

A410/2/2



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

ការិយាល័យប្រចាំការ
Office of Administration

(PTC 447)

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សម្ងាត់ / Confidential / Confidential

Date: 30 November 2010

សាធារណៈ / Public

- RESPONSE



To: Judges of the Pre-Trial Chamber of ECCC

From: Tony Kranh, Acting Director of the Office of Administration

- CC:**
- Office of the Co-Investigating Judges
 - Office of the Co-Prosecutors
 - Civil Party Co-Lead Lawyers Section
 - Co-Lawyers for Civil Party
 - Victims Support Section
 - Defence Support Section

Subj: Response to “Co-Lawyers for Civil Party’s Motion on Confidentiality, Equality and Fairness filed with the Office of the Co-Investigating Judges of 18 August 2010” and “Appeal Against the Response of the Co-Investigating Judges on the Motion on Confidentiality, Equality and Fairness of 12 October 2010”

Ref: - Co-Lawyers for Civil Parties’ Motion on Confidentiality, Equality and Fairness of 18 August 2010;¹
- Response of the Co-Investigating Judges to the Co-Lawyers for Civil Parties’ Motion on Confidentiality, Equality and Fairness of 31 August 2010;²

¹ Document No. A410.

² Document A410/1.

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ORIGINAL DOCUMENT/DOCUMENT ORIGINAL	
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):	
01 / 12 / 2010	
ម៉ោង (Time/Heure):	
15:45	
អ្នកទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier:	
Ratanak	

- Appeal against the Response of the Co-Investigating Judges on Motion on Confidentiality, Equality and Fairness of 12 October 2010;³
- Pre-Trial Chamber's electronic notice to the Office of Administration of 26 October 2010 on the Filing.

1. Mindful of the administrative issues in the areas raised in the motion of the Co-Lawyers for Civil Parties, the Office of Administration would like to respond to the concerns and problems raised in the Motion of the Co-Lawyers for Civil Parties filed with the Office of the Co-Investigating Judges (OCIJ) on 18 August 2010, and later declared to be outside the jurisdiction of the Co-Investigating Judges on 31 August 2010; and the Appeal against the Response of the Co-Investigating Judges on the Motion on Confidentiality, Equality and Fairness of 12 October 2010 as follows:

1. DUTY OF THE OFFICE OF ADMINISTRATION FOR THE CO-LAWYERS FOR CIVIL PARTIES

2. The ECCC's Office of Administration established Victims Unit, and later known as Victims Support Section pursuant to Rule 12 of the Internal Rules entrusted with roles and duties as provided for in Rule 12 and Rule 12 bis⁴ including providing necessary administrative support to the Civil Party Co-Lead Lawyers Section as well as all Civil Party Co-Lawyers. Thus, the Office of Administration established Victims Support Section to provide all Civil Party Co-Lawyers with all types of necessary administrative assistance.

Rule 12: Organization of Victims Participation

(Adopted on 9 February 2010 and amended on 17 September 2010)

"... The Office of Administration may enter into contracts with Civil Party lawyers. It also provides necessary administrative support to the Civil Party Lead Co-Lawyers' Section and all Civil Party lawyers."

3. The application of its duty shall be limited to the level of available resources at the court and with necessity for this support/assistance. So far, the Office of Administration has been

³ Document A410/2/1.

⁴ Rule 12 and 12 bis of the IR (Fifth amendment on 9 February 2010 and sixth amendment on 17 September 2010).

trying to offer this assistance; and a lot of progress has been made in response to the necessary needs of Civil Party Co-Lawyers; however, some demands of the Co-Lawyers for Civil Party exceed the capacity of the Office of Administration. The issue of limited resources of Office of Administration has been transmitted to all the Co-Lawyers for Civil Party on several occasions; however, these efforts have never been appreciated or accepted by some individual lawyers.

2. THE USE OF OFFICE EQUIPMENT/SUPPLY

4. During the trials in Case 001, there were only three sets of computers available at the Information Centre for those with urgent works related to the ECCC made use (not only at the exclusive disposal of any particular legal team). In the meantime, at the court, Victims Support Section were provided with eight sets of computers—six of them located in a room designated for Civil Party Co-Lawyers namely Room C127 and the other two in the Civil Party Co-Lawyers' room; three sets in Room C131 and three others in Room C132.

5. Recently, the Office of Administration arranged rooms at Information Centre in Phnom Penh and Room C127 (at the court) for the Co-Lawyers for Civil Party with the understanding that the new arrangement will greatly help facilitate the works of the lawyers; for example, the time they can save from travelling which allows them to have more time to carry out their work more effectively as well as to ease the meeting with their clients. As to the non-court funding lawyers, the court has provided them with office equipments including 16 computers (7 sets on the ground floor of the IC and the other 9 sets in Room C127 at the court) designated to only lawyers and six other sets of computers for everyone in the meeting room on the ground floor of the Information Centre. Therefore, all the lawyers have already enjoyed the full rights to make use of a total of 22 computers available at both the IC in Phnom Penh and the court along with four printers and two scanners. All in all, the number of computers made available to the lawyers has doubled excluding the ones being used by the court-funding legal team and by the Civil Party Co-Lead Lawyers Section.

6. To update its management, the Victims Support Section notified the Co-Lawyers for Civil Parties that all the equipments are for them but none of them has the exclusive and permanent ownership over any computer. It simply means that they are all at the disposal of all lawyers. As a matter of fact, in accordance with the available resources of the court, the Victims Support Section has overcome all kinds of difficulties to ensure sustainable and necessary services provided to all legal teams to sufficiently carry out their professions for the interests of Civil Parties as well as complainants. Moreover, this arrangement is also carried out pursuant to the limited funding to the Victims Support Section for victims participation; however, the demand of this particular legal team always exceeds the limited resources of the court.

3. THE MOVE OF OFFICE AND ITS REASONS

7. The Office of Administration decided to re-organize the working place of the staff members of the Victims Support Section (VSS) from the Information Centre in Phnom Penh to the court's premises. The initiative was to facilitate the work of VSS as it needs to communicate with other sections of the Office of Administration or the court, and for the sake of staff management. The initiative also aims to ease the meeting between all the legal teams with their respective clients in the Phnom Penh office. With the new arrangement, the clients do not need to travel all the way to Chaom Chau which has caused a lot difficulties among the clients as most of them are old and find it difficult to travel; and all the legal teams have easy access to internet, Zylab and other services available.
8. During the transitional period of this move, the said information systems were not in full operation. The Office of Administration with relevant sections did try to find any possible solutions to the problems. Because of all the efforts by the Office of Administration, all the problems have been resolved; and all the said information systems are in smooth operation.
9. On the contrary, this particular legal team with the initiative of Ms. Silke STUDZINSKY who was not happy with these measures filed complaints to the Office of Administration on several occasions, although there were many explanations over the issues from the Office

of Administration. These actions have been causing a lot of disruptions to the staff members of the section in carrying out their works. Moreover, she even used judicial measures to demand for things that exceed the capacity of the Office of Administration as demonstrated above.

10. The Office of Administration understood the genuine intent of this lawyer, and were aware that she once used a room⁵ at the Victims Support Section exclusively for herself and her interns while the other lawyers did not do so. In fact, the Legal Aid of Cambodia (LAC) prepared an office with supporting staff for her (with DED funding) to work, but she did not consider making use of the office. Instead, she used the place designated to all Civil Party lawyers in general, and made it a permanent place for keeping her files and for her interns by anarchicly violated the rights to use the equipments and office of other legal teams. To date, there are 12 legal teams; thus, what would happen if each legal team demands for the use of a room with a set of equipments? How would the Office of Administration resolve this? The Office of Administration cannot afford to provide a room to each individual lawyer or any particular legal team and a lawyer from any special legal team.
11. The move of location by the Office of Administration was initiated with pure and decent intent pursuant to its duty to make it easy for Civil Parties and their lawyers, the court's administration and other offices/sections of the court in general. Thus, the move benefits all relevant parties.

4. OBLIGATION AND VIOLATION OF OBLIGATIONS OF LAWYERS

12. Honestly speaking, the lawyers licensed with the Bar Association of the Kingdom of Cambodia have an obligation to comply with duties required by the legal framework of the Kingdom of Cambodia as provided for in Rule 22 (4) of the IR⁶ and Rule 6 of the Code of

⁵ Room C131 of the Victims Support Section at the court.

⁶ Rule 22 of the ECCC-IR "In the performance of their duties, lawyers shall be subject to the relevant provisions of the Agreement, the ECCC Law, these IRs, ECCC Practice Directions and administrative regulations, as well as the Cambodian Law on the Statutes of the Bar and recognised standards and ethics of the legal profession. They have an obligation to promote justice and the fair and effective conduct of proceedings."



Ethics for Lawyers. These obligations include the obligation to establish a professional domicile, the obligation to guarantee confidentiality and the obligation to treat other colleagues with respect and to avoid conflict of interests among fellow lawyers.

A. VIOLATION OF THE OBLIGATION TO ESTABLISH A PROFESSIONAL DOMICILE

13. Article 1 of Code of Ethics for Lawyers stipulates, “The lawyer licensed with the Bar Association of the Kingdom of Cambodia establishes his or her principal professional domicile in Cambodia.⁷ This personal location shall be used to store and keep files, discuss with clients and shall be an appropriate location that assures the principles of dignity and professional confidentiality.
14. Among the lawyers, two international lawyers naming Ms. Silke STUDZINSKY and Ms. Lyma NGUYEN who, in particular, have not complied with the articles. The two lawyers are advisors to the Legal Aid of Cambodia (LAC). Via inquiry from staff members of the said organization, the organization prepares a decent office with support staff at its headquarter at No. 51, Street 608, Sangkat Boeng Kak II of Tuol Kork, but the two advisors turn to constantly cause problems to the court. Once approached with regard to the issue, Ms. Silke STUDZINSKY claimed that she does not have other place to work (sic). Does this show the honesty for the team spirit?
15. As mentioned above, the location of Victims Support Section are not meant to provide permanent offices to lawyers, but a place for Civil Party lawyers to meet among themselves and to meet their clients, and to consult documents, retrieve documents and make copies of some important documents. Lawyers shall have their own place to store and keep documents; a professional place that complies with the principles of dignity and confidentiality. Therefore, the said two lawyers have violated Article 1 of the Code of

⁷ Article 1 states: “The lawyers of the Bar Association of the Kingdom of Cambodia establishes his or her principal professional domicile in Cambodia.”

Ethics for Lawyers by not establishing a professional domicile in the Kingdom of Cambodia.

B. THE EFFECT ON THE OBLIGATION OF CONFIDENTIALITY OF LAWYERS

16. This legal team, on their own subjective base, of the opinion that the arrangement on the move of office is the attribute to their difficulties in compliance with the obligation of professional confidentiality. They claimed that, “The Civil Party Lawyers did not choose such arrangement. But it was the Director of the Office of Administration who ordered the existence of the situation in which Civil Party lawyers may violate their own code of ethics and obligations that will unfairly affect the rights to trials of Civil Parties”.⁸
17. This particular legal team is further of the opinion that in the worst circumstance, failure to improve the working condition of their team exposes the Director of the Office of Administration to the violation of Rule 35 of the IR due to the breach of confidential information via the establishment and continued practice of the working condition that makes this legal team impossible to comply with their obligation of confidentiality.⁹
18. Article 7 of the Code of Ethics for Lawyers stipulate, “The lawyer is absolutely bound by professional confidentiality”. Thus, the lawyers themselves shall be bound by this obligation, but the Office of Administration. In the meantime, as to other lawyers including the court-funding lawyers and lawyers from other organizations have not encountered such problems in managing their files and compliance with their obligation of confidentiality. On the contrary, this legal team turns to understand that it is difficult for them to stick to the principle of confidentiality, and only the Office of Administration has the duty to help them comply with their professional confidentiality. In real practice, lawyers shall handle the printouts from the printers with care, not leaving them all over the desks and sometimes on the floor in such mess. Furthermore, lawyers have already been notified that the new location is meant to be used by all Civil Party lawyers, in general. At their own

⁸ Motion on Confidentiality, Equality and Fairness of the Co-Lawyers for Civil Party of 18 August 2010, para.16

⁹ Motion on Confidentiality, Equality and Fairness of the Co-Lawyers for Civil Party of 18 August 2010. para.29; Document A410.

responsibility, lawyers shall comply with the issue of confidentiality. If a lawyer has his or her own office and bring the files/documents to be used there, there would not be a problem.

19. What raised by the legal team as demonstrated in Paragraphs 16-17 were not reasonable. The argument was that they could not comply with their professional confidentiality due to the office arrangement of the Office of Administration, and claimed that the Office of Administration may violate Rule 35 of the IR by interfering in the administrative affairs of the Chamber with regard to the issue of professional confidentiality of lawyers. The office of Administration is of the opinion that the issues raised were two separate issues; and the Office of Administration has the obligation as raised in Paragraph 1 (Duty of the Office of Administration...) while the issue of professional confidentiality is the obligation of the lawyers themselves. Office of Administration is neither a party in Case 001 nor in Case 002 as the legal team is; thus, the Office of Administration would like to inform the relevant lawyers that they shall assure the principle of confidentiality themselves.

C. CRITICISM OVER THE SYSTEM OF LEGAL ASSISTANCE

20. Besides, this legal team even criticised that, “ECCC provides none system of legal assistance to ensure that Civil Parties and Civil Party applicants access to legal representation. There is not an international lawyers among the three [court-funded] lawyers. The clients will have the feeling of equality compared to the Defence lawyers if there is a mixture of both national and international lawyer.¹⁰” The Office of Administration would like to inform that the clients are free to choose the lawyer(s) that they like. As to the un-represented Civil Parties and Civil Party applicants, it is the responsibility of the ECCC to provide them with lawyer(s). National lawyers enjoy the rights to represent clients before the ECCC without foreign lawyers. On the contrary, international lawyers shall cooperate with national lawyer(s) based on the principle of equality of arms.
21. ECCC is a type of criminal court that allows Civil Parties to claim moral reparation with the support from the civil society. So far, some civil society organizations have offered full

¹⁰ Appeal against the Response on the Motion on Confidentiality, Equality and Fairness of 12 October 2010, para.8.

legal services with offices to help lawyers with their work and special allowance and equipments. Therefore, the legal team who filed the appeal must have had contract with those civil society organizations already in representing victims of the Democratic Kampuchea as well as some Civil Parties before the ECCC. As to the un-represented Civil Party applicants, they need assistance from the ECCC; thus, the ECCC decides to hire more lawyers, and has the obligation to provide them with working space like those provided to other legal teams funded or supported by other organizations. Moreover, the Victims Support Section also has facilitated their working conditions by providing all Civil Party lawyers in general with offices and office equipments/supply as demonstrated in Paragraphs 2 and 4). To date, all Civil Parties and Civil Party applicants have lawyer(s); thus, none of the ECCC IR has been violated by any means.

D. IMPROPER TREATMENT TOWARD THE COURT-FUNDED LAWYERS

22. It was argued that, “Clients of the three court-funded lawyers have no international lawyers to represent them. The victims themselves raised on many occasions that they feel they have received the same care given to the charged persons compared to the past if they have both national and international lawyers.”¹¹ The legal team who filed the appeal seems to clearly understand the feeling of the court-funding lawyers’ clients. It seems that they have inquired the clients of other lawyers of their representation without prior permission from those respective lawyers.

23. As mentioned as well as such acts considered as violating the legal framework that allows national lawyers to practise laws before the ECCC (Rule 22 of the IR), and as insult to the capacity of the three lawyers¹² who represent these clients. And by raising such phrase, these clients can loose trust in the three national lawyers who are also their colleagues. This shows the lack of respect among their fellow lawyers. Furthermore, the legal team who files the appeal never come for consultation or ask for permission from the court-funded lawyers to use the information regarding the three lawyers in their motion or their appeal.

¹¹ Ibid., paras. 9-10; Document A410/2/1.

¹² To ensure that all Civil Party applicants are represented by lawyer(s), the Office of Administration initially hired two lawyers, and later on another lawyer pursuant to the instruction from the Office of Co-Investigating Judges.

This is an act of violation of the three court-funded lawyers' rights. These acts are severe violations of Article 25 of the Code of Ethics for Lawyers which stipulates, "All interactions among lawyers shall occur in a spirit of brotherhood, propriety, and courtesy. Subject to the interests of his or her client, the lawyers must abstain from all acts which may be prejudicial to other lawyers".

24. The Office of Administration is of the opinion that what raised by the legal team who filed the appeal (in the Motion and the Appeal) demonstrates discrimination and the lack of understanding of their roles as Civil Party Lawyers. Their job was to make sure that they become good representatives and meet the needs of their respective clients. They should not be observing or evaluating the needs of other legal teams' needs and their lawyers'. These should be the tasks of the clients of each legal team or of the Victims Support Section to evaluate and find them resolutions.

E. DISRUPTION TO THE VICTIMS SUPPORT SECTION AND OTHER LAWYERS

25. Having moved to the new office, Ms. Silke, on many occasions, contacted the Office of Administration via face-to-face meetings or emails. She has also written emails complaining about the issue to every judge of the ECCC, in particular, to the Office of Co-Investigating Judges, and, this time, to the Pre-Trial Chamber of the ECCC. These acts have become very disruptive to the Office of Administration, although there have been many explanations that the issue is beyond the capacity of the Office of Administration.
26. Moreover, the use of the office provided to all Civil Party lawyers in general has been disrupted particular lawyer. She occupied a place designated for everyone which include a few desks with computers for her permanent use. As a consequence, there were not enough computers for other legal teams and their interns to use; and people become unhappy about it. If Silke's legal team uses the place provided by Legal Aid of Cambodia and respects others of their rights, there would be no disruptions to others. This type of attitude shall be justified.

REQUESTS

For the foregoing reasons, the Office of Administration requests Mr. President and all judges of the Pre-Trial Chamber to take due note of the foregoing, and to consider the issue based on the available resources of the Office of Administration rather based on the private interests of a legal team. Our requests are as follows:

1. Reject the appeal against the response of the Co-Investigating Judges on the motion on confidentiality, equality and fairness of 12 October 2010 filed by this legal team;
2. Uphold the decision of the Co-Investigating Judge of 31 August 2010;
3. Demand that these lawyers work in their own offices of professional domicile or at the organizations that support them;
4. Demand that these lawyers comply with their Code of Ethics; and
5. Demand that these lawyers comply with the arrangements by the Office of Administration and cease disruptions to the administrative management of the Office of Administration from this day onwards.

May, Mr. President and judges of the Pre-Trial Chamber, accept my highest consideration.