

## **Hamill's lawyers on warpath**

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Attorneys for former Olympic rower Rob Hamill have appealed against what they describe as an “absolutely shocking” decision by the Khmer Rouge tribunal’s co-investigating judges to reject his application for civil-party status in the court’s controversial third case.

Civil party lawyer Lyma Nguyen said in a statement yesterday the co-investigating judges’ grounds of rejection were “absolutely shocking, drafted very poorly and completely surprising”.

She urged the international community to hold the court accountable for the “poor legal quality” of the order and the “blatant contempt depicted against victims and civil party applicants by the co-investigating judges”.

Hamill, a New Zealander, was accepted as a civil party in Cases 001 and 002.

His brother Kerry and two other foreigners were captured by the Khmer Rouge in 1978 after accidentally sailing into Cambodian waters. Kerry was tortured and later executed at the notorious S-21 prison.

Nguyen said yesterday Ham-ill’s application for civil-party status was “clearly in the scope of investigations” for Case 003.

According to a statement by international co-prosecutor Andrew Cayley, alleged crimes in the case include the “capture of foreign nationals off the coast of Cambodia and their unlawful imprisonment, transfer to S-21 or murder”.

The suspects in Case 003 remain officially confidential but court documents show them as former KR navy commander Meas Muth and former KR air force commander Sou Met.

Hamill “demonstrated the requisite direct and personal harm that was necessary” for a successful civil-party applicat-ion in the case, Nguyen said.

In an appeal to the Pre-Trial Chamber made public last week, Hamill’s lawyers quoted from the decision by judges You Bunleng and Sigfried Blunk, who ruled that Hamill had failed to show that his psychological suffering was a “direct consequence” of the death of his brother.

The appeal also alleged that the judges had failed to meet their legal obligations to victims and the public and used faulty legal reasoning that evidenced political influence.

“Had this incredible ground of rejection been applied in Case 001 against Kaing Guek Eav, 86 out of 90 applicants would have been rejected, since only four were considered by the Trial Chamber to be immediate survivors (‘direct victims’),” the appeal stated.

“The CIJs’ rejection on this ground very clearly indicates that there was no proper legal application of rules and principles, but that there were political considerations and influences involved.”

Hamill’s lawyers also argued that the ruling was inconsistent with previous decisions, noting that You Bunleng had admitted Hamill as a civil party in Cases 001 and 002.

You Bunleng and Blunk were quoted in the appeal brief as saying Hamill’s acceptance in Case 002 was “non-binding” for his application in Case 003, and claimed that they “cannot follow the reasoning” of his acceptance in Case 001.

Although the United Nations, international donors and the government have claimed the Khmer Rouge tribunal would be a “model” for Cambodian courts, Hamill’s lawyers said the actions of the co-investigating judges in Case 003 “have made that model one of reckless impunity, setting a dangerous precedent . . . for victims’ rights”.

“The standard set by the CIJs in Case 003 has been a lack of investigation, succumbing to political influence, lack of transparency, mistreatment of victims and denial of civil party application,” they claimed.

A total of 318 victims have applied for civil-party status in Case 003. Nguyen said Hamill’s appeal would be a “test case for the Pre-Trial Chamber”.

In June, the Pre-Trial Chamber admitted an additional 1,728 victims as civil parties for Case 002, overturning decisions by the co-investigating judges that had rejected the applicants.

The co-investigating judges’ rejection of Hamill’s application for civil-party status has been cited as yet another sign that the court has decided to scuttle Cases 003 and 004 amid political pressure.

The judges apparently did not even interview the suspects before declaring the investigation closed at the end of April. Nor did they solicit victim complaints or civil-party applicants, as had been done in previous cases.

Court spokesman Lars Olsen said he could not comment on Hamill’s appeal as it was “pending a judicial decision”.