

Khmer Rouge Tribunal Judge Backs Out of New Inquiries

BY DOUGLAS GILLISON
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The Khmer Rouge tribunal announced yesterday that its co-investigating judges have parted ways in the conduct of investigations of new suspects, with a Cambodian judge signing written instructions to investigators only to cross out his name four days later.

The schism within the court extended into its office of public affairs this week, with the tribunal's Cambodian and UN spokesmen retracting statements made by each other and contradicting each other as to whether a late night public statement from the court had been subject to

joint consultation.

The latest event marks the second time in less than a year that the investigating judges have publicly disagreed on actions to be taken in the politically sensitive matter of investigating more Khmer Rouge regime suspects.

Cambodian Co-Investigating Judge You Bunleng last year refused to participate in summoning six senior CPP lawmakers and ministers for testimony. The government has opposed honoring the summonses and the six officials have refused to be interviewed by the court.

French Investigating Judge Marcel Lemonde and Judge

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Judge...

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Bunleng had been due to begin investigating additional Khmer Rouge suspects late last year, when UN prosecutors filed introductory documents seeking further investigations of officials in the Pol Pot regime. Those documents, which were filed over the objections of Cambodian prosecutors, targeted five more individuals for alleged crimes against humanity and genocide, among other charges.

According to internal court memos released yesterday by the tribunal, Judge Lemonde on June 2 gave his counterpart Judge Bunleng a 48-hour ultimatum to sign rogatory letters, which are written instructions empowering investigators, in the case of the new suspects. The failure of Judge Bunleng to sign the rogatory letters, Mr Lemonde wrote in his memo, would require him to file a notice of their disagreement, a process that can result in arbitration by other judges at the tribunal.

"I had thought I understood we were in agreement to sign an immediate rogatory letter in order to allow the investigators to begin 'crime base' investigations at a certain number of sites, investigations which will take several months," Judge Lemonde wrote in the memo to Judge Bunleng.

"For three weeks now, this rogatory letter has been ready to be signed. I was therefore surprised to hear you say on May 28, 2010 that you desired 'more time' to issue it while the content of it is extremely simple," he said.

"Therefore I kindly ask that you note that I can no longer await a hypothetical signature," the French judge added, giving his Cambodian counterpart until noon on June 4 to sign the rogatory letter.

UN spokesman Lars Olsen said on Monday that both the investigating judges had signed rogatory let-

ters in the new cases.

However, on Tuesday, Judge Bunleng returned the rogatory letters, saying he had changed his mind, citing in his memo to Judge Lemonde "the current context of Cambodian society as a whole" as well as supposed negative effects the new cases could have in finalizing a recently concluded investigation.

"Throughout the process of reflection on your proposal and the ultimatum you imposed on me, I had thought that it seemed time to take actions as part of cases 003 and 004; I therefore signed the draft rogatory letters on Friday June 4, 2010," Judge Bunleng wrote.

"However, upon more attentive and deeper consideration of the question, I think that it is not yet opportune to take action in cases 003 and 004," he wrote.

"So I permit myself to return to you the draft rogatory letters containing your signature, mine being crossed out, and we shall contemplate discussion of any measures concerning cases 003 and 004 in the month of September 2010," he wrote.

On Tuesday evening, the court's Cambodian spokesman issued a statement announcing Judge Bunleng's dissociation from the rogatory letters, and saying that a Cambodia Daily report on the signing of the documents, which was based on information provided by UN spokesman Mr Olsen, was "non-basis information."

The tribunal's Public Affairs Chief Reach Sambath yesterday declined to discuss Judge Bunleng's memo but said the judges had not begun joint investigations.

"The question is, did they begin? No," Mr Sambath said. He also said that Tuesday evening's statement regarding Judge Bunleng had been issued in consultation with the UN side of the court.

"Yes, I did discuss [it] with him," Mr Sambath said of the UN's Mr

Olsen. "He did know."

However Mr Olsen said flatly yesterday that Tuesday's statement was "sent without the prior knowledge of the UN side and was not approved and endorsed by the UN side."

As a result of the disagreement, Judge Lemonde will now work alone on the two new cases, Mr Olsen said.

"It means Marcel Lemonde will operate by himself in cases three and four until You Bunleng decides otherwise," he said.

While prosecutors announced last year that they had identified five additional suspects, the work of the co-investigating judges at this point consists of establishing whether crimes occurred at particular locations, Mr Olsen explained.

Prime Minister Hun Sen warned publicly last year that the tribunal's pursuit of Khmer Rouge suspects beyond the five currently in detention at the tribunal could spark renewed civil war. The premier's remarks have fueled allegations of political interference in the work of the Khmer Rouge tribunal.

Anne Heindel, a legal adviser to the Documentation Center of Cambodia, said yesterday that Judge Bunleng's hesitation on the rogatory letter could be seen as a telling sign that he was not categorically opposed to the court's additional cases.

"To me the interesting part is not that You Bunleng scratched his signature off, it's that he signed it in the first place," she said, adding that this could indicate a continuing "evaluation process."

The controversy over the additional cases is well known and the matter was decided by the court's Pre-Trial Chamber nine months ago, allowing both judges time to decide on a position to take, she noted.

"One would have thought that if You Bunleng were against this, he never would have signed it," Ms Heindel said.