

PRESS STATEMENT

An Opportunity to Remedy Past Wrongs against Victims at the ECCC (Case 003)

18 February 2013

On 13 February 2013 – almost exactly one year from the Considerations offered by the Pre-Trial Chamber (PTC) on Rob Hamill’s Appeal against a decision of Co-Investigating Judges (CIJs) Siegfried BLUNK and YOU Bunleng rejecting his civil claims in Case 003, the PTC issued its Opinions in respect of two more civil party applicants in the same case file. This was in response to appeals against the rejections of their Civil Party applications, filed by lawyers HONG Kimsuon and Silke STUDDZINSKY, and SAM Sokong and Lyma NGUYEN, in August and October 2011, respectively.

Similarly to the PTC’s position on Rob Hamill’s civil claims, the PTC was again unable to reach a super-majority ruling with national judges PRAK Kimsan, NEY Thol and HUOT Vuthy opining that since no person has been officially charged in Case 003, the decisions of the CIJs denying the victims civil party status does not “at this stage” infringe upon the victims’ rights, reasoning that there is no one against whom reparations could be sought.

The opinions of international PTC Judges DOWNING and CHUNG differed, emphasising the denial of procedural fairness, not only to the victim applicants, but also to the Prosecution, as procedural irregularities throughout the conduct of the judicial investigations, and the civil party applications and appeals, denied the Prosecution the opportunity to request further investigations in respect of the evidence offered by civil party applicants.

In one case, the PTC international judges identified a gross defect in that, on 15 August 2011, when the PTC was seized of the appeal, the only documents on the case file concerning the applicant was the CIJ’s Inadmissibility Order and a request from civil party lawyers to obtain access to the case file. In this case, it appeared that the CIJs did not have before them pertinent materials upon which to properly assess the application in accordance with civil party admissibility criteria under the Internal Rules and other relevant laws. In another case, the Civil Party’s application and appeal was placed on the case file on the same day as the decision deeming the victim inadmissible.

Other errors include procedural irregularities with (lack of) notification of pertinent decisions to victims and their lawyers, failure to grant lawyers access to the case file, erroneous statutory interpretation of the definition of “victim”, a failure to apply proper jurisprudence previously provided by the ECCC regarding harm as a “direct consequence [of a crime alleged]” (the requirement being that harm needs to be personal but need not be direct), error in applying the correct standard of proof, and ultimately, violations of the principles of legal certainty and transparency, in the procedural conduct of the civil party applications and appeals. In respect of the decision not to admit the victims as Civil Parties on the basis that they had already been admitted as Civil Parties in cases 001 and 002 on the same factual allegations, the international PTC judges found that the CIJs’ reasons were illogical and ill-reasoned or lacked any reasoning.

The PTC international judges concluded in both cases, that CIJs Siegfried BLUNK and YOU Bunleng committed several grave errors of law, which, were it not for the split along national and international lines within the PTC, would have caused them to quash the inadmissibility order in its entirety, and remit the cases back to the current CIJ composition for re-consideration.

The international PTC judges concluded that at a minimum, civil party status for the purpose of participation and reparations should be available to those whose injury may also form the basis of

an accused conviction and/or sentence, and to consider otherwise “is an absurd result undermining the purpose of Civil Party participation under the Rules, the ECCC Law, the Agreement and international law”.

Since the civil party appeals were lodged, Reserve CJJ, Laurent KASPER-ANSERMET exercised judicial discretion in re-considering the order of Judges Siegfried BLUNK and YOU Bunleng in granting the victims civil party status, on a finding that they suffered harm and met the legal definition of “victim” in accordance with the Internal Rules and relevant international instruments. However, the re-consideration orders granting civil party status were not timely placed on the case file and neither the Civil Parties nor their lawyers were ever notified until the PTC Considerations were issued on 13 February 2013.

Nevertheless, the international judges of the PTC found that the subsequent admissibility decision of the Reserve CJJ, Laurent KASPER-ANSERMET rendered the civil party admissibility appeals moot.

In the interests of transparency, procedural fairness, justice and basic respect for the fundamental right of victims, and in light of the harm and confusion already caused by the lack of notification or extremely belated notifications of the Civil Party status of our clients in Cases 003 (decisions in case 004 yet to come), Civil Party Lawyers urge Judges Mark HARMON and You BUNLENG to use the opportunity provided by the issue of the PTC’s reasoned Opinions to clarify and confirm the status of Civil Parties admitted by Reserve CJJ Laurent KASPER-ANSERMET.

We also implore the current CIJs to exercise better care and due diligence in the exercise of their judicial functions, as the current state of affairs – nearly two years after the filing of civil party applications before this Extraordinary Chamber in the Courts of Cambodia, is, simply put, unacceptable. The hand-balling of victims in cases 003 and 004 between different judges, without any apparent regard for their substantive legal rights, has caused a miscarriage of justice for those whom the ECCC should seek to serve.



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