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Investigating judge Michael Bohlander takes an oath of office in 2015 at the Extraordinary Chambers in the Courts of Cambodia. ECCC

Staying Khmer Rouge tribunal cases mulled

Mon, 8 May 2017 Andrew Nachemson and Erin Handley

Legal action against former Khmer Rouge leaders accused of genocide could be halted by the end of June, tribunal sources reveal, ostensibly due to lack of funding – a claim analysts suspect could be masking government pressure.

In a confidential document issued on Friday – an official summary of which was obtained by The Post yesterday – the Khmer Rouge tribunal's co-investigating judges said they were considering a "permanent stay on proceedings" due to a "lack of funding" in Case 003 against former alleged Naval Commander Meas Muth, Case 004 against Yim Tith and Case 004/02 against Ao An.

"This stay order would be based on the sole reason of insufficiently secure funding, it would be permanent and prevent any re-opening of the investigations," read an excerpt from the summary, which was corroborated by a number of sources yesterday.

"It would in particular neither pronounce on the question of personal jurisdiction [whether they are 'senior leaders' and 'most responsible'] nor on the merits of the alleged crimes. All charged persons would continue to be presumed innocent and the case files would remain sealed."

Cases 003 and 004 have long been dogged by claims of political interference, and the government has made no secret of its preference that the tribunal conclude with the current Case 002. In the past, Prime Minister Hun Sen went so far as to claim there would be "civil war" if the later cases went ahead.

The accused have been under investigation for almost a decade. Muth has been charged with genocide, torture, forced marriage and rape, among other crimes. He was also implicated in the Mayaguez incident, in which the Khmer Rouge captured a US container ship, killing 41 US servicemen in a pitched battle during a rescue effort.

The investigation into his case closed in January and a closing order which would either indict him or dismiss the charges – was expected in July.

Ao An, an alleged secretary of the Central Zone, had his case severed into Case 004/02 in December and a closing order is expected in June. The investigation into Tith is still ongoing. Both were accused of genocide, murder, enslavement and torture.

In November, American legal scholar John Ciorciari warned that dismissing the cases could damage the court's legacy. A source with intimate knowledge of court proceedings said the budgetary concerns were exaggerated and not a justifiable reason

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to dismiss the cases.

The source said International Co-Investigating Judge Michael Bohlander's actions coincided with government wishes, but added there was not any tangible evidence of government influence.

The same source, however, said Bohlander's decision to make administrative actions like Friday's document confidential was an abuse of power, and echoed Ciorciar's concerns about the tribunal's legacy. Bohlander did not respond to requests for comment yesterday.



Meas Muth, former Khmer Rouge navy chief and war-crimes suspect, smokes a cigarette at his house in Battambang province in 2015. © Vireak Mai

Muth's son, Meas Sopheak, said he was unaware of the court procedure, but maintained his father's innocence. "He is too mild to commit such crimes," he said. Several prosecution and defence lawyers connected to cases 003 and 004 declined to comment.

"We will provide our views in the requested submissions," said Ao An defender Göran Sluiter.

Muth defence lawyer Michael Karnavas said he could not comment as the matter was confidential, as did Tith defender So Mosseny. He would only speak in general terms about his client, who is now a wealthy businessman and married to the sister of deceased senior Khmer Rouge leader Ta Mok. "Our position is clear; our client is innocent," Mosseny said.

"The Cambodian government already provided clear and confident [assurances] that the case would not be brought."

For long-term trial observer Long Panhavuth, the potential stay of proceedings came as no surprise in light of the Cambodian government's lack of political will to pursue the cases and the UN's failure to push them. "Since the beginning, the case was tainted by the political influence," he said.

He said the court had been plagued by funding issues since its inception, but said citing insufficient funding as a reason to halt the proceedings was a half-truth.

"I would say this is 50 percent honesty; the other half is the lack of political will," he said. Panhavuth further urged judges to be honest with the public and said the potential stay of proceedings would be "disappointing" to victims of the Khmer Rouge regime.

The court's case against Im Chaem, known as Case 004/01, was dismissed in February as judges found she was neither a senior leader nor most responsible for the crimes committed during the regime, under which at least 1.7 million perished. Lawyers are awaiting a closing order with the full reasoning for the decision, and the dismissal is subject to appeal.

Closing arguments in Case 002/02, against convicted former leaders Nuon Chea and Khieu Samphan, will begin next month.

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