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Second bias motion planned

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Marcel Lemonde attends a Khmer Rouge tribunal conference at Raffles Hotel La Royal earlier this year.

So Sovann, defence lawyer for former Khmer Rouge head of state Khieu Samphan, said Sunday that his team planned to file a motion today to dismiss Co-Investigating Judge Marcel Lemonde for bias in the investigation of his client.

The move follows a similar motion filed Friday by Michael Karnavas and Ang Udom, defence lawyers for Ieng Sary, former foreign minister under the Khmer Rouge regime, which charged Lemonde with pursuing a “personal agenda” at the tribunal instead of conducting an objective investigation.

“I will also file a complaint against Lemonde about his lack of impartiality,” So Sovann said, referring to the motion filed on behalf of Ieng Sary.
“These allegations could also affect my client.”

On Friday, Ieng Sary’s defence team filed a motion demanding the removal of Lemonde, saying recent comments allegedly made by the judge demonstrated an “impermissible bias and predilection towards the [prosecution]”.

“His immediate disqualification is imperative in fairness to Mr Ieng Sary and the other Charged Persons,” Karnavas and Ang Udom wrote.

The motion was based on a witness account provided by Wayne Bastin, a former chief of the Intelligence and Analysis Unit of the Office of the Co-Investigating Judges. In an affidavit signed on Thursday, Bastin said that during an August meeting, Lemonde stated his preference that investigators “find more inculpatory evidence than exculpatory evidence” in the case against the former regime leaders.

“To suggest his preference for investigative efforts to be channelled in search of more inculpatory and less exculpatory evidence is nothing more than a veiled instruction for the investigators to act in a complicit manner,” stated the motion, which will now be reviewed by the court’s Pre-Trial Chamber.

Investigating judges – unlike prosecutors – must remain impartial in their examination of the case, seeking out exculpatory evidence as well as evidence of a defendant’s guilt.

On Sunday, Karnavas said Lemonde’s comments were an “ominous sign” for his client’s right to a fair trial, and that nothing short of the judge’s removal would solve the problem.

“I think this is a severe blow to the ECCC’s reputation,” he said. “The only viable option at this point is for Judge Lemonde to step aside.... For the sake of the ECCC, I think it would be best to spare a knock-down, drag-out confrontation on this matter.”

Observers, however, said it remained unclear just how the allegations against Lemonde would affect the tribunal.

“It is clear that the investigating judges have an obligation to impartially investigate both inculpatory and exculpatory evidence,” said Heather Ryan, who monitors the court for the Open Society Justice Initiative.

“It is less clear whether the single statement quoted in the motion is sufficient to call the impartiality of Judge Lemonde into doubt such that he should be removed.”

Anne Heindel, a legal adviser for the Documentation Centre of Cambodia, said that whatever the truth of the allegation, the court had a duty to investigate it thoroughly.

“If it’s true, I think it’s a very big problem. [But] I think if it’s handled appropriately, the court could weather this,” she said.

Lemonde could not be reached for comment on Sunday, but court spokesman Reach Sambath said it was “too early” to say whether he would be forced to resign. Lawyers for defendants Nuon Chea and Kaing Guek Eav, alias Duch, could also not be reached.