 28 June 2019, D384 (“Admissibility Order (D384)”).

⁸ Case 004, Annex B: List of Civil Party Applications Inadmissible, 28 June 2019, D384.2.

⁹ Case 004, International Co-Prosecutor’s Response to the Civil Party Co-Lawyer’s Request regarding the Appeal of the Admissibility Order D384 (D384/1), 31 July 2019, D384/2.



2019, a group of Civil Party Co-Lawyers filed the Second Request, which reproduced identically same requests as the First Request.¹⁰

4. The Civil Party Co-Lawyers request the Pre-Trial Chamber's authorisation to file 45-page appeals to Civil Party admissibility decisions in Case 004, in a single language, English or Khmer, with translation to follow soon after, within 30 days from the notification of the Khmer language translation of the International Co-Investigating Judge's Closing Order.¹¹ The Co-Lawyers submit that it is in the interests of justice that Civil Party applicants are provided a reasonable, fair, accessible and meaningful opportunity to appeal,¹² and that, in the present case, they are put into an impossible position of handling expedited appeals for over a hundred clients all at once.¹³ The Co-Lawyers further argue that, given the large number of dismissals and the diminished resources available to them, the extension is necessary for them to reach their clients for meaningful consultation to prepare the appeals,¹⁴ and that the time limit for appeals should not begin to run until the Khmer language translation of the International Co-Investigating Judge's Closing Order is made available as their ability to effectively advocate for the Civil Party applicants depend on a clear understanding of the only document providing grounds for the denial of individual Civil Party applicants and Cambodian Co-Lawyers and their clients should not be placed at a disadvantage in the proceedings.¹⁵ The Co-Lawyers lastly contend that the extension will neither prejudice the rights of the other Parties nor diminish the efficiency of the proceedings as the Pre-Trial Chamber's decision on Civil Party admissibility is not necessary at this stage of the proceedings.¹⁶

5. The Pre-Trial Chamber reaffirms that victims should be afforded with fair and effective access to justice and that they 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."¹⁷

¹⁰ Compare Second Request (D384/3) with First Request (D384/1).

¹¹ Requests (D384/1 and D384/3), para. 15.

¹² Requests (D384/1 and D384/3), para. 9.

¹³ Requests (D384/1 and D384/3), para. 10.

¹⁴ Requests (D384/1 and D384/3), paras 10, 12.

¹⁵ Requests (D384/1 and D384/3), para. 11.

¹⁶ Requests (D384/1 and D384/3), para. 13.

¹⁷ Case 004/2/07-09-2009-ECCC/OCIJ (PTC58), Decision on Civil Party Requests for Extension of Time and Page Limits, 27 August 2018, D362/4 ("Case 004/2 (PTC58), Decision on Extension of Time and Page Limits (D362/4)"), para. 7 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, Principle 6(b); Case 003/07-09-2009-ECCC/OCIJ, Decision on Civil Party Co-Lawyer's Urgent Request for an Extension of Time and Pages to Appeal



6. The Pre-Trial Chamber recalls that, although Internal Rule 77 *bis* prohibits extensions to the ten-day time limit for appeals against orders on Civil Party admissibility, the Chamber is of the view that failing to extend this short deadline in circumstances where Civil Party Co-Lawyers have hundreds of clients whose applications are simultaneously denied, would impede victims' meaningful participation, in violation of Internal Rule 21(1) and international principles safeguarding their interests.¹⁸

7. Turning to the length of the extension, the Pre-Trial Chamber observes that the determinations in the Admissibility Order are based on the findings in the International Co-Investigating Judge's Closing Order and detailed in Annex B, which were issued on 28 June 2019 in English only and later notified in Khmer on 15 August 2019 and 19 July 2019, respectively. The Cambodian Civil Party Co-Lawyers may therefore not have been able to begin to meaningfully prepare any appeals until all the documents were issued in the Khmer language. In light of the foregoing and considering the number of Civil Party applications that were declared inadmissible, the Pre-trial Chamber considers it fair and reasonable, pursuant to Internal Rule 39(2), to extend the deadline to file any appeals to Civil Party admissibility decisions in Case 004 to thirty days after the notification of the Khmer-language version of the International Co-Investigating Judge's Closing Order.

8. The Pre-Trial Chamber further finds that an increased page limit to forty-five pages is appropriate in accordance with Article 5.4 of the Practice Direction on Filing of Documents, in light of the large number of civil party applicants who may be appealing.

9. Finally, pursuant to Article 7.2 of the Practice Direction on Filing of Documents, the Pre-Trial Chamber grants the Civil Party Co-Lawyers' request to file their appeals in a single language, English or Khmer, with translations to follow soon after.

FOR THESE REASONS, THE PRE-TRIAL CHAMBER UNANIMOUSLY HEREBY:

GRANTS the Requests;

the Civil Party Admissibility Decisions in Case 003, 8 February 2019, D269/2 ("Case 003, Decision on Extension of Time and Page Limits (D269/2)"), para. 3.

¹⁸ Case 004/2 (PTC58), Decision on Extension of Time and Page Limits (D362/4), para. 8 referring to Case 002/19-09-2007-ECCC/OCIJ, Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications, 24 June 2011, D404/2/4, para. 65; Case 003, Decision on Extension of Time and Page Limits (D269/2), para. 3.

Decision on Civil Party Co-Lawyers' Urgent Requests for an Extension of Time and Pages to Appeal the Civil Party Admissibility Decisions in Case 004



ALLOWS the Civil Party Co-Lawyers to file 45-page appeals to Civil Party admissibility decisions in Case 004 in English or French, or 90-page appeals in Khmer, within 30 days from the notification in Khmer of the International Co-Investigating Judge’s Closing Order.

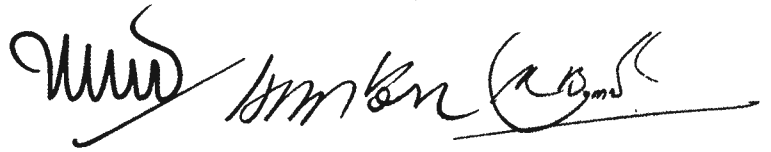
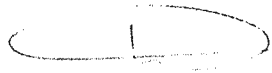
ALLOWS the Civil Party Co-Lawyers to submit their appeals in one language with translation to follow.

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

Phnom Penh, 22 August 2019

President

Pre-Trial Chamber



PRAK Kimsan Olivier BEAUVALLET NEY Thol Kang Jin BAIK HUOT Vuthy

