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..... **SANN RANA**

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

TRIAL CHAMBER

សាធារណៈ / Public

TO: Mr. Michael G. KARNAVAS
Mr. ANG Udom **Date:** 4 June 2014

FROM: NIL Nonn, President of the Trial Chamber

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



SUBJECT: Decision on Request for leave to file *amicus curiae* brief

1. The Chamber is seised of a request by Mr. Michael G. KARNAVAS and Mr. ANG Udom, who present themselves as counsel to a suspect in Case 003 and former counsel for IENG Sary (Applicants), to file an *amicus curiae* brief on the applicability of a statute of limitations for grave breaches of the Geneva Conventions (“Request”)(E306/3).
2. On 25 April 2014, the Chamber invited the parties to Case 002 to indicate their respective positions regarding two issues that had been raised by the IENG Sary Defence in 2011 prior to IENG Sary’s death, namely the applicability of a statute of limitations for grave breaches of the Geneva Conventions and this court’s jurisdiction over the crime against humanity of deportation (E306). The NUON Chea and KHIEU Samphan Defence teams filed responses on 20 May 2014 (E306/1, E306/2).
3. The Applicants submit that:

[They are] 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 as well as having made oral arguments on this issue before the Trial Chamber at the Initial Hearing. 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.

4. Internal Rule 33 provides: "the Chambers may, if they consider it desirable for the proper adjudication of the case, invite or grant leave to an organization or person to submit an *amicus curiae* brief in writing concerning any issue." The Pre-Trial and Supreme Court Chambers have denied several requests to file *amicus curiae* briefs where the respective Chamber considered it was already adequately informed on an issue or where the filing of *amicus curiae* briefs would create unnecessary delays (D99/3/17, D158/5/1/14, F16/3). In addition, the Supreme Court Chamber has held that an *amicus curiae* must be "unaffiliated with the court or any of its offices." (F7/2, Case 001).

5. The Chamber adopts this reasoning and notes also that an *amicus curiae* is traditionally an independent and impartial adviser to the court whose role is simply to inform and not to advocate (D99/3/18.31). In prior submissions, the Applicants have supported the imposition of this standard (D99/3/18, para. 11). The Chamber considers that one who has acted for a party in the current proceedings, and presents himself as counsel for a party in Case 003, as the Applicants here, is neither objective nor disinterested in the outcome of the proceedings. As the Applicants are affiliated with the court or its offices and cannot be considered impartial and independent advisers to the Chamber, the Request is denied.