



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

**Extraordinary Chambers in the Courts of Cambodia**

**ការិយាល័យសហចៅក្រមស៊ើបអង្កេត**

**Office of the Co-Investigating Judges  
Bureau des Co-juges d'instruction**

**សំណុំរឿងព្រហ្មទណ្ឌ**

**Criminal Case File /Dossier pénal**

**លេខ/No: 002/14-08-2006**

**លេខស៊ើបសួរ/Investigation/Instruction**

**លេខ/No: 002/19-09-2007-ECCC-OCIJ**

**ព្រះរាជាណាចក្រកម្ពុជា**

**ជាតិ សាសនា ព្រះមហាក្សត្រ**

**Kingdom of Cambodia**

**Nation Religion King**

**ឯកសារយោងត្រឹមត្រូវតាមច្បាប់**  
**CERTIFIED COPY/COPIE CERTIFIÉE CONFORME**  
 ថ្ងៃ ខែ ឆ្នាំ ត្រឹមត្រូវ (Certified Date /Date de certification):  
 17-Aug-2010, 15:43  
 .....  
 Kouv Keoratanak  
 .....

**សៀវភៅចុះបញ្ជីឧទ្ធរណ៍**

**Record of Appeals**

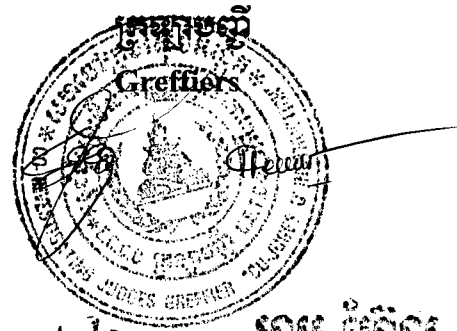
**Registre des appels**

The Year two thousand ten, the month of August the sixteenth day, at three thirty PM,

We, LY Chantola and Ham Hel, Greffiers of the Co-Investigating Judges of the Extraordinary Chambers,

Received the Notice of appeal from Michiel PESTMAN and Victor KOPPE, in their capacity as Co-lawyers of the charged person NUON Chea, against the constructive dismissal of their 2nd Request For Investigation (Rule 35) dated 07 July 2010, notified on 09 July 2010.

**ឯកសារដើម**  
**ORIGINAL DOCUMENT/DOCUMENT ORIGINAL**  
 ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/Date de reception):  
 ..... 17 ..... 08 ..... 2010 .....  
 ម៉ោង (Time/Heure): ..... 15:30 .....  
 មន្ត្រីទទួលបន្ទុកសំណុំរឿង/Case File Officer/L'agent charge  
 du dossier: ..... Ratanak .....



LY Chantola

ហាម ហែល

**BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

**Case No:** 002/19-09-2007-ECCC/OCIJ  
**Filing Party:** Nuon Chea Defence Team  
**Filed to:** Office of the Co-Investigating Judges  
**Original language:** English  
**Date of document:** 16 August 2010

**CLASSIFICATION**

**Classification Suggested by Filing Party:** PUBLIC

**Classification of PTC:**

**Classification Status:**

**Review of Interim Classification:**

**Records Officer Name:**

**Signature:**

<b>ឯកសារដើម</b>
ORIGINAL DOCUMENT/DOCUMENT ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ ទទួល (Date of receipt/date de reception): ..... 16 / 08 / 2010 .....
ម៉ោង (Time/Heure) : ..... 15 : 50 .....
មន្ត្រីទទួលបន្ទុកសំណុំរឿង / Case File Officer / L'agent chargé du dossier: ..... S. ANN RADA .....

**NOTICE OF APPEAL**

**Filed by**

**Nuon Chea Defence Team:**

Michiel PESTMAN  
 Victor KOPPE  
 Andrew IANUZZI  
 Jasper PAUW  
 Oyinlola OGUNTEBI (Legal Intern)

**Distribution**

**Co-Prosecutors:**  
 CHEA Leang  
 Andrew CAYLEY

**All Defence Teams**

**NOTICE OF APPEAL**

1. Counsel for Charged Person NUON Chea (the 'Defence') submit this notice of appeal to the Office of the Co-Investigating Judges (the 'OCIJ') pursuant to (i) the Pre-Trial Chamber's Decision on Ieng Sary's Appeal Regarding the Appointment of a Psychiatric Expert (the 'PTC Decision')<sup>1</sup> and (ii) Rule 35(6) of the ECCC Internal Rules (the 'Rules').
  
2. On 7 July 2010, the Defence filed a 'Second Request for Investigation' (the 'Second Request').<sup>2</sup> On 3 August 2010, having received no decision from the OCIJ on the Second Request, the Defence sent a Letter to the OCIJ regarding the Second Request for Investigative Action (the 'Letter to the OCIJ').<sup>3</sup> The Letter to the OCIJ requested that the OCIJ file a decision on the Second Request by 7 August 2010, to allow the Defence sufficient time to file an appeal, should the OCIJ partly or wholly reject the request.<sup>4</sup> The Letter to the OCIJ noted that if the Defence did not receive a response by 7 August 2010, Defence counsel would consider the silence of the OCIJ to amount to a constructive refusal of the Second Request, and would move forward with filing the present Appeal.<sup>5</sup>
  
3. To date, no decision has been received from the OCIJ.

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<sup>1</sup> Document No A-189/I/8, 21 October 2008, para 24 ('the failure of the Co-Investigating Judges to rule on [a request] as soon as possible, in circumstances where a delay in making a decision deprives the Charged Person of the possibility of obtaining the benefit he seeks, amounts to a constructive refusal of the application, which can be appealed').

<sup>2</sup> Document No D-384, 7 July 2010, ERN 00549028-00549031 (the 'Second Request').


<sup>3</sup> Document No D-384/2, 'Letter to the OCIJ Re: Outstanding Rule 35 Request', 4 August 2010, ERN 00581379-00581380.

<sup>4</sup> Letter to the OCIJ, p. 2. The Defence had previously asked the OCIJ to decide on the Second Request 'within one week from the date of filing', 7 July 2010, 'in order to allow an effective appeal before the PTC, before the issuing of the closing order, should the request be partly or entirely dismissed'. Second Request, para 9(b).

<sup>5</sup> Letter to the OCIJ, p. 2.

4. Accordingly, the Defence *construes* the OCIJ's failure to decide on the Second Request—as well as its apparent unwillingness to commit to prompt investigative action—as a refusal of the Second Request and hereby invokes its appellate right as provided by the PTC Decision.

CO-LAWYERS FOR NUON CHEA

P.P.  


Michiel PESTMAN



Victor Koppe