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To:  
 - Mr. Isaac Endeley, Head of the Defense Support Section  
 - Ms. Claudia Fenz, Judge of the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia  
 - Mr. Neth Pheaktra, spokesperson for the Extraordinary Chambers in the Courts of Cambodia

via e-mail

**Subject:** Mr. Victor Lodewijk Koppe v. ECCC

Dear madam,  
 dear sirs,

Mr. Koppe has asked me to advise and represent him in the above-mentioned matter.

The unlawful actions of the Extraordinary Chambers in the Courts of Cambodia (hereinafter: the ECCC) - including but not limited to the actions of the Head of the Defense Support Section (hereinafter: the DSS), Ms. Claudia Fenz (Judge of the Trial Chamber) and Mr. Neth Pheaktra (spokesman for the ECCC) – caused serious harm to the defense of Mr. Koppe's client, Mr. Nuon Chea, as well as to Mr. Koppe himself.

**Relevant facts:**

(1) On 23 October 2007 Mr. Nuon Chea requested Mr. Koppe and his colleague Mr. Michiel Pestman to represent him as Foreign Co-Lawyers before the ECCC. Mr. Pestman was to act as 'primary' Foreign Co-Lawyer and Mr. Koppe as 'secondary' Foreign Co-Lawyer.

As you are aware, under Internal Rule 4 c) i) and Regulation 2.2 i. of the DSS Administrative Regulations in order for a foreign lawyer to be included in the UNAKRT list of lawyers eligible to represent indigent defendants before the ECCC he or she must "be a current member in good standing of a recognized association of lawyers in a United Nations Member State" other than Cambodia. In other words, one of the requirements to be included on the list of Foreign Co-Lawyer is the admission to a national bar, in Mr. Koppe's case, the Dutch Bar in Amsterdam. At this point, Mr. Koppe had been admitted to the Dutch Bar in Amsterdam since 27 September 1989.

Neither the Legal Services Contract nor the Internal Rules of the ECCC stipulate that a Foreign Co-Lawyer has to maintain his/her membership of a national bar after the initial admission to the UNAKRT-list of Foreign Co-Lawyers and his/her admission to the Cambodian Bar.

(2) On 30 January 2008 Mr. Koppe entered into a Legal Services Contract with the United Nations, at the time formally represented by Ms. Jenny Redl, Chief of Personnel at UNAKRT.

(3) On 6 February 2008, Mr. Koppe was admitted to the Bar of the Kingdom of Cambodia (hereinafter: the BAKC). As with all Foreign Co-Lawyers, the admission to practice in Cambodia is limited to the representation of clients before the ECCC.

(4) In December 2012 Mr. Pestman terminated his work as primary Foreign Co-Lawyer due to the continuous political interference in the proceedings in case 002/001. Subsequently, Mr. Koppe took over as primary (and only) Foreign Co-Lawyer in January 2013.

(5) Mr. Koppe initially maintained his law practice in Amsterdam, but it became increasingly clear that the preparations for the trial in Case 002/02 and the upcoming appeal in case 002/01 were simply too time consuming. In order to effectively represent Mr. Nuon Chea, Mr. Koppe gave up his Dutch law practice and worked in Phnom Penh full-time.

(6) Subsequent to his decision to exclusively work in Cambodia, Mr. Koppe's admission to the Dutch Bar was terminated per 1 January 2016. Of course, Mr. Koppe maintained his admission to the BAKC.

(7) On 14 March 2018 the Trial Chamber of the ECCC directed the DSS "to seek clarification from Mr. Koppe regarding his status", i.e. his status with the regard to the Dutch Bar (E 378/8).

(8) On 21 March 2018 the Head of the DSS informed the Trial Chamber (E378/8/1) that Mr. Koppe's admission to the Dutch Bar was indeed terminated per 1 January 2016. The DSS further stated:

"3. The general practice at DSS over the years has been to verify a foreign applicant's membership of a domestic bar association outside of Cambodia before admitting him or her to the list of lawyers. The proof of membership is then forwarded to the BAKC prior to the applicant's admission to the Cambodian Bar. *In other words, proof of foreign bar membership is only required at the time of application for admission to the DSS list and to the BAKC but not thereafter* (emphasis added). None of the foreign lawyers practicing before the ECCC has ever been required to provide proof of membership in a domestic bar association outside of Cambodia after admission to the DSS list or to the BAKC.

4. Mr. Koppe has indicated that if the Trial Chamber determines that he needs to maintain a foreign bar membership as well as his BAKC membership in order to continue practicing before the ECCC then he is willing to renew his Dutch Bar membership quickly. However, it would be best if such a requirement were made applicable not only to Mr. Koppe but to all the foreign lawyers admitted to practice before the ECCC. *It may also be necessary to amend the relevant provisions of the Internal Rules the DSS Administrative Regulations and the Legal Services Contract signed by the defense lawyers (...).*" (emphasis added)

(9) On 2 May 2018 the Trial Chamber invited Mr. Koppe to file submissions on his status. In light of the necessary change of the Legal Services Contract and the Internal Rules of the ECCC, Mr. Koppe argued:

"As far as I can see nothing to this effect has been initiated in respect of the abovementioned rules and regulations nor have I been in receipt of a draft amended Legal Services Contract now requiring periodic proof of a domestic bar association outside of Cambodia. (...)

It might very well be that in a Plenary Session the Supreme Court Chamber judges and or other ECCC judges agree with Mr. Endeley and me. The position of the SCC judges in a Plenary Session in this matter is of course specifically relevant since they will start adjudicating Mr. Nuon Chea's inevitable appeal in Case 002/02 hopefully sometime this year."

(10) The Trial Chamber subsequently referred the matter to the BAKC for further consideration and on 16 August 2018 the BAKC informed the Trial Chamber of its decision to

"exclude International Co-Lawyer, Mr. Victor Koppe, from the list of lawyers of the Bar Association of the Kingdom of Cambodia effective from 9 August 2018 onward."

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- The BAKC is not an independent organization. I refer you for instance to the assessment by the Dutch organization Lawyers for Lawyers and their country report for Cambodia:

"Any lawyer who directly or indirectly (through the defence of particular clients) takes a critical position towards the establishment (i.e. Cambodian People's Party (CPP) and its widespread – military – support) runs the risk of suppression. It is dangerous to take a critical position openly. Under these circumstances, many lawyers opt to acquiesce. That is the safest option and is the only way as a lawyer to earn a living. Lawyers are united in the Cambodian Bar Association Kingdom of Cambodia ('BAKC'). The BAKC is closely affiliated to the CPP and is run by members of the CPP."

- Mr. Koppe not only represents a client in a highly political case but regularly took a very critical position regarding political interference in the proceedings by the current Cambodian government.

(12) The letter of the BAKC of 16 August 2018 was sent to the DSS. The Head of the DSS then e-mailed it to Mr. Koppe. However, Mr. Koppe was never notified of the decision as stipulated in Article 22 of the Law of the Bar of the Kingdom of Cambodia:

"Every decision of the Bar Council affecting any lawyer shall be communicated to such concerned lawyer by registered mail or hand delivery with acknowledgment of receipt."

Due to the lack of proper notification, the BAKC decision never came into effect.

(13) In order to prevent a possible loss of legal remedies - if the proper notification was considered unnecessary - and after consultation with the DSS, Mr. Koppe filed an appeal with the Court of Appeal in Phnom Penh.

In his Appeal Brief Mr. Koppe repeated the earlier arguments made by himself and the DSS that admission to the Dutch Bar is solely a requirement for the initial admission to the BAKC but that there is no requirement to maintain the national bar-admission afterwards. As of today (16 December 2018), the appeal against the decision of the BAKC is still pending.

The appeal has suspensive effect. The suspensive effect of a legal remedy such as an appeal is a fundamental rule of law, especially in punitive matters. If - by exception - the suspensive effect is to be excluded for certain proceedings, the relevant laws have to stipulate the exclusion explicitly. In addition, Rule 38 of the Internal Rules of the ECCC also stipulates that an appeal against a disciplinary measure of the BAKC has suspensive effect.

(14) The suspensive effect was confirmed by the Head of the DSS in an e-mail to Matteo Crippa dated 16 October 2018:

"Dear Matteo:

Yes, it is my understanding that the filing of Mr. Koppe's appeal has a suspensive effect on the BAKC decision to exclude him from its rolls. Further, as previously

stated, I intend to maintain Mr. Koppe as the Co-Lawyer for Mr. NUON Chea until and unless the BAKC decision is upheld by the Cambodian Court of Appeal.

Moreover, Mr. Koppe has informed me that he has also been undertaking all the steps necessary for his readmission to the Amsterdam Bar. He stated that he would have been sworn-in at the monthly ceremony in Amsterdam on 14 November but since he will be in Phnom Penh for the Case 002/02 judgement delivery, he has requested that the ceremony be conducted at the next opportunity, which will be on 12 December. I believe he has included this explanation in his filing before the Cambodia Court of Appeal.

Best regards,  
Isaac."

(15) On 16 November 2018 the judgement in Case 002/02 was pronounced. Mr. Koppe was present in the court room as Mr. Nuon Chea's Foreign Co-Lawyer. As stated above, the Trial Chamber was fully aware of the matter of Mr. Koppe's resignation from the Dutch Bar (since March 2018), of the decision of the BAKC of 16 August 2018, Mr. Koppe's appeal against the decision and the suspensive effect of the appeal.

(16) The Head of the DSS also continued to approve Mr. Koppe's monthly reimbursement, i.e. the payment of fees relating to his work as Foreign Co-Lawyer. The last instruction for payment by the DSS was received on 12 December 2018 for the hours spent on the case during the month of November.

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(25) On or around 14 December 2018 the BAKC-letter of 11 December 2018 and the information of the termination of Mr. Koppe's Legal Services Contract were leaked to the South China Morning Post. In an article published on 14 December 2018 it was stated that Mr. Koppe "was practicing illegally" and that he consequently had been "dismissed" by the ECCC. Multiple news outlets worldwide took over the very damaging news-report of the South China Morning Post.

(26) In the aforementioned article, Mr. Neth Pheaktra, as spokesperson for the ECCC, is cited as follows:

"As foreign lawyers in Cambodia have to be registered in their home country and the BAKC, Mr. Koppe cannot continue to practice in Cambodia. Mr. Nuon Chea has been informed of the situation and is currently considering his options, including selecting a possible replacement for Mr. Koppe."

This statement is not only incorrect because it does not, for example, reflect the pending appeal regarding the BAKC's decision of 9 August 2018, it is also a direct contradiction of the earlier statements and assurances by the DSS and the ECCC.

Mr. Pheaktra also made a statement to the New York Times, published on 16 December 2018: "Neth Pheaktra, a spokesman for the tribunal said that neither the tribunal nor the Cambodian bar association had known of Koppe's status until this month."

This statement is evidently untrue. As shown above the Trial Chamber was aware of Mr. Koppe's status as early as March 2018.



(27) In the aforementioned article of the South China Morning Post it was also stated:

"Other court sections of the tribunal also declined to comment. They included DSS chief Isaac Endeley, trial chamber judge Claudia Fenz, and lead co-prosecutor Nicholas Koumjian."

**In light of the above:**

(I) I conclude that there were no legitimate grounds to terminate the Legal Services Contract with Mr. Koppe and therefore, the termination is wrongful.

I request that the termination is revoked immediately, and that Mr. Koppe is re-instated as Foreign Co-Lawyer of Mr. Nuon Chea. Any delay will cause irreparable harm to the defence of Mr. Nuon Chea and will prevent Mr. Nuon Chea to be represented by the lawyer of his choice. Article 33 (new) of the ECCC Law requires that trials before the ECCC be "fair" and "conducted [...] with full respect for the rights of the accused" and "in accordance with international standards of justice, fairness and due process of law as set out in Articles 14 and 15 of the International Covenant on Civil and Political Rights", the ICCPR. Article 14 of the ICCPR and Article 35 (new) of the ECCC Law guarantee an accused's right to legal counsel of their own choosing.

[REDACTED]

[REDACTED]

(III) I conclude that the communication with the media by the ECCC was unethical and negligent and in violation of the Rules applicable to all UN-personnel. The Code of Conduct for UN employees in Cambodia stipulates:

"As an employee of the UN I will

1. Treat all persons equally, fairly, and with respect and dignity by

\* (...)

\* avoiding spreading misinformation about people

\* (...)"

As shown above, Mr. Pheaktra's comments to the press were untrue. In addition, none of the people approached by the journalist for comments, in particular Judge Fenz and the Head of the DSS, spoke to the press to rectify the wrong and harmful image of Mr. Koppe's conduct that arose from the publication of the biased BAKC-letter of 11 December 2018.

I request that the ECCC takes all necessary measures to restore Mr. Koppe's reputation. I also request a letter of rectification signed by the Head of the DSS, Judge Fenz and Mr. Neth Pheaktra in which the background of the case is explained, and which will be made public no later than Monday 17 December 2018, 12.00.

[REDACTED]

[REDACTED]

(V) Mr. Koppe reserves the right to seek monetary compensation for all damages incurred or to incur in the future (e.g. loss of income), including punitive damages (serious damage to Mr. Koppe's good name and reputation). Presently, I estimate the compensatory damages to amount to US \$ 1 (one) million.

I am looking forward to hearing from you at your earliest convenience.

Yours sincerely,  
Dr. Britta Böhler