

**BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

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**APPEAL AGAINST CONSTRUCTIVE DISMISSAL OF APPLICATION FOR
IMMEDIATE ACTION PURSUANT TO RULE 35**

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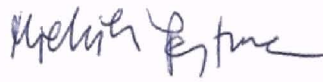
1. Pursuant to Rule 104(4) of the ECCC Internal Rules (the ‘Rules’), counsel for the Accused Nuon Chea (the ‘Defence’) hereby submit this appeal against the Trial Chamber’s constructive dismissal of its application for immediate action in response to the resignation of Co-Investigating Judge (‘CIJ’) Laurent Kasper-Ansermet (‘Application’).¹ The Application is attached to this Appeal as Annex A.
2. The Application was originally filed with the Trial Chamber nearly six months ago, on 25 April 2012. The Defence has approached the Trial Chamber informally seeking an update as to the status of the Application but no decision appears imminent.
3. The Pre-Trial Chamber (‘PTC’) has previously recognized that a Chamber’s failure to resolve a motion before it within a reasonable time is grounds for appeal on the basis of the doctrine of constructive dismissal where the delay is such that it becomes ‘impossible for the [Accused] to obtain the benefit which he sought.’²
4. The delay in this case satisfies this standard. The Application demonstrated a clear reason to believe that government interference in Case 002 was ongoing and that a judicial investigation was necessary to illuminate the nature and extent of that interference. Six months, 50 trial days and over 20 witnesses later – by some measures a full third of the Case 002/01 trial – no such investigation has taken place. The ability of the Defence to challenge the credibility of the evidence presented at trial has been severely constrained, and the purpose of filing the Application *de facto* defeated. The failure to issue a decision has therefore amounted to a denial of the relief requested.
5. The failure to act expeditiously is of particular concern in light of the nature of the allegations in the Application. The Application claims, with substantial supporting evidence, that judicial independence is functionally non-existent in Cambodia and that the Cambodian judges at the ECCC – along with all other national side staff – are unable to act in a manner contrary to the wishes of the Cambodian government. The failure of the Trial Chamber to address these legally-speaking straightforward allegations for six full months only reinforces the suspicions which prompted the Application in the first place. The Supreme Court Chamber, or at least its international members, must assert jurisdiction over this Appeal in order to ensure that the allegations in the Application are promptly addressed

¹ Document No. **E-189**, ‘Application for Immediate Appeal Pursuant to Rule 35’, 25 April 2012, ERN 00803004-00803019 (‘Application’).

² Document No. **A-189/I/8**, ‘Decision on Ieng Sary’s Appeal Regarding the Appointment of a Psychiatric Expert’, 21 October 2008, ERN 00233433-00233443, paras 23-24.

6. The underlying motion is furthermore subject to immediate appeal pursuant to Rule 104(4)(d), which contemplates immediate appeals against 'decisions on interference with the administration of justice under Rule 35(6).' The constructive dismissal of the Application without reasons constitutes both an error of law and an abuse of discretion under Rule 104(1).
7. The Defence respectfully requests that the Supreme Court Chamber admit the present appeal and grant the relief requested in the attached Application.

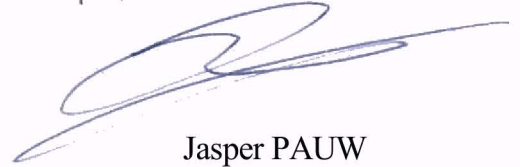
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