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Lawyers for Ieng Sary file OCIJ appeal Sebastian Strangio and Meas Sokchea October 14, 2009

Say investigation of their client lacks transparency, fairness.

Defense lawyers for former Khmer Rouge foreign minister Ieng Sary have turned up the heat on the war crimes tribunal's Office of Co-Investigating Judges (OCIJ), saying investigators are stonewalling requests for details about the investigation process.

In a motion of appeal filed Tuesday, Ieng Sary's lawyers reiterated the contents of a request filed in May seeking additional information about the ongoing investigation of four former regime leaders, saying they have not received a timely response from the OCIJ.

"This is an issue which directly involves the transparency and fairness of the proceedings," lawyers Michael Karnavas and Ang Udom wrote in the appeal.

"By failing to provide a timely response, the OCIJ is deliberately concealing information related to the quality, scope and methodology of its investigation."

Among the requests lodged in May – and reiterated in Tuesday's appeal – were demands for information relating to the overall strategy of the investigation, the qualifications of the investigating judges and "the collection and analysis of exculpatory evidence".

The latter became a fraught issue on Friday, when Ieng Sary's lawyers filed a separate motion requesting the removal of International Co-Investigating Judge Marcel Lemonde, saying he has shown an "impermissible bias" in his conduct of the investigation.

The motion was based on an account provided by Wayne Bastin, a former chief of the OCIJ's Intelligence and Analysis Unit, who quoted Lemonde as saying investigators should "find more inculpatory evidence than exculpatory evidence" in the tribunal's case against four former Khmer Rouge leaders.

Also Tuesday, So Sovann, the lawyer for former Khmer Rouge head of state Khieu Samphan, filed a similar motion seeking the removal of Lemonde and the release of his client.

“My client Khieu Samphan must be released immediately because ... this judge did not respect his obligation to be neutral,” he told reporters. In light of recent allegations, Karnavas said the appeal would bear heavily on the court’s second case, due to begin next year.

The “entire process of investigating has been one of immense doubt and concern – primarily because of the complexity of the case and the lack of transparency,” he said.

However, court spokesman Lars Olsen said the request filed by Ieng Sary’s team in May was being considered by the OCIJ, who had every intention of responding to the defence’s concerns.

“The co-investigating judges have received many requests from the defence teams, which raise a lot of legal issues that are very time-consuming,” he said.

Although internal rules place the judges under strict obligation to conduct investigations impartially – searching for evidence that both incriminates and exculpates defendants – observers remain uncertain about the outcome of the allegations against Lemonde.

“The eventual outcome relating to these allegations is entirely too speculative until we know the true nature and scope of the alleged misconduct,” said David Scheffer, director of the Centre for International Human Rights at Chicago’s Northwestern University School of Law.

“If the facts show that investigations proceeded on a fair and comprehensive basis to explore exculpatory evidence regardless of the co-investigating judge’s alleged remarks, the allegations may prove inconsequential,” he said.

Also Tuesday, Amnesty International, the International Commission of Jurists and the REDRESS Trust submitted an amicus curiae brief to the Pre-Trial Chamber pertaining to a decision by the OCIJ regarding the use of “torture-tainted evidence” in the case of former Khmer Rouge minister of social action, Ieng Thirith.

The OCIJ in July dismissed a request from Ieng Thirith’s defence team to deem all such evidence inadmissible.

In their brief, filed September 25, the organisations urged the chamber to “reject any attempts to admit statements obtained by torture as evidence in any proceedings”.