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Judge's split decisions fail the victims of the Khmer Rouge

Today, 4 November 2011, it was reported in the Phnom Penh Post, in an article titled, “Khmer Rouge tribunal judges split once more” that the Pre-Trial Chamber at the Extraordinary Chambers of the Courts of Cambodia (the “ECCC”) failed to reach the super-majority necessary to come to a decision regarding International Co-Prosecutor Andrew Cayley’s request for further investigative action in Case 003. The three national judges approved the actions of National Co-Prosecutor Chea Leang, who opposes Cases 003 and 004, while the two international judges aligned their support with the actions of Cayley, who has advocated strongly for full investigations into Case 003. This is the fifth Pre-Trial Chamber decision this year to be split down national/international lines involving deliberations into the controversial Cases 003 and/or 004. It further fuels fears of political interference at the ECCC especially into the investigation of Cases 003 and 004.

Former International Co-Investigating Judge, Judge Blunk, resigned on October 10, citing numerous statements by government officials that indicated political interference in the investigations of Cases 003 and 004. Regardless of how much concern comments from members of the government have caused as to whether there is interference into the ECCC: the manner of Judge Blunk’s resignation provides the clearest evidence to date that the operations of the ECCC, particularly with respect to the investigations into additional cases, are subject to government interference. Judge Blunk’s resignation was followed by a visit to the ECCC from Patricia O’Brien, the U.N. Under Secretary-General for Legal Affairs. At the conclusion of her trip, she called on the Royal Government of Cambodia (“RGC”) to refrain from interfering in any way with the judicial process and reminded the government that it is obliged to cooperate fully with the tribunal.

The co-investigation judges are still to hear a separate request for additional investigation into Case 003 which was filed by the co-prosecutors shortly after the first one had been rejected. William Smith, Deputy Co-Prosecutor, is quoted in today’s Cambodia Daily, in an article titled “Split Ruling May Spell the End of the Road for Case 003”, saying that “the judges held that they could not deal with this second request with the cured defect because the same subject matter was under appeal, but now that this has been heard, we expect the (co-investigating judges) to consider the rectified request to carry out the investigative acts we feel are necessary to fully investigate Case 003.”

Commenting on the latest split decision at the Pre-Trial Chamber, Ou Virak, President of the Cambodian Center for Human Rights, and a victim of the Khmer Rouge – whose father was murdered at the hands of the brutal regime – said:

“After Judge Blunk’s resignation, the court was at a crossroads where the only way it could regain public confidence in the process was by conducting a full investigation into allegations of political interference, publishing the investigation’s finding, and revisiting the investigations into Cases 003 and 004 to ensure that they are both full and frank. In this context it is worrying to again see a split between national and international judges at the Pre-Trial Chamber in their decisions relating to further investigation into Cases 003 and 004. The split inevitably raises questions into whether the judges are honouring their duties to be independent and impartial in providing justice for the victims of the Khmer Rouge, and are following the internal rules and principles of a fair trial. The ECCC by failing to rid itself of the allegations of political interference is failing the victims of the Khmer Rouge.”

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