

Alarm sounded on KRT

James O'Toole

June 15, 2011

AN independent monitoring group has called for a United Nations investigation of the UN-backed Khmer Rouge tribunal amid growing controversy over the court's apparent failure to properly investigate the suspects in its third case.

In a report released yesterday, the New York-based Open Society Justice Initiative said the UN must examine issues of "judicial independence, misconduct, and competency", particularly with regard to the actions of German co-investigating judge Siegfried Blunk and his Cambodian counterpart, You Bunleng.

OSJI said developments over the past few weeks at the Extraordinary Chambers in the Courts of Cambodia, as the tribunal is formally known, suggested "the court itself is on the verge of officially embracing impunity" for Khmer Rouge atrocities.

"Recent events have worsened long-standing concerns about the willingness of some of the ECCC's judicial officers to fulfil their obligations not only to perform their sworn duties with competence and integrity, but also to act independently, and not upon the instructions of any government or any other source," OSJI said. "Such serious judicial misconduct or breach of duty must be addressed with urgency."

Clair Duffy, an OSJI trial monitor based in Phnom Penh, acknowledged that the call for investigation was "a significant step", but said concerns the group harboured about judicial independence had gained new urgency in recent weeks.

"We realise that this is a significant step, but we feel there's no other means of addressing, or seeking to address, this problem than an independent inquiry into what's gone on," Duffy said. "This has got to be done now."

The judges closed their Case 003 investigation, which features former KR navy commander Meas Mut and air force commander Sou Met, in April.

They did not even question the suspects during their investigation, however, nor did they investigate a number of alleged crime sites, prompting allegations that they deliberately sabotaged the case under pressure from the Cambodian government, which opposes prosecutions beyond the upcoming Case 002.

The judges have denied such allegations in a series of increasingly hostile public statements in recent weeks.

Staff from their office, however, have begun resigning in protest over their failure to investigate the case properly.

In a resignation letter to Blunk last month, noted Khmer Rouge-era historian Stephen Heder, formerly a consultant to the investigating judges, spoke of the “toxic atmosphere” within their office, saying it had become “professionally dysfunctional”.

In response, the judges said in a statement on Sunday that they “welcome the departure of all staff members who ignore the sole responsibility of the [co-investigating judges]” over Case 003.

OSJI called on the UN’s Special Rapporteur on the Independence of Judges and Lawyers to travel to the Kingdom to assess the independence of the tribunal judges – Blunk and You Bunleng in particular.

The report also called for UN secretary general Ban Ki-moon to initiate an inquiry.

A spokesman for Ban did not respond to a request for comment yesterday. UN court spokeswoman Yuko Maeda declined to comment.

Representatives of several embassies declined to weigh in directly on the Case 003 fiasco.

Lesley Saunderson, deputy head of mission at the British embassy, commended the court’s achievements to date in an email on Monday, adding: “It is important that the Court continue to uphold those standards, and be seen to do so.”

US embassy spokesman Mark Wenig said in an email that the US would help ensure “that we have the resources needed to proceed with Case 002, which now appears ready to go ahead”.

OSJI said donors and the UN had thus far “done nothing more than repeat general statements affirming the importance of judicial independence, while taking no concrete action to defend the principle”.

“A number of donors have underscored the importance of the court’s second case (Case 002, involving four surviving senior leaders of the Khmer Rouge), seeming to imply that preserving the case may require ceding the ability to proceed with Cases 003 and 004,” the report said. Case 004, involving a trio of mid-level KR leaders, is still pending with the investigating judges but is believed to be facing dismissal as well.

The Cambodian Centre for Human Rights yesterday echoed OSJI’s call for an investigation into potential judicial misconduct at the court.

“This whole episode surrounding Case 003 is a farce,” CCHR president Ou Virak said in

a statement. “Should the ECCC’s door shut without a full investigation into Cases 003 and 004, the UN will have failed the victims of the Khmer Rouge.”

International co-prosecutor Andrew Cayley has requested that Blunk and You Bunleng carry out a series of additional investigative steps in Case 003, though the judges rejected this request last week on a technicality. In a statement yesterday, Cayley said he had appealed this decision and had resubmitted his requests.

“The Co-Investigating Judges have an obligation ... to conduct their investigation impartially and to take investigative action conducive to ascertaining the truth,” Cayley said.