



Monday, 26 March 2012

Press Statement by National Co-Investigating Judge (unofficial translation)

On 19 March 2012, the International Reserve Co-Investigating Judge released a Press Statement and made a number of documents public which require an explanation by the National Co-Investigating Judge for the part relating to his Office to avoid any public misunderstanding.

1. Lack of Acknowledgment and Support for Judge Laurent Kasper-Ansermet's Standing as the International Co-Investigating Judge

Before his arrival in Phnom Penh, the International Reserve Judge, on 17 November 2011, sent the National Co-Investigating Judge an email requesting a meeting at the ECCC to discuss procedural measures in relation to Cases 003 and 004, and stating that the Cambodian government opposed his coming to Cambodia.¹ The National Co-Investigating Judge is convinced that this remark had no basis, since only a few days after that he arrived unimpeded at the ECCC. Shortly after his arrival, on 2 December 2011, the International Reserve Judge sent the National Co-Investigating Judge a draft Order on Resuming the Judicial Investigation for Case File 003² though a single meeting had yet to be convened. On 5 December 2011 the National Co-Investigating Judge met with judge Laurent Kasper-Ansermet and informed him, *"I cannot discuss any case file-related issue or undertake any procedural measure with you [International Reserve Judge] while the International Co-Investigating Judge's seat is still vacant because it is mandatory, in accordance with the principles stipulated in the Internal Rules, Article 26 and 27 of the Law on the Establishment of the ECCC and Article 3 and Article 5.6 of the Agreement, that an International Reserve Co-Investigating Judge be first officially appointed as a full rights judge, as previously applied when Judge Siegfried BLUNK's replaced Judge Marcel LEMONDE. Therefore, you must first wait for an official appointment as a fully-accredited judge. Besides, such hasty actions will not provide Case 003 and 004, and the Office of Co-Investigating Judges with any common interest, and hence you [International Reserve Judge] should rather take this time to peruse the substance of the Case Files, for they*

¹ Email dated 17 January 2011.

² Letter dated 2 December 2011 and Draft Order on Resuming the Judicial Investigation dated 2 December 2011.

contain a large number of fundamental documents. Furthermore, you also need to understand the procedures implemented at the ECCC because in this instance, you have mistakenly referred to “Ordonnance de Reprise de l’Instruction Préparatoire” [which is normally conducted by Co-Prosecutors] at the investigation stage, when “Judicial Investigation” shall be applied”. International Reserve Judge Laurent Kasper Ansermet admitted that he had not looked into the Case Files but needed to take immediate action to reopen the investigation for Case File 003 for fear that the National Co-Investigating Judge would send the Forwarding Order to the Co-Prosecutors. In response, the National Co-Investigating Judge explained, *“the Forwarding Order was drafted months ago by the National Co-Investigating Judge and the International Co-Investigating Judge Siegfried BLUNK, but we were not able to sign it during Judge BLUNK’s time only due to the unexplained or unreasoned delay in the Pre-Trial Chamber’s decision on the Co-Prosecutors’ appeal. Now, because a fully-accredited International Co-Investigating Judge is not available for discussion on issuing the Forwarding Order, the National Co-Investigating Judge is not able to forward it to the Co-Prosecutors and would not take such a rushed action that could lead to a violation of procedural principles”*.

Since Judge Laurent Kasper-Ansermet insisted on having a written response, the National Co-Investigating Judge sent him an internal memorandum whereby the National Co-Investigating Judge reiterated: *he could only discuss the commencement of procedural measures with the International Reserve Judge only after the Judge is legally accredited by the Supreme Council of the Magistracy of the Kingdom of Cambodia. This is a matter of correct legal procedure and was previously implemented between I myself and the previous International Co-Investigating Judges*.³ In his press statement dated 6 December 2011 and his subsequent releases, the National Co-Investigating Judge has firmly held to the same position.

The adherence to the principle of interpretation of the Rules, ECCC Law and Agreements was solely a commitment made by a professional Judge, and not an anti-measure against the Reserve Judge Laurent Kasper Ansermet. To illustrate, the National Co-Investigating Judge recently invited the International Reserve Co-Investigating Judge for a dinner at a restaurant in Phnom Penh, which the International Reserve Judge, in his recent press statement, presented as an informal meeting.

2. Disagreement According to Rule 72

Following the meeting on 5 December 2011, the International Reserve Co-Investigating Judge Laurent Kasper-Ansermet subsequently submitted what he called Disagreements on the proceedings of case 003 and 004 to the National Co-Investigating Judge without any consultation or discussion, but rather based solely on the internal memorandum of National Co-Investigating Judge dated 5 December 2011. Further, the International Reserve Co-Investigating Judge has, without consultation with the National Co-Investigating Judge, repeatedly issued public statements in violation of Rule 56.

As a consequence, the National Co-Investigating Judge has issued responding press statements in order to prevent any misleading opinion among the public, and to reaffirm his

³ Internal Memorandum of the National Co-Investigating Judge dated 5 December 2011

standing, as well as to warn the International Reserve Co-Investigating Judge of his misconduct.

Given the continued submissions of records of disagreements from the International Reserve Co-Investigating Judge, the National Co-Investigating Judge instructed his national greffier and administrative assistant not to accept further disagreement records from the International Reserve Co-Investigating Judge on the basis that no discussion on procedural measures has ever been held between the National Co-Investigating Judge and the International Reserve Judge, and hence no disagreement is recordable. As a supplement to this, on 27 February 2012, the National Co-Investigating Judge sent a confidential letter to the International Reserve Co-Investigating Judge to alert and reaffirm him of the position of the National Co-Investigating Judge, and also ask him to immediately cease using the National Co-Investigating Judge's name in connection with any unilateral measure taken by the International Reserve Co-Investigating Judge.

The National Co-Investigating Judge would like to reaffirm that there is no Disagreement of Co-investigating Judges, as stipulated in Rule 72, but the objection of the National Co-Investigating Judge on this issue is because Judge Laurent Kasper Ansermet does not have legal authority, and that the Internal Rules and the Law do not also set a reserve provision on this. Therefore, this problem needs to be tackled first. The International Reserve Judge should not refer to the opinions of other judges who have no jurisdiction as arguments providing the basis for him to take certain actions without considering the applicable practices and legal principles.

3. Refusal of Placement of Documents by the International Reserve Co-Investigating Judge into the Case Files

In principle, the Co-Investigating Judges are in possession and control of the case files under judicial investigation, and no single document shall be placed into the case file without the consent from both Judges. As Judge Laurent Kasper Ansermet has no legal authority to decide whether to place documents into the case files, the National Co-Investigating Judge has not decided to have any document placed into the case files since the departure of Judge Siegfried BLUNK, except for civil party applications received during Judge BLUNK's time for there was a consent from both judges to have them placed into the case files. Therefore, as the only standing judge supervising an investigating case file, the National Co-investigating Judge has not allowed any change in the status quo of the case files, as attempted by the Reserve Judge who does not have legal authority. It is within this context that the International Reserve Judge Laurent Kasper-Ansermet has initiated various investigations into alleged interference in the administration of justice (under Rule 35) against a Case File Officer and the Chief of Court Management Section because these people abided by the instructions of the National Co-Investigating Judge who allowed no change to the case files unless there is judicial deliberation in accordance with the Internal Rules, the Law on the Establishment of the ECCC, and the Agreements. A similar Rule 35 investigation was also initiated against the National Legal Team Leader of the OCIJ who only conveyed the instruction of the National Co-Investigating Judge to the Court Management Section. Such measures are not of any benefit to the case files, but rather represent clear threats to any officer who opposed the orders of the International Reserve

Co-Investigating Judge, despite the fact that those actions had already been successfully carried out by staff in the Office of Administration.

4. Rejection of the Request for Access to Case Files by Civil Party Lawyers Following the Issuance of an Admissibility Order

As the International Reserve Co-Investigating Judge is not legally qualified to undertake any procedural measure, any decision made by the Judge is not legally valid. Hence, the rejection made by the Court Management Officer was an appropriate decision regarding the civil party application of Mr. Rob Hamill, which had already been rejected by the National Co-Investigating Judge and Judge Siegfried BLUNK, and whose appeal had also been decided by the Pre-Trial Chamber.

The linking of this issue to the banning of the International Legal Team Leader from entering the Court Management Section is indeed an exaggeration since in his email dated 02 March 2012 sent to the International Legal Team Leader, and copied to the National Co-Investigating Judge, the International Reserve Judge and the Acting Director and Deputy Director of Office of Administration, the Chief of the Court Management Section pointed out the unethical and unprofessional conduct of the International Legal Team Leader. Such misconduct is not surprising to the National Co-Investigating Judge because he and Judge Siegfried BLUNK complained on two occasions to the United Nations' Officer about such misconduct after the International Legal Team Leader had called out behind the back of Judge Siegfried BLUNK "Connard = Damn Fool or Jackass". In this regard, the National Co-Investigating Judge highly valued the position of Judge Siegfried BLUNK who once said, in reaction *"As judges, we need to make our own -decisions, which are not pressured by the Legal Officers or any external factors"*.

5. Withholding the Judicial Official Stamp of the Office of the Co-Investigating Judges

The National Co-Investigating Judge wishes to clarify that during Judge Marcel LEMONDE and Judge Siegfried BLUNK's administrations, there was a single Greffiers Office, with the International and National Greffiers sharing the same room, and that the stamp was kept by the National Greffier. On 6 February 2012 Judge Laurent Kasper Ansermet separated the International Greffier from the Office without any notice or explanation to the National Co-Investigating Judge.

On 20 February 2012, the National Greffier requested the National Co-Investigating Judge for his approval to keep the stamp in the National Co-Investigating Judge's office. The request came after the National Greffier had been threatened by the International Reserve Co-Investigating Judge via his International Greffier that legal action would be taken against him under Rule 35, as taken against other Court Officers, if the National Greffier refused to affix the stamp on any documents issued by Judge Laurent Kasper-Ansermet. The threat was made after the National Greffier had also accidentally witnessed the unexpected presences of Judge Kasper-Ansermet and his Greffier in the National Greffier's

room when he had not been in office.⁴ On 20 February 2012, the International Reserve Co-Investigating Judge issued a letter instructing the National Co-Investigating Judge to regularise the situation within 24 hours, that was until 4 o'clock the following day. If not, he would take all necessary legal measures against the National Co-Investigating Judge.⁵ The National Co-Investigating Judge did not respond to this threat.

6. Obstruction to the Internal Investigations

As mentioned above, the International Reserve Co-Investigating Judge has used Rule 35 of the Internal Rules as a weapon to threaten various officers of the ECCC including both national and international staff.

On 20 January 2012, the International Reserve Co-Investigating Judge issued a Rogatory Letter relating to an investigation on the interference in the administration of justice under Rule 35 and instructing interviews to be held with Mr. Christopher Ankersen, Chief of the Security and Safety Section and Mr. Soe U Myint, Chief of the Information and Communication Technology Section regarding their rejections of the requests by an investigator Mr. Paolo Pastore Stocchi sent to them on 28 September 2011. The issuance of this Rogatory Letter was based solely on the report of Mr. Paolo Pastore Stocchi who had written it so as to conceal his professional misconduct, as in relation to a previous investigation under Rule 35 opened by both the National Co-Investigating Judge and the International Co-Investigating Judge Siegfried Blunk, this investigator had seriously violated the Rogatory Letter dated 19 September 2011, and this violation was later formally filed as a complaint to Ms. Patricia O'Brien, the Legal Counsel and Head of the Office of Legal Affairs of the United Nations, in a letter dated 20 October 2011. Besides, the issuance of the Rogatory Letter by Judge Laurent Kasper-Ansermet was inappropriately done, even though an explanation had been given and a reference document about such an action had also been emailed to him by Mr. Knut Rosandhaug on 17 January 2012.

The National Co-Investigating Judge has never given order to the National Legal Team Leader and other officers of the ECCC in responding to any summons by the International Investigators, but the National Co-Investigating Judge clearly sees that the response by the National Legal Team Leader and the silence of the other national and international staff who are knowledgeable about the legal principles applied at the ECCC were the appropriate responses to the threat by the International Reserve Co-Investigating Judge Laurent Kasper-Ansermet who is not a fully accredited judge. The charge of obstruction to the internal investigation raised by Judge Laurent Kasper-Ansermet so as to put the blame on the national staff and the National Co-Investigating Judge is a total exaggeration.

About Judge Laurent Kasper-Ansermet's assertion of irregularity, dysfunction and the violation of procedural principles, the National Co-Investigating Judge considers that:

⁴ National Greffier's Report dated on 13th February 2012.

⁵ Letter of the Reserve International Co-Investigating Judge dated 9 February 2012.

1. Procedural measures regarding Cases 003 and 004 have been taken without any problem since Judge Marcel LEMONDE and Judge Siegfried BLUNK's administrations although some measures have proceeded with agreement of both judges, while others with disagreements recorded.

2. Cases 003 and 004 have slowed down since the departure of Judge Siegfried BLUNK because there has not been an official appointment of a new judge to replace him and undertake the on-going procedures although a common judicial approach with almost 100 percent agreement was reached between both judges, the National Co-Investigating Judge and International Co-Investigating Judge Siegfried BLUNK.

3. The National Co-Investigating Judge still affirms that he has never contested with Judge Laurent Kasper-Ansermet on any procedural matters, but he cannot acknowledge the legal validity of any of the procedural acts conducted so far by the International Reserve Co-Investigating Judge.

4. The National Co-Investigating Judge would like to further clarify that, although the International Reserve Co-Investigating Judge made accusations of obstruction and interference, in reality, he has so far conducted his missions in various provinces smoothly, and at the particular moment of the issuance of his press release making such allegations, the International Reserve Co-Investigating Judge is conducting interviews with civil parties in the ECCC's small courtroom.

5. Despite all this, the National Co-Investigating Judge welcomes Judge Laurent Kasper-Ansermet's resignation. The National Co-Investigating Judge is convinced that the resignation reflects his taking responsibility for his professional as well as his procedural misconduct done thus far, despite repeated warnings by the National Co-Investigating Judge.

6. The National Co-investigating judge is committed to maintain high professionalism and always acknowledges the experiences learned from the ECCC as legacy for the Cambodian Judiciary.