

# The Phnom Penh Post

**Split decision**  
**James O'Toole**  
**September 13, 2010**

Cambodian and foreign judges of the Khmer Rouge tribunal's Pre-Trial Chamber have issued a rare split decision on the controversial issue of political interference at the court and the question of whether the matter warrants an internal investigation.

In a ruling published on Friday, international judges Rowan Downing and Catherine Marchi-Uhel called such an investigation "imperative... to ensure that the charged persons are provided with a fair trial". Cambodian judges Prak Kimsan, Ney Thol and Huot Vuthy said, however, that the court's Co-Investigating Judges had been right to conclude that no investigation was necessary.

In the absence of a super-majority of judges, the request for an investigation by lawyers for former Khmer Rouge Foreign Minister Ieng Sary and Brother No 2 Nuon Chea was dismissed.

Michiel Pestman, a lawyer for Nuon Chea, said the decision reinforced "serious" concerns about interference at the court.

"The big question is in the end, when the trial starts, whether the court will be able to deliver a fair trial according to international standards, or whether we're going to have a trial in the usual Cambodian tradition where the government decides the outcome," Pestman said.

Per requests from defence teams in the court's second case, international Co-Investigating Judge Marcel Lemonde sought testimony last year from King Father Norodom Sihanouk and six senior members of the Cambodian People's Party: Senate President Chea Sim, National Assembly President Heng Samrin, Minister of Finance Keat Chhon, Minister of Foreign Affairs Hor Namhong and senators Ouk Bunchhoeun and Sim Ka. Cambodian Co-Investigating Judge You Bunleng did not sign off on the summonses.

A summons issued for Sihanouk in July was returned by Royal Palace Minister Kong Som Ol along with a note that read: “I refuse the receipt of this letter”.

The six CPP officials also ignored their summonses, leading Lemonde to defer to the Trial Chamber the question of whether “coercive” measure were warranted to secure the officials’ testimony.

Friday’s decision focused largely on comments made last October by Information Minister Khieu Kanharith, who said foreign officials at the tribunal could “pack their clothes and return home” if they disagreed with the government’s stated opposition to the summonses for the six ruling party officials.

Downing and Marchi-Uhel wrote that Khieu Kanharith’s remarks “may amount to an interference or reflect other efforts to prevent the testimony of the six officials” at the Extraordinary Chambers in the Courts of Cambodia, as the tribunal is formally known. In a rebuke to the Office of the Co-Investigating Judges, Downing and Marchi-Uhel recommended that an investigation of possible political interference be conducted by the Pre-Trial Chamber rather than the OCIJ, saying the office had “repeatedly refused to investigate this matter”.

The Cambodian judges said, however, that Khieu Kanharith’s statements “cannot obstruct, prevent, or threaten directly or even indirectly the appearance of the six high-ranking officials before this Court”. The Information Minister, they added, “did not assert that he expressed his opinion in the name of the Government”.

Pestman called the arguments from the Cambodian judges “embarrassing”.

“They came up with ridiculous excuses which are an embarrassment to the court and to the international community that helped set up the court,” Pestman said. “The international community was wrong to accept a majority of Cambodian judges.”

Michael Karnavas, co-lawyer for Ieng Sary, said in an email that the decision “highlights how political the ECCC is and why the accused have legitimate reasons to be concerned”.

Trial monitors have long called for the court to confront the issue of political interference, citing the refusal of government officials to cooperate with Case 002 as well as opposition from Cambodian court officials to pending investigations in Cases 003 and 004. In a report published earlier this month, the Open Society Justice Initiative said political interference should be of

“immediate concern” to the United Nations and donor countries.

UN court spokesman Lars Olsen noted that Friday’s decision did not mean that the Pre-Trial Chamber’s international judges had concluded definitively that political interference had taken place.

“They say that in their view, the threshold for where you should do an investigation to find out if there has been political interference has been met,” Olsen said. Defence teams upset by Friday’s decision would have the opportunity to raise the matter again before the Trial Chamber, he added.

Anne Heindel, a legal adviser at the Documentation Centre of Cambodia, said the defence teams would likely take this opportunity.

“They’re going to pound this continuously, and the more the court refuses to deal with this, the more legitimate of a challenge it appears to be,” Heindel said. She added that potential interference by Kong Som Ol had been ignored, but said the court would have difficulty doing a comprehensive investigation of alleged interference even if it chose to do so.

“This court doesn’t have the capacity to do much about it internally,” Heindel said. “If it comes to a head, it will be the UN that has to get involved and take some action.”

In a separate Pre-Trial Chamber decision published Friday, a request from defence lawyers that the court dismiss You Bunleng due to his alleged lack of independence from the Cambodian government was dismissed.