

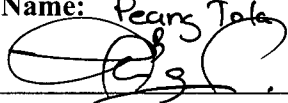
AL10/2/4

**BEFORE THE PRE-TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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REPLY TO THE RESPONSE OF THE OFFICE OF ADMINISTRATION

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I. Background to this Reply

1. In the Pre-Trial Chamber's (PTC) "Decision to Determine the Appeal on the Basis of Written Submissions"¹, dated 7 December 2010, Civil Party Lawyers concerned, were invited to file a reply in their own capacity, to address the fresh allegations made in the response of the Office of Administration dated 30 November 2010 (**Administration's Response**).² Pursuant to the PTC's invitation to provide a reply, and given the serious nature of the allegations made by the Administration (including any adverse judicial or non-judicial outcome that may result in any failure to reply), this filing serves as a reply, submitted in the individual capacity of one of the International Civil Party Lawyers explicitly named in paragraph 14 of the Administration's response.³
2. In accordance with Article 8.4 of the Practice Directions on Filing (Revision 5), this response will be filed within five calendar days of notification of the PTC's invitation to reply (Sunday 12 December 2010). In accordance with Internal Rule 39(3), as the deadline for filing falls on a weekend, this reply shall be submitted the next working day, Monday 13 December 2010. Noting that three out of the five days for this deadline includes a weekend and a public holiday when no translation services are operating, leave is sought from the PTC to grant a filing of this reply in the English language first, with the Khmer translation to be submitted when it becomes available.⁴

II. General Remarks

3. It is unfortunate that amidst important trial preparation work currently required of all parties concerned in Case 002, time has to be expended on addressing unfounded and ambiguous allegations that are grounded upon incorrect facts. This reply is intended only to provide the PTC with the facts and background necessary to rectify any

¹ Decision to Determine the Appeal on the Basis of Written Submissions, 07 December 2010, Document no. A410/2/3.

² Response by the Administration, dated 30 November 2010 (Document no. A410/2/2) concerning the Appeal against the Response of the Co-Investigating Judges on the Motion on Confidentiality, Equality and Fairness, dated 18 October 2010, Document no. A410/2/1.

³ Response by the Administration, dated 30 November 2010, Document no. A410/2/2, para 14, page 6.

⁴ It is intended that a translation request be made on the same day as the filing of the English version of this reply, Monday 13 December 2010.

misperceptions that may have been perpetuated through the allegations made in the Administration's response, and to set the record straight.

4. The reply will contain some submissions to specifically address the allegations made in paragraph 14 of the Administration's response, which was explicitly directed at Ms Silke STUDZINSKY and the author of this reply. Comments in respect of allegations made in paragraphs 22 - 25 of the Administration's response will also be made. However, the limited and specific nature of this reply should not be taken as an acceptance of any other allegations made in the Administration's response which could be understood to be directed at the author.
5. As a preliminary remark, the Administration's response does not make clear as to which lawyer or legal team certain allegations were intended to target. References to "this legal team" under parts of the response (eg. paragraphs 16 – 20 and 24) are ambiguous and it cannot be properly ascertained whether the statements were directed at the conduct of all lawyers who submitted the Appeal against the Response of the Co-Investigating Judges on the Motion on Confidentiality, Equality and Fairness (**PTC Appeal**),⁵ including various national lawyers, – or just the international lawyers.
6. To make it clear, Ms Silke STUDZINSKY and the author of this reply represent different clients, and have separate, distinct and independent legal teams.

III. Allegations made in Paragraph 14 of the Administration's Response Concerning Violations of a "Permanent Domicile" Provision

7. One of the objectives of the PTC Appeal was to ensure that all Civil Party Lawyers would have parity with other parties in the proceedings, by way of having a room at the court complex *during the trial phase of proceedings*, as had been the practice for all parties to proceedings before the ECCC in Case 001. This concern was based on the foreseeable difficulties that would result if Civil Party Lawyers had files and other necessary equipment at a place other than the court during this important phase of the proceedings.

⁵ Appeal against the Response of the Co-Investigating Judges on the Motion on Confidentiality, Equality and Fairness, dated 18 October 2010, Document no. A410/2/1.

8. It is unfortunate that efforts to communicate with the ECCC Administration in good faith, with a view to securing a proper working space, have eventually resulted in allegations of unethical conduct and specific noncompliance with a professional domicile provision under the Bar Association of the Kingdom of Cambodia's (BAKC) Code of Ethics for Lawyers.
9. Since the admission of the author to the BAKC in May 2009, the issue of "professional domicile" has never been raised, except through the allegations under paragraph 14 of the Administration's recent response.
10. The allegation that the two international lawyers mentioned have "not complied with the articles [in the Code of Ethics] because they "have not established a professional domicile in the Kingdom of Cambodia"⁶ is unfounded, because in practice, very few International Civil Party Lawyers have a "professional domicile" in Cambodia. The reality is that most International Civil Party Lawyers work entirely on a pro bono basis (without a salary) and operate largely from abroad, with short missions in-country as required. During these in-country visits, lawyers will often work from the premises of the ECCC, or their hotel accommodation.
11. There may be varying views as to where an international Civil Party Lawyer's "professional domicile" should be. Given that the ECCC is a hybrid court within the national Cambodian structures, with nationals and internationals working alongside one another, one view could be that the "professional domicile" of an international lawyer should be at their respective national co-lawyers' office. However, international lawyers admitted to the BAKC only have standing to represent clients before the ECCC, and no entitlement to engage in general legal practice locally. Moreover, the reality is that the ECCC is very much a self-contained entity, with its own electronic systems networks, including various programs (eg. Case Map, Text Map) which are only accessible at the court premises (including town office). Further, in practice, any arrangements of office space for international lawyers working in-country (whether temporary or permanent) is always subject to

⁶ Paragraph 14 of the Administration's response explicitly mentions the names of two international lawyers who "in particular, have not complied with the articles [of the Code of Ethics for Lawyers]". Specifically, the allegation is that both lawyers have violated "Article 1 of the Bar Association's Code of Ethics for Lawyers by not establishing a professional domicile in the Kingdom of Cambodia".

considerations of donor funding and the good will and availability of spacing and facilities in the offices of the local host organisations with whom international lawyers may enter a partnership or agreement. Therefore, this particular view is problematic.

12. The “Extraordinary Chambers in the Courts of Cambodia” is a distinct, unique, “extraordinary” court with its own self-contained and internal electronic and IT systems. Therefore, it is submitted that the “professional domicile” of any lawyer working within the ECCC jurisdiction should (at the very least, technically) be at the court premises itself. As it is understood, at present, the court-funded lawyers also do not have their own “professional domicile”, unless it is understood that the ECCC Public Information Centre in town is their “professional domicile”. It is further understood that even the international lawyers defending the accused persons do not have their own “professional domicile” outside of the Court premises.
13. Regardless of where an international lawyer’s “professional domicile” is purported to be, it is clearly ideal that Civil Party Lawyers working permanently in-country, work within the electronic court system of the ECCC because of significantly faster access to the Case File/Zylab, access to the ECCC intranet including staff directories, the common G: and S: drive, Case Map, Text Map, the availability of adequate printers for a Case File constituting 350 000 pages, and ready access to court staff, other lawyers and the Lead Lawyer team. Outside of the ECCC court complex or Public Information Centre/town office, lawyers are in fact, excluded from the ECCC electronic systems network, and given the enormity of Case File 002, are rendered unable to conduct work as effectively, smoothly or efficiently as when they are within this network.⁷

⁷ Given the serious and unfounded substance of these allegations, it should be noted that the author’s legal team was invited by the National Lead Civil Party Lawyer to occupy room 103 within the ECCC town office. This invitation took place on 1 October 2010, when the National Lead Lawyer commenced this new position, and structural office/room changes were made at the town office to cater for the working arrangements of the National Lead Lawyer’s team and the court-funded team. Before moving to room 103 of the ECCC town office, and during the phase of conducting mass civil party admissibility appeals (August to 30 September 2010), the legal team of the author had been working temporarily from the room currently occupied by the court-funded team (previously the Civil Party Lawyers’ meeting room). Given the superior access to printers and the Case File from the town office (comparative to other premises outside of the court complex), the offer to work in room 103 of the town office was accepted with much gratitude. Following this, office equipment as needed was provided (a filing cabinet, a desk, computers, access to the printers and similar facilities for

14. It is to be noted that the submissions in this reply are made in the personal capacity of the author and only in order to counter the allegations of a violation of the BAKC's Code of Ethics. Whilst it can be understood if the Administration may have financial or other concerns which render it difficult to provide adequate support and facilities necessary for Civil Party Lawyers to work properly to international standards, the allegations made by the Administration concerning "professional domicile" are a real affront to the work of *all* Civil Party Lawyers. Specifically, if these unfounded and unreasonable allegations against the International Lawyers are taken further, there is a real possibility of the creation of a regime of discrimination at the ECCC against pro bono International Lawyers registered with the BAKC.

IV. Allegations made in Paragraph 22 – 24 of the Administration's Response about Improper Treatment toward Court-funded Lawyers

15. The allegations of improper treatment toward the court-funded lawyers are completely speculative and unwarranted. By way of background for the PTC as to the context in which the work of Civil Party Lawyers takes place: International Civil Party Lawyers working in-country have always collaborated in good faith, and enjoyed good working relationships with national Civil Party Lawyers, including our colleagues from the court-funded team. Our relationship has always been one of mutual cooperation and in a spirit of mutual sharing of knowledge and learning. For example, on the very day that the response from the Administration appeared on the Case File, both international lawyers against whom allegations were directed had interacted positively with their national counterparts, providing training sessions on preparing witness lists and the definition and elements analysis of certain international crimes – similarly, other exchanges and interactions regularly take place where international lawyers learn from their national colleagues.

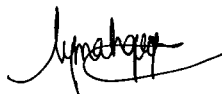
interns and legal assistants). A key to room 103 was also provided. This room was occupied by the legal team of the author from 1 October 2010 to 23 November 2010. On 23 November 2010, all files belonging to the legal team of the author were moved out of the town office, and the move was explained in person to the Victims Support Section as being in anticipation of a request to move out, and the increasingly difficult working environment at the town office created by this. Both International Civil Party Lawyers subject to the Administration's allegations about violating the "professional domicile" provision, currently work from the premises of Legal Aid of Cambodia (LAC) and no longer occupy any space at the ECCC Public Information Centre/town office.

16. In particular, the allegation that “[I]t seems that they have inquired the clients of other lawyers of their representation without prior permission from those respective lawyers [sic]” is mere speculation. The author confirms that no unauthorised contact has ever been made with clients of any legal team which is not her own.
17. It is hoped that the response from the Administration does not create any unnecessary divide amongst international and national colleagues and/or any further unnecessary distinction between pro bono lawyers and court-funded lawyers. It would be disappointing if this were to result, particularly as the Office of Administration is mandated under Internal Rule 12 to “provide necessary administrative support to the Civil Party Lead Co-Lawyers’ section and all Civil Party lawyers”.

Conclusion

18. In conclusion, the original requests made by Civil Party Lawyers concerning equality between parties to the proceedings and proper working conditions for all Civil Party Lawyers, in terms of access to the Court’s resources etc, was made pursuant to fulfilling the role of a Civil Party Lawyer acting in the best interests of civil party clients to whom legal services are provided on a pro bono basis.
19. Against the backdrop of a difficult operational environment, it was decided that the PTC’s invitation to provide a reply needed to be acted upon, in order to enable the PTC to make a proper and meaningful determination of this matter, on complete and correct factual information. Additionally, the allegations made under paragraph 14 of the Administration’s response would understandably be of interest to all International Lawyers working in this jurisdiction.

Respectfully submitted by



Ms. Lyma NGUYEN
International Civil Party Lawyer

Signed in Phnom Penh, Kingdom of Cambodia on this 13th day of December, 2010.