



Prosecutor blasts KRT judges

James O'Toole

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British co-prosecutor Andrew Cayley has fired back at the Khmer Rouge tribunal's investigating judges, calling their order for him to retract a public statement he made earlier this month on the court's controversial third case "unreasonable, arbitrary and of no effect".

The judges announced the conclusion of their Case 003 investigation last month, but in response, Cayley said the case had "not been fully investigated". In making his own statement listing a series of additional investigative steps he planned to ask the judges to perform, Cayley effectively exposed their inaction over the 20 months that the investigation was open.

The judges later ordered him to retract this statement, saying he lacked legal basis to make it and had violated the court's confidentiality rules. In an appeal made public on Friday, however, Cayley branded this order "both unfair and unreasonable".

The order "implies that a court of law may simply censor parties' public statements of legal opinion with which it disagrees", Cayley wrote. "In this regard, it is virtually unprecedented in the jurisprudence of courts dealing with cases of mass crime."

The spat between the prosecutor and co-investigating judges Siegfried Blunk and You Bunleng comes as the pair are facing mounting criticism over their handling of the third case and accusations that they deliberately botched their investigation in the face of opposition to the case from the Cambodian government. In listing the additional investigative steps he believed were still required in his statement earlier this month, Cayley revealed that the judges had not even questioned the suspects in the case over the course of the investigation, nor had they examined a number of potential crime sites.

The suspects in Case 003 remain officially confidential, though court documents reveal them as former KR navy commander Meas Muth and air force commander Sou Met.

The judges were clearly irked by Cayley's statement, ordering him to publicly retract it "within three working days" after previously having considered initiating contempt-of-court proceedings against him, according to a court source.

In his appeal, however, Cayley noted the illogic of this request, as the retraction order itself quotes extensively from his offending statement.

“The retraction order restates in full the very information whose retraction it directs, thereby repeating the supposed confidentiality breach,” Cayley said, calling the order “an abuse of discretion” and “a capricious judicial act designed to publicly reprimand the international co-prosecutor”.

In making his statement earlier this month, Cayley said he sought both to provide victims with much-needed information and restore public faith in the work of the tribunal, noting that “public confidence in the effective conduct of the judicial proceedings in Case 003 appeared to be seriously undermined”.

This confidence has been especially harmed by the fact that the investigating judges have been so secretive about their Case 003 investigation, said Anne Heindel, a legal adviser at the Documentation Centre of Cambodia.

“This practice has always led to a concern that the co-investigating judges were not carrying out their activities appropriately, and whether they were or they weren’t, the point is this lack of information has contributed to that perception,” she said.

“Everything that’s been made public about Case 003 makes it seem that they are not doing their job in a thorough fashion, and that they’re trying to hide that from the public.”

The co-investigating judges have shown signs that they are sensitive to such criticism, hitting out last week at an article in the International Justice Tribune in which court observers said infighting and alleged political interference in the court’s third case had left the tribunal “in danger of collapse”.

The judges dismissed this claim as “nonsensical”, adding: “The Co-Investigating Judges have worked independently from outside interference, will continue to resist all such attempts, and are resolved to defend their independence against outside interference, wherever it may come from.”

Nonetheless, observers and other officials within the Extraordinary Chambers in the Courts of Cambodia, as the tribunal is formally known, remain concerned about the broader consequences of a failure by the judges to fully investigate the third case, a concern raised by Cayley in his appeal. In defending his claim that crimes alleged by the prosecution are legally required to be investigated, Cayley said a contrary approach “would undermine the structural integrity of proceedings before the ECCC”.

“It would enable the [judges] to simply ignore or dismiss cases initiated by the Co-Prosecutors, a position that is both untenable and inconsistent with the principles underpinning the creation of the Court,” he said.