

Ban hits back at tribunal criticism

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The office of United Nations secretary general Ban Ki-moon has defended the embattled investigating judges at the Khmer Rouge tribunal in a statement that drew criticism from local observers and lawyers at the court.

The judges have come under fire in recent weeks from victims, civil society groups and even their own staff for their apparent failure to investigate the tribunal's third case properly. The likely dismissal of the case reflects the viewpoint of the Cambodian government, which opposes prosecutions beyond the upcoming Case 002, leading many to charge that Case 003 has been sabotaged for political expediency.

In a statement released in New York on Tuesday, Ban's office rejected "media speculation" that the UN had directed the judges to shutter Case 003 and denied that any political interference had occurred in the case. A "closing order" – indictments or dismissals in the case – will be available to public scrutiny at a later date, the statement added.

"The judges and prosecutors at the Extraordinary Chambers in the Courts of Cambodia (ECCC) must be allowed to function free from external interference by the Royal Government of Cambodia, the United Nations, donor States and civil society," the statement read, adding: "Speculating on the content of the Closing Order at this stage does not assist the independent judicial process."

However, local observers said the statement was in fact cause for greater concern about the tribunal, as the UN refused to acknowledge the abundance of evidence that the Case 003 investigation has been mismanaged.

Co-investigating judges Siegfried Blunk of Germany and You Bunleng of Cambodia announced the conclusion of their Case 003 investigation in April, though without taking a number of seemingly basic steps including the questioning of the suspects involved and the examination of a number of alleged crime sites.

Staff from the judges' office have since begun resigning in protest; 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". He added that the judges had closed Case 003 "effectively without investigating it".

The judges last week rejected a series of requests from international co-prosecutor Andrew Cayley calling for them to investigate the case further, a decision Cayley has appealed.

In the statement Tuesday, Ban's office cited the confidentiality of the investigation and said the investigating judges "are not under an obligation to provide reasons for their actions at this stage of the investigation in Case 003".

But Anne Heindel, a legal adviser at the Documentation Centre of Cambodia, called this an erroneous reading of court rules and said the UN was "hiding behind a cloak of confidentiality".

"As an institution, the UN is trying to protect the integrity of the court by denying that there are any problems, and it's too late for that," she said. "They need to acknowledge that action needs to be taken to save this investigation or it could undermine the entire work of the court."

Clair Duffy, a trial monitor with the Open Society Justice Initiative, said UN officials were "ignoring all of the evidence they now have before them, including from people inside the court with knowledge of what's going on".

"To pretend that this is a matter of speculation at this point ignores the wealth of available evidence that no serious investigative action was ever undertaken in relation to the 003 suspects," she said.

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

Lawyers for former Khmer Rouge Brother No 2 Nuon Chea, set to stand trial later this month in the court's second case, also took issue with the UN statement, which referred to their client as one of "the four remaining leaders of the Khmer Rouge".

This statement, the defence team said, presupposes both Nuon Chea's guilt and the fact that he and the other Case 002 suspects "are the only 'leaders' of the Khmer Rouge still alive".

Whether the Case 003 suspects also fall into this category "is a matter which is currently the subject of litigation before the ECCC", the defence team said.