

NUON CHEA DEFENCE TEAM  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

Phnom Penh, 27 October 2011

Judge YOU Bunleng  
Office of the Co-Investigating Judges  
Extraordinary Chambers in the Courts of Cambodia

VIA EMAIL

**Re: Request for list of tainted material in Case 002 and call for resignation**

Dear Judge Bunleng:

We read with dismay the Pre-Trial Chamber's recent decision on the admissibility of Robert Hamill's civil-party application in Case 003 at the ECCC,<sup>1</sup> as well as the press reports that followed.<sup>2</sup>

After reviewing the separate opinion of PTC Judges Downing and Lahuis,<sup>3</sup> we agree that you (and your recently departed colleague) have 'committed major procedural irregularities, including backdating documents, secretly altering documents, and failing to send proper notifications to lawyers' in Case 003.<sup>4</sup>

Given your principal role in shaping the judicial investigation and crafting the Closing Order in Case 002, the recent revelations of the PTC's international judges cast further doubt on the integrity of the case file and Closing Order. Accordingly, we hereby request you to identify—as a matter of urgency—all documents on the Case 002 file that have been backdated, secretly altered, otherwise tampered with, and/or concealed from counsel.

We take the position that the statement of the PTC's international judges constitutes something more than '*prima facie* evidence of serious misconduct'.<sup>5</sup> It leads to the almost inevitable conclusion that you and Judge Blunk have engaged in behavior that can only be described as criminal.<sup>6</sup>

The response issued yesterday by your office—in which you suggest that "the corrections concerned only erroneous points"<sup>7</sup>—is disingenuous in so far as it fails to address what we consider to be your major transgression: the *post facto* altering of judicial findings that were subject to appeal. As noted by Judges Downing and Lahuis, the 'modifications could not be made by way of a corrigendum, *especially where an appeal has been lodged against the order and raises some of the very defects the Modified Order intends to cure*'.<sup>8</sup>

We therefore forward a copy of this letter to the Supreme Council of the Magistracy along with a request to initiate a disciplinary investigation into your delinquent conduct.<sup>9</sup>

<sup>1</sup> Document No D-11/2/4/4, 'Considerations of the Pre-Trial Chamber Regarding the Appeal Against Order on the Admissibility of Civil Party Applicant Robert Hamill', 24 October 2011, ERN 00748542–00748564 (the 'PTC Considerations').

<sup>2</sup> See, e.g., Julia Wallace, *Cambodia Daily*, 'KRT Judges List Failings of Blunk, Bunleng', 26 October 2011); Mary Kozlovski, *Phnom Penh Post*, 'Judges Decry KRT Missteps', 26 October 2011.

<sup>3</sup> See PTC Considerations, paras 12–16 (pp 9–12).

<sup>4</sup> Julia Wallace, *Cambodia Daily*, 'KRT Judges List Failings of Blunk, Bunleng', 26 October 2011.

<sup>5</sup> Mary Kozlovski, *Phnom Penh Post*, 'Judges Decry KRT Missteps', 26 October 2011.

<sup>6</sup> See e.g. Article 629 of the Cambodian Penal Code ('Any forgery committed in an authentic document or in any document issued by a public administration to confirm a right, an identity or a status, or to grant an authorization is punishable by an imprisonment from 5 (five) to 10 (ten) years.')

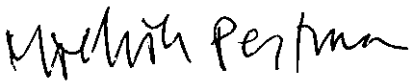
<sup>7</sup> See Statement of the Office of the Co-Investigating Judges (*unofficial translation*), 26 October 2011.

<sup>8</sup> PTC Considerations, para 14 (p 10) (emphasis added).

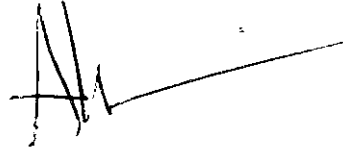
<sup>9</sup> See Constitution of the Kingdom of Cambodia: Article 132 ('The King shall be the guarantor of the independence of the Judiciary. The Supreme Council of the Magistracy shall assist the King in this matter.'). Article 133 ('The Supreme Council of the Magistracy shall take disciplinary actions against any delinquent judges'); Article 134 ('The Supreme Council of the Magistracy shall meet under the chairmanship of the President of the Supreme Court or the General Prosecutor of the Supreme Court to decide on disciplinary actions against judges or prosecutors.'). See also Law on Organization and Functioning of the Supreme Council of Magistracy: Articles 9, 12–17.

We are of the firm opinion that your continued presence at the ECCC will only further discredit this already critically debased institution. We thus join Human Rights Watch in its call for your resignation.

Regards,



Michiel PESTMAN & Victor KOPPE  
Co-Lawyers



Andrew IANUZZI & Jasper PAUW  
Legal Consultants

CC: His Majesty The King of Cambodia  
Supreme Council of the Magistracy  
Minister of Justice, Royal Government of Cambodia  
President of the Supreme Court of Cambodia  
Prosecutor-General of the Supreme Court of Cambodia  
President of the Bar Association of the Kingdom of Cambodia  
UN Under Secretary-General for Legal Affairs  
ECCC Trial Chamber Judges  
ECCC PTC Judges  
ECCC Office of Administration  
ECCC Office of the Co-Prosecutors  
ECCC Defence Counsel and Defence Support Section  
ECCC Civil Party Co-Lead Lawyers