



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង
Special Panel of the Trial Chamber
Panel Spécial de la Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ
Case File/Dossier No. 002/19-09-2007/ECCC/TC

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Before: Judge THOU Mony, President
Judge Rowan DOWNING
Judge Chang-ho CHUNG
Judge PRAK Kimsan
Judge HUOT Vuthy

Date: 14 November 2014
Original language(s): Khmer/English
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**DECISION ON INTERLOCUTORY REQUESTS RELATED TO APPLICATIONS FOR
DISQUALIFICATION**

Co-Prosecutors
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The Special Panel of the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (“Special Panel”) is seised of a number of interlocutory requests related to applications for disqualification of judges in the Trial Chamber from adjudicating Case 002/02 made by the KHIEU Samphan and the NUON Chea Defence (“KHIEU Samphan and NUON Chea Applications for Disqualification”)¹ currently pending before the Special Panel, namely: **a.** a request for extension of page limit made by the NUON Chea Defence on 8 September 2014 (“NUON Chea Request for Extension of Page Limit”);² **b.** a request for extension of page limit and to file a response in one language only filed by the Office of the Co-Prosecutors (“OCP”) on 2 October 2014 (“OCP Request for Extension of Page Limit and for Filing in One Language”);³ **c.** a request to suspend the trial proceedings in Case 002/02 and for an oral hearing filed by the KHIEU Samphan Defence on 10 October 2014 (“KHIEU Samphan Request for Suspension of Case 002/02 and Hearing”);⁴ and **d.** a request for an oral hearing filed by the NUON Chea Defence on 14 October 2014 (“NUON Chea Request for Hearing”).⁵

1. INTRODUCTION

2. In order to expedite proceedings concerning the KHIEU Samphan and NUON Chea Applications for Disqualification as requested by the parties and required by the interests of justice, the Special Panel has already informally informed the parties of its decisions in respect of their interlocutory requests and advised that a written decision would be issued in due course. The Special Panel hereby formalises these decisions.

¹ Mr. KHIEU Samphan’s Request for Reconsideration of the Need to Await Final Judgement in Case 002/01 Before Commencing Case 002/02 and the Appointment of a New Panel of Trial Judges, E314/1, 25 August 2014; NUON Chea Application for Disqualification of Judges NIL Nonn, YA Sokhan, Jean-Marc LAVERGNE, and YOU Ottara, E314/6, 29 September 2014.

² Email dated 8 September 2014 from the NUON Chea Defence consultant to the Senior Legal Officer of the Trial Chamber.

³ Co-Prosecutors’ Request for Extension of Pages to Respond to NUON Chea Defence Disqualification Application and Authorisation to Respond in One Language in the First Instance, E314/7, 2 October 2014.

⁴ Renewed Application for Disqualification of the Current Judges of the Trial Chamber Who Are to Hear Case 002/02, E314/8, 10 October 2014.

⁵ NUON Chea Request for an Oral Hearing of Defence Applications for Disqualification of Judges, E 314/6/1, 14 October 2014.

2. FINDINGS

a. Applications for Extension of Page Limit

3. On 8 September 2014, the NUON Chea Defence requested that the page limit for its upcoming application for disqualification of President NIL Nonn and Judges YA Sokhan, Jean-Marc LAVERGNE and YOU Ottara from any further trials in Case 002 be extended to a maximum of 45 pages.⁶ The NUON Chea Defence submitted that its application for disqualification would be based on “numerous grounds” and contain “lengthy references to evidence”.⁷
4. Article 5.1 of the Practice Direction on Filing of Documents before the ECCC (“Practice Direction”) provides that “a document filed to the [...] Trial Chamber of the ECCC shall not exceed 15 pages in English or French or 30 pages in Khmer, unless otherwise provided in the Internal Rules or this Practice Direction or ordered by the ECCC”. Article 5.4 further provides that “the relevant Chamber may, at the request of a participant, extend the page limit in exceptional circumstances”.
5. On 11 September 2014, the Special Panel informed the NUON Chea Defence that its Request for Extension of Pages was granted.⁸ Considering the requirement set out in Internal Rule 34(3) that a party filing an application for disqualification of a judge “clearly indicate the grounds” and “provide supporting evidence”, the Special Panel found it appropriate and in the interest of justice to allow the request pursuant to Article 5.4 of the Practice Direction.
6. On 2 October 2014, the OCP requested that the page limit for its response to the NUON Chea Application for Disqualification be extended to a maximum of 30 pages in English and to be authorised to file its response in English first, with Khmer translation to follow.⁹ The OCP submitted that these requests were justified owing to the length of the NUON

⁶ Email dated 8 September 2014 from the NUON Chea Defence consultant to the Senior Legal Officer of the Trial Chamber.

⁷ *Ibid.*

⁸ Email dated 11 September 2014 from the Senior Legal Officer of the Trial Chamber to the Senior Legal Consultant of the NUON Chea’s Defence Team.

⁹ OCP Request for Extension of Page Limit and Filing in One Language.

Chea Application for Disqualification and “the complexity of the factual, legal, constitutional and international public policy arguments advanced therein”.¹⁰

7. On 6 October 2014, the Special Panel informally informed the parties that the OCP Request for Extension of Pages and Filing in One Language was granted.¹¹ The Special Panel found that the OCP request for extension of page was justified under Article 5.4 of the Practice Direction given the need to respond to submissions that are lengthier than that envisaged in the Article 5.1 of the said Direction and to ensure equality of arms. Considering that the 10 day time limit may be too short to respond to a lengthy application in two languages simultaneously, the Special Panel found it appropriate to authorise the filing in English first, with Khmer translation to follow at the earliest opportunity, pursuant to Article 7.2 of the Practice Direction.

b. Applications for Suspension of Proceedings and Hearing

8. On 10 October 2014, the KHIEU Samphan Defence team filed an application before the Special Panel in which it: (i) reiterated its request for disqualification and adopted the totality of the arguments raised by the NUON Chea Application for Disqualification; (ii) requested the Special Panel to delay the beginning of the proceedings in Case 002/02 until after a decision is issued on the applications for disqualification; (iii) requested the Special Panel to hear oral arguments on the KHIEU Samphan Applications for Disqualification.¹² On 14 October 2014, the NUON Chea Defence team filed a request for an oral hearing concerning the Applications for Disqualification. In the alternative, if its request for oral hearing was denied, the NUON Chea Defence team informed the Special Panel of its intention to file a written reply to the OCP Response submitted in English on 10 October 2014.¹³
9. On 16 October 2014, the Special Panel informally informed the parties that the KHIEU Samphan Request for Suspension of Case 002/02 was denied.¹⁴ The Special Panel found that the KHIEU Samphan Defence did not identify any power pursuant to which the Special Panel could make such an order. To the contrary, pursuant to Internal Rule 34(5), a challenged judge “may continue to participate in the judicial proceedings pending a

¹⁰ *Ibid.*, para. 6.

¹¹ Email dated 6 October 2014 from the Greffier of the Special Panel to the parties.

¹² KHIEU Samphan Request for Suspension of Case 002/02 and Hearing.

¹³ NUON Chea Request for Hearing.

¹⁴ Email dated 16 October 2014 from the Greffier of the Special Panel to the parties.

decision". Consequently, the Special Panel concluded that the request did not fall within the ambit of its jurisdiction.

10. On 21 October 2014, the Special Panel informally informed the parties that the Defence Requests for an Oral Hearing were dismissed and that it would instead proceed on the basis of public written submissions.¹⁵ The Internal Rules do not require or even envisage oral arguments prior to deciding on applications for disqualification of judges.¹⁶ The Special Panel considered that it was sufficiently informed by the submissions of the parties to dispose of the matter on the basis of written submissions alone and that the need to ensure transparency and publicity of these proceedings is adequately fulfilled by making all written submissions accessible to the public. Pursuant to Article 8.4 of the Practice Direction, the Special Panel granted the NUON Chea Defence leave to reply to the OCP Response. The Special Panel directed that the reply: (i) be filed on or before Tuesday 28 October 2014; (ii) be restricted to addressing new issues, if any, raised by the OCP Response, rather than reargue points already made in the original application; and (iii) be filed in English, with Khmer and French translations to follow as soon as they are available.
11. On 28 October 2014 the NUON Chea Defence informed the Special Panel that it did not intend to file a written reply.¹⁷

FOR THE FOREGOING REASONS, THE SPECIAL PANEL:

GRANTS the NUON Chea Defence Request for Extension of Page Limit;

GRANTS the OCP Request for Extension of Page Limit and to File in One Language;

DENIES the KHIEU Samphan Request for Suspension of Case 002/02;

DENIES the Khieu Samphan and NUON Chea Requests for Hearing;

¹⁵ Email dated 21 October 2014 from the Greffier of the Special Panel to the Parties.

¹⁶ Internal Rule 34(7) rather suggests that applications for disqualification of judges be determined on the basis of written submissions.

¹⁷ Email dated 28 October 2014 from the Legal Consultant of the NUON Chea Defence to the Greffiers of the Special Panel.

NOTES that the NUON Chea Defence elected not to file a reply to the OCP Response within the time limit set for 28 October 2014.

Phnom Penh, 14 November 2014
President of the Special Panel



HOU Mony