Dear Editor,

The Phnom Penh Post recently reported on the split decision of the Khmer Rouge Tribunal’s Pre-Trial Chamber, which rejected a request from defence lawyers for a judicial investigation into allegations of political interference in the work of the Tribunal (“KRT denies inquiry request from defence”, September 12).

The allegations stemmed from the failure of government officials and King Father Norodom Sihanouk to respond to summonses issued in 2009 and provide witness testimony before the Tribunal.

The Cambodian Center for Human Rights writes to express its concern at the paralysis resulting from the PTC decision, which has negated the ability of the Tribunal to respond definitively to these allegations before trial proceedings commence, and consequently damaged the ability of the Tribunal to act as a model court by demonstrating the conduct of fair and independent trials.

The refusal of the seven individuals summoned to provide testimony undermines the ability of the Tribunal to deliver a trial that is fair to both the charged persons and victims. One of the core requirements of a fair trial is that all evidence capable of assisting in the ascertainment of the truth should be available for consideration unless ruled out by another rule of evidence.

By denying the Tribunal testimony that might include key inculpatory or exculpatory details, those who have ignored summonses have compromised the rights of both victims and the charged persons to have all available evidence presented for consideration.

The Cambodian judges of the PTC failed to provide adequate consideration to the severity of the allegations of political interference and the consequent impact on the fair trial rights of the accused.
Rule 35(2) of the KRT’s internal rules provides that where the Co-Investigating Judges or judicial Chambers have reason to believe that a person may have failed to comply with an order to appear before them without just excuse, or may have interfered with a potential witness, the authority exists to conduct an investigation or refer the matter to the appropriate Cambodian or United Nations authorities.

Government spokesman Khieu Kanharith publicly stated that “the government’s policy was that [those summoned] should not give testimony”.

Hun Sen also appeared concerned that in providing testimony, those summoned might inadvertently cast a negative light on his regime, questioning why they were of interest to the Tribunal and taking care to emphasise that the officials concerned helped topple the regime and establish the KRT to bring justice to Cambodians. As noted in the strong dissenting judgment of the PTC’s international judges, Catherine Marchi-Uhel and Rowan Downing: “no reasonable trier of fact could have failed to consider that the [facts previously referred to in the dissenting judgment] and their sequence constitute a reason to believe that one or more members of the RGC may have knowingly and wilfully interfered with witnesses who may give evidence before the [Co-Investigating Judges].”

The KRT was supposed to operate according to international standards, acting as a model for Cambodia’s courts. The failure of both the Co-Investigating Judges (who effectively deferred the politically sensitive decision to the PTC) and the PTC to respond adequately to the allegations of political interference and continuing refusal of key witnesses to testify is likely to undermine the fairness of any trial resulting from the investigation in Case 002.

The split decision along national/international lines has reinforced perceptions that Cambodian judicial officers at the Tribunal are preoccupied with the concerns of the government.

The KRT appears to have reached a crossroads; the success or failure of the Tribunal will be judged in large part by its ability to administer a fair trial adhering to international standards in Case 002, the most significant case likely to go to trial.

The CCHR calls on the United Nations expert on the KRT, Clint Williamson, to pay special attention to the implications of Friday’s decision of the PTC for the credibility of both the KRT and the United Nations.

If the KRT administers an investigation and trial that cannot be judged as fair to the accused and victims, it will set a dangerous precedent for the Cambodian courts and is likely to result in a failed – or negative – legacy for the wider Cambodian justice system.

Ou Virak
Cambodian Center for Human Rights

Send letters to: newsroom@phnompenhpost.com or PO Box 146, Phnom Penh, Cambodia.
KR tribunal at a crossroads

Written by Ou Virak
Wednesday, 22 September 2010 15:00 - Last Updated Wednesday, 22 September 2010 15:09

The Post reserves the right to edit letters to a shorter length. The views expressed above are solely the authors’ and do not reflect any positions taken by The Phnom Penh Post.