

Notice and requests regarding prospective motion for disqualification

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Doreen CHEN

to:

Kenneth William ROBERTS

11/08/2014 03:18 PM

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Dear Ken,

The Co-Lawyers for Mr. Nuon Chea ("the Defence") hereby formally notify the Trial Chamber that, in light of the Case 002/01 Judgment and the Final Decision on Witnesses, Experts and Civil Parties to be Heard in Case 002/01 ("Case 002/01 Final Witnesses Decision") rendered last Thursday, 7 August 2014, the Defence intends to apply for the disqualification of President NIL Nonn and Judges YA Sokhan, Jean-Marc LAVERGNE and YOU Ottara from any further trials in Case 002, including the upcoming trial in Case 002/02. This position assumes that Judge Silvia CARTWRIGHT will be leaving the ECCC before 1 September 2014, however if this is not the case, the application for disqualification will encompass her also.

The Defence notes the requirement under Internal Rule 34(3) to file an application for disqualification "as soon as the party becomes aware of the grounds in question". The Defence is undertaking every effort to prepare the application for disqualification as soon as possible. The Defence received the Case 002/01 Judgment and the Case 002/01 Final Witnesses Decision last Thursday and has thus only become progressively aware since then of the grounds for disqualification that arise from the contents of those two decisions. Given the significance, complexity and length of those two decisions (amounting to 788 pages in English), the Defence anticipates that it will take a considerable amount of time to analyse those decisions in detail and then compile evidence of the ensuing grounds for disqualification. In light of this, as well as the relationship between the application for disqualification and the Defence's overall Case 002/01 Judgment appeal, the Defence expects to be in a position to file the application for disqualification at the same time as its notice of appeal of the Case 002/01 Judgment, shortly before or on Monday,

8 September 2014. The Defence takes the view that, under the circumstances, this timing fulfills the requirement under Internal Rule 34(3) to file the application for disqualification "*as soon as the party becomes aware of the grounds in question*".

As the Defence expects the application for disqualification to indicate numerous grounds for disqualification and contain lengthy references to evidence, the Defence requests permission from the Trial Chamber or, in the alternative, the Chamber dealing with the request, to extend the length of its application for disqualification to a maximum of 30 pages in English. In addition, given the potential impact of the application for disqualification on the upcoming commencement of substantive hearings in Case 002/02, and the likely increased demand on ITU should multiple parties intend to file and request translation of notices of appeal to the Case 002/01 Judgment, the Defence further requests permission from the relevant Chamber to initially file the application for disqualification in one language (English) only, with Khmer language translation to follow as soon as possible. The Defence believes that this will enable the relevant Chamber and the parties to begin to consider this matter as early as possible, and to initiate the process of appointing judges to hear the application.

The Co-Lawyers thank the relevant Chamber in advance for its consideration and response.

Best regards,

**Doreen Chen**

Senior Legal Consultant

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