

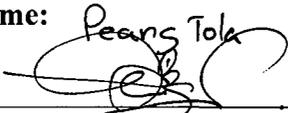
A410/2/5

**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

1. On 7 December 2010, the Pre-Trial Chamber (“PTC”) decided to determine the Appeal¹ of Co-Lawyers for Civil Parties on the basis of written submissions. It invited Co-Lawyers for Civil Parties and the lawyers mentioned in paragraphs 9, 14, 25 and 26 of the Response of the Office of Administration² (“Response”) in their own capacity, to file a reply.³
2. The Response explicitly mentions the names of Ms. Lyma NGUYEN and the signatory out of the six lawyers from two different teams. Herewith, the latter replies in her own capacity.
3. The invitation to reply was notified to the Co-Lawyers for Civil Parties on 7 December 2010. Pursuant to Article 8.4 of the Practice Directions on Filing Documents the reply has to be filed within 5 calendar days. As 12 December 2010 is a Sunday, the date for filing falls on the next working day, namely 13 December 2010.

The signatory notes that three out of the five days fall on a holiday and/or a weekend. Given that the Interpretation and Translation Unit (“ITU”) does not work on holidays and weekends, it will not be possible to file the reply within the deadline in two languages. Therefore, it is respectfully requested that the PTC grant leave to file the English version of the reply first and to submit the Khmer translation as soon as it is available.

II. PRELIMINARY REMARKS

4. The signatory emphasizes that the invitation by the PTC to reply is in accordance with the Practice Direction and is utilized when no oral hearing is scheduled during which a debate of the arguments would otherwise take place. Article 8.4 of the Practice Direction on Filing Documents reflects the general and fundamental principle of the right to be legally heard. It is necessary to make this remark given

¹ Appeal against the Response of the Co-Investigating Judges on the Motion on Confidentiality, Equality and Fairness, 18 October 2010, A410/2/1.

² Response, 30 November 2010, A410/2/2.

³ Decision to determine the Appeal on the Basis of Written Submissions, 07 December 2010, A410/2/3, p.3.

that the PTC's invitation to reply, in itself, has caused irritation and surprise within certain organs of the Court.

5. It should be noted at the outset that among the "twelve teams of Civil Party Lawyers,"⁴ the majority of the international lawyers, of whom most share the same national lawyers, are not permanently working in Cambodia and do not intend to do so because they have insufficient funds that would enable them to permanently move to Cambodia and work on a pro-bono basis, either with no salary or at most a small allowance through volunteer organizations. There are no more than approximately 16 national and international lawyers and assistants who are working permanently in Cambodia.
6. The Office of Administration charges the signatory with having sought "judicial measures."⁵ Seeking a judicial remedy is the right of the parties to the proceedings and it is not a violation of professional duties as the Response appears to suggest. In addition, requesting the Office of Administration to provide administrative support for Civil Party Lawyers is a right recognized in the Internal Rules and cannot be labeled a "disruption"⁶.
7. It is extremely worrying that the Office of Administration makes serious allegations against "a team of Co-Lawyers for Civil Parties" which are unfounded, baseless and appear emotive, rather than presenting correct facts – this is reflected by the inflammatory language used as a response to a factual and reasoned Appeal. The unreasonable and unsubstantiated allegations of having violated the Bar Association's Code of Ethics constitute defamation and place the proper work and the reputations of the lawyers mentioned at risk. In summary, the signatory wholly rejects all the allegations made as incorrect and false.
8. The signatory further notes that only paragraphs 1 and 17 of the Response are fully factually correct.

III. ALLEGATION OF HAVING VIOLATED THE PROVISION TO ESTABLISH A PROFESSIONAL DOMICILE

⁴ See para. 10 of the Response.

⁵ See para. 9 of the Response. See also paras.25-26 of the Response.

⁶ See paras. 25-26 of the Response. See also Rule 12 of the ECCC Internal Rules.

9. The Office of Administration (“OA”) in its Response alleges that “in particular Ms. Lyma NGUYEN and the signatory have not complied with the articles [Article 1 of the Code of Ethics]”⁷ which stipulates that lawyers of the Bar Association in the Kingdom of Cambodia (“BAKC”) establish his or her principal professional domicile in Cambodia.
10. The signatory notes that the conditions of admission to the BAKC for international lawyers in the context of the ECCC are different from those conditions for national lawyers insofar as (i) international lawyers are limited to practice in the jurisdiction of the ECCC only, and (ii) international lawyers are obliged to act with national lawyers, while the latter are permitted to practice in this jurisdiction alone.
11. Furthermore, in contrast to national Courts, the ECCC is an electronic Court which is fully accessible only from computers within the Court’s network. Whilst remote Zylab access can be granted, working abroad entails limited or no access to the ECCC’s electronic networks and programs necessary to fully and properly engage with the work (Case Map, Text Map, shared network G and S drives, etc). For Civil Party Lawyers to adequately represent their clients, smooth and fast access to these networks and programs is essential and indispensable.
12. In view of these technical constraints and the co-location of all other offices within the Court, the signatory has established her professional domicile within the ECCC’s premises (and thus in Cambodia) since her admission to the BAKC (March 2008). Therefore the signatory has not violated the Code of Ethics.
13. The signatory’s first office was in room 429 in the main building of the Court, the second was on the same floor, the third in room C131 and the fourth in room 100 of the Information Center of the Court. The offices behind the canteen were newly built for the Victims Unit (now the Victims Support Section) and most of them built specifically for Civil Party Lawyers. Since the establishment of the Court, the signatory has been the only International Civil Party Lawyer who has worked permanently in Cambodia.⁸ It should also be noted that the OA provided the signatory and her assistants with keys to each of the respective offices (except for

⁷ See para. 14 of the Response.

⁸ In July 2010, Ms. Lyma NGUYEN started working in Cambodia on a full-time basis.

room 100 which is an open plan office) and organized, through enlisting the assistance of ECCC staff, each transfer between offices of all files and other materials, including computers. During the almost three-year period and throughout the four separate moves, the folders, files and other resources remained at all times within the Court buildings.

14. The final move to the town office on 5 July 2010 was pursuant to instructions from the OA which specifically designated on its floor plan the location where the desk, computer, shelf and cabinets of the signatory were to be situated in room 100. Later when the court-funded lawyers moved from room 103 of the town office to the adjacent room the signatory was orally and explicitly invited by the now national Lead Co-Lawyer, who passed on instructions from the Chief of the Victims Support Section (“VSS”), to move all her materials into room 103. This request came during a busy and intense phase where Civil Party Lawyers were dealing with appeals against the Admissibility Orders of the Co-Investigating Judges. The move to room 103 was therefore not executed. In addition, the signatory did not wish to have any additional privileges as an international lawyer, such as having a private and lockable office (room 103), while her national Cambodian colleagues did not enjoy similar working conditions.
15. During the almost three years that the signatory permanently worked at an office within the Court’s premises, OA/VSS at no time raised any objection. Their lack of objection is an indication that OA/VSS accepted this working arrangement. The OA even assisted with each office move, by respectively assigning for each single move, exactly where desks and cabinets were to be placed.
16. The signatory notes that the OA/VSS changed its sentiment and policies about the treatment of Civil Party lawyers only recently when the Appeal against the Response of OCIJ was filed. The Appeal was classified as confidential but was immediately disclosed to the Chief of the VSS by an unknown person prior to the PTC inviting the OA to respond to matters raised in the Appeal.
17. Furthermore, the signatory reiterates that most of the international lawyers for Civil Parties and all court-funded lawyers – including the national and international

Defense lawyers – have never established an office outside of the Court due to its specificity as described above.

18. To conclude, the signatory did not violate the Code of Ethics. The signatory established, as did all other lawyers, her professional domicile in Cambodia at the Court premises. This had, in the past, always been accepted by the OA and in fact, was facilitated by the OA.
19. In light of the foregoing, the problems with confidentiality that are related to the working conditions at the ECCC's Public Information Center are a matter for the OA to resolve and not for the Civil Party lawyers as incorrectly stated in paragraphs 16-19 of the Response.

IV. ALLEGED VIOLATION OF ARTICLE 25 OF THE CODE OF ETHICS

20. The response of the OA alleges a violation of Article 25 of the Code of Ethics and improper, inappropriate, insulting and discriminating treatment toward Court-funded lawyers.⁹ It further speculates that lawyers who submitted the appeal contacted clients of the court-funded team without that team's permission.¹⁰
21. The signatory strongly rejects these allegations.
22. The signatory never had any improper contact with clients of the Court-funded lawyers and has never undertaken any "inquiries"¹¹ in this regard. Moreover, the signatory has maintained since the commencement of her work at the ECCC, an extremely respectful relationship with all colleagues, including all national lawyers, whether Court-funded or not. This is demonstrated by her undertaking, in addition to her daily legal work, capacity building workshops and forums to enhance the skills and expertise of national lawyers, and on-the-job training about legal and procedural issues throughout Case 001 and 002. This relationship has developed in a spirit of solidarity, respect and mutual willingness to learn from each other, all in accordance with professional ethics and duties.

⁹ See paras 22-24 of the Response.

¹⁰ See para 22 of the Response.

¹¹ See para. 22 of the Response.

23. The fact that many Civil Parties enjoy and prefer to be represented by national **and** international lawyers in a hybrid Court, and thus have equivalent legal representation to the Defense (and all other bodies in the Court), derives from the statements of many of the signatory's clients. Furthermore, many of the signatory's clients have indicated that the presence of international Civil Party Lawyers (and international staff) provides them with confidence that the proceedings will be conducted in accordance with international standards.

V. THE MOTIVE OF MOVING THE OFFICES OF CO-LAWYERS FOR CIVIL PARTIES FROM THE COURT TO THE INFORMATION CENTER AND VSS STAFF FROM TOWN TO THE COURT

24. The reasons given within the OA's Response for the move of the Offices of the Civil Party Lawyers from the Court premises to the ECCC Public Information Center, and the respective move of VSS staff to the Court premises are partly incorrect. The Response states that the move (i) facilitates the work of VSS, (ii) facilitates meetings amongst the legal teams, and (iii) facilitates the lawyers' meetings with clients.
25. In relation to the stated benefits for Civil Party Lawyers, it is incorrect to say that the move to the Public Information Center facilitates meetings with clients. The overall majority of Civil Parties come from remote areas in the provinces of Cambodia. They are neither able to travel to the Court, nor to the Information Center because of the lack of resources. Prior to the move of the offices, meetings with the few clients from Phnom Penh were held in the meeting room of the Public Information Center.

There was never any consultation from the OA about whether the move to the town office would actually facilitate meetings with clients. Nor has the OA explained how the move of office could facilitate lawyers meeting clients who, prior to the move, had no means of going to either the Court premises or the meeting room of the Information Center in town.

26. To summarize, none of the given reasons for the move alleging to be for the benefit of Civil Party Lawyers holds any weight.

VI. CONCLUSION

27. For all the foregoing reasons, it can be concluded that the office move was based on reasons other than to facilitate and support the work of Civil Party Lawyers. This move has had an adverse impact on the work of Civil Party Lawyers and the final transfer of offices to an office outside of the ECCC electronic court network is now further detrimental to the proper conduct of Civil Party Lawyers' work. The harsh and serious allegations of violations of ethical and professional duties are baseless and therefore null and void.

28. Therefore the signatory respectfully requests that the PTC:

- (i) Grant leave to submit the reply within the deadline in English only;
- (ii) Dismiss the allegations contained in the Response by the OA;
- (iii) Reject the OA's request that international civil party lawyers be ordered to "work in their own offices of professional domicile or at the organizations that support them";
- (iv) Reject all of the OA's other requests; and
- (iv) Decide the Appeal by restoring the Civil Party Lawyers working conditions to an equivalent standard like other parties to the proceedings.

Respectfully submitted by,



Ms. Silke STUDZINSKY
Co-Lawyer for Civil Parties

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