



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

INTEROFFICE MEMORANDUM

TO: Srim Kong
A: President of Supreme Court Chamber

Date: 18 September 2013

THROUGH:
PAR:

CC: Tony Kranh
Acting Director of Administration

FROM: Knut Rosandhaug
DE: Deputy Director of Administration

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 20-Nov-2013, 12:14
CMS/CFO: Sann Rada

Dear President Kong,

I refer to the Decision of the Supreme Court Chamber of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) dated 23 July 2013 on the Immediate Appeals against Trial Chamber’s Second Decision on Severance of Case 002 (the “Decision”). In paragraph 11 of the Decision, the Supreme Court Chamber instructed the Office of Administration of the ECCC “to immediately explore the establishment of a second panel of national and international judges within the Trial Chamber to hear and adjudicate Case 002/02”.

I understand that the Supreme Court Chamber will deliver full reasons underlying the Decision in due course. However, in view of the instruction referred to above, and having regard to the statement of the Supreme Court Chamber that “Case 002/02 must ... commence as soon as possible”, I have consulted the Office of Legal Affairs of the United Nations (OLA). OLA has drawn attention to the legal and practical issues which fall to be considered with regard to the establishment of a second panel of judges, and requests the relevant judicial authorities of the ECCC to arrive at a decision regarding whether such second panel should be established.

The question whether a new trial bench may begin sitting in a trial after completion of its first phase, and conversely, whether the existing trial judges would have conflicts of interest if they continue to sit in a trial after rendering judgment on its first phase, are all judicial matters for the ECCC judiciary itself to determine.

As the Supreme Court Chamber is aware, Article 3 of the Agreement between the United Nations and the Royal Government of Cambodia (the “Agreement”) addresses a number of issues regarding the Judges of the ECCC. In particular, Article 3(2)(a) provides that the Trial Chamber shall be composed of “three Cambodian judges and two international judges”. Article 3(7) of the Agreement provides that “[t]he judges shall be appointed for the duration of the proceedings”. These provisions raise the question, therefore, whether the establishment of a second panel of the Trial Chamber

would require an amendment to the Agreement. As the Agreement was negotiated and entered into by the Secretary-General of the United Nations upon the instruction of its General Assembly, the question also arises whether the General Assembly's authorisation would be required before any amendments to the Agreement could be concluded.

An alternative view that has been expressed is that Article 3(8) of the Agreement, which provides that "the President of a Chamber may, on a case-by-case basis, designate from the list of nominees submitted by the Secretary-General, one or more alternate judges to be present at each stage of the proceedings, and to replace an international judge if that judge is unable to continue sitting", may in effect authorise the establishment of a second panel of the Trial Chamber. The interpretation and application of this provision would fall to the President of the Trial Chamber.

With regard to practical matters, my Office is, of course, cognisant of the financial challenges which the ECCC continues to face. The constitution of a second panel of the Trial Chamber would, of course, give rise to budgetary implications. A question that arises, therefore, is whether the relevant ECCC judicial authorities consider that these budgetary implications would be off-set by greater speed and efficiency in moving the Case 002 judicial process forward, or not.

Against this background, I would be grateful for clarification from the Chamber as to whether the relevant ECCC judicial authorities will be taking a decision regarding the establishment of a second panel of the Trial Chamber. If so, I also seek clarification on whether the Chamber considers that any steps would need to be taken by the parties to the Agreement, including whether the Agreement would need to be amended.

Thank you for your consideration of these matters.

Respectfully,

Knut Rosandhaug
Deputy Director of Administration