



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

STATEMENT BY THE INTERNATIONAL CO-PROSECUTOR

Regarding the Co-Investigating Judges’ Retraction Order In Case 003

In accordance with ECCC Internal Rule 77 (13), the Pre-Trial Chamber’s *Considerations Regarding the International Co-Prosecutor’s Appeal Against the Co-Investigating Judges’ Order on International Co-Prosecutor’s Public Statement Regarding Case 003* of 24 October 2011 and the *Order on International Co-Prosecutor’s Public Statement Regarding Case File 003* (“Retraction Order”) of 18 May 2011, the International Co-Prosecutor Andrew Cayley retracts his Public Statement of 9 May 2011.

The Public Statement, issued after the Co-Investigating Judges filed their *Notice of Conclusion of the Judicial Investigation* in Case 003, contained (1) a summary of the crimes required to be investigated in Case 003; (2) the view that those crimes had not been fully investigated; (3) an outline of the further types of investigative acts which the International Co-Prosecutor intended to request; (4) a notice to potential victims of the 15 day time limit to file their Civil Party applications and (5) the International Co-Prosecutor’s intention to request the Co-Investigating Judges to extend this time limit.

The Retraction Order held that the International Co-Prosecutor should retract his Public Statement for two reasons, namely that he (1) was not entitled to “express publicly his opinion about crimes ‘required to be judicially investigated’” and (2) “violated the Rule of Confidentiality” by informing the public about his intended requests.

While the Pre-Trial Chamber Judges unanimously found that the Co-Investigating Judges were entitled to issue the Order, they were unable to reach an affirmative decision on the merit of the Appeal.

On the related issue of civil party participation in Case 003 in the *Considerations of the Pre-Trial Chamber Regarding the Appeal Against Order on the Admissibility of Civil Party Applicant Robert Hamill*, the International Judges of the Pre-Trial Chamber made a number of findings, including:

- (1) the Co-Investigating Judges did not provide any information about the investigation in Case 003 to enable victims to make civil party applications, contrary to the practice in Case 002 ;
- (2) no civil party applicant has been “in a position to effectively exercise the right to participate in the judicial investigation” and this “appears to result, to a significant extent, from the lack of information surrounding the investigation in case 003” ;
- (3) as a result of the Co-Investigating Judges’ approach in Case 003, the “rights of victims have been ignored thus far to their detriment,” and “refusing [the victims] the possibility to participate in the investigation may deprive the Co-Investigating Judges of important information in their search for the truth, leading to an incomplete investigation and raising doubts about its impartiality.”
- (4) the “only information made available to the public about the scope of the investigation in Case 003 was provided in a press release issued on 9 May 2011 by the International Co-Prosecutor, which was the subject of a retraction order issued by the Co-Investigating Judges.”