



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Kingdom of Cambodia  
Nation Religion King

E 214/3

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

Royaume du Cambodge  
Nation Religion Roi

**អង្គជំនុំជម្រះសាលាដំបូង**

Trial Chamber  
Chambre de première instance

<b>ឯកសារដើម</b>	
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មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer/L'agent chargé du dossier: ..... SANN RADA .....	

19 October 2012

Dear Mr. Kemper,

Reference is made to your recent letter in which you acknowledge receipt of the Trial Chamber's referral to you on 29 June 2012 of misconduct of lawyer Michiel PESTMAN (E214/1) and the Trial Chamber's accompanying decision (E214), English and Dutch versions of which are enclosed for ease of reference.

In your letter, you have asked me to confirm whether the action taken by the Trial Chamber amounts to a formal complaint. Referral E214/1, which is based on Decision E214, is indeed a formal complaint. As the introductory paragraphs of the referral indicate, the Chamber has addressed and will continue to address this misconduct under its own Internal Rules. It notes, however, that as this conduct may also raise issues concerning professional competence and compliance with ethical duties under the rules of the jurisdiction in which Mr. PESTMAN is admitted to practice, referral to the Amsterdam Bar Association was considered by the Chamber to be an appropriate additional form of recourse, in accordance with Article 38(2) of the ECCC's Internal Rules. For the purposes of transparency, I append a recent decision of the Supreme Court Chamber where that Chamber, *proprio motu*, ruled *obiter dictum* on one feature of the Trial Chamber's 29 June 2012 notification (E176/2/1/4 of 14 September 2012, paragraphs 21-23). No other feature of the Chamber's decision or notification has been subject to appellate scrutiny before the ECCC to date.

You also requested further information regarding the applicable internal rules regarding the conduct of counsel before the ECCC, and expressed a wish to receive them.

The governing legal instruments, as mentioned in the decision and referral, are Article 21(3) of the Agreement between the United Nations and the Royal Government of Cambodia Concerning the Protection under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea and Internal Rule 38(1) and (2). The ECCC Internal Rules and Agreement may be accessed on the following links:

- <http://www.eccc.gov.kh/en/document/legal/agreement> and
- <http://www.eccc.gov.kh/en/document/legal/internal-rules>

In addition, all lawyers practicing before the ECCC must register with the Bar Association of Cambodia (BAKC) and are bound by its Code of Ethics, which is accessible on the following link:

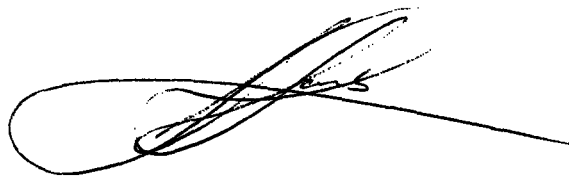
<http://en.bakc.org.kh/index.php/law-for-lawyer>

Although there is no ECCC-specific code of ethics for Defence counsel practicing before the Trial Chamber, at the time of application to be placed on the Defence Support Section's list of counsel considered competent to represent accused before the ECCC, each lawyer is required to provide a copy of the code of ethics from his or her domestic jurisdiction. Standards applicable

domestically – many of which the Trial Chamber considers to be universal – therefore form a significant part of the ethical framework that governs conduct before the ECCC. This also accords with the ECCC’s status as a hybrid tribunal, one of the purposes of which is to assist in capacity building in Cambodia. In support of this objective, the Trial Chamber therefore expects that foreign lawyers employed by the ECCC will demonstrate the highest ethical and professional standards of their home jurisdictions. For these reasons, we would be grateful to know if, in the opinion of the Bar Association of Amsterdam, the conduct described in this referral meets standards that would be considered appropriate before Dutch courts or to exemplify the ideals of professional and ethical competence upheld by the Amsterdam Bar.

In view of the delays entailed in regular postal communications between Cambodia and The Netherlands, you may if you prefer direct any further questions or request for further information to me via email ([lamb@un.org](mailto:lamb@un.org)). I would also be grateful if you could inform the Trial Chamber, through me, of the outcome of this referral and of any action taken in consequence of it, in due course.

Yours sincerely,



Susan Lamb  
Senior Legal Officer  
Trial Chamber

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Encl.