

UN PRESS STATEMENT FAILED TO ANSWER: WHAT IS IN IT FOR THE VICTIMS OF THE KHMER ROUGE?

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In a June 14 press release, the United Nations spokesperson “categorically rejects media speculation that [the UN has] instructed the Co-Investigating Judges to dismiss Case 003.” However, the statement lacks any reference to serious public concerns about the CIJs’ decision to conclude the investigation without undertaking basic investigative measures and in a manner that effectively precludes Cambodians from exercising their rights to participate as Civil Parties.

The International Co-Prosecutor, Andrew Cayley, believes that the alleged crimes “have not been fully investigated” and has requested the CIJs to conduct additional investigative actions, including questioning the Case 003 suspects, interviewing witnesses and examining crime sites. In a similar vein, Stephen Heder, a well-respected Khmer Rouge historian and one of several former OCIJ staff who have recently resigned, has said that the judges closed the investigation “effectively without investigating it.” The manifest deficiencies in the investigation carried out by the OCIJ are clear, yet the UN statement fails to acknowledge them.

Especially concerning is the UN’s assertion that the CIJs are not under an obligation to provide reasons for their actions at this stage of the investigation in Case 003. In fact, according to Internal Rule 66(2), the ICJs “shall issue a reasoned order” if they decide to reject requests for further investigative action, whether or not they make those reasons public. Indeed, when they rejected Cayley’s investigative requests on a technicality, they provided reasons (and made them public), enabling Cayley to effectively appeal. The Trial Chamber has recently affirmed a general obligation to provide reasoned decisions motivated by objectives including “to permit public scrutiny of the administration of justice and to ensure that courts display special diligence in the conduct of proceedings.” The UN statement, however, suggests such public scrutiny amounts to

“external interference,” which “does not assist the independent judicial process.” The Public Affairs Section of the ECCC, whose stated purpose is to “provide as much information as possible on the activity of the Court, working transparently to build public confidence in the judicial process,” unfortunately appears to share this view, emphasizing the confidentiality of the Case 003 investigation instead of providing evenhanded information explaining both the CIJs’ and the international prosecutor’s legal arguments. Public Affairs FAQ concerning Case 003 states: “the public has no say in the investigations, and the public is not party to them.” Yet the Cambodian public is the intended beneficiary of ECCC justice.

In this light, the UN approach appears unnecessarily reticent. The criticism of the investigation should result in a certain vigilance, since an inadequate investigation is harmful to the credibility of the ECCC as a whole and is not in the interest of the donors, the UN nor the Cambodian people. By ignoring the serious concerns raised, the UN is effectively supporting a sham. Instead, the UN should insist these concerns be taken into serious consideration. If the rule of law is not followed and Cambodians are kept out of the process, what’s in it for the victims of the Khmer Rouge?