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ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

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Extraordinary Chambers in the Courts of Cambodia  
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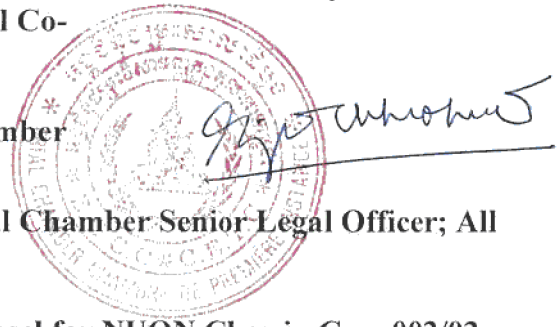
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**TO:** Mr. Isaac Endeley, Chief, DSS;  
Mr. Victor Koppe, International Co-  
Counsel for NUON Chea

**Date:** 2 May 2018

**FROM:** President NIL Nonn, Trial Chamber



**CC:** All Trial Chamber Judges; Trial Chamber Senior Legal Officer; All Parties, Case 002

**SUBJECT:** Status of International Co-Counsel for NUON Chea in Case 002/02

1. The Trial Chamber is in receipt of a memo from the Chief of DSS dated 21 March 2018 (E378/8/1) on this subject, confirming that Mr. Victor Koppe has not been a member of the Amsterdam Bar Association (ABA) or any other foreign bar association since 1 January 2016. The memo states that Mr. Koppe confirmed that he ended his membership in the ABA because he was never instructed that continued membership of a foreign bar was a prerequisite for continued membership in the Bar Association of Cambodia (BAKC); the Legal Services Contract he signed with the United Nations does not stipulate that he needs to remain a member of a foreign bar association after being admitted to the BAKC; and his membership of a foreign bar association was no longer necessary following admittance to the BAKC and to the list of foreign lawyers maintained by the DSS. The Chamber notes Mr. Koppe's indication that he is willing to renew his membership in the ABA if required by the Chamber.
2. The Chamber notes that all foreign co-lawyers practising before the ECCC are required to maintain on a continuing basis the status of current member in good standing of a recognised association of lawyers in a United Nations Member State other than Cambodia. Contrary to the suggestion of Mr. Koppe, this requirement does not apply only to the stage of being admitted to the list of eligible counsel. This is reflected in a holistic assessment of the ECCC legal framework governing the eligibility of foreign lawyers to practise before the ECCC.
3. Internal Rule (IR) 11(2)(d)(ii) requires DSS to maintain a list of "foreign lawyers admitted to the bar in a UN Member State who have been registered by the BAKC and who meet Defence Support Section criteria, as set out in its administrative regulations ...". There is nothing in this or any other provision which suggests that the foreign bar admission requirement is no longer required following admission to the list. To the contrary, the Chamber notes that the requirement to "maintain" the list connotes an ongoing obligation for DSS, during which all criteria must continually be met. The list is not maintained only at the time of admission of a lawyer to the list, but on an ongoing basis. Similarly, IR 11(4)(c)(i) provides that the criteria for "inclusion" of a foreign applicant in the IR 11(2)(d)(ii) list

includes being a current member in good standing of a recognized association of lawyers in a United Nations Member State. The term “inclusion” also connotes an ongoing process, covering not only the time of initial admission to the list but also the remainder of the period during which a foreign lawyer remains on the list.

4. The DSS Administrative Regulations are consistent with this view. Article 1.7 clarifies that “[a] candidate included in a list [of foreign counsel] shall be removed where the candidate ... ii. no longer satisfies the qualifications as outlined in the Internal Rules, ECCC administrative regulations ...”. Membership in a foreign bar association is one such qualification, identified in both the Internal Rules and the DSS Administrative Regulations (article 2.2). Accordingly, the absence of such membership at any point should result in removal of counsel from the list of those eligible to practice. Article 4.3 provides that “in order to be authorised [by the Bar Council of the Kingdom of Cambodia] to practise before the ECCC, foreign lawyers must be a current member in good standing of a recognised association of lawyers of a United Nations member state”. Practising before the ECCC is an ongoing process, not a one-time event. For the authorisation to practise to remain in place, the membership in a foreign bar association must clearly be maintained on an ongoing basis.

5. The Legal Services Contract between Mr. Koppe and DSS also supports the view that it is not sufficient for an international co-lawyer to be a member of the BAKC only. As stated clearly in paragraph 6.2, the legal framework for that contract includes both the “Code of Professional Conduct and Ethics of the Bar of which the Contracting Co Lawyer is a member, and the Code of Ethics for Lawyers Licensed with the Bar Association of the Kingdom of Cambodia.” The fact that the latter Code of Ethics refers explicitly to the BAKC makes it clear that the former refers to the bar association of another state. The language used in that provision makes it clear that these are cumulative parts of the legal framework rather than alternatives.

6. It is further clear from the legal framework that it must be possible to hold foreign lawyers accountable for their behaviour while practising before the ECCC. In this regard, Internal Rule 38(2) permits a Chamber to refer misconduct of a lawyer to the “appropriate professional body”, and paragraph 6.9 of the Legal Services Contract provides that prior to commencement of the contract, “the Contracting Co Lawyer shall provide the DSS with the following documents ... b. An original copy and a translation into English or French of the full text of the Code of Professional Conduct and Ethics of the Bar of which the Contracting Co Lawyer is a Member along with the contact details of the person in the Contracting Co-Lawyer’s professional association who is responsible for disciplinary matters.” At a practical level, the Chamber notes that the initial requirement for a foreign lawyer to provide DSS with the code of professional conduct and ethics of a foreign bar association of which that lawyer is a member would serve no purpose if the foreign lawyer could subsequently withdraw from said bar association with no consequence.

7. With respect to the BAKC, the Chamber notes Mr. Koppe’s assertion that his membership of a foreign bar is and has always been irrelevant to the Cambodian Bar other than at the time of admittance, since the BAKC did not expressly instruct him of a continuing requirement and has not subsequently asked him for proof of continued membership. The Chamber considers that even accepting Mr. Koppe’s representations, these do not confirm the absence of a BAKC requirement for continued membership in a foreign bar association. The BAKC could reasonably have expected a foreign counsel to inform them of any changes in status subsequent to registration. Further, Article 5 of the Cambodian Law on the Statutes of the Bar links the right of a foreign lawyer to practise before the ECCC with the requirement

of a foreign bar membership. As noted above, “practise” is an ongoing concept which implies that the underlying requirements are continuing obligations.

8. The Trial Chamber accordingly considers that there is an existing and mandatory requirement that international co-counsel be a current member in good standing of a recognised association of lawyers in a United Nations Member State other than Cambodia, and that Mr. Koppe has been in breach of this requirement since 1 January 2016.

9. The Chamber accordingly invites Mr. Koppe to immediately seek admission to a recognised association of lawyers in a UN member state other than Cambodia by 15 May 2018. The Chamber invites Mr. Koppe at the same time to regularize his situation with the foreign bar association for the period from 1 January 2016. In the alternative, the Chamber invites submissions from Mr. Koppe on this subject, to be filed before the Chamber no later than 15 May 2018, following which the Chamber may issue an order on the subject.