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Ruling clarifies KRT civil parties

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A RULING from judges at the Khmer Rouge tribunal made public this week moved to settle a debate about civil party participation at the court that has long been brewing among observers, civil party lawyers and tribunal officials.

For months, the question of which victims would be eligible to participate in the trial – a practice unique among international tribunals – has proved contentious, but several lawyers said Thursday that the new ruling had provided clarity, prompting them to revise and resubmit applications that had previously been rejected.

Lyma Nguyen, a civil party lawyer in the court's second case who resubmitted applications on behalf of several ethnic Vietnamese clients, described the decision as "very important".

"It is a position that does give some guiding principles as to what to expect in terms of civil party admissibility," she said. "This is the first decision that gives that guidance."

Mahdev Mohan, another Case 002 civil party lawyer, agreed. "One of the points coming out of the decision is that, obviously, the civil parties have to be within the scope of investigation," he said, and added that he had revised and resubmitted the applications of two of his clients in response.

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In the decision, dated April 27 and posted on the court's website Wednesday, the court's Pre-Trial Chamber judges affirmed a January ruling from the co-investigating judges (CIJs) stating that "in order for a Civil Party application to be admissible, the applicant is required to demonstrate that the injury results only from the facts for which the judicial investigation has already been opened".

This line of argument was reinforced by a February amendment to the court's internal rules. In the original draft of the rules, released in June 2007, the court said

only that civil parties must prove that they suffered as a result of crimes “within the jurisdiction of the ECCC”.

Thus, for example, the CIJs said in January that Khmer Krom civil party applicants who claimed to have suffered as a result of Khmer Rouge crimes in Pursat province could not be admitted because, regardless of whether the crimes occurred, they are not among the alleged offences being investigated in the current case.

In the decision released on Wednesday, the Pre-Trial Chamber said this distinction should have been clear even before the February rule change.

“The Pre-Trial Chamber notes that the new rule merely codifies the obvious requirement already spelled out by the Pre-Trial Chamber’s jurisprudence,” the decision read.

But Nguyen, who represents a group of 16 ethnic Vietnamese civil party applicants who were rejected in January, said Thursday that the requirement that applications be related to the judicial investigation had come as a surprise to her and a number of her colleagues.

“We were all of the view that it was based on the suffering of crimes within the jurisdiction of the ECCC,” she said, rather than the “restrictive” list of sites involved in the Case 002 investigation.

This point of view was articulated in the aftermath of the February amendments to the court’s rules in a joint statement from 14 Case 002 civil party lawyers that accused the court of trying to “change the rules in the middle of the game”.

Civil party applicants “were not informed and never expected that the court would fundamentally change its policy in the course of proceedings and admit only those survivors who fall within a very narrow scope of investigation,” the lawyers’ statement read.

Others have argued, however, that an obvious element of civil party participation in any criminal case is a connection to the crimes that are being investigated.

“I think it’s always the case,” said Long Panhavuth, a project officer at the Cambodia Justice Initiative. “Normally, to be a civil party, you have to be connected to the scope of investigation.”

UN court spokesman Lars Olsen said the Pre-Trial Chamber decision followed a well-established pattern of decisions from the Co-Investigating Judges.

“The ruling is consistent with what has always been argued from the Co-Investigating Judges, and the ruling should not come as a surprise to any lawyer,” he said.

But regardless of the consistency of the court's rulings, Long Panhavuth said, civil party lawyers and court officials needed to manage the expectations of victims and ensure that they understand the rules for participation in the case.

"A kind of message has to be delivered properly so that there is no questioning among the victims," he said.

Youk Chhang, director of the Documentation Centre of Cambodia, agreed, saying that victims would willingly accept any decision about their civil party status as long as it was clearly conveyed.

"They would be happy to accept any explanation," he said.