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KRT judges divided on next cases

Int'l, national sides disagree on timing of future investigations

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The Khmer Rouge tribunal has released letters documenting a disagreement concerning the timing of investigations into five additional regime suspects, continuing a long-standing pattern of disputes between Cambodian and international officials over the issue.

Documents made public Wednesday showed that Cambodian co-investigating judge You Bunleng reversed an earlier agreement with his international counterpart Marcel Lemonde to open investigations into the five unnamed suspects.

“For the sake of transparency, they have decided to make public the letters they exchanged recently on this issue,” the judges’ office said in a statement Wednesday.

In the first of the letters released by the court, dated June 2, Lemonde called on You Bunleng to sign a rogatory letter authorising preliminary investigations in Cases 003 and 004.

He said that investigation teams were ready to be deployed “without delay”, and that if the order was not signed by June 4 he would conclude that the two disagreed on the issue, “with all the negative consequences this might entail”.

“I hope we can avoid reaching this point,” he added.

In a response dated June 8, You Bunleng stated that he initially signed the order Friday, but then reversed his decision, saying the issue should be considered in September after the closing order for Case 002 – the “core” of the tribunal’s mandate – is finalised.

He said his decision was based on his consideration of the court’s purpose and the “current state of Cambodian society”.

UN court spokesman Lars Olsen said Lemonde will pursue the investigations on his own, pursuant to court rules. He added that investigators will not yet focus on specific individuals, but rather try to establish “whether or not crimes described in the submissions from the prosecutors took place at certain locations”.

“The results from this part of the investigation will form some of the basis for the decision of whether or not to start investigations against individuals” at a later date, he said.

Despite disagreement on the timing of the new investigations, Lemonde and You Bunleng are still working closely together on Case 002, which will provide a “good basis for future cooperation”, Olsen said.

The disagreement is consistent with an apparent pattern of government reluctance to prosecute any former regime leaders beyond those five already indicted by the court.

In September 2009, the court’s acting international co-prosecutor William Smith announced he had filed submissions for investigations into five additional, unnamed regime suspects, overriding the objections of national co-prosecutor Chea Leang, who had argued that additional prosecutions could prompt ex-Khmer Rouge cadres and their allies to “commit violent acts”.

After the announcement, Prime Minister Hun Sen echoed this warning in a speech, saying, “If you want a tribunal, but you don’t want to consider peace and reconciliation and war breaks out again, killing 200,000 or 300,000 people, who will be responsible?”

Anne Heindel, a legal adviser for the Documentation Centre of Cambodia, said the rift echoed earlier disagreements, but said that such disputes are to be expected in a tribunal combining local and international officials.

She expressed concern about delays that might result, but added that it is not feasible to wait for the conclusion of Case 002 before the third and fourth cases move ahead.

“If they don’t get started on Cases 003 and 004 while they’re still on Case 002, there’s probably going to be donor fatigue and unwillingness,” Heindel said. The fact that You Bunleng signed the letter before reconsidering showed “some willingness on his part to consider a third and fourth investigation”, she added.

Under the tribunal's internal rules, either investigating judge may bring the disagreement before the Pre-Trial Chamber within 30 days.

The rules also hold that while the dispute-resolution process is in motion, "the subject of the disagreement shall be executed". Only in the case of arrests, it adds, does there need to be full consensus between the two judges.

You Bunleng could not be reached for comment.