

Investigation At Worst ‘Puzzling,’ Say Judges
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The Khmer Rouge tribunal Trial Chamber roundly rejected requests from the defence team of former minister of Foreign Affairs Ieng Sary (echoed at times by lawyers for Nuon Chea and Khieu Samphan) to hear further evidence regarding alleged irregularities in the investigation of Case 002, according to a decision filed on Friday.

Although deeper scrutiny of witness statements and in-court testimony revealed instances of seeming malfeasance in 15 witness statements on the part of court investigators – including unrecorded and staged witness interviews – the Trial Chamber ruled that the Ieng Sary defence team’s requests to hear testimony from co-investigators and to hold a public hearing on investigating judges’ methods should have been filed before the trial even began.

“In a perfect world you could say that the defence should have [listened] to all of the tapes and uncovered these irregularities well in advance,” Ieng Sary co-counsel Michael Karnavas said. “Where were the resources?”

“Deflecting and blaming is par for the course,” he added.

According to Karnavas, the decision was in keeping with the “hostility shown towards us whenever we dare expose irregularities by the investigators”, but raised serious concerns nonetheless about the court’s respect of the concept of a free trial.

“Imagine, how fair can the process be if the judges, when confronted with clear evidence of irregularities . . . rather than call the translator to give evidence and get to the bottom of this fiasco, the judges admonish the lawyers and go on to claim that the investigative process has been complete and impartial?” Karnavas asked.

In its filing, the chamber acknowledged that one case in particular – in which witness Phy Phuon’s interview with investigators was seemingly staged beforehand, then read aloud in an audio recording – was indeed “puzzling”, but nonetheless declined to call investigators forward to clarify.

“The Trial Chamber will ultimately have to weigh the probative value and reliability of all of the evidence before it,” said Open Society Justice Initiative tribunal monitor Clair Duffy.

“It may be of assistance in making that assessment to understand the Office of the Co-

Investigating Judges' investigative methodologies, particularly those the Trial Chamber has said are 'puzzling'."

Duffy said Friday's filing, however, was unlikely to be the last word on the matter.

"No doubt these issues will come up again on appeal, following any conviction."