



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

INTEROFFICE MEMORANDUM

TO: Prak Kimsan

Date: 31 January 2020

A: President, Pre-Trial Chamber

CC: Judges Ney Thol, Olivier Beauvallet, Huot Vuthy, Baik Kang Jin
Judges of the Pre-Trial Chamber

FROM: Tony Kranh, Acting Director of Administration

DE: Knut Rosandhaug, Deputy Director of Administration

SUBJECT:

OBJET: Request for clarification under Internal Rule 10(2)

1. On 28 January 2020, the Records and Archives Unit of the Office of Administration (RAU) received two separate and conflicting filing and notification instructions from the Pre-Trial Chamber concerning its *Considerations on the Appeals against the Closing Orders* in case 004/02, dated 19 December 2019. While one instruction directs “the case files” to be archived, the other instructs the Considerations to be notified to the Trial Chamber. These are two contrary instructions.
2. Pursuant to Internal Rule 10(2), the Acting Director and the Deputy Director of the Office of Administration hereby request clarification from the Pre-Trial Chamber on the implementation of these instructions. For clarity, our request is limited to this discreet issue and we seek no clarification of the said Considerations, nor on the rules leading to those Considerations.
3. A chronology is provided in the following section for context.

Chronology

4. On 19 December 2019, a PTC greffier filed the *Considerations on the Appeals against the Closing Orders* in case 004/02. The filing and notification instruction directed RAU to notify the document to the Pre-Trial Chamber, Office of Co-Investigating Judges, Office of the Co-Prosecutors, Defence for Ao An, and the Civil Parties. Such was done on the same day.
5. On 21 January 2020, the Trial Chamber informed the parties in case 004/02 by email, copying the Pre-Trial Chamber, Acting Director and Deputy Director of the Office of Administration, that it “is aware of the publicly available *Considerations on Appeals against [the] Closing Orders issued by the Pre-Trial Chamber on December 19, 2019 and documents you sent to the Trial Chamber. However these Considerations have so far not been notified to the Trial Chamber ...*”.



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6. On 28 January, a PTC greffier informed RAU by email that she “*received instructions from the national judges of [the] PTC to notify you that in our disposition of the D359/24 & D360/33 decision all PTC judges decided to notify only parties. [The] Trial Chamber is not a party of this case, therefore notification to TC is not needed here. Moreover, this 004/2 case is finished. So the case files should be kept at the archive unit of CMS*”.
7. Later the same day, another PTC greffier submitted a notification instruction to RAU directing that the *Considerations* of 19 December 2019 be notified to the Trial Chamber.
8. Upon receipt of these “*two different instructions from the PTC greffier[s]*” the Case File Officer informed the greffiers by email that: “*As these two instructions are conflicting, CMS can’t proceed with either. Please clarify and advise*”. No clarification or advise was received from any of the PTC greffiers.
9. On 29 January, the President of the Pre-Trial Chamber forwarded a memorandum to the Chief of the Court Management Section, copying all PTC judges and the Acting Director and Deputy Director of the Office of Administration, in which he confirmed the filing instruction of 19 December 2019: “*According to the ... joint disposition, [the] judges of [the] PTC notified to only [sic] [the] Co-Investigating Judges, Co-Prosecutors, Defense Lawyers and Civil Party Lawyers*”. He added that:

Therefore, notification to any person or chamber who is not a party of this case is violating the unanimous decision of [the] PTC.

Only the joint disposition part unanimously decided and signed by all 5 judges shall have the applicable effect. The personal opinions of each judge shall have no applicable effect.

We hereby instruct [the] Court Management Section to follow the joint disposition as stated above.

10. Later the same day, two judges of the PTC forwarded a separate memorandum to the Chief of the Court Management Section and the Acting Director and Deputy Director of the Office of Administration, copying the President and other PTC judges. Therein, the two judges stated that the PTC President’s “*limited powers are set forth in Internal Rule 77 and notably, none of them gives him the authority to instruct CMS*”. They “*find*”, *inter alia*, that “*[t]he Administration is currently instructed to notify the Trial Chamber of the Pre-Trial Chamber’s Considerations*”.

Request

11. The Office of Administration, through its sub-offices, shall implement judicial acts following an instruction or direction of the relevant Chamber as communicated through its greffier. The Office is neither mandated to interpret any judicial decision nor resolve any conflicting instructions made by any of the greffiers.



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12. Per Internal Rule 17(3), "*The Chambers shall be assisted by Greffiers, who shall ... undertake such ... actions as directed by the Chambers under these IRs*". The greffiers therefore exercise their functions equally on behalf of the Chamber as a whole. In the context of the legal framework of the ECCC, Internal Rule 17(3) identifies the respective chambers as unitary entities. Our reading of Internal Rule 17(3) is therefore that greffiers can only act on directions of the bench.
13. Since the received two instructions oppose each other, the Office of Administration respectfully requests the Pre-Trial Chamber's authoritative clarification on which of the two opposing instructions should be implemented, or in the alternative, that the Chamber provide an actionable instruction.

