

BEFORE THE TRIAL CHAMBER OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

Case No: 002/19-09-2007-ECCC/TC
Filed to: Trial Chamber
Date of Document: 1 March 2011

Party Filing: Defence for Ieng Thirith
Original language: English

CLASSIFICATION

Classification of the document suggested by the filing party: Public

Classification by Chamber: សាធារណៈ / Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

IENG THIRITH DEFENCE REPLY TO 'CO-PROSECUTORS' JOINT RESPONSE TO IENG THIRITH, IENG SARY AND NUON CHEA'S APPLICATIONS FOR DISQUALIFICATION OF THE JUDGES'

Defence for Ieng Thirith:
Diana ELLIS, QC

Trial Chamber Judges:
NIL Nonn, President
Silvia CARTWRIGHT
THOU Mony
Jean-Marc LAVERGNE
Ya SOKHAN

Civil Party Co-Lead Lawyers:
PICH Ang
Elisabeth SIMONNEAU FORT

Co-Prosecutors:
CHEA Leang
Andrew CAYLEY

ឯកសារដើម
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):
..... ០១ / ០៣ / ២០១១

ម៉ោង (Time/Heure): ១១:៣០

មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent chargé du dossier: Uch Arun

I INTRODUCTION AND PETITION

1. On 1 February 2011, defence for Madame Ieng Thirith (**Charged Person**) filed its 'Ieng Thirith Defence Application for Disqualification of Judges Nil Nonn, Sylvia Cartwright, Ya Sokhan, Jean-Marc Lavergne and Thou Mony' (**Ieng Thirith Application**).¹ Defence for Nuon Chea and Ieng Sary filed similar applications subsequently.² On 23 February 2011 the Co-Prosecutors responded by way of the 'Co-Prosecutors' Joint Response to Ieng Thirith, Ieng Sary and Nuon Chea's Applications for Disqualification of the Judges' (**Joint Response**).³ This Joint Response was notified to the parties the following day, 24 February 2011.

II SUBMISSIONS IN REPLY

2. The defence submits that the Co-Prosecutors misrepresent the defence arguments in paragraph 3 of their Joint Response. The defence does not challenge the competence as such of the Trial Chamber Judges. Rather, the argument sets out that the Trial Chamber has already determined several issues in the *Duch* case, that were not crucial to the Duch defence, and thus not properly challenged by the Duch defence, but which same issues are crucial to the case at hand. These issues, such as the existence of an armed conflict in Cambodia between 1975 and 1979, require both parties to present evidence, instead of only the Co-Prosecutors' evidence. The Trial Chamber decided this issue without hearing argument from the defence. The defence in Case 002 is thus unfairly prejudiced, given that these same issues are crucial to the underlying case.

¹ Ieng Thirith Defence Application for Disqualification of Judges Nil Nonn, Sylvia Cartwright, Ya Sokhan, Jean-Marc Lavergne and Thou Mony, 1 February 2011, Document No. E28.

² Nuon Chea Defence Urgent Application for Disqualification of the Trial Chamber Judges, 8 February 2011 and Ieng Sary Defence Motion to Support Ieng Thirith and Nuon Chea's Applications for Disqualification of the Trial Chamber Judges and Ieng Sary's Motion to Support Ieng Thirith's Application for the Trial Chamber to Be Replaced for the Purpose of Adjudicating the Applications by Reserve Judges of the Trial Chamber or Additional Judges Chosen by the Judicial Administration Committee, 17 February 2011.

³ Co-Prosecutors' Joint Response to Ieng Thirith, Ieng Sary and Nuon Chea's Applications for Disqualification of the Judges, 23 February 2011, Document No. E55.

3. The Co-Prosecutors contend that 'the Defence teams do not argue that the Duch judgment demonstrates that Judges have taken into consideration extraneous or improper factors'.⁴ This again misconstrues the defence argument. The Duch defence did not put forward any arguments rebutting the Co-Prosecutors' case in several instances, presumably as it was not considered to be in their specific interest to do so. The Judges were thus deprived of hearing both sides of the situation, and made legal and factual findings based on one parties' information only. In the circumstances, the defence submits that it will be problematic for these Trial Chamber Judges to reverse their legal and factual findings already made in the *Duch* case and conclude differently in Case 002. A Chamber composed of different Judges would not be handicapped or embarrassed by prior decisions and would, therefore, be in a better position to rule on these issues.

4. The defence further submits that what is unique about this case is that it was not just one Judge who formed part of the *Duch* Chamber, but it was the whole Chamber that also dealt with Case 001. So whilst the Co-Prosecutors assert that 'none of the international criminal cases referred to by the parties demonstrate such an instance'⁵, none of those cases related to a whole bench being replaced. It is the defence submission that this makes the underlying case unique, and warrants a disqualification of the whole Trial Chamber.


III RELIEF REQUESTED

5. Pursuant to Internal Rule 34(2), the defence respectfully applies for disqualification of Judges Nil Nonn, Sylvia Cartwright, Thou Mony Jean-Marc Lavergne and Ya Sokhan of the Trial Chamber based on the appearance of bias since there is an apprehension of bias against the Accused.

⁴ Joint Response, para. 4.

⁵ Joint Response, para. 11.

6. Accordingly, the defence requests that Judges Nil Nonn, Sylvia Cartwright, Thou Mony Jean-Marc Lavergne and Ya Sokhan be replaced by reserve judges of the Trial Chamber or additional judges chosen by the Judicial Administration Committee from amongst the ECCC judges as prescribed by Rule 34(6) of the Internal Rules.

Party	Date	Name Lawyers	Place	Signature
Co-International Lawyer for Ieng Thirith	1 March 2011	Diana ELLIS, QC	Phnom Penh	 P.P