

II – REASONS FOR THE DECISION

5. The application has to be rejected because the applicant did not demonstrate that he suffered the alleged psychological injury as a **direct** consequence of the death of his brother.
6. Internal Rule 23bis.1 (b) requires that a Civil Party applicant must demonstrate that he has suffered injury as a direct consequence of the crime alleged against a Charged Person. According to English usage ⁷ "direct" in this context means that the crime alleged caused an injury without any intermediate causal link. However, in this case the intermediate link that caused the psychological injury of the applicant was the death of his brother. Without that link his injury could not have been caused by the crime. The causal chain in this case in abbreviated form is: Crime of charged person– death of brother – injury of applicant.
7. This does not conflict with The Practice Direction on victim participation which in Article 3.2.c only states that psychological injury **may** include the death of kin who were the victim of such crimes, but which does not deal with the causality link between the injury and the crime. Anyhow, the Practice Direction is merely a guideline without the quality of a Rule, let alone of Law.
8. The Co-Investigating Judges are aware that they admitted the Applicant as a Civil Party in Case 002 ⁸, but it is not apparent from that decision (which was taken under the great time pressure of bringing Case 002 to trial) that the requirement of directness of the causality link was examined in depth at the time. The decision's chapter under the heading "Causality link between the harm and the crimes alleged against the charged persons" states (at para.15) that "the applicant must demonstrate harm as a direct consequence of facts in the Introductory and Supplementary Submissions", but does not explain the requirements of the term "direct". The ending of this chapter" (at para.18), namely the stated requirement that the "alleged harm results only from facts for which the judicial investigation has already been opened" also seems to indicate that the line of thought – despite the heading – was not concerned with the requirements of causal directness.

Anyhow, the considerations that led to that decision are non-binding, and cannot prevent the (present) Co-Investigating Judges from applying the Rule in the way considered now to be correct.
9. The Co-Investigating Judges are also aware that the Trial Chamber in the Judgement of Case 001 admitted the Applicant as a Civil Party, but they cannot follow the reasoning (at para. 650 of the Judgement) that the applicant has shown that his "harm was a direct consequence of the crimes ...".

The reference that Judgement makes (in fn. 1075) to Article 2 of the French Code of Criminal Procedure is inconclusive as that Article only states that civil action is open to all those who have "personally suffered damage **directly** caused by the offence", but does not explain the requirements of the term "directly".

The same applies to the quoting of Article 13 of the 1964 Cambodian Code of Criminal Procedure.

⁷ cf. the Oxford Online Dictionary's definition of the word "direct" as "without intervening factors or intermediaries"

⁸ D404: Order on the Admissibility of Civil Party Applicants residing outside the Kingdom of Cambodia