



**Civil Party Lawyers Granted Access to Case Files 003 & 004**  
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Two years after an apparent effort to prevent victims from exercising their party rights in controversial Cases 003 and 004, the lawyers of hundreds of Civil Party applicants at the Extraordinary Chambers in the Courts of Cambodia have received case file access<sup>1</sup> in conformity with the Court's Internal Rules and prior practice.

In April 2011, Co-Investigating Judges (CIJs) You Bunleng and Siegfried Blunk summarily closed Case 003<sup>2</sup> without informing victims of the crime sites under investigation or the impending 15-day deadline to join the proceedings as Civil Parties.<sup>3</sup> International Co-Prosecutor Andrew Cayley sought to rectify the situation by releasing a statement providing basic facts about the charges and crime sites at issue and highlighting the impending application deadline.<sup>4</sup> Of those victims who filed before the deadline, at least two whose family members suffered harm related to crimes under investigation in Case 003 were nevertheless swiftly rejected by the CIJs.<sup>5</sup> On appeal, the international Pre-Trial Chamber (PTC) judges castigated the CIJs for numerous procedural irregularities in their handling of the Case 003, including failing to recognize the applicants' lawyers, to notify them of filings in the case, and to give them access to the case file despite "repeated requests".<sup>6</sup>

[N]o civil party applicant has been in a position to effectively exercise the right to participate in the judicial investigation expressly provided for under the Internal Rules. ... Refusing them the possibility to participate in the investigation may deprive the Co-Investigating Judges of important information in their search for the truth, leading to an incomplete investigation and raising doubts about its impartiality.<sup>7</sup>

Nevertheless, the CIJ's rejections remained in force due the national and international PTC judges' inability to reach a supermajority decision.

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<sup>1</sup> Lawyer's Recognition Decision Concerning All Civil Party Applications on Case File No. 003 (Feb. 26, 2013) [hereinafter Lawyer's Recognition Case 003]; Lawyer's Recognition Decision Concerning All Civil Party Applications on Case File 004 (Apr. 1, 2013) [hereinafter Lawyer's Recognition Case 004].

<sup>2</sup> See *Press Release from the Co-Investigating Judges* (Apr. 29, 2011).

<sup>3</sup> Internal Rules, r. 23bis(2).

<sup>4</sup> Press Release, *Statement by the International Co-Prosecutor Regarding Case File 003* (May 9, 2011).

<sup>5</sup> As of February, there were 321 applicants in Case 003. Lawyer's Recognition Case 003, ¶ 5, *supra* note 1. In Case 004, there are currently 760 applicants. Lawyer's Recognition Case 004, ¶ 5, *supra* note 1.

<sup>6</sup> Considerations of the Pre-Trial Chamber Regarding the Appeal Against Order on the Admissibility of Civil Party Applicant Robert Hamill, Case No 003/07-09-ECCC/OCIJ (PTC02), Opinion of Judges Lahuis and Downing ¶¶ 4-8 (Oct. 24, 2011) [hereinafter PTC Hamill Decision].

<sup>7</sup> *Id.* ¶ 5.

Blunk’s replacement, Judge Laurent Kasper-Ansermet, re-opened the Case 003 investigation, reconsidered and admitted the two rejected Civil Parties’ applications, and granted case file access to some Civil Party lawyers in April 2012.<sup>8</sup> However, the national staff of the Court, following the lead of Judge You, took the position that Judge Kasper-Ansermet “does not have legal accreditation to undertake any procedural action or measure with respect to the Case Files”<sup>9</sup> and refused to file his orders or to comply with them.<sup>10</sup>

After Judge Kasper-Ansermet’s acrimonious departure nearly a year ago, it remained uncertain if his orders would be respected and upheld by his replacement, Judge Mark Harmon. Then in February 2013, Judge Harmon informed the public that—Judge You’s opposition notwithstanding—“Case 003 remains open.” He also provided information about the crime sites under investigation and encouraged victims to file Civil Party applications.<sup>11</sup> Two days prior—but not publicly revealed until last week—he accredited, recognized, and granted case file access to 14 Civil Party lawyers representing Case 003 applicants. At the beginning of April, he issued a companion order granting access to 20 Civil Party lawyers in Case 004.

To safeguard the right of victims to “procedural justice,” Judge Harmon clarified that the Internal Rules give Civil Party applicants the rights of Civil Parties “*unless and until rejected*,” whether or not anyone has been formally charged with a crime and emphasized that the CIJs have the obligation “to make appropriate orders for the purpose of ensuring legal representation of Civil Parties as soon as practicable.”<sup>12</sup> Recognized Civil Party lawyers have the right to participate in the judicial investigation, to access the electronic case file, to file documents, and to receive notice when documents have been filed.<sup>13</sup> These findings are consistent with the views of the international PTC judges, who have affirmed that the Internal Rules “give[] civil party applicants the right to have access to the case file, through their lawyers, from the moment the application is filed until the rejection of such application becomes final.”<sup>14</sup>

In his Case 003 order, Judge Harmon supported the Civil Party reconsideration orders of his predecessor, agreeing with the international PTC judges that these orders “render[ed] the

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<sup>8</sup> See, e.g., Order on the Reconsideration of the Admissibility of Civil Party Applicant [REDACTED], ¶ 34 (April 3, 2012).

<sup>9</sup> See *Press Statement of the National Co-Investigating Judge* (Jan. 9, 2012). See also *Press Statement of the National Co-Investigating Judge* (Dec. 6, 2011); *Press Statement by the National Co-Investigating Judge* (Feb. 10, 2012).

<sup>10</sup> See Note of the International Reserve Co-Investigating Judge to the Parties on the Egregious Dysfunctions within the ECCC Impeding the Proper Conduct of Investigations in Cases 003 and 004, Case No. 003/07-09-2009-ECCC-OCIJ and 004/07-09-2009-ECCC-OCIJ, ¶¶ 39-40 (Mar. 21, 2012) (stating that national staff refused to admit on reconsideration civil party applicant Rob Hamill and to grant his co-lawyers access to the Case 003 case file). Hamill’s international lawyer was nevertheless granted effective access by international staff. *Id.* The status of other Civil Party lawyers was also formally recognized but they were “not fully informed of their rights and obligations[.]” Lawyer’s Recognition Case 003, ¶ 12, fn. 8, *supra* note 1.

<sup>11</sup> Press Release, *Statement by the Co-Investigating Judges Regarding Case 003* (Feb. 28, 2013).

<sup>12</sup> Lawyer’s Recognition Case 003, ¶ 10, *supra* note 1 (emphasis in original). See Internal Rule, r. 23bis(2), providing in part, “Unless and until rejected, Civil Party applicants may exercise Civil Party rights.”

<sup>13</sup> Lawyer’s Recognition Case 003, ¶ 13, *supra* note 1.

<sup>14</sup> PTC Hamill Decision, ¶ 6, *supra* note 6.

previous OCIJ and PTC decisions moot.”<sup>15</sup> More broadly, he made it known that he had filed a disagreement with Judge You “concerning the validity of documents placed on Case File No.003 since the resignation of International Co-Investigating Judge Siegfried Blunk[,]”<sup>16</sup> thereby publicly affirming for the first time that, in his view, Case 003 documents filed during Judge Kasper-Ansermet’s tenure have legal effect.

Under the Court’s rules Harmon has broad authority to act alone, and the failure of his national counterpart to support his actions recognizing the reopening of Case 003 and the participation rights of Civil Parties in Cases 003 and 004 does not reduce their legal effect. Nevertheless, it confirms that—with only one person convicted and two accused remaining on trial—the Cambodian side of the Court has not softened its longstanding objection to the investigation and prosecution of additional suspects.

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<sup>15</sup> Lawyer’s Recognition Case 003, ¶ 8, *supra* note 1. *Cf.* Considerations of the Pre-Trial Chamber Regarding the Appeal Against Order on the Admissibility of Civil Party Applicant [REDACTED], separate opinion of Downing & Chung ¶ 39 (Feb. 13, 2013).

<sup>16</sup> Lawyer’s Recognition Case 003, ¶ 9, *supra* note 1.