

**BEFORE THE TRIAL CHAMBER****EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/TC**Party Filing:** The Case 003 Defence**Filed to:** The Trial Chamber**Original language:** ENGLISH**Date of document:** 14 May 2014**CLASSIFICATION****Classification of the document suggested by the filing party:****PUBLIC****Classification by OCIJ or Chamber:****សាធារណៈ/Public****Classification Status:****Review of Interim Classification:****Records Officer Name:****Signature:**


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**CASE 003 DEFENCE REQUEST FOR LEAVE TO FILE AMICUS CURIE BRIEF  
&  
AMICUS CURIAE BRIEF CONCERNING THE STATUTE OF LIMITATIONS FOR  
GRAVE BREACHES OF THE GENEVA CONVENTIONS**

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Judge YOU Ottara

Judge YA Sokhan

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Reserve Judge THOU Mony

Reserve Judge Claudia FENZ

**Co-Prosecutors:**

CHEA Leang

Nicholar KOUMJIAN

**All Defence Teams****All Civil Parties**

**REQUEST FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

The Case 003 Defence, pursuant to Rule 33 of the ECCC Internal Rules (“Rules”), hereby seeks leave to file an *amicus curiae* brief on the issue of *whether a statute of limitations bars the prosecution of grave breaches of the Geneva Conventions at the ECCC*. The Case 003 Defence, as *amicus curiae*, submits the attached *amicus curiae* brief in response to the Trial Chamber’s 25 April 2014 memorandum E306, wherein the Chamber invited the Parties to make submissions on the “the statute of limitations for grave breaches of the Geneva Conventions,” because “the Chamber would benefit from further information from the parties on [this issue]...” The Case 003 Defence is well-placed to assist the Trial Chamber as *amicus curiae*, having researched and prepared a submission on this issue in Case 003, and having filed the initial preliminary objection in Case 002<sup>1</sup> as well as having made oral arguments on this issue before the Trial Chamber at the Initial Hearing.<sup>2</sup> There is no prejudice to any party by the filing of this *amicus curiae* brief; it refers to no facts or allegations but relates only to the discrete legal issue of whether grave breaches of the Geneva Conventions are subject to a statute of limitations. *Amicus curiae* briefs have been submitted by Defence Counsel before international tribunals such as the ICTY. For example, the Association of Defence Counsel Practising Before the International Criminal Tribunal for the former Yugoslavia (“ADC-ICTY”) was requested to file an *amicus curiae* brief by the Appeals Chamber in the *Brdjanin* case, on the issue of *whether the membership of a joint criminal enterprise must include the physical perpetrators of the crime*.<sup>3</sup> While ADC-ICTY

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<sup>1</sup> See *Case of NUON Chea et al.*, 002/19-09-2007-ECCC-TC, IENG Sary’s Rule 89 Preliminary Objection (Statute of Limitations for Grave Breaches), 14 February 2011, E43.

<sup>2</sup> See *Case of NUON Chea et al.*, 002/19-09-2007-ECCC-TC, Transcript, 28 June 2011, E1/5.1; *Case of NUON Chea et al.*, 002/19-09-2007-ECCC-TC, Transcript, 29 June 2011, E1/6.1.

<sup>3</sup> See *Prosecutor v. Brdjanin*, IT-99-36-A, Decision on Motion to Dismiss Ground 1 of the Prosecutor’s Appeal, 5 May 2005, p.5; *Prosecutor v. Brdjanin*, IT-99-36-A, Amicus Brief of Association of Defence Counsel – ICTY, 5 July 2005. The ADC-ICTY was also invited to participate during the appeal oral arguments, with Michael G. Karnavas, as President of the ADC-ICTY, appearing to argue the *amicus curiae* brief on 8 December 2006. See *Prosecutor v. Brdjanin*, IT-99-36-A, Decision on Association of Defence Counsel Request to Participate in Oral Argument, 7 November 2005. See also *Prosecutor v. Brdjanin*, IT-99-36-A, Appeal Judgement, 3 April 2007, paras. 24-27. Mr. Karnavas is a current member of the ADC-ICTY *amicus* committee, as well as a member of the ADC-ICTY Rules Committee and Training Committee, and the former ADC-ICTY President, from October 2006 to March 2009. The ADC-ICTY has also appeared as an *amicus curiae* in the *Prlić* case, regarding whether conduct of counsel constituted contempt of court, violation of the Rules of Procedure and Evidence or misconduct, and the *Hadžihasanović* case, regarding the impact of the allocation of resources to the Accused on his right to a fair trial. See *Prosecutor v. Prlić et al*, IT-04-74-T, Order Appointing an Amicus Curiae, 3 July 2009; *Prosecutor v. Prlić et al*, IT-04-74-T, Advisory Opinion of Amicus Curiae Disciplinary Council of the Association of Defence Counsel of the ICTY, 13 August 2009; *Prosecutor v. Hadžihasanović*, IT-01-47-PT, Amicus Brief of the Association of Defence Counsel Practicing Before the International Criminal Tribunal for the Former Yugoslavia in Support of Joint Defence Oral Motion for

represents all ICTY Defence Counsel as an association, at the ECCC, there is no such association. ECCC Defence Counsel have no common representation on legal issues. The ECCC Defence Support Section is an administrative section of the Administration of ECCC (much like the ICTY Office for Legal Aid and Defence), and as such does not have a mandate or the capabilities to research, draft and file *amicus curiae* briefs to assist the ECCC Chambers on issues that are of general interest and importance to the Suspects and Accused. This *amicus curiae* brief has been prepared based on a submission the Defence filed in Case 003 on 12 December 2013. The translation is still unavailable. Therefore, the Case 003 Defence submits this *amicus curiae* brief in English only, with the Khmer translation to follow.

Respectfully submitted,

  
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ANG Udom

  
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Michael G. KARNAVAS

Co-Lawyers for a Suspect in Case 003

Signed in Phnom Penh, Kingdom of Cambodia on this 14<sup>th</sup> day of **May, 2014**

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Reconsideration of Decision on Urgent Motion for Ex Parte Oral Hearing on Allocation of Resources to the Defence and Consequences Thereof for the Rights of the Accused to a Fair Trial, 14 July 2003.