NUON CHEA DEFENCE TEAM

Phnom Penh, 21 April 2016

To the Dean of the

Amsterdam Bar Association

Dear Colleague,

In response to your letter of this past 15 March in which you ask me to respond to a complaint filed by the Extraordinary Chambers in the Courts of Cambodia against me due to improper behaviour, I would like to inform you as follows.

1. On 6 June 2003, an agreement was concluded between the United Nations and the Royal Government of Cambodia for the purpose of prosecuting persons who are responsible for crimes committed during the regime of Democratic Kampuchea (DK) between 17 April 1975 and 7 January 1979.
2. In 2004, to implement the agreement in Cambodia, a law was adopted that provided for establishing the so-called Extraordinary Chambers in the Courts of Cambodia (hereafter referred to as the "ECCC"). Under the agreement and the law, the ECCC (informally also referred to as the Khmer Rouge Tribunal) has jurisdiction over "senior leaders" of the DK regime and those that are most responsible for the crimes against humanity, genocide, war crimes and violations of international humanitarian law committed during the DK regime.
3. The ECCC has a so-called "hybrid" structure. Thus, for example, the Trial Chamber is composed of three Cambodian judges and two international judges. The prosecutors and the lawyers for the accused include Cambodian and international lawyers. An accused can only be found guilty by a super-majority; at least one international judge must vote together with a Cambodian majority. By contrast, the three national judges can dismiss requests (e.g. to hear certain witnesses) by a simple majority. Cambodian criminal procedure law – which has many similarities with French criminal procedure law, and thus also Dutch law – applies. In principle, international criminal law is supplementary, but in practice it has appeared to be decisive in answering many (legal) questions.
4. On 18 July 2007, the prosecutors commenced proceedings against five persons and requested the opening of a preliminary judicial investigation (PJI). Two months after the request was approved, the Investigating Judges split the case against these five persons into two different PJI's. The first PJI (case 01) was directed against Kaing Guek Eav, alias Duch, head of the S21 prison in Phnom Penh. The second PJI (Case 002) was directed against Nuon Chea, the former Deputy Secretary of the Communist Party of Kampuchea (CPK) and President of the National Assembly, Khieu Samphan, the former President of DK, Ieng Sary, former Vice-Premier and former Minister of Foreign Affairs and his wife Ieng Thirith, former Minister of Social Affairs. The last two have died in the meantime.

5. On 19 September 2007, Nuon Chea was arrested and placed in pre-trial detention. Shortly thereafter Michiel Pestman and I (we were associates in the same law firm) were asked to handle his defence together with the already earlier-appointed Cambodian lawyer, Son Arun. In August 2007, Mr Pestman and I had completed a case before the Special Court for Sierra Leone and so we possessed, amongst other things, the necessary knowledge of and experience in international criminal law.

6. The agreement between the two of us was that we would jointly assist our client during the PJI, that Mr Pestman would then assume responsibility for the first part of the trial and I would be responsible for the second part, including the oral arguments. The expectation expressed to us on behalf of the ECCC at the time was that, under the applicable procedural law, the case (including the appeal) would be completed in at most two to three years.

7. On 21 October 2007, I travelled to Phnom Penh ahead of Mr Pestman to speak to the client, our Cambodian colleague and the head of the Defence Support Section, to conclude the necessary contracts and make preparations for my mandatory swearing-in. In February 2008, I was sworn in by the Cambodian Court of Justice and thus became a member of the Cambodian Bar, with the restriction that I could only appear before the ECCC. Mr Pestman went through the same swearing-in procedure a short time later.

8. Three years after Nuon Chea's arrest, on 15 September 2010, the PJI against Nuon Chea and the other charged persons arrived at its conclusion. Between 27 and 30 June 2011, a pre-trial review was held and the substantive trial began on 21 November 2011. As we had agreed, Mr Pestman then handled the first part of the criminal proceeding. However, at the end of 2012, he withdrew from the case (as for his reasons for doing so, more below). At the beginning of January 2013, I left for Cambodia in order to, as mentioned, bring the trial to its conclusion.

9. On 7 August 2014, Nuon Chea and Khieu Samphan were both sentenced to life in prison for crimes against humanity because of their criminal involvement in the forced evacuation of the population of Phnom Penh on 17 April 1975 and the execution of military personnel and officials of the overthrown regime in April 1975 in Tuol Po Chrey in the northwest of the country.

10. Nuon Chea filed an appeal against this judgement. The appellant's brief contained 223 grounds of appeal against the judgement. In the course of the appeal, the defence added another six requests for further investigation and the summoning of witnesses. Most of these requests (about which more below) were dismissed on 21 October 2016 without any detailed justification. A ruling of the appeals judge is expected before the end of the second quarter of this year.

11. It is also important to note that the Trial Chamber, shortly before the beginning of the substantive part, decided to split the trial itself into several parts. The indictment contained a large number of facts concerning the whole regime between 1975 and

1979. The decision to split the case into several parts was taken in order to avoid that the four accused, all of whom were in their eighties at the time, should die before a judgement could be reached. The first trial therefore referred to as Case 002/01.

12. In the months between the indictment and the oral arguments in September 2013 and the judgement of 7 August 2014, the scope of the second and last part of the criminal proceeding was finally defined. It was designated as Case 002/02. The scope of Case 002/02 includes the alleged genocide against the Cham Muslims and the Vietnamese, the crimes committed in several prisons including the above-mentioned S21, the employment of the Cambodian population in cooperatives, building of dams and a military airport and various other crimes against humanity.

13. The pre-trial review in Case 002/02 was held shortly before the judgement in Case 002/01. The substantive hearings in 002/02 opened in January 2015. The current expectation is that these hearings will be concluded in February 2017. A judgement is expected sometime in the fall of 2017 - provided of course that the two accused are still alive at that point. Nuon Chea turned ninety in July of this year.

14. In December 2013, it became definitively clear that a second trial would be coming (there had been some uncertainty in this regard for a long time due to the ECCC's substantial budgetary problems). That was a signal for me to settle permanently in Cambodia effective 1 January 2014, and as of the same date I requested permission from the Dutch Bar to maintain my office outside of the Netherlands. As you know, this permission was granted to me.

15. So much for the procedural aspect of the case.

16. In order to understand why in August and December 2015 - nearly eight years after my first involvement in the case – I made the challenged statements, the following is important.

17. One of the first things that Mr Pestman and I did in this case was to make a request to the French Investigating Judge and his Cambodian colleague to be present at the examination of the witnesses. At the same time, we communicated to them that we wanted to conduct an independent investigation, as we had earlier done in Sierra Leone as well, and as is customary for all other international tribunals.

18. On 10 January 2008, to our amazement, the request to be able to attend the examinations of the witnesses was dismissed. At the same time, we were threatened with criminal sanctions if we were to undertake any independent investigation. Together with their decision the Investigating Judges noted that, in due time, at the trial, we could examine all the witnesses that we deemed to be in the interest of the defence. The effect of this decision – which is wholly unprecedented – was that, until the beginning of the trial, we were unable to do virtually anything in the interest of the defence. All of our work had to be done during the trial, and thus within a very limited period of time. A virtually impossible task.

19. Subsequently, during the trial, a very limited number of witnesses that we had requested (and whom we had never been able to question earlier) were allowed by the Trial Chamber, while virtually all of the witnesses requested by the prosecutors were allowed. Considering further that, before the opening of the PJI in 2007, the prosecutors had been able to conduct their own investigative work and that they were also able to make a written submission of over 1,000 pages before the start of the trial, it will be clear to you that already from the very beginning there was no fairness in the trial. I will leave unmentioned here the many other violations of the right to a fair trial during the trial.

20. Moreover the jurisdiction of the ECCC is described in such a way that not only the massive American bombardments at the beginning of the 1970's (which undoubtedly constituted war crimes) and the involvement of the US in the Cambodian civil war between 1970 and 1975 are excluded from the criminal proceedings, the 1979 Vietnamese invasion – supported by the Soviet Union – of Cambodia (undoubtedly, an act of flagrant aggression in violation of the UN Charter) and the following decade-long occupation of Cambodia also were and are *off limits*.

21. This is important to know, because the present-day rulers in Cambodia were put in place with the aid of Vietnam in 1979. At the time, they held important positions in the CPK. For example, the current premier Hun Sen was regiment commander of the Revolutionary Armed Forces of the CPK and most likely he was personally involved in crimes against humanity in 1975 against the Cham Muslims. The current number 2 and the first President of Cambodia after 1979, Heng Samrin, held an even higher military position within the CPK between 1975 and 1978. The forced evacuation of the population of Phnom Penh, which since the judgement of the Trial Chamber of 7 August 2014 has rightly been regarded as a crime against humanity, was executed and planned by this same Heng Samrin (amongst others).

22. Hun Sen and Heng Samrin fled to Vietnam in 1977 and 1978, respectively. Along with many others, they constituted an important faction within the CPK which, with the support of Vietnam, fought for power and ultimately – as mentioned – triumphed, again with the aid of Vietnam. Vietnam's ambition was to have Cambodia form a part of an Indochinese federation. Roughly, in the same vein as the Soviet Union, which included not only Russia but also Ukraine, Belarus, the Baltic States, etc.

23. The two have now been in power for almost forty years and still have a great interest in ensuring that their version of history prevails - which entails depicting Pol Pot, Nuon Chea and others in as black a fashion as possible. The Cambodian judges - whose independence, as appears from many reports of the UN and non-governmental organisations, is limited – must therefore ensure that the historical narrative continues to prevail, thus giving Vietnam and the current rulers maximum protection.

24. Every attempt of the defence to cast light on the political interference of the present government and their great influence over the Cambodian judges was effectively squashed right off the bat. Often, during the first part of the trial, Mr Pestman's

microphone was shut off or it was made impossible for him to speak in any other way, so that the public could not hear what he e.g. wished to say about the role of Vietnam. It is partly in this light that one must understand Mr Pestman's anger and frustration, which ultimately led him to decide to throw in the towel for good at the end of 2012. The complaint that was filed against him with your predecessor at the time primarily focused on his rage and frustration as expressed during the trial.

25. But, you may be wondering, there are international judges as well, aren't there? Doesn't the hybrid structure that the international community ultimately agreed on serve as a guarantee for an adequate truth-finding process and a fair trial?

26. In January 2013, when I took up the baton from Mr Pestman, I made the decision to drop the issue of political interference with the national judges and focus exclusively on the substance of the case. In the hope and on the assumption that this strategy could indeed have some effect. Would the two international judges ultimately realise that there really was a lot to object to concerning the way that the PJI had been conducted and the evidence collected? That there were very many flaws in this presentation of evidence and that on many points violence was done to the historical reality by the investigating judges?

27. Would the international judges, for example, agree that hearing Heng Samrin as a witness was of great importance for the defence, and not merely a form of provocation? After all, Heng Samrin could explain how the evacuation of Phnom Penh took place and what the policy of the CPK was vis-à-vis the military personnel and officials of the previous regime. He had already told an American academic that the policy was precisely *not* to kill these people as had in fact happened in the Northwest of the country. He could perhaps confirm that the indicted execution in Tuol Po Chrey was a tragic exception.

28. Moreover, before he fled to Vietnam, Heng Samrin was a close friend of Nuon Chea and he could also speak as a character witness in favour of our client. Naturally, it was also possible that he might testify to the *disadvantage* of my client Nuon Chea – after all, there was a reason he fled to Vietnam - but Nuon Chea was willing to take that risk.

29. That the international judges appeared to be just as biased as the national judges and were equally uninterested in the truth and that Mr Pestman had thus seen the situation correctly became absolutely clear to me after about six months.

30. During the examination of witnesses about the events at Tuol Po Chrey – which received daily coverage in the national media – I received an unsolicited e-mail from the renowned British filmmaker Robert Lemkin. In 2009, Lemkin had, together with the Cambodian journalist Thet Sambath, made an important film about Nuon Chea and about the events in Tuol Po Chrey. Interviews with Nuon Chea play an important role in the film, which is entitled Enemies of the People[1] and which once premiered at the Amsterdam IDFA. In the email, Lemkin stated that he and Thet Sambath, as

part of making their film, had collected a great deal of evidence demonstrating that the execution of military personnel and officials of the former regime was the work of Ruos Nhim, the leader of the Northwest Zone, and was *not* carried out at the order of Nuon Chea or Pol Pot. Very important exculpatory information, obviously.

31. Of course I immediately requested the Trial Chamber to hear Lemkin as a witness. But this request was just as quickly dismissed. The word 'amazement' which I already used once above is simply inadequate to describe the feeling that this decision produced. That the judges refused to decide on our – in the meantime sixth – request to hear Heng Samrin as a witness was, given the precarious position of the Cambodian judges vis-à-vis the government, still somewhat understandable, but that they also did not want to examine this filmmaker was simply shocking. All the more since – as we now know – the Trial Chamber judges had used the film Enemies of the People many times as incriminating evidence against Nuon Chea.

32. Thus over that summer in 2013 it became clear to me that this trial was one huge farce, and moreover that none of the five judges in the Trial Chamber could be described as impartial. But I kept that dissatisfaction to myself and in the 'closing submissions' and in our oral arguments my Cambodian colleagues explained in objective but unmistakeable terms that Nuon Chea had by no means received a fair trial. We did not use words such as 'farce' at that time. Also, we did not direct our fire at the judges in person, although there was certainly occasion to do so.

33. Also, in February 2014, for example, when I was in Amsterdam and participated in a presentation to the Bar Association about the case, I always expressed myself in nuanced terms because in my view only the judgement could definitively reveal whether things were really as bad as I thought at the time.

34. The judgement of 7 August 2014 appeared indeed to be a qualitatively disastrous judgement. (And I do not say that because my client was found guilty). In this connection, I would like to refer you to an extensive report,[2] from Stanford Law School, which contained the following about the judgement:

> *Despite hopes that the five-year process of judicial investigation, trial, deliberation and Judgement-drafting would produce a rigorous and insightful final product, in reality, as this report argues, the Case 002/01 Judgement fails to deliver the most fundamental output one expects from a criminal trial - systematic application of the elements of crime to a well-documented body of factual findings. [...]*
>
> *[T]he Trial Chamber's poor handling of a number of novel and complex legal issues arising out of Case 002 created procedural confusion that permeated many aspects of the trial. [...]*
>
> *[The report finds] a great deal of cause for concern in the Court's analysis of the facts and application of the law, including the substantive legal analysis and factual findings underlying the Court's liability assessment. [...]*
>
> *[W]e argue that the Case 002/01 Judgement is inadequate in its failure to meet expected standards for a final written reasoned decision. [...]*

> *Falling far below this standard, the Judgement in Case 002/01 offers a poorly-organized, ill-documented, and meandering narrative in lieu of clearly structured legal writing, based upon a thorough and balanced analysis of the legal and factual issues in dispute. [...]*
>
> *The Judgement repeatedly draws inferences from a factual narrative that assumes rather than justifies the validity of those inferences. [...]*
>
> *In addition to the lack of systematic and cogent analysis for the factual findings, the application of legal doctrines to the facts also provides cause for concern throughout the Judgement.*

35. In connection with the above quote, one should bear in mind that the Stanford jurists are favourably disposed towards the ECCC as an institution and, as academics, are inclined to express themselves with caution and reserve. Thus, their assessment can be regarded as nothing less than devastating.

36. In just one month's time my team and I formulated no fewer than 223 grounds for appeal against the judgement. Most of these grounds focused on the extremely deficient presentation of evidence and the very dishonest course of the proceedings and do not need to be discussed further here. If you deem it desirable, however, I can of course produce the grounds of appeal for you.

37. On the date of submission of the appeal grounds (later elaborated into an appellant's brief of 270 pages) we also sought the disqualification of the judges who had pronounced the judgement (with the exception of the Austrian judge who, in the first trial, had been a reserve judge and had not formally participated in the deliberations and had replaced the New Zealand judge, Sylvia Cartwright, in the second trial). In my opinion, after this judgement, it was impossible for the judges of the Trial Chamber to be able to simply continue as judges in the second trial. After all, numerous considerations in the judgement revealed great bias with respect to the factual and legal issues that still had to be dealt with in the second trial. The idea that these very same judges would also preside over the second trial caused me to lose heart long before it began.

38. In the application for disqualification (which I have attached as an annex), we naturally also paid attention to the issue of the witness Heng Samrin. In a separate decision that was not incorporated into the judgement about this witness, the international judges – unlike the national judges – arrived at the conclusion that hearing Heng Samrin *was* in the interest of both the defence and the truth-finding process. After having given the matter long consideration, in the application for disqualification, I labelled the failure to justify this decision in the judgement but rather to conceal it in a separate decision, as well as the failure to attach any consequence in the judgement to the fact that Heng Samrin was not heard, as a 'cowardly' decision. At the same time, I reproached the French judge for a 'lack of judicial moral integrity'. A serious reproach, but substantively justified. It is the word 'cowardly' that I repeated - making reference to this passage in the application for disqualification – during the hearing of August 2015 and which the Trial Chamber

appears to have suddenly stumbled across 11 months later. Perhaps they simply hadn't read the application for disqualification – which was addressed to the disqualification chamber –any earlier.

39. In addition, in that same application for disqualification, we focused at great length on the lack of independence of the Cambodian magistracy. It would lead us too far afield to repeat all of those arguments here, but I am happy to refer you to the annex.

40. Finally, however, it is also important to note that the application for disqualification also discussed the following: shortly before the conclusion of the PJI against Nuon Chea and his co-accused, the same Trial Chamber on 26 July 2010 sentenced the above-named Duch – whose case (as mentioned) was split off in Case 001 – for having, inter alia, committed crimes against humanity in his position as the head of S21. In that judgement, the judges reached a large number of factual conclusions about the DK regime in general and about S21 in particular which are of direct relevance to the case against Nuon Chea. It is a judgement that is highly incriminating for Nuon Chea. At the time, it was a reason for seeking disqualification of the bench shortly before the start of the first trial (002/01). That application and comparable applications from the other accused were then dismissed.

41. This ground for disqualification was repeated in the application for disqualification of 29 September 2014, given that it had become clear that S21 would definitely play a prominent role in Case 002/02 as well.

42. It is moreover precisely during this week in which I am writing my response to you that we have begun to deal with the facts regarding S21. For this reason, I once again had the occasion last week to reread the judgement in case 001 and, once again, I find it inconceivable that the very same judges could deal with the second case against my client in an unbiased manner.

43. As expected, the application for disqualification was dismissed. However, there was a 'dissenting opinion' from the Australian judge in the disqualification chamber, who was of the opinion that we were correct, and that the appearance of bias was indeed created, and that therefore other judges should handle Case 002/02.

44. After the application for disqualification was found to be without merir, the trial in 002/02 could not begin immediately, because the defence team of co-accused Khieu Samphan had received instruction from their client to only participate in the second trial after the appellant's brief was filed. This temporary 'boycott' became the subject of the complaint that the Trial Chamber submitted to the Dean of the Paris Bar Association, which – as you are aware – was found to be without merit.

45. It is under this particular constellation of circumstances that the second trial began in January 2015. You will not be surprised to learn that, in the meantime, my confidence in the possibility of a fair judicial process had sunk to zero.

46. At that moment there were two reasons why I did not simply withdraw definitively from the case. The first reason is the loyalty that I have to my client. It was at that

moment unthinkable that I would leave him in the lurch after all that time. I believe that, as a lawyer, I have not only a legal but also a moral obligation to defend the interests of my client and to continue to make sure that his side of the story gets told.

47. The second reason was the fact that at that time I still had confidence in the judges of the Supreme Court Chamber (SCC) and the outcome of the appeal. In particular, the Polish judge and also the judicial support staff, the so-called 'legal officers' of the SCC, had good reputations. That confidence in the outcome of the appeal was significantly reinforced by a number of preliminary decisions of the SCC. For example, in July 2015, witnesses that we had requested were summoned *and* an investigation began into the film material of documentary filmmaker Robert Lemkin. Lemkin himself was also heard as a witness via a video link (although this was done in our absence).

48. Furthermore, the third and fourth PJI's against five other persons initiated several years earlier were producing ever more new evidence that often confirmed important points of the defence. We consequently made all of that new evidence available to the SCC in 'requests to admit additional evidence'.

49. In the meantime, the second trial itself proved to be dramatic (as expected). Time and again, the Trial Chamber made arbitrary and unreasonable decisions to the disadvantage of the defence. With regard to some witnesses, the cross-examination was effectively sabotaged by the prosecutors, with the aid of the Trial Chamber, so that many questions simply could not be posed. The judicial decisions also demonstrated time after time that there was no impartial, independent and competent administration of justice here. The bias was blatant. The defence often had the impression that the judges were acting as an extension of the prosecutors. The questions which (for example) the French judge posed to witnesses were always aimed at supporting the evidence in favour of the prosecutors. If a witness came out with a statement that was exculpatory for the two accused, he often showed his displeasure and disbelief in an unmistakeable and sometimes theatrical manner.

50. Furthermore, unfortunately, it also became clear that the knowledge of the French judge of the vitally important geopolitical background of the case, in particular, often did not go beyond the Wikipedia level, and that his knowledge of the case file was still rudimentary. His Austrian colleague admittedly displayed greater expertise, but even her questions to the witnesses never really displayed a sure critical ability.

51. If one were to compare this second trial – somewhat disrespectfully – to a football match between two parties, then the defence was not only playing an away match in which it was placed at a 5-0 disadvantage right from the beginning. It was also a match in which it was playing with eight players against eleven, the referee was a home referee who issued red cards for every minor foul on the part of the defence and for every dishonest "dive" awarded the prosecutor a penalty kick or a free kick. Under these circumstances, it required virtually supernatural capacities to keep a cool

head day after day. That worked for seven months – with a great deal of effort, but it worked. Until that one trial day in August 2015.

52. The occasion for my spontaneous outburst was in fact not even a very fundamental issue. It was more a matter of the straw that broke the camel's back. What was the situation? At the end of each phase in the trial, all parties receive a possibility to hold a so-called documents presentation hearing. Documents, such as for example the minutes of the meeting of the Politbureau (Standing Committee) or copies of the monthly magazine published by the CPK, The Revolutionary Flag, which when questioning witnesses often do not get raised because they might be unknown to them, can - in the interest of openness and the public - be addressed and relevant passages can be read out loud. By itself, this is a good idea and a practice in which the defence is happy to cooperate.

53. The defence certainly wanted to collaborate in the documents presentation hearing scheduled in August 2015, precisely because many contemporaneous documents for that part of the indictment are exculpatory. The prosecutors themselves had virtually no documents to present and wished to offset this by reading from written witness statements stemming from the PJI. But that had never been the practice up to that point, and naturally it was also not the purpose of such document presentation hearings. After all, we had already heard witnesses at the trial, why would the public want to hear something comparable all over again? When, during the hearing, I complained about these pointless readings and my objection was overruled, I stood up, called out that this case was a farce and spontaneously left the courtroom. Because the other lawyers followed me out of solidarity, the hearing could then not continue.

54. That same day, all of the lawyers were summoned by e-mail to appear the next day and explain themselves. I prepared a text that would take about 25 minutes to read out loud in order to explain why, after seven months of trial, the camel's back had been loaded to the maximum, and why the decision of the previous day was the straw that finally caused it to break.

55. I then found that at the hearing, in public now, I really had to say what I thought of the unacceptable manner in which the second trial had unfolded from the very beginning. I had earlier thought carefully about my words and the context in which they had to be seen. I referred to the application for disqualification that was described earlier, which contained the words 'cowardly conclusion'. I referred to the embarrassing incident, also extensively discussed, of the interview that the predecessor of the Austrian judge, Justice Sylvia Cartwright, had given in the US shortly after the close of the investigation about the trial and drew a comparison between her bias and that of the Austrian judge Fenz. The issue of the interview was also discussed in the application for disqualification, to which I am happy to refer you.

56. But, after less than five minutes, I was interrupted and could not conclude my story of the straw and the camel's back. I did still manage to get out that, if my spontaneous departure the day before could have been regarded as 'contempt of court' under the common law, I would be happy to admit my guilt because I indeed had 'nothing but professional contempt' for the international judges of the tribunal. Strong words, but at that moment very functional and also in the interest of my client.

57. Later, I was given the opportunity to offer my apologies to the Trial Chamber. I did not do so, because I then and even now harbour a deep professional disdain for the French judge in particular. The absence of such an apology led to the filing of the present complaint.

58. Shortly after this incident, on 21 October 2015 and precisely eight years to the day after my first trip to Cambodia, the SCC made a decision that was dramatic for the defence. It dismissed without giving any reasons virtually all of the requests to place on the case file the new evidence that had been gathered in the meantime. And most importantly: the SCC also refused to summon either Heng Samrin or Robert Lemkin to appear as witnesses.

59. A week later I let the SCC know that the appeal for Nuon Chea had become not only irrelevant for him, but that I was also considering definitively withdrawing as counsel. Before this I informed my client that I could no longer bring my further participation in this tribunal in accordance either with my conscience or my oath as a Dutch lawyer, and that despite my strong loyalty to him I nevertheless wished to cease acting as his counsel. Nuon Chea implored me not to stop and instead to reconsider my decision.

60. I then departed for the Netherlands with the intention of reflecting on his request. In accordance with the instruction of my client, I did not appear at the appeal hearing on 17 November 2015. Because my national colleague also - after a speech from my client about the dramatic decision of 21 October 2015 - left the courtroom, the appeal hearing could no longer continue and had to be postponed for several months.

61. Ultimately in Amsterdam I decided *not* to abandon the defence of Nuon Chea.

62. It should also be mentioned that I made one last attempt to change the mind of the SCC by requesting that they reconsider the decision not to summon Heng Samrin and Robert Lemkin as witnesses. I attach a copy of that request because it offers a good overview explaining why it was of great importance for the defence that these persons be heard as witnesses.

63. These are therefore the relevant events, whereby I should note that my response could have been much longer had I discussed *all* of the facts and circumstances.

64. Now my response to the question of whether I acted improperly.

65. Let me say first that, since taking my oath in September 1989, I have always and everywhere, in accordance with article 3 of the Counsel Act, demonstrated respect

for judicial authorities throughout the world. I have done trials before the Supreme Court, before all courts of appeal and before a large number of the district courts in the Netherlands. I have acted as a counsel before the Yugoslavia Tribunal, as mentioned earlier before the Special Court for Sierra Leone and before the European Court of Justice in Luxembourg. In 26 years, I never had any reason to utter an indelicate word about any judge whosoever.

66. In these 26 years that I have been practicing law, no complaint against me has ever been found to have merit, to say nothing of ever having had disciplinary measures imposed on me by the Dutch disciplinary court.

67. Even in front of the ECCC I kept my lips tightly sealed for almost eight years, although – as explained above – there were more than enough concrete occasions for *not* doing so.

68. In the words that I ultimately used in the express interest of my client and his defence - both in the trial and in the interview in question – I was not, in accordance with Rule 31 of the Code of Conduct, unnecessarily hurtful and, in my capacity as a lawyer, I did not act improperly.

69. My words also remained well within the limits of article 10 of the ECHR. The personal criticism of international judges of the Trial Chamber was harsh, but always remained objective and was directed exclusively at their functioning in court, namely their actions in the trial and the inconceivable fact of staying on as judges in Case 002/02 despite being obviously biased and prejudiced. I thus did not violate the criterion set bout in the Schöpfer case by the European Court of Human Rights, which entails that public confidence in the 'proper administration of justice' may not be impaired by a lawyer.

70. In light of the foregoing, I ask you to find the complaint and the supplementary complaint to be wholly without merit.

Sincerely yours,

[Signature]

Victor Koppe

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[1] http://enemiesofthepeoplemovie.com

[2] David Cohen, Melanie Hyde and Penelope Van Tuyl, *A Well-Reasoned Opinion? Critical Analysis of the First Case Against the Alleged Senior Leaders of the Khmer Rouge (Case 002/01)*, https://handacenter.stanford.edu/report/well-reasoned-opinion-critical-analysis-first-case-against-alleged-senior-leaders-khmer-rouge