

## **PRESS RELEASE**

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### **Rob Hamill's Civil Party Admissibility Appeal a Test Case for the Pre-Trial Chamber**

Revelations of judicial misconduct by the Co-Investigating Judges (CIJs) in their decision to reject Rob Hamill's civil claims in Case 003, as disclosed in the Appeal Judgment of the ECCC's Pre-Trial Chamber (PTC) shows that Mr Hamill's case was the litmus test for the future of civil party participation in Case 003.

On 24 October the PTC issued its "Considerations" of Rob Hamill's appeal, where there was a clear divide along national and international lines. The separate opinions of the three national judges and two international judges is provided in the publicly available document at [http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D11\\_2\\_4\\_4\\_Redacted\\_EN.PDF](http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D11_2_4_4_Redacted_EN.PDF).

As the PTC could not reach an affirmative super majority vote on a decision either way, the rejection of Mr. Hamill's application for Civil Party status stands.

However, the opinions of the International Judges discloses a number of facts which clearly give rise to the appearance of, or actual, misconduct by the CIJs.

Facts discovered by the PTC about the modification and backdating, in July 2011, of the Impugned Order, dated 29 April 2011, is one such revelation which calls into question the degree of professional misconduct engaged by the CIJs. The document, amended so significantly that the international PTC judges considered that it must be taken to be a new and entirely different Order, was never notified to Mr Hamill or his lawyers. This conduct constitutes an obstruction of justice, sufficient to declare a miscarriage of justice, and should subject the responsible judicial officers to criminal investigation.

Whilst the national judges of the PTC did not consider that the CIJs' rejection of Mr Hamill's application, "at this stage", infringes upon victims' rights, the opinions of the international judges focussed on transparency and on the adversarial character of the proceedings. The international PTC judges found that the CIJs disregarded and violated fundamental principles and previous practices relating to civil party rights at the ECCC, including:

- (i) in failing to provide an explanation as to why the CIJs' practice in Case 003 differs from the previous practice and why the suspects have not been notified of the status of the investigation
- (ii) in failing to provide an explanation for the failure to give victims – potential civil party applicants and complainants – any information about judicial investigations conducted in Case 003, and thereby depriving victims the foundation for exercising a right to participate in the judicial investigation as provided for in the Internal Rules, including the possibility of participating in a search for the truth

(iii) in failing to grant civil party lawyers access the case file

(iv) in unnecessarily requiring that Mr Hamill's lawyers be further recognised as having a standing to represent him, given that the Cambodian lawyer enjoys a *de jure* right to act immediately upon the filing of a power of attorney and the international counsel has been accredited and recognised as the co-lawyer of civil parties in Case 002 – effectively depriving Mr Hamill – and other applicants whose lawyers were not recognised – a fundamental right to legal representation

(v) in the various delays in the registration of filed documents, such as, in Mr Hamill's case, placing his application on the case file 30 minutes before the Impugned Order was, itself, filed

(vi) in failing to exercise judicial discretion in a sufficiently transparent manner so as to allow parties the opportunity to exercise their rights during the investigations, and

(vii) in failing to respect the right to a fair trial and the procedural rights of individuals involved in the proceedings, as a basic guarantee of the rule of law, and in particular in the context of Case 003.

The CIJs' failure to recognise lawyers for civil party applicants does indeed deprive them of a fundamental right to legal representation, because most civil party applicants, residing in regional areas in Phnom Penh, are unable to distinguish what their rights are, or when these rights have been violated.

These disclosures raise serious doubts about the impartiality of the CIJs, and their capacity to perform their functions competently and in accordance with due process.

We, the Civil Party lawyers and our client, Mr. Hamill, welcome the transparency offered by the International Judges of the PTC. We are, once again, deeply perturbed by the real procedural and substantial failures of the CIJs, many of which we were made aware only through the opinions of the international judges, since no access to the relevant case file has been granted.

The international judges note that given all the procedural failings of the CIJs in this case, reconsideration of the Mr Hamill's civil party application should be seriously considered by the CIJs, in accordance with the proper procedure. The international Judges of the PTC directed the CIJs to ensure legal certainty and transparency in accordance with Internal Rule 21(1).

Rob Hamill, from New Zealand, commented, "I'm astounded by the revelations divulged by the international PTC judges. The inference that tampering with legal documents has occurred reinforces one's belief that all is not well at the ECCC. I have to admit the outrageous rulings made by the CIJs in recent times gave cause to doubt the court's credibility. However, Judges Downing and Lahuis have, to some degree, reinforced my belief that there are still many people working in the court who have a desire to seek the truth".

The division within the PTC, between the national and international sides, has become a tradition in this Court in Cases 003 and 004. We can only infer that this is due to an influence by various statements of senior government officials who have indicated that they oppose the continuation of these cases and have expressed that these cases "are not allowed".

This emerging trend of national and international divisions regarding civil party admissibility will likely result in *any and all* civil party admissibility appeals being stalled at the Pre-Trial Chamber level in Cases 003 and 004, with potentially no civil party participation in these case files at all. This will become a significant departure from the Court's mission to bring justice to the victims by effectively fostering a reign of impunity.

Given the looming spectre of injustice, the only remaining hope is that, with the arrival of the new international CIJ, both CIJs will take a different approach, in accordance with the PTC suggestion, by reconsidering the previous rejections of Civil Party applicants as well as the premature closing of the investigations in Case 003. For the sake of justice for victims who have suffered incredible harm, it is our hope that the both CIJs will then conduct thorough investigations, question witnesses in a proper and adequate manner, and notify the suspects about the investigations, so they may be confronted with the charges against them.

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