

**BEFORE THE SPECIAL BENCH OF THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

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**NUON CHEA REQUEST FOR AN ORAL HEARING ON DEFENCE APPLICATIONS
FOR DISQUALIFICATION OF JUDGES**

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I. INTRODUCTION

1. Pursuant to Article 8.4 of the *Practice Direction on the Filing of Documents Before the ECCC* (the “Practice Direction”), the Co-Lawyers for Mr. Nuon Chea (the “Defence”) submit this request for an oral hearing with respect to outstanding applications to disqualify certain Trial Chamber judges.

II. PROCEDURAL HISTORY

2. On 11 August 2014, the Defence notified the Trial Chamber that it would imminently file an application to disqualify Judges Nil Nonn, Ya Sokhan, Jean-Marc Lavergne, and You Ottara from Case 002/02 and all further proceedings against Mr. Nuon Chea (“Notification of Imminent Application”).¹
3. On 25 August 2014, the Co-Lawyers for Mr. Khieu Samphân filed a request to stay proceedings in Case 002/02 until the rendering of the Case 002/01 Judgement or, in the alternative, to disqualify all Trial Chamber judges (“First Khieu Samphan Request”).²
4. On 4 September 2014, the ECCC Judicial Administration Committee appointed a special bench (“Special Bench”) to hear the future application by the Defence and the First Khieu Samphan Request.³
5. On 19 September 2014, the Trial Chamber rejected the First Khieu Samphan Request insofar as it concerned a stay of proceedings, leaving the disqualification request to the Special Bench to consider.⁴
6. On 29 September 2014, the Defence filed an application to disqualify judges Nil Nonn, Ya Sokhan, Jean-Marc Lavergne and You Ottara from Case 002/02 and all further proceedings against Mr. Nuon Chea (the “Application”).⁵

¹ Doc. No. **E314.1**, E-mail from Doreen Chen to Ken Roberts, 11 Aug 2014.

² Doc. No. **E314/1**, ‘Demande de réexamen de M. Khieu Samphân sur la nécessité d’attendre un jugement définitif dans le procès 002/01 avant de commencer le procès 002/02 et sur la nomination d’un nouveau collège de juges’, 25 Aug 2014.

³ Doc. No. **E314/4**, ‘Decision of the JAC regarding the constitution of the bench following disqualification motions’, 4 Sep 2014.

⁴ Doc. No. **E314/5**, ‘Decision on the Khieu Samphan Request to Postpone the Commencement of Case 002/01’, 19 Sep 2014.

⁵ Doc. No. **E314/6**, ‘Nuon Chea Application for Disqualification of Judges Nil Nonn, Ya Sokhan, Jean-Marc Lavergne, and You Ottara’, 29 Sep 2014.

7. On 10 October 2014, the Co-Lawyers for Mr. Khieu Samphân filed a request to the Special Bench (“Reiteration Request”) reiterating its disqualification application and requesting an oral hearing on this matter on the following basis set out in paragraph 13:

Compte tenu de l'importance des questions soulevées par la demande de récusation notamment en matière de procès équitable, la Défense sollicite que le Collège spécial entende les parties au cours d'une audience publique. Cette demande a pour but que les débats soient compris et suivis par la population cambodienne.⁶

8. Also on 10 October, the Co-Prosecutors filed a response to the Application (“Co-Prosecutors’ Response”).⁷

III. APPLICABLE LAW

9. As part of their fundamental right to a fair trial, accused persons at the ECCC have the right to a “fair and *public hearing*.”⁸ Article 8.4 of the Practice Direction permits parties to reply to responses. It also contemplates the possibility of oral hearings in connection with applications filed by the parties, providing that “[a] reply to a response shall only be permitted where there is no oral argument.”

IV. ARGUMENT

10. Mr. Nuon Chea is entitled to request an oral hearing. Having reviewed the Co-Prosecutors’ Response, the Defence takes the view that, in order to properly and fully discuss its reply to the Co-Prosecutors’ Response, an oral hearing is essential, for the reasons which the Co-Lawyers for Mr. Khieu Samphân outlined in paragraph 13 of its Reiteration Request, which the Defence adopts.
11. In the event that the Special Bench does not grant this Request, the Defence notifies the Special Bench of its intention to file a written reply to the Co-Prosecutors’ Response.

⁶ Doc. No. E314/8, ‘Requête réitérée en récusation des juges composant actuellement la Chambre de première instance devant statuer sur le process 002/02’, 10 Oct 2014, para. 13. For the convenience of the Special Bench, the Defence informally translates the relevant passage as follows: “In light of the importance of the questions raised by the request particularly in terms of fair trial, the Defence requests the Special Bench to hear the parties in a public hearing. This application is so that the requests are understood and followed by the Cambodian population.”

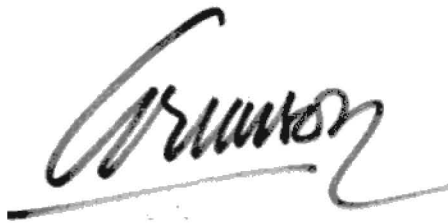
⁷ Doc. No. E314/9, ‘Co-Prosecutors’ Response to Nuon Chea’s Disqualification Application’, 10 Oct 2014.

⁸ *International Covenant on Civil and Political Rights*, Art. 14(1); ECCC Establishment Law, Arts. 10 new, 33 new, 34 new; Constitution of the Kingdom of Cambodia, Art. 31; Code of Criminal Procedure of the Kingdom of Cambodia, Art. 316.

V. RELIEF

12. For the reasons stated above, the Defence requests that: **(i)** the Special Bench admit this request for an oral hearing in relation to the outstanding disqualification applications; **(ii)** the Special Bench notify its decision in response to this request as a matter of urgency given its nature.

CO-LAWYERS FOR NUON CHEA



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