



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
Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ

Case File/Dossier No. 002/19-09-2007/ECCC/TC

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

Date: 14 November 2014
Original language(s): Khmer/English/French
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DECISION ON APPLICATIONS
FOR THE DISQUALIFICATION OF TRIAL CHAMBER JUDGES

Co-Prosecutors
CHEA Leang
Nicolas KOUMJIAN

Accused
NUON Chea
KHIEU Samphan

Civil Party Lead Co-Lawyers
PICH Ang
Marie GUIRAUD

Lawyers for the Defence
SON Arun
Victor KOPPE
KONG Sam Onn
Arthur VERCKEN
Anta GUISSÉ

THE SPECIAL PANEL of the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia (“Special Panel”) is seised of an application made by the KHIEU Samphan Defence on 25 August 2014 seeking to disqualify President NIL Nonn and Judges Silvia CARTWRIGHT, YA Sokhan, Jean-Marc LAVERGNE, YOU Ottara and Claudia FENZ from adjudicating Case 002/02 (“KHIEU Samphan’s Application”);¹ an application made by the NUON Chea Defence on 29 September 2014 seeking to disqualify President Nil Nonn and Judges YA Sokhan, Jean-Marc LAVERGNE and YOU Ottara from any further proceedings against NUON Chea (“NUON Chea’s Application”);² and a renewed application made by the KHIEU Sampah Defence on 10 October 2014 seeking to adopt the arguments advanced in NUON Chea’s Application in support of its first Application, with the exception of Judge Silvia CARTWRIGHT who has now ceased to be a judge at the ECCC (“KHIEU Samphan’s Renewed Application”).³

NOTING that the Office of the Co-Prosecutors (“OCP”) submitted responses opposing KHIEU Samphan’s Application and NUON Chea’s Application;⁴

BEING SEISED OF the OCP’s Request for an Expedited Decision on Motions for Disqualification, which requests that the Special Panel issue its decision on the disqualification applications as soon as possible, with reasons to follow;⁵

NOTING that opening statements in Case 002/02 took place on 17 October 2014, during which the Accused NUON Chea stated, among other things, that he had instructed his counsel not to participate in further proceedings against him pending the Special Panel’s decision on NUON Chea’s Application;⁶

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.

² NUON Chea Application for Disqualification of Judges NIL Nonn, YA Sokhan, Jean-Marc LAVERGNE, and YOU Ottara, E314/6, 29 September 2014.

³ Renewed Application for Disqualification of the Current Judges of the Trial Chamber Who Are to Hear Case 002/02, E314/8, 10 October 2014.

⁴ Co-Prosecutor’s Response to KHIEU Samphan’s Request for Stay of Proceedings or Disqualification of Judges, E314/3, 4 September 2014; Co-Prosecutor’s Response to NUON Chea’s Disqualification Application, E314/9, 10 October 2014.

⁵ Co-Prosecutors’ Request for Expedited Decision on Motions for Disqualification, E314/10, 22 October 2014. The Special Panel notes that the Khmer translation of the OCP’s Response to NUON Chea’s Application was only provided on 30 October 2014.

⁶ Transcript, 17 October 2014, E1/242.1, p.73: “Judges, if you will not step down while your disqualification application is being decided, you leave me with no choice. I will instruct my lawyers to leave the courtroom after Mr. Khieu Samphan has spoken and to boycott all further hearings in this second trial until the disqualification decision is issued.”

RECALLING that on 21 October 2014 the Special Panel notified the parties that it declined to hold an oral hearing but granted leave to the NUON Chea Defence to file a written reply to the OCP's response by 28 October 2014. The Special Panel directed that the reply should be restricted to addressing new issues, if any, raised by the OCP's Response;⁷

NOTING that on 28 October 2014 the NUON Chea Defence informed the Special Panel via email that it did not intend to file a written reply;⁸

NOTING that Judge Silvia CARTWRIGHT ceased to be a judge at the Extraordinary Chamber's in the Courts of Cambodia on 1 September 2014;

NOTING that none of the judges challenged by the disqualification applications sought to present any written submissions pursuant to Internal Rule 34(7);

HAVING DELIBERATED on the parties' submissions and determined the final disposition of KHIEU Samphan's Applications and NUON Chea's Application;

CONSIDERING that circumstances exist to justify the Special Panel to pronouncing its disposition of the Applications at this stage, with full reasoning to be provided in Khmer, English and French, as soon as it is available;

THE SPECIAL PANEL HEREBY DECIDES:

Unanimously, to **ADMIT** KHIEU Samphan's Application, NUON Chea's Application and KHIEU Samphan's Renewed Application under Internal Rule 34(4);

Unanimously, to **DISMISS** KHIEU Samphan's Applications insofar as they concern the disqualification of Judge Claudia FENZ;

By majority of four judges, Judge Rowan DOWNING dissenting, to **DISMISS** KHIEU Samphan's Applications insofar as they concern the disqualification of President NIL Nonn and Judges YA Sokhan, Jean-Marc LAVERGNE and YOU Ottara.

⁷ Email from the Greffiers of the Special Panel to the Parties, 21 October 2014.

⁸ Email from the Legal Consultant of the NUON Chea Defence to the Greffiers of the Special Panel, 28 October 2014.

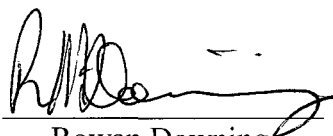
By majority of four judges, Judge Rowan DOWNING dissenting, to **DISMISS** NUON Chea's Application.

In accordance with Internal Rule 34(8), this decision is not subject to appeal.

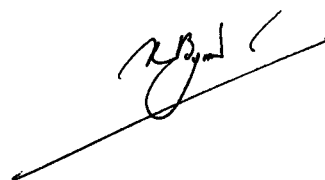
Phnom Penh, 14 November 2014



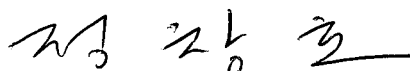
THOU Mony



Rowan Downing



HUOT Vuthy



Chang-ho Chung



PRAK Kimsan