

KRT TRIAL MONITOR

Case002/02 ■ Special Report: Defense Teams' Boycott ■ 31 October 2014



Case of Nuon Chea and Khieu Samphan

Asian International Justice Initiative (AIJI), a project of East-West Center and the WSD Handa Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center)

To put it on record, wouldn't you agree that there are limits to the obedience of a lawyer when it comes to what his client asks him to do with the law?

- Judge Claudia Fenz, questioning Chief of DSS at 21 October 2014 Trial Management Meeting¹

I. OVERVIEW

As reported in the last edition of the KRT Trial Monitor, on the same day evidentiary hearings in Case 002/02 began, the Defense Teams for Nuon Chea and Khieu Samphan brought ECCC proceedings to a standstill by announcing their decision to boycott the trial. The Defense counsels for the co-Accused have remained adamant that they will not return to the courtroom until certain concerns are addressed and requests are satisfied. The team for Nuon Chea demands the judges of the Chamber voluntarily step down while a Special Bench empanelled by the Judicial Administration Committee considers pending motions for their disqualification from Case 002/02, and the team for Khieu Samphan asks that substantive proceedings in Case 002/02 resume only after the appellate filings in Case 002/01 conclude.² In the two weeks since the start of the boycott, both the Trial Chamber and the OCP have sought to compel the defense teams back to the courtroom in order to proceed. The Parties have turned to both international jurisprudence and domestic Cambodian procedural guidelines to justify their arguments regarding the legality of the boycott.

AIJI is publishing this special report on the boycott in order to provide more detailed discussion of the body of relevant international law and domestic legal codes the Parties to the proceedings have cited in regard to this matter. Section II of this report complements the KRT Trial Monitor's prior summary of the boycott announcement on 17-18 October 2014, with a summary of developments over the subsequent two weeks. This section provides procedural context to those developments with references to the ECCC Internal Rules, and it relates the conduct of Defense counsel to pertinent standards found in Cambodian laws and professional codes. Section II also analyzes cases from other international tribunals that have dealt with similar issues of defense representation, trial boycotts, and the disqualification of judges.

II. HEARINGS AND MOTIONS SINCE 18 OCTOBER 2014

This section details a series of recent trial management meetings, Party filings, and warnings from the Court related to the boycott issue. As detailed below, on 21 October, the Trial Chamber held a closed Trial Management Meeting, which Defense counsel for the Co-Accused did not attend. Subsequent to the meeting, the Court elected to publicly release video of a portion of the meeting, revealing that, among other things discussed, the two international judges had indicated interest in possibly hiring a second set of defense lawyers to replace the absent counsel. On 22 October, the OCP filed a request for the Chamber to assign *amici curiae* counsel to the co-Accused,³ and, on 24 October, the Trial Chamber officially warned the four defense counsels that continuing to boycott the proceedings would be considered misconduct.⁴ The Court delayed further evidentiary hearings for the week of 27 October and ordered the Defense teams to attend a newly scheduled Trial Management Meeting on 28 October.

A. Trial Management Meeting on 21 October 2014

On the day the Defense first revealed plans to boycott, the Trial Chamber announced that it would postpone evidentiary hearings for the week of 20 October and hold a Trial Management Meeting *in camera* on the 21st. Defense Teams did not attend the meeting, asserting in the local press that the meeting related to proceeding with Case 002/02, so their presence for the meeting would run contrary to their client instructions to boycott.⁵ Although the hearing was a closed session, held *in camera*, the ECCC elected to publicly release a 46-minute video clip from a portion of the hearing, in which Judges Claudia Fenz and Jean-Marc Lavergne questioned Court administrators. During the released segment, Judge Fenz questioned Mr. Knut Rosandhaug, Deputy Director of the Office of Administration and Coordinator for UNAKRT, about the Khieu Samphan team's request for additional resources. Mr. Rosandhaug clarified that the Defense Team had requested supplemental support in October 2014, for the first time in Case 002/02. Judge Lavergne questioned Mr. Isaac Endeley, Chief of the DSS, on the number of days that the international counsels for Khieu Samphan have spent in Cambodia and on DSS oversight of the lawyers' work. Mr. Endeley explained that he does not keep track of every day the counsels are present in Cambodia, but that they must regularly submit reports on their work in order to receive payment.

At one point during the hearing, Mr. Endeley commented that, "It is not my understanding that the lawyers willfully boycotted the proceedings; they were instructed by their client not to participate." Judge Fenz responded that, "These are the arguments of the Khieu Samphan team."⁶ She sought Mr. Endeley's opinion on the legality of the Defense Teams' actions, but he responded that he was not in a position to answer this legal question. Further questioning from the international judges revealed their interest in possibly hiring two sets of new defense lawyers to represent the Co-Accused in Case 002/02, while the current lawyers focus on the appellate filings in Case 002/01. In subsequent statements to the press, international Counsel for Khieu Samphan, Mr. Arthur Vercken, called the Chamber's actions during this segment of the meeting "ridiculous and very aggressive." He also took issue with the fact that only one portion of the day's proceedings was made public.⁷

B. OCP Files Request for Assignment of "*Amicus Curiae*" as Stand-by Defense Counsel

In response to the opening statements of Khieu Samphan and Nuon Chea and the subsequent boycott of the proceedings by their respective counsels, the Co-Prosecutors filed a motion with the court asking that the Trial Chamber assign *amici curiae* counsel to stand in during the absence of Defense Counsel, and allow the trial proceedings to move forward. The OCP acknowledged in its submission that *amici curiae* counsel would not "represent the Accused but [...] assist in the proper determination of the case," and would therefore constitute only an "interim measure" to allow trial to proceed without disruption.⁸ However, the OCP request for *amici curiae* counsel may be problematic if the boycott of Case 002/02 persists, as the lack of representative counsel beyond

such advisory assistance may affect the Accused's ability to put forward a defense. The OCP submission suggests that such an action would allow the trial to proceed while safeguarding fair trial rights, in accordance with established international procedural practice.⁹ In their submission, the Co-Prosecutors insist that a functioning criminal court requires that all counsels follow the instructions of the Trial Chamber rather than the opinions of the Co-Accused.

1. Internal Rules, Administrative Regulations, and Codes of Conduct

The OCP request refers to ECCC Internal Rule 22(4), which obligates lawyers "to promote justice and the fair and effective conduct of proceedings."¹⁰ The Prosecution submits that boycotting the proceedings, although at the instructions of a client, violates this rule. Of course, the Prosecution and Defense take differing view of what it means to "promote justice" in a circumstance such as this one, and what constitutes "fair" proceedings. In an effort to contextualize the Prosecution view of this Internal Rule, the OCP submission quotes various codes of conduct from different bar associations, including the Code of Conduct of the Bar Association of the Kingdom of Cambodia (BAKC), the *Code de déontologie des Avocats européens*(France) and the *Rules of Conduct of Advocates* (Netherlands).¹¹ Articles 37 and 39 of the Code of Professional Conduct of the BAKC, for example, provide that "the lawyer shall abide by the procedural provisions and regulations of the court," and that "a lawyer shall not hinder any judicial procedure by negligence or unreasonable cause which may jeopardize interests of justice." However, Article 38 of the same code also requires that lawyers "demand and endeavor to assure the existence of fair trial, respect for laws, and due process."¹²

To further bolster their argument that the Counsel for the Accused were bound to appear in Court, despite the wishes of the Accused to boycott, the OCP submission cites Article 7.1 of the DSS Administrative Regulations, which subjects the Defense Co-Lawyers to "any order of the ECCC" and requires they "conduct the case to finality." However, it must be noted, that these regulations, like the Internal Rules, place a number of competing obligations on Counsel, which sometimes stand in conflict with one another. In this case, Article 9.2 of the DSS also obliges Defense Counsel to, "exercise all care to ensure that no conflict of interest arises. They shall put the client's interests before their own or those of any other person, organization, or state."¹³

2. Relevant International Jurisprudence

The OCP submission also cites multiple international criminal cases where other Tribunals decided to assign standby counsel in order to protect fair trial rights while ensuring expeditious completion of the trial.¹⁴ Specifically, the OCP motion cites ICTR case, *Prosecutor v. Jean-Bosco Barayagwiza*.¹⁵ In the *Barayagwiza* case, the Accused had refused to appear in Court and instructed his defense counsels "not to represent him in the courtroom."¹⁶ In response to the counsels' request to withdraw from the case, the Chamber noted that counsel at the ICTR is assigned, not appointed, implying that a counsel "represents the interest of the Tribunal to ensure that the Accused receives a fair trial."¹⁷ Therefore, the ICTR concluded that Defense Counsel were under no obligation to follow an Accused's instructions and their withdrawal was not warranted.¹⁸ In its request for the assignment of counsel to act as *amici curiae*, the OCP highlighted that the option to impose standby counsels was explored in *Barayagwiza*. In a concurring and separate opinion in the decision, ICTR Judge Osaka de Zoysa Gunawardana suggested the solution of the appointment of standby counsels to ensure, in the interest of justice, that the Accused who does not wish to attend his trial retains representation.¹⁹ The OCP request applies *Barayagwiza* to the current situation of Case 002/02, and argues that the "solution-oriented approach" of Judge Gunawardana would be an appropriate response.²⁰

The OCP motion further raised analogies to the issue of self-representation challenges other Tribunals have faced, and argued that the Trial Chamber is "empowered to seek guidance in the consistent body of international jurisprudence concerned with remedying obstructions, disruptions and delays occasioned by self-representation of the accused."²¹ The Prosecution pointed to

international jurisprudence suggesting that an Accused's right to self-representation is not absolute, and that counsel may be imposed in the interests of justice. The OCP submission specifically references, *Prosecutor v. Norman*, from the Special Court for Sierra Leone (SCSL), which International Co-Prosecutor Nicholas Koumjian had previously discussed during the 17 October 2014 hearing on opening statements.²² In the *Norman* case, the Accused sought to represent himself, invoking his right to self-representation under the statute of the SCSL. The Trial Chamber found that the right to self-representation is "qualified," and that the Accused's right to self-representation "could only be exercised with the assistance of counsel to be assigned to the trial."²³ The SCSL Trial Chamber reasoned its decision based on a number of contextual factors: the trial's complexity as a joint trial involving grave offences and many witnesses; national and international public interest in the expeditious completion of the trial; and, the potential for further disruption to the Court's timetable.

The OCP request also refers to two ICTY Judgments: *Prosecutor v. Vojislav Seselj*²⁴ and *Prosecutor v. Slobodan Milosevic*.²⁵ In *Seselj*, the ICTY decided to appoint standby counsel, as it found that the Accused acted in an obstructionist fashion after having declared his intention to "use the Tribunal as a vehicle for the furtherance of his political beliefs and aspirations."²⁶ In *Milosevic*, however, the Prosecution's request for the imposition of standby counsel was denied, after having argued that self-representation was taking a toll on the Accused's health. Although the ICTY Trial Chamber acknowledged that there might be circumstances where it would be in the interest of justice to appoint counsel, the balance favored the Accused's right to self-representation.²⁷

The OCP has argued that the principles of self-representation established in other cases are instructive to how the ECCC ought to rule in the present boycott situation in Case 002/02. The OCP submission asserts that the right of the Accused to instruct counsel and manage their own defense must be qualified in the "interests of justice and a fair and expeditious trial."²⁸ The OCP asserts that the trial may proceed, even in the absence of the Co-Accused, on the basis of the ICTR's *Barayagwiza* decision.²⁹

Defense Counsel for both Accused steadfastly maintain that their principal obligation, under professional ethical codes, is to take instruction from their client. As Kong Sam Onn explained when the Defense walked out of proceedings on 17 October 2014, "We had to follow our client's instructions, based on the applicable laws as well as the code of ethics for lawyers. As a lawyer, we cannot refuse in whole any requests by our client unless we have to leave our client or to resign from a position."³⁰ He repeated this claim at the 18 October press conference held by the Defense, specifically citing the Cambodian Constitution and the Law on the BAKC.³¹ Article 38 of the Constitution of the Kingdom of Cambodia protects an individual's "right to his/her own defense through the judicial system."³² Article 58 of the Law on the Bar states, in unofficial translation, "Lawyers shall determine by their own conscience and with the consent of the client what issues to raise in order to defend the interests of the client."³³

C. Trial Chamber Issues Official Warning of Misconduct to Defense Counsels

On 24 October 2014, the Trial Chamber issued an official warning for misconduct to the Co-Lawyers for both Nuon Chea and Khieu Samphan. The warning acknowledges Nuon Chea's reference to Article 559 of the 2007 Cambodian Code of Criminal Procedure as part of his demand that the judges cease participation in Case 002/02 until a decision is reached on their disqualification.³⁴ Although the Chamber agrees with the Nuon Chea team's general interpretation of Article 559, the Trial Chamber reiterated that the proceedings are in fact regulated by ECCC Internal Rule 34(5), which provides that judges "may continue to participate in proceedings" while a decision on a disqualification application is pending.³⁵ The Court concluded that the Internal Rules take precedence over other codes of conduct at the ECCC.³⁶ Relying, in part, on international precedent from other Tribunals facing similar scenarios,³⁷ the Chamber concluded that there was no legal requirement to stop proceedings when an Accused wished to boycott the trial. The Chamber specifically raised two cases, *Prosecutor v. Galic*³⁸ and *Prosecutor v. Seromba*,³⁹ where

the issue of suspension of trial pending a motion for disqualification of judge(s) was considered. In *Galić*, the ICTY Appeals Chamber stated that the “decision to suspend a trial while a disqualification motion is pending is a discretionary decision.”⁴⁰ Furthermore, the Appeals Chamber commented that a sufficient safeguard to the Accused’s rights is ensured through his ability to petition for the reconsideration of a Trial Chamber’s refusal to suspend proceedings. In the *Seromba* case, the Accused had filed a motion for disqualification of all three judges of the Trial Chamber. When it was denied, he filed an appeal of the decision and argued for a suspension of proceedings while the motion for disqualification was pending. The Appeals Chamber held that *Seromba*’s appeal was inadmissible under the Rules of Procedure and Evidence, and, therefore, the Trial Chamber acted “well within its discretion in refusing to suspend the proceedings.”⁴¹ The ICTR Appeals Chamber reiterated the *Galić* Judgment and added that a reversal of such a decision by the Trial Chamber would occur “only upon a showing of abuse of discretion resulting in prejudice.”⁴²

The ECCC further noted that the absence of Khieu Samphan’s Defense Team from the 21 October 2014 Trial Management Meeting was detrimental to the Court’s ability to resolve the boycott question, because it had rendered the Chamber unable to form a complete view of the issue of insufficient resources, which that team raised as part of its justification for the boycott. Because the Trial Chamber did not find any legal basis for requiring the ECCC to stop proceedings in Case 002/02, it officially defined the Defense boycott as misconduct and issued a formal warning, pursuant to Internal Rule 38(1).⁴³ The warning orders both Defense Teams immediately cease boycotting.

D. Trial Management Meeting on 28 October 2014

The Trial Chamber scheduled a second closed Trial Management Meeting to discuss resource issues raised by the Khieu Samphan Defense Team, as well as the OCP request for the assignment of *amici curiae*. In its official warning to the defense teams, the Chamber expressly ordered Defense to appear at the 28 October meeting.⁴⁴ Both Defense Teams, as well as one of the Accused, Khieu Samphan, did attend this meeting. The ECCC Public Affairs Section made three hours of video from the meeting public and published it on the Court’s website.⁴⁵

During the meeting, Judge Jean-Marc Lavergne asked Khieu Samphan and his counsels if their request for an increased budget indicated that they were willing to work on the 002/01 appeal and the 002/02 trial simultaneously, given adequate financial resources. International Defense Co-Lawyer Anta Guissé answered that the budget request and the boycott were separate issues. Ms. Guissé argued that the “crux of the matter” regarding the boycott is about Khieu Samphan’s ability to concentrate on only one case at a time, and about the defense lawyers’ own code of ethics. Ms. Guissé confirmed that her team could be prepared to resume proceedings in Case 002/02 in January 2015, after the 29 December 2014 appellate filing deadline in Case 002/01 had passed. That filing deadline has not yet been confirmed by the Supreme Court Chamber, but it is a likely outcome of a one-month extension from the current deadline for late November 2014.

In the second session of the meeting, the Chamber invited the Parties to make oral submissions in relation to the OCP request to assign *amici curiae* counsel. International Co-Prosecutor Nicholas Koumjian asserted, “The Defense has simply decided that they disagree with rulings of the Court, and that they will not obey, according to their clients’ informed instructions, the orders of the Court.”⁴⁶ Mr. Koumjian suggested that *amici curiae* would not replace the counsel already representing the Accused, but would ensure that a party representing the interests of the Defense was present in court even as Counsel for the Accused boycotted proceedings. International Co-Lawyer for the Civil Parties Marie Guiraud expressed support for the OCP submission, arguing that the assignment of *amici curiae* counsel would ensure respect for the rights of victims to a fair and efficient trial.

Representatives of the Defense strenuously objected to the Prosecution motion. National Lawyer for Khieu Samphan, Kong Sam Onn argued that Article 13 of the Agreement between the UN and the RGC guarantees the right of the Accused to engage a counsel of his or her choice, not be assigned *amicus curiae* counsel.⁴⁷ There is further support for this guarantee in Article 35 new of the ECCC Law, which specifically delineates an Accused's "minimum guarantees...to have adequate time and facilities for the preparation of their defence...and to defend themselves in person or with the assistance of counsel of their own choosing."⁴⁸ Articles 300 and 301 of the Cambodian Code of Criminal Procedure reiterate this right of an Accused to be assisted by a lawyer of his/her own choosing, in accordance with the Law of the BAKC.⁴⁹ Ms. Anta Guissé cited an international code of professional ethics, which calls for lawyers to always seek to protect human rights and "defend the interests of their clients fairly."⁵⁰ Although her actions contravened the desires of the other Parties and of the Trial Chamber, she argued that she remained ethically bound as a lawyer to follow the instructions of her client. Speaking on his own behalf, Mr. Khieu Samphan also addressed the Court directly, characterizing the OCP submission as an attempt to dismiss his chosen counsels and provide him with *amici curiae* that cannot understand his case as extensively as his current team.

International Lawyer for Nuon Chea, Victor Koppe, questioned why this hearing on the substance of *amici curiae* counsels' assignment was taking place during a closed trial management meeting rather than during a public hearing. When Judge Claudia Fenz responded to Mr. Koppe's concerns by stating the Court would publish video of the hearing, the International Lawyer opined that this was the wrong way to hold a public hearing on a "fundamental" issue. Nonetheless, the Chamber decided to proceed with the meeting without recessing. Mr. Koppe informed the Court that Nuon Chea had written a letter to the Chief of DSS, stating that he would categorically refuse to cooperate with any *amici curiae* counsel appointed by the Court. Mr. Koppe called the OCP's attempt to assign *amici curiae* "opportunistic," and pointed out that there is "no such thing" as *amici curiae* in civil law systems or in Cambodian domestic law.

DSS Chief Isaac Endeley was also present during the Trial Management Meeting. He emphasized the need for the Chamber to respect the Co-Accused's right to choose their own counsel, and underlined the DSS' support for the positions of the two Defense Teams. Mr. Koumjian rose for the OCP, and sought to restate his points and rebut the Defense's positions, but the President announced that the technical unit was running out of video recording space, and the video concluded. At this time, the Court has not published any further video from the remainder of the meeting.

Unless specified otherwise,

- the documents cited in this report pertain to *The Case of Nuon Chea and Khieu Samphan* before the ECCC;
- the quotes are based on the personal notes of the trial monitors during the proceedings;

Glossary of Terms

Case 001	<i>The Case of Kaing Guek Eav alias “Duch”</i> (Case No.001/18-07-2007-ECCC)
Case 002	<i>The Case of Nuon Chea, Ieng Sary, Ieng Thirith and Khieu Samphan</i> (Case No.002/19-09-2007-ECCC)
CPC	Code of Criminal Procedure of the Kingdom of Cambodia (2007)
CPK	Communist Party of Kampuchea
CPLCL	Civil Party Lead Co-Lawyer
DK	Democratic Kampuchea
DSS	Defense Support Section
ECCC	Extraordinary Chambers in the Courts of Cambodia (also referred to as the Khmer Rouge Tribunal, or “KRT”)
ECCC Law	Law on the Establishment of the ECCC, as amended (2004)
ERN	Evidence Reference Number (the page number of each piece of documentary evidence in the Case File)
FUNK	National United Front of Kampuchea
GRUNK	Royal Government of National Union of Kampuchea
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IR	Internal Rules of the ECCC Rev.8 (2011)
KR	Khmer Rouge
OCIJ	Office of the Co-Investigating Judges
OCP	Office of the Co-Prosecutors of the ECCC
RAK	Revolutionary Army of Kampuchea
UNAKRT	United Nations Assistance to the Khmer Rouge Trials
VSS	Victims Support Section
WESU	Witness and Expert Support Unit

*This report was authored by Thilo Gottschalk, Daniel Mattes, Lina Tay, Stephanie Teh, and Penelope Van Tuyl as part of AIJI's KRT Trial Monitoring and Community Outreach Program. AIJI is a collaborative project between the East-West Center, in Honolulu, and the WSD Handa Center for Human Rights and International Justice at Stanford University (previously known as the UC Berkeley War Crimes Studies Center). Since 2003, the two Centers have been collaborating on projects relating to the establishment of justice initiatives and capacity-building programs in the human rights sector in South-East Asia.

¹ Public Affairs Section. "Video from Case 002/02 Trial Management Meeting 21 October 2014" (21 October 2014). ECCC. Available at: <<http://www.eccc.gov.kh/en/tmm-21October>>. From 28:00.

² See CASE 002/02 KRT TRIAL MONITOR. Issue 2, Opening Statements, (17 October 2014).

³ Office of the Co-Prosecutors. "Co-Prosecutors' Request to Assign *Amici Curiae* Counsel and Advance the Trial Proceedings" (22 October 2014). E321. [hereinafter, **OCP REQUEST**].

⁴ Trial Chamber. "Warning to counsel for NUON Chea and KHIEU Samphan" (24 October 2014). E320. [hereinafter, **TRIAL CHAMBER WARNING**].

⁵ Peter Zsombor. "Khmer Rouge Defense Teams a No Show at Meeting to End Boycott" (22 October 2014). *Cambodia Daily*. Available at: <<http://www.cambodiadaily.com/news/khmer-rouge-defense-teams-a-no-show-at-meeting-to-end-boycott-70530>>. The article states: "Kong Sam Onn, a lawyer for Khieu Samphan, said his team did not attend Tuesday's meeting 'because there was nothing new to the management hearing...so we decided to not waste our time with that.'"

⁶ Public Affairs Section. "Video from Case 002/02 Trial Management Meeting 21 October 2014" (21 October 2014). ECCC. Available at: <<http://www.eccc.gov.kh/en/tmm-21October>>. From 27:14.

⁷ Stuart White. "Work Ethic Focus of KRT Hearing" (22 October 2014). *Phnom Penh Post*. Available at: <<http://www.phnompenhpost.com/national/work-ethic-focus-krt-hearing>>.

⁸ OCP REQUEST, para 20.

⁹ OCP REQUEST, para. 13.

¹⁰ OCP REQUEST, paras. 8-9. This wording appears in the ECCC Internal Rules, Revision 8 (3 August 2011).

¹¹ OCP REQUEST, paras. 10-12.

¹² Bar Association of the Kingdom of Cambodia. "Code of Professional Conduct of the Bar Association of the Kingdom of Cambodia" (Revised, 2013).

¹³ Defense Support Section. "DSS Administrative Regulations."

¹⁴ OCP REQUEST, paras. 16, 18. The referenced cases include *Prosecutor v. Slobodan Milošević* (IT-02-54-T, ICTY); *Prosecutor v. Radovan Karadžić* (IT-95-5/18-AR73.6, ICTY); *Prosecutor v. Vojislav Šešelj* (IT-03-67-PT, ICTY); *Prosecutor v. Goran Janković and Radovan Stanković* (IT-96-23/2-PT, ICTY); and, *Prosecutor v. Samuel Hinga Norman* (SCSL-2004-14-T, SCSL).

¹⁵ *Prosecutor v. Jean-Bosco Barayagwiza*. ICTR-97-19-T. ICTR Trial Chamber I. "Decision on Defense Counsel Motion to Withdraw" (2 November 2000). [Hereinafter, **BARAYAGWIZA**].

¹⁶ BARAYAGWIZA, para. 17, as referenced in the OCP REQUEST, para. 13.

¹⁷ BARAYAGWIZA, para. 21, as referenced in the OCP REQUEST, para. 13.

¹⁸ BARAYAGWIZA, para. 24.

¹⁹ BARAYAGWIZA, concurring and separate opinion of Judge Gunawardana.

²⁰ OCP REQUEST, para. 15.

²¹ OCP REQUEST, para. 16.

²² *Prosecutor v. Sam Hinga Norman et al.* SCSL-2004-14-T. SCSL Trial Chamber. "Decision on the Application of Samuel Hinga Norman for Self-Representation under Article 17(4)(d) of the Statute of the Special Court" (4 June 2004). [Hereinafter, **NORMAN**]. For more on the case, see U.C. Berkeley War Crimes Studies Center, Sierra Leone Trial Monitoring Project, "Weekly Update Number 1" (23 June 2004), p.1. For summary of Mr. Koumjian's statements on 17 October 2014, see CASE 002/02 KRT TRIAL MONITOR. Issue 2, Opening Statements, (17 October 2014), III.C.

²³ NORMAN, para. 32, as referenced referred in the OCP REQUEST, para 17.

²⁴ *Prosecutor v. Vojislav Seselj*, IT-03-67-PT. ICTY Trial Chamber II. "Decision on Prosecution's Motion for Order Appointing Counsel to Assist Vojislav Seselj with his Defense" (9 May 2003). [Hereinafter, **SESELJ**].

²⁵ *Prosecutor v. Slobodan Milosevic*, IT-02-54. ICTY Trial Chamber. "Reasons for Decision on the Prosecution Motion Concerning Assignment of Counsel" (4 April 2003). [Hereinafter, **MILOSEVIC**].

²⁷ MILOSEVIC, paras. 9, 11, 17, 31, 35, 40.

²⁸ OCP REQUEST, para. 18.

²⁹ BARAYAGWIZA, para. 6.

³⁰ Trial Chamber. Transcript of Opening Statements. (17 October 2014) E1/242.1. Lines 9-13. p.85.

³¹ See CASE 002/02 KRT TRIAL MONITOR. Issue 2, Opening Statements, (17 October 2014), III.D.

³² Constitutional Council of Cambodia. "The Constitution of the Kingdom of Cambodia" (March 2010). Available at: <<http://www.ccc.gov.kh/english/CONSTITUTIONEng.pdf>>.

³³ Bar Association of the Kingdom of Cambodia. "Law on the Bar" (23 June 1995).

³⁴ TRIAL CHAMBER WARNING, para. 2.

³⁵ Internal Rule 34(5) states, "An application for disqualification of a Co-Investigating judge shall be submitted to the Pre-Trial Chamber. In any other case it shall be submitted to the Chamber in which the judge in question is sitting. The Judge in question may continue to participate in the judicial proceedings pending a decision. However, he or she may decide to step down voluntarily at any point in the following proceedings."

³⁶ TRIAL CHAMBER WARNING, para. 2.

³⁷ The referenced cases in footnote 1 of the warning include *Prosecutor v. Seromba*, ICTR, Appeal Judgment, para. 21; and, *Prosecutor v. Galic*, ICTY, Appeal Judgment, para. 33.

³⁸ *Prosecutor v. Stanislav Galić*. IT-98-29-A. ICTY Appeals Chamber. "Judgment" (30 November 2006). [Hereinafter, **GALIĆ**].

³⁹ *Prosecutor v. Athanase Seromba*. ICTR-2001-66-A. ICTR Appeals Chamber. "Judgment" (12 March 2008). [Hereinafter, **SEROMBA**].

⁴⁰ **GALIĆ**, para. 33.

⁴¹ **SEROMBA**, para. 22.

⁴² **SEROMBA**, para. 21.

⁴³ Internal Rule 38(1) states, "The Co-Investigating Judges or the Chambers may, after a warning, impose sanctions against or refuse audience to a lawyer if, in their opinion, his or her conduct is considered offensive or abusive, obstructs the proceedings, amounts to abuse of process, or is otherwise contrary to Article 21(3) of the Agreement."

⁴⁴ TRIAL CHAMBER WARNING, para. 4.

⁴⁵ Public Affairs Section. "Video from Case 002/02 Trial Management Meeting 28 October 2014" (30 October 2014). ECCC. Available at: <<http://www.eccc.gov.kh/en/tmm-28October>>.

⁴⁶ Public Affairs Section. "Video from Case 002/02 Trial Management Meeting 28 October 2014" (30 October 2014). ECCC. Available at: <<http://www.eccc.gov.kh/en/tmm-28October>>. From 2:30.

⁴⁷ "Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea" (6 June 2003).

⁴⁸ Royal Government of Cambodia. "Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea" (27 October 2004).

⁴⁹ Office of the High Commissioner for Human Rights. "Code of Criminal Procedure of the Kingdom of Cambodia" (First translation to English, September 2008). Pp.132-133. Available at: <http://cambodia.ohchr.org/klc_pages/KLC_files/section_011/S11_CriminalProcedureCode2007E.pdf>.

⁵⁰ Ms. Anta Guissé specifically quoted principles adopted by the 8th Conference of the United Nations (28 August 1988), paras. 14-15.