

Judge Resigns KR Court Over Gov't Pressure

BY ALICE FOSTER
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THE CAMBODIA DAILY

International Co-Investigating Judge Siegfried Blunk has resigned from his position at the Khmer Rouge tribunal in the face of government interference in the court and adamant opposition to investigations into two more cases against Khmer Rouge regime suspects.

The move came less than a week after Human Rights Watch called for Mr Blunk's resignation over failing to properly investigate the two cases, which are known as 003 and 004.

In a statement released by Judge Blunk yesterday, he referred to three comments made by Prime Minister Hun Sen, Information Minister Khieu Kanharith and Foreign Minister Hor Namhong that have warned judges at the tribunal away from pursuing investigations into cases 003 and 004.

"Although the International Co-Investigating Judge will not let himself be influenced by such statements, his ability to withstand such pressure by Government officials and to perform his duties independently, could always be called in doubt, and this would also call in doubt the integrity of the whole proceedings in Cases 003 and 004," Judge Blunk wrote.

The resignation marks an end to months of heated criticism against Judge Blunk, and his national counterpart You Bunleng, for refusing to thoroughly

Continued on page 3



Extraordinary Chambers in the Courts of Cambodia Siegfried Blunk, right, who resigned on Sunday as International Co-Investigating Judge at the Khmer Rouge tribunal, shakes hands with his Cambodian counterpart, You Bunleng, on taking up his position with the court in a photograph from December 2010.

Political Interference Takes Toll at KR Tribunal

Without full UN investigation, credibility of the court in tatters

BY JULIA WALLACE
THE CAMBODIA DAILY

In 2002, former UN Secretary-General Kofi Annan pulled out of talks to form the Khmer Rouge tribunal, citing his grave reservations about possible political interference in the work of the court.

Nearly 10 years and \$150 million later, the court's international investigating judge has just resigned, saying that government interference made it impossible

for him to continue in his job.

In his resignation statement, Siegfried Blunk referred to comments made by Prime Minister Hun Sen, Information Minister Khieu Kanharith and Foreign Minister Hor Namhong warning judges not to pursue two hot-button cases known as 003 and 004.

But Judge Blunk could easily have found dozens of others. The prime minister was known to oppose the two cases even before they were formally opened in September 2009. Over the past 10

years, he has made repeated public statements that no more than five Khmer Rouge suspects should be tried.

Just days before prosecutors forwarded cases 003 and 004 for investigation, Mr Hun Sen gave a speech predicting that mass bloodshed lay ahead for Cambodia. He said up to 300,000 people could die if the court "prosecuted without thinking of peace and national reconciliation."

In October 2010, Mr Hun Sen

Continued on page 2

About Cambodia

- International Aid for Flood Disaster Begins to Trickle In Page 25
- Amid Devastating Floods, a 14-Year-Old's Tale of Survival Page 26
- Government Suspends Malaysia Maids Recruitment Firm Page 27
- EU Raises Concerns Over Human Rights Page 28
- Four People Complain to Court Over Verdict Page 29
- Policy Draft Does Not Set Legal Age to Drink Page 29
- Court Concludes Hearing of Accused Foreign Pedophile Page 29
- Officials Ask for More Info Ahead of Drilling Page 29

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Tribunal...

CONTINUED FROM PAGE 1

bluntly told visiting UN Secretary-General Ban Ki-moon that cases 003 and 004 were "not allowed."

Judge Blunk claimed in his resignation that, until recently, he believed this statement by the prime minister "did not reflect general government policy." But it is hard to imagine how government officials could have more clearly articulated their feelings about the cases over the past several years.

"All the information that Judge Blunk provides is already public," said Anne Heindel, an adviser to the Documentation Center of Cambodia (DC-Cam). "The government's position against additional trials has been well known all along. The major significance of his statement is thus his acknowledgement that the public's perception of the integrity of the court has been severely compromised by alleged corruption in the Office of Co-Investigating Judges."

Outrage over Judges Blunk and You Bunleng's handling of the government-opposed cases has mounted since April, when they prematurely closed Case 003—which involves war crimes and crimes against humanity allegedly committed by Khmer Rouge army and navy commanders—without even interviewing the suspects.

The judges reportedly did an equally poor job investigating Case 004, even as they refused to release crucial information on crime scenes to victims and the public.

The court's reputation may now be beyond the point of salvaging due to the circumstances of Judge Blunk's resignation. What happens next depends largely on the UN, which reacted to the judge's resignation with what has become characteristic reticence.

In a short statement, echoing words the UN has used before on several occasions, a spokesman for Mr Ban said he "emphasized



Prime Minister Hun Sen, right, with UN Secretary-General Ban Ki-moon in Phnom Penh in October 2010. Mr Hun Sen has publicly opposed the Khmer Rouge tribunal cases 003 and 004, and he bluntly told Mr Ban during his visit that the cases would not be 'allowed.'

Reuters

that the ECCC must be permitted to proceed with its work without interference from any entity."

But this time, words of appeasement from UN headquarters may not be enough.

Several tribunal observers said the UN-backed court simply cannot move forward without an independent investigation into charges of political interference.

"Judge Blunk's admission that he has faced sustained governmental pressure over cases 003 and 004 compromises the Office of the Co-Investigating Judges and all of its work," said Ms Heindel. "Whether or not it is fatal to the integrity of the court as a whole, including Case 002, can only be determined by a full and independent UN investigation."

Clair Duffy, who monitors the tribunal for New York-based Open Society Justice Initiative, called the UN's statement "shocking" in its refusal to address the underlying causes of Judge Blunk's resignation.

"We're going to run into the exact same problem a little bit down the track until the UN has

called for an absolute and unequivocal withdrawal of all Cambodian government expressions of will about these cases," she said.

The UN said it hoped to replace Judge Blunk with his reserve, Laurent Kasper-Ansermet, as soon as possible, but installing another international judge in the seat will only offer a cosmetic fix, Ms Duffy said, pointing out that both Judge Blunk and his predecessor, Marcel Lemonde, had struggled to deal with government interference.

John Hall, a professor at Chapman University School of Law in California, said the future of the court depended on whether the UN would support Judge Kasper-Ansermet in reopening Case 003 and making "a thorough, credible and transparent investigation of the additional suspects."

"If he does, then the ECCC may yet preserve some degree of legitimacy," he added. "But if the UN simply allows business as usual, unable or unwilling to demand that the political interference cease, then the future of the ECCC is necessarily bleak."

What comes next for the court

will also depend substantially on its donors, who supply nearly its entire budget.

In December 2009, a budget projection forecast that the court would spend another \$148 million between 2012 and 2015. But donors could prove less than keen to provide these funds for a court now proven to have had its work disrupted by a controlling government.

"The court is already short of donations, and it is hard to imagine that any states will be willing to provide additional financial support until this matter is resolved," said Ms Heindel of DC-Cam.

Up until now, donors have declined to make strong statements on the progress of cases 003 and 004, focusing instead on the crucial importance of the upcoming trial of four senior regime leaders. But defense lawyers for Khmer Rouge Foreign Minister Ieng Sary, Social Action Minister Ieng Thirith, Brother Number Two Nuon Chea and head of state Khieu Samphan have been arguing for years that political interference

Continued on page 3

NATIONAL

Judge...

CONTINUED FROM PAGE 1

investigate the two cases. Both Judge Blunk and Judge Bunleng have stopped investigating Case 003 without having interviewed suspects or examined crime sites.

Commenting on the resignation, Council of Ministers spokesman Phay Siphan said Judge Blunk's departure from the tribunal showed that he had misunderstood the principles of a mixed court.

"He [Judge Blunk] failed to understand the wisdom of setting up the ECCC, which is the partnership between the government and the UN," he said. "We still stand on our ground regarding the ECCC. There will be no case 003 or 004."

"The government doesn't want failure; that is why it only allows Case 002 to take place."

Prime Minister Hun Sen has publicly opposed the two cases for years and in October 2010 bluntly told UN Secretary-General Ban Ki-moon that the cases were "not allowed."

In his statement, Judge Blunk also said he had initiated contempt of court proceedings against Mr Kanharith for saying in May that "if they want to go into Case 003 and 004, they should just pack their bags and leave."

Judge Blunk said he "expected this to be a warning to other government officials."

Last week, however, Foreign Minister Hor Namhong was quoted as saying that the arrest of more Khmer Rouge leaders "must be decided by Cambodia," the statement added.

UN Secretary-General Ban Ki-moon's spokesman Martin Nesirky said yesterday that the UN is urgently working to get Judge Blunk's replacement, Swiss crimes investigator Laurent Kasper-Ansermet, to take over work at the tribunal as soon as possible.

"The United Nations has consistently emphasized that the ECCC must be permitted to proceed with its work without interference from any entity, including the Royal Government of Cambodia, donor States or civil society," Mr Nesirky said in an e-mail.

In a message sent via the social networking site Facebook, Mr Kanharith denied that the government had interfered with the court.

"He [Judge Blunk] reject the blame on others while he failed to cooperate with other colleagues at the Court," Mr Kanharith said. "He must read carefully the convention between the [government] and UN."

Elisabeth Simonneau Fort, lead

civil party co-lawyer, said Mr Blunk's resignation would actually improve the climate at the tribunal as Case 002 begins.

"I could say it was necessary at this stage," she said. "But it is not a resolution to every problem."

International Co-Prosecutor Andrew Cayley said he would continue to press for a proper investigation and due process in Cases 003 and 004.

"I do not think Judge Blunk's resignation signals the end of the court since the trial of Case 002 will soon

begin," Mr Cayley said in an e-mail.

Human rights groups, however, voiced frustration that not enough was being done to address concerns over political interference in the court.

Youk Chhang, director of the Documentation Center of Cambodia, said Judge Blunk's resignation alone was not good enough and the UN must conduct an independent investigation into the office of the co-investigating judges.

"This is a court, not a theater," he said.

Tribunal...

CONTINUED FROM PAGE 2

has tainted all the cases at the court, not just the ones opposed by the government. And Mr Blunk's resignation just made their job much easier.

"They are definitely going to have more fodder for the allegations they have already made that their clients cannot be fairly tried by this court," said Ms Duffy. "That is why, until the UN addresses it head-on, it threatens the absolute foundation of the institution."

Michiel Pestman, a defense lawyer for Nuon Chea, who has long complained of interference

and bias at the court, said his team would be exploring "all the necessary and possible legal steps and avenues" in response to Judge Blunk's statement.

"He is resigning because of government interference in his judicial investigation," Mr Pestman said. "We should understand what that means. It means that the national judge is not acting independently, the same judge who investigated in Case 002."

"The question now is, does this court have a future?" he asked.

"Something fundamental has to change, or this court has no future as an internationalized court able to give a fair trial independently from outside interference."

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