



Wikileaks: UN discussed dropping #003

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The case – known as 003 – is at the centre of a controversy that has observers questioning the court’s ability to act independently of pressure from the Cambodian government, which has repeatedly said it will not allow the trial to go forward.

Victims were outraged when investigating judges announced on April 29 the conclusion of the investigation into 003, despite failing to interview witnesses or even the suspects themselves, or inspecting potential mass grave sites.

Observers accused judges of failing to properly investigate 003, because they were reluctant to turn up evidence that would force the case go to trial. Many suspected the investigative judges’ handling of the case was evidence that the UN had made an internal decision not to bring the case to trial at the tribunal.

The judges have strongly denied such claims, and the UN insists there has been no internal decision to shut down the case.

“The United Nations categorically rejects media speculation that we have instructed the Co-Investigating Judges to dismiss Case 003,” said UN Secretary General Ban Ki-moon in June 14 statement. He added that the UN would ensure that the court “has sufficient resources to undertake its work.”

Cable records talk of killing case

But a cable from the US embassy in Phnom Penh, recently released by the anti-secrecy group Wikileaks, indicates that UN officials did discuss removing 003 from the tribunal’s caseload.

During a January 11, 2010, meeting of donors to the tribunal, Knut Rosandhaug, a UN court administrator, cited funding concerns. And, according to the cable, he “broached the subject of transferring case 003 to the domestic court to further reduce the total amount required to the tribunal.”

Such a move would indeed reduce the financial burden of the court, which continually struggles to find funding. But doing so would also undoubtedly kill the problematic case, as Cambodia’s legal system is infamously corrupt and controlled by the very government that opposes 003.

Alex Bates, a former prosecutor at the tribunal, said UN officials would have long

foreseen difficulties arising with 003 and made contingency plans.

“With all the people in the UN – and they’ve got some good people there who would have thought long and hard about how this will play out – you have to think this was some form of predetermined strategy,” said Bates.

Legal staff under pressure

The implications of any strategy to transfer 003 to domestic courts would have been obvious. “The judges and the prosecutors are completely in the hands of their political masters,” Bates said of Cambodia’s legal system.

He added that Cambodian employees at the tribunal – a hybrid of national and international legal systems that employs dual staff at every level – did not escape such political pressure.

“It cannot be underestimated how much my former Cambodian colleagues were being scrutinized by the people in power,” said Mr Bates. “Nothing happens in Cambodia without the approval of the CPP (the ruling Cambodian People’s Party).”

Suspects were high-level cadres

Case 003 involves former Khmer Rouge Air Force Commander Sou Met and Navy Commander Meas Mut, according to a confidential court document leaked to journalists. Both men were also influential members of the regime’s communist party, prosecutors claimed in the document.

“In particular, Sou Met and Meas Mut participated in a criminal plan to purge the RAK [Revolutionary Army of Kampuchia] of all undesirable elements, which resulted in at least thousands and quite probably tens of thousands of deaths,” prosecutors alleged.

Given the seriousness of the charges, the senior rank of the suspects, and the detailed case built by prosecutors, many questioned why judges failed to perform an exhaustive investigation. Watchdog groups including the Open Society Justice Initiative called on the UN to hold an inquiry into the conduct of the co-investigating judges, Cambodian You Bunleng and German Siegfried Blunk.

Officials can’t quell concern

The UN refused to launch such a probe. And the judges maintained in a May 26 statement that they “have worked independently from outside interference, and will continue to resist all such attempts and are resolved to defend their independence against outside interference, wherever it may come from.”

In his June statement, Ban sought to reassure critics, saying that closing the investigation into 003 was only “an interim procedural step”.

The Pre-Trial Chamber is now considering a request by Lead Prosecutor Andrew Cayley to ask the Blunk and You to reopen the investigation.

Such a move would certainly bolster the court's battered image. But statements by UN and court officials have done little to alleviate concerns among victims and observers who continue to claim that the tribunal is caving to political pressure.

"We expected, to a degree, the Cambodian personnel to align unquestioningly with the dictates of Cambodian politics," said Theory Seng, a Khmer Rouge victim and activist who wrote *Daughter of the Killing Fields*. "But what is totally unacceptable and sickening is the UN succumbing to the same domestic politics."