

4 June 2007

Interview with You Bun Leng, Co-investigating judge ECCC

Khmer Rouge Tribunal judges convened on June 1 to adopt the court's internal rules, a prerequisite to the start of the legal process. If the plenary is successful it is expected that the contentious issue will be resolved by June 13.

You Bun Leng, the national co investigating judge of the UN-backed tribunal and a committee member, gave Somne Thmey an interview to underscore the importance of the rules and discuss differences of opinions among national and international judges.

You Bun Leng also rejected allegations of political interference and corruption in the tribunal cast by some NGOs.

Khmer Rouge Tribunal judges convened on June 1 to adopt the court's internal rules, a prerequisite to the start of the legal process. If the plenary is successful it is expected that the contentious issue will be resolved by June 13.

You Bun Leng, the national co investigating judge of the UN-backed tribunal and a committee member, gave Somne Thmey an interview to underscore the importance of the rules and discuss differences of opinions among national and international judges.

You Bun Leng also rejected allegations of political interference and corruption in the tribunal cast by some NGOs.

Somne Thmey: The tribunal cannot start until procedures regarding charges and trials are adopted. Why are the rules so important?

You Bun Leng: The internal rules are so crucial because the ECCC is a special court established under an agreement between the Cambodian government and the United Nations. National and international judges must cooperate as the agreement specifies that our own laws and Cambodia's existing basic judicial procedures must be applied. If there are flaws or uncertainty over a particular matter, we can seek international standards and customs for its application. This is the first point we can observe in the internal rules.

The second point is that although the tribunal shall follow the procedures of Cambodian courts, our typical court does not have a pre-trial chamber. And as the Extraordinary Chambers consist of co-prosecutors and judges, the legal procedures could encounter disagreement. Therefore, the pre-trial chamber must solve disputes to move the procedures forward. The ECCC is different from a local Cambodian court as it has only the trial court chamber and the supreme court chamber with the absence of the appeal court chamber, an existing element in our Cambodian courts. This is because our mission is short term and has budgetary issues, which is why both sides [the Cambodian government and the UN] agreed not to establish an appeal court chamber for the ECCC.

Despite the absence of the appeal court chamber, we shall have a pre-trial chamber as some decisions or tasks of the court can be appealed. To examine an appeal, we have added more jurisdictions to the pre-trial chamber. The addition makes the ECCC different from Cambodia's existing legal procedure. Therefore, if we don't have the internal rules in place, ECCC trials, when in progress, can be interpreted differently in some aspects, thus possibly leading to a halt to the tribunal's procedural process.

SNT: The plan to adopt the internal rules has been deadlocked by disagreements between national judges and their foreign counterparts in the past. What were the disagreements?

YBL: We established the Internal Rules Committee during a meeting in July 2006 to arrange and draft the rules as procedures to begin the ECCC. A plenary session was held in November 2006, but failed to approve the rules. There were many factors we, and even foreign judges, could not predict. Therefore, regarding the stalemate, one cannot blame only the Cambodian judges, and fail to blame the foreign judges or others involved. We hope to finalize the internal rules as quickly as possible as due mandate is only for three years. So we have tried to achieve it quicker than in comparison to the finalizing of internal rules for the International Criminal court in Sierra Leone, which took a longer period of time.

The first issue was that the internal rules consist of more than 100 rules, but the Rules Committee had only a week to discuss and approve them. The duration was not enough for national and international judges to conduct an examination and learn of what should be done. For the setting of such a short-time period, we cannot blame the administration section because it knew that there was no budgetary plan for such a meeting. It feared that the spending would be too excessive, which is why it allowed the plenary meeting to take only a week.

Secondly, national and international judges did not yet understand each other as they had met only during sessions. I acknowledge that the national judges failed to do enough research on international law. Therefore, they had to adhere to the country's existing laws as the tribunal is within the Cambodian courts. At the same time, most international judges did not learn of our judicial systems including civil law, and they also failed to study about our national laws. That's why they adhered to the so-called Common Law system because most of them come from countries where the legal system is applicable. They demanded international standards without considering adapting Cambodia's procedures to international standards in a way acceptable to both sides.

Because the tribunal is within the Cambodian courts, we can not accept anything that would detract from our existing legal systems. This aspect is also defined in the agreement between Cambodia and the UN. These were the root causes of disagreements. In addition, we have a civil action party system in which victims can file civil lawsuits. We were worried that a large number of victims would lodge complaints individually, thus slowing down [the ECCC] process. Our judicial system accepts that victims can lodge complaints individually. Some said a civil action was not necessary, but others argued it was necessary based on the special law stipulating a victim can lodge a complaint. This was the legal aspect that we could not debate fast it has previously been enforced.

SNT: The process of the Khmer Rouge Tribunal, which has a three-year mandate, has now taken more than one year, and the internal rules have yet to be approved. Victims are awaiting justice eagerly. What would you say to the victims?

YBL: The word "court" is not simple. To reach a decision that can protect justice, the court in its capacity must follow procedures in which justice is ensured not only for the protection of victims, but also for the defence of the accused, in order to pursue a fact at a particular point. In another regard, we think this is the will of the Royal Government to establish the court, and a historical event for the next young generation have proof that brutal atrocities did occur in the period between 1975 and 1979.

The court is a bit slow, but everyone should tolerate and forgive it as the delays are merely to ensure that it can serve the interest of both victims and the accused. To put it briefly, it is to ensure both sides receive justice, and it is to link justice to national reconciliation.

SNT: In the eyes of many NGOs, the national judges are allegedly "chess pieces" of the government, which is also accused of having no political will for the tribunal and interfering in the court. How would you react to these accusations?

YBL: I note that those people seem to fail to research on the root causes of the legal foundations in the court. We are lovers of democracy and equal rights, so before saying something, we should not be biased. We should study about the root causes to see why a particular problem has occurred. We can not complain that the Khmer are not good, but all foreigners are good. We can not evaluate people only through their physical appearance.

For me, I'm trying to move the process forward because I have been appointed to perform the task. [I] want the Khmer Rouge Tribunal to proceed and a historical decision to be made because it is the policy of the government with the UN. Therefore, I'm working with integrity and honesty, and without orders from anyone. But if there is a particular pressure on the nature of Cambodia's legal foundations, it would not be acceptable to any country.

SNT: The Open Society Justice Initiative (OSJI) has alleged that the Khmer staffers including the prosecutors and judges offer to have a portion of their salaries deducted in exchange for their positions and to secure their positions in the court. And results of the auditing recently conducted by the United Nations Development Programme (UNDP) have not been made public, which has triggered more doubt. What are your thoughts?

YBL: As a Khmer judge, I didn't know that I would be allowed to work here. It is my honor to work here thanks to the government's attention. But I also feel it a great burden to be here. I never went to make any request to get employment here. So these accusations seem too exaggerated and made without clear sources. I, on behalf of our national judges, would like to confirm that no one deducts my salary. With a deduction of salary paid for my hard work and efforts, I would possibly resign, but such a problem doesn't occur. For administrative affairs, I pay no attention to them, and I'm uninterested in them. The important thing is about my daily work.

Copyright 2007

(Excerpt from Somne Thmey, - Translated and published by Development Weekly)