

BEFORE THE SUPREME COURT CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/SC**Party Filing:** The Defence for a named Suspect in Case 004**Filed to:** The Supreme Court Chamber**Original language:** ENGLISH**Date of document:** 12 January 2015**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:**

REQUEST TO SUBMIT AMICUS BRIEF ON JOINT CRIMINAL ENTERPRISE

Filed by:**Distribution to:****The Co-Lawyers:**SO Mosseny
Suzana TOMANOVIĆ**The Supreme Court Chamber Judges:**Judge KONG Srim
Judge SOM Sereyvuth
Judge MONG Monichariya
Judge YA Narin
Judge Florence Ndepele Mwachande MUMBA
Judge Agnieszka KLONOWIECKA-MILART
Judge Chandra Nihal JAYASINGHE**Co-Prosecutors:**CHEA Leang
Nicholas KOUMJIAN**All Defence Teams****All Civil Parties**

A named Suspect in Case 004 (“the Suspect”), through his Co-Lawyers (“the Defence”), pursuant to Rules 21 and 33 of the ECCC Internal Rules (“Rules”), hereby request to submit an Amicus Curiae (“Amicus”) (See Annex A) in order to assist the Supreme Court Chamber in deciding the Co-Prosecutors’ Request to apply the extended form of Joint Criminal Enterprise (“JCE III”) at the ECCC (“OCP Request”).¹ Further, in order to assist the Supreme Court Chamber, the Amicus will also examine the validity of JCE as valid mode of liability at the ECCC. The Amicus is made necessary because the OCP Request violates the Suspect’s fundamental rights by attempting to have a mode of liability declared applicable at the ECCC – and thereby also apply to the Suspect – which did not exist in customary international law during the temporal jurisdiction of the ECCC. In accordance with the Article 8.3 of the Practice Direction on Filing of Documents, a Response shall be filed “within 10 calendar days of notification of the document to which the participant is responding.”² The Amicus is not a Response, but responses are permitted to an amicus.³

I. ADMISSIBILITY OF AMICUS

1. The Amicus is admissible under Rule 21. The Pre-Trial Chamber has previously considered that the fundamental principles set out in Rule 21 “requires that the Pre-Trial Chamber adopt a broader interpretation of the Charged Person’s right to appeal in order to ensure that the fair trial rights of the Charged Person are safeguarded.”⁴ The Pre-Trial Chamber has admitted appeals which raise issues of fundamental fair trial rights solely on the basis of Rule 21.⁵ Rule 21 is also applicable to Suspects, and therefore the Pre-Trial

¹ *Case 002*, Co-Prosecutors’ Appeal Against the Judgment of the Trial Chamber in Case 002/01, 28 November 2014, F11.

² Practice Direction ECCC/01/2007/Rev.8, Filing of Documents before the ECCC, Article 8.3.

³ Rule 33(2) states in pertinent part: “Briefs under this Rule shall be filed with the Greffier of the Co-Investigating Judges or Chamber concerned, who shall provide copies to the Co-Prosecutors and the lawyers for the other parties, who shall be afforded the opportunity to respond.”

⁴ *Case 002*, Decision on IENG Sary’s Appeal against Co-Investigating Judges’ Decision Refusing to Accept the Filing of IENG Sary’s Response to the Co-Prosecutors’ Rule 66 Final Submission and Additional Observations, and Request for Stay of Proceedings, 20 September 2010, D390/1/2/4 (“Decision on IENG Sary’s Response”), para. 13. *See also*, *Case 002*, Decision on KHIEU Samphan’s Appeal against the Order on Translation Rights and Obligations of the Parties, 20 February 2009, A190/I/20, para. 36; *Case 002*, Decision on IENG Sary’s Appeal against the Closing Order, 11 April 2011, D427/1/30, para. 49.

⁵ *See, e.g.*, *Case 002*, Decision on IENG Thirith’s Appeal Against the Co-Investigating Judges’ Order Rejecting the Request for Stay of Proceedings on the Basis of Abuse of Process, 10 August 2010, D264/2/6, paras. 13-14; Decision on IENG Sary’s Response, para. 13.

Chamber's broad interpretation should also apply to Suspects. The International Co-Investigating Judge has held that Suspects enjoy the rights enshrined in Rule 21.⁶

2. Rule 21 states, "The applicable ECCC Law, Internal Rules, Practice Directions and Administrative Regulations shall be interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused and Victims and so as to ensure legal certainty and transparency of proceedings...." The Suspect has a fundamental right to be tried only by law which was applicable at the time of the alleged offence, and a right to equality of arms, as enshrined in the Constitution,⁷ the Agreement,⁸ the Establishment Law,⁹ the International Covenant on Civil and Political Rights ("ICCPR"),¹⁰ and the Rules.¹¹
3. In the Notice of Appeal, the Co-Prosecutors state that "they do not intend to appeal the dispositive part of the Judgment or any factual or legal findings in that Judgment,"¹² but that they file the Notice of Appeal "in the interests of the law."¹³ The Co-Prosecutors are clear in that the purpose of the OCP Request is to benefit their case in Case 002/02.¹⁴ The

⁶ "Accordingly, the right of suspects to 'be heard' at this stage of the proceedings only extends to the rights enjoyed by a suspect, as set forth in Internal Rule 21," *Case 004*, Decision on ██████████ Request to the Co-Investigating Judges to Order the OCIJ Greffier to Immediately Place the Defence's Filings on the Case File, 4 August 2014, D202/2, para. 6.

⁷ Article 31 of the Constitution states: "The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women's and children's rights." Article 38 of the Constitution states: "The prosecution, arrest, or detention of any person shall not be done except in accordance with the law; Every citizen shall enjoy the right to defense through judicial recourse."

⁸ Article 12(2) of the Agreement states in pertinent part: "The Extraordinary Chambers shall exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights, to which Cambodia is a party." Article 13(1) of the Agreement states in pertinent part: "The rights of the accused enshrined in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights shall be respected throughout the trial process. Such rights shall, in particular, include the right: to a fair and public hearing."

⁹ Article 33 new of the Establishment Law states in pertinent part: "The Extraordinary Chambers of the trial court shall ensure that trials are fair... The Extraordinary Chambers of the trial court shall exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights."

¹⁰ Article 14(1) of the ICCPR states in pertinent part: "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing." Article 15(1) of the ICCPR states in pertinent part: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed."

¹¹ Rule 21(1)(a) states in pertinent part: "ECCC proceedings shall be fair and adversarial and preserve a balance between the rights of the parties."

¹² *Case 002*, Co-Prosecutors' Notice of Appeal of a Decision in Case 002/01, 29 September 2014, E313/3/1 ("Notice of Appeal"), para. 10.

¹³ Notice of Appeal, para. 2.

¹⁴ "[T]he Co-Prosecutors will seek the application of JCE III in relation to the charges being heard in Case 002/02, for which the Co-Prosecutors consider that liability under JCE III would be a factually-appropriate, *alternative* characterisation of the conduct of the Co-Accused." Notice of Appeal, para. 8(2).

content of the OCP Request will have nothing to do with Case 002/01, but has the potential to affect the entire ECCC jurisprudence, including the law applicable to the Suspect. In order to protect the Suspect's fundamental right to be tried only by law which was applicable at the time of the alleged offence, and right to equality of arms, he must be permitted to respond through the Amicus to the OCP Request should the Supreme Court Chamber find the OCP Request admissible. Without being able to file the Amicus, the Suspect cannot defend himself on a potentially detrimental matter in violation of his fundamental right to adequate facilities for the preparation of his defence.¹⁵

II. THE OCP REQUEST IS NOT ADMISSIBLE

A. The Co-Prosecutors fail to meet the standard set out in the Rules

4. The Co-Prosecutors have stated that they "submit this appeal to the Supreme Court Chamber ... against the Trial Chamber's Judgment in Case 002/01."¹⁶ With respect to an appeal against a Judgement, Rule 104, entitled "Jurisdiction of the Supreme Court Chamber," states at subsection 1:

The Supreme Court Chamber shall decide an appeal against a judgment or a decision of the Trial Chamber on the following grounds:

- a) an error on a question of law invalidating the judgment or decision; or
- b) an error of fact which has occasioned a miscarriage of justice.

The Co-Prosecutors have failed to demonstrate any errors invalidating the Judgement. Indeed, the Co-Prosecutors unequivocally state that "they do not intend to appeal the dispositive part of the Judgment or any factual or legal findings in that Judgment."¹⁷

5. The Co-Prosecutors bring the Notice of Appeal "[p]ursuant to Internal Rule 105(3)."¹⁸ Rule 105(3) states:

A party wishing to appeal a judgment shall file a notice of appeal setting forth the grounds. The notice shall, in respect of each ground of appeal, specify the alleged errors of law invalidating the decision and alleged errors of fact which occasioned a miscarriage of justice. The appellant shall subsequently file an appeal brief

¹⁵ Article 35 new of the Establishment Law states in pertinent part: "In determining charges against the accused, the accused shall be equally entitled to the following minimum guarantees, in accordance with Article 14 of the International Covenant on Civil and Political Rights. b. to have adequate time and facilities for the preparation of their defence ..." Article 14(3) of the ICCPR states in pertinent part: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence..."

¹⁶ OCP Request, para. 1.

¹⁷ Notice of Appeal, para. 10.

¹⁸ Notice of Appeal, para. 1.

setting out the arguments and authorities in support of each of the grounds, in accordance with the requirements of paragraphs 2(a) and (c) of this Rule.

Rule 105(3) clearly states that each ground of appeal should set out specify the “alleged error of law” or “alleged error of fact.” Yet, the Co-Prosecutors state that they file the Notice of Appeal “in the interests of the law.”¹⁹ Filing a Notice of Appeal in the interests of the law does not conform to the criteria set out in Rule 105(3).

6. The OCP Request is procedurally deficient. The Co-Prosecutors bring the Notice of Appeal before the Supreme Court Chamber. In accordance with Rule 106(2), notices of appeal “shall be filed with the Greffier of the Trial Chamber.” As such, the Notice of Appeal is invalid and the Co-Prosecutors are procedurally barred from filing an Appeal to which this Notice of Appeal relates.

B. Procedural rules established at the international level do not support the admissibility of the OCP Request

7. The Co-Prosecutors “position on admissibility” is that this matter is admissible under “[p]rocedural rules established at the international level.”²⁰ Article 33 new of the Establishment Law is clear in that ECCC procedures must be “conducted in accordance with existing procedures in force,” and only “[i]f these existing procedure do not deal with a particular matter, or if there is uncertainty regarding their interpretation or application or if there is a question regarding their consistency with international standard, guidance may be sought in procedural rules established at the international level.” The existing procedures, in the form of Rules 104(1) and 105(3) are clear in that appeals against the Trial Chamber Judgement can only be brought on the basis of “alleged error of law” or “alleged error of fact.” The Co-Prosecutors claim neither of these. In the present instance, guidance need not be sought from procedural rules established at the international level to allow the OCP Request.
8. Even if procedural rules established at the international level are taken into account, this does not make the OCP Request admissible. The jurisprudence cited by the Co-Prosecutors does not assist their case. As stated by the Co-Prosecutors, the Supreme Court Chamber (reflected from the jurisprudence of the International Criminal Tribunal

¹⁹ Notice of Appeal, para. 2.

²⁰ Notice of Appeal, para. 5. *See also*, OCP Request, paras. 7-8.

for the former Yugoslavia (“ICTY”) and the International Criminal Tribunal for Rwanda (“ICTR”)) found that “[i]n exceptional circumstances, the Supreme Court Chamber may raise questions *ex proprio motu* or hear appeals where a party has raised a legal issue that would not lead to the invalidation of the judgement but is nevertheless of general significance to the ECCC’s jurisprudence.”²¹

9. In the present instance, a revisit of the application of JCE III at the ECCC is not of general significance to the ECCC jurisprudence. ECCC jurisprudence is clearly settled on this issue. The Pre-Trial Chamber undertook a comprehensive analysis of the status of customary international law regarding the existence of JCE III during the temporal jurisdiction of the ECCC and found it not to exist (“PTC JCE III Decision”).²² The Trial Chamber confirmed the Pre-Trial Chamber’s findings.²³ Further, Supreme Court Chamber has not found the circumstances surrounding JCE III to be “exceptional.” The Supreme Court Chamber Judgement in Case 001 was rendered after the PTC JCE III Decision.²⁴ If the Supreme Court Chamber took exception to the PTC JCE III Decision, it would have *proprio motu* raised the question as a matter of general significance to the ECCC’s jurisprudence.
10. The Co-Prosecutors assert that “[t]his position is also well-established in French law through the extraordinary recourse of *pourvoi en cassation dans l’intérêt de la loi*.”²⁵ Further, the Co-Prosecutors assert that, “as the apex judicial body of the ECCC, the Chamber should exercise the same authority as would be available under Cambodian law to address compelling issues of law even if they would not affect the ultimate judgment.”²⁶ The ECCC is a Cambodian court applying Cambodian law. There is no provision in Cambodian law permitting declaratory relief through the appellate courts on legal issues of general significance or considerable significance to Cambodian jurisprudence. At times where ambiguity exists, guidance from other domestic

²¹ *Case 001*, Appeal Judgement, 3 February 2012, F28, para. 15.

²² *Case 002*, Decision on the Appeals of the Co-Investigative Judges['] on Joint Criminal Enterprise (JCE), 20 May 2010, D97/14/15.

²³ *Case 002*, Decision on the Applicability of Joint Criminal Enterprise, 12 September 2011, E100/6 (“Trial Chamber JCE III Decision”).

²⁴ The PTC JCE III Decision was rendered on 20 May 2010. The Supreme Court Chamber Appeal Judgement in Case 001 was rendered on 3 February 2012.

²⁵ Notice of Appeal, para. 5.

²⁶ OCP Request, para. 9.

jurisdictions is helpful. In the present instance, guidance from other domestic jurisdictions is not needed as the ECCC jurisprudence on this issue is clear and settled.

C. The Co-Prosecutors' other admissibility concerns are ill-founded

11. The Co-Prosecutors erroneously assert that “[a]bsent admitting an appeal at this stage, this Chamber will be powerless to settle this issue of general significance regarding the applicability of JCE III.”²⁷ Where the application of JCE III triggers the test set out in Rule 104, the Co-Prosecutors will have the correct legal tools to bring JCE before the Supreme Court Chamber. The Co-Prosecutors state that they “will seek the application of JCE III in relation to the charges being heard in Case 002/02.”²⁸ Through Rule 104, if raised in Case 002/02, the Co-Prosecutors will have the correct legal tools to raise the application of JCE III before the Supreme Court Chamber in Case 002/02.
12. The Co-Prosecutors assert that “[c]ompelling considerations of international public policy favour review by this Chamber, as set out in the Co-Prosecutors’ Notice of Appeal.”²⁹ The Co-Prosecutors provide five reasons for requesting “definitive legal guidance” from the Supreme Court Chamber. Each of these will be taken in turn.
13. First, the Co-Prosecutors assert that “the applicability of JCE III has been judicially considered by the Pre-Trial Chamber and the Trial Chamber, but has not been settled definitively by this Chamber either in Case 001 or Case 002.”³⁰ The existence of JCE III in customary international law during the temporal jurisdiction of the ECCC is not a matter of unsettled law. Both the Pre-Trial Chamber and the Trial Chamber agree that JCE III is not applicable at the ECCC.³¹ The Supreme Court Chamber does not need to resolve any issue for the purposes of legal certainty. On the contrary, having the Supreme Court Chamber disturb already settled jurisprudence will lead to legal uncertainty. The Co-Prosecutors are erroneous to claim that the issue is unsettled because the Supreme Court Chamber has not considered it. The Supreme Court Chamber did not find the matter “exceptional” or of “general significance” in order to raise the matter *proprio motu* when it had the opportunity in Case 001.

²⁷ OCP Request, para. 10.

²⁸ Notice of Appeal, para. 8(2).

²⁹ OCP Request, para. 11.

³⁰ Notice of Appeal, para. 8(1).

³¹ PTC JCE III Decision; Trial Chamber JCE III Decision.

14. Second, the Co-Prosecutors assert that “the Co-Accused are on notice as from further Initial Hearing of 30 July 2014 that the Co-Prosecutors will seek the application of JCE III in relation to the charges being heard in Case 002/02.”³² This is of no relevance. As stated *supra*, an appeal against a Judgement which is not brought on the basis of “alleged error of law” or “alleged error of fact” cannot be admissible. Further, the Co-Prosecutors’ Appeal cannot be found to be admissible simply because the Co-Accused have been put on notice that the Co-Prosecutors disagree with a legal issue relevant to their case in Case 002/01.

15. Third, the Co-Prosecutors assert that “the ICTR Appeals Chamber has stated unequivocally, ‘... there can be no question that third-category JCE liability is firmly accepted in customary international law.’”³³ Further, the Co-Prosecutors assert that:³⁴

Were the Trial Chamber’s finding that JCE III was not part of customary law during the DK period to be upheld and applied, this would strongly suggest that the Trial and Appeals Chambers of the ICTY [and the ICTR Appeals Chamber in *Karemera et al.* and of the SCSL Appeals Chamber in *Brima et al.*] were in error to enter convictions on the basis of JCE III...

The Co-Prosecutors’ concerns are misplaced. The Co-Prosecutors must “have high moral character.”³⁵ In accordance with their moral duties, the Co-Prosecutors should be more concerned as to whether JCE III formed part of customary international law during the temporal jurisdiction of the ECCC and not whether coming to the correct legal finding will result in erroneous convictions at other tribunals. By raising such a concern, the Co-prosecutors, who must “have high moral character,” appear to be requesting ECCC Judges to be influenced in their decision making from erroneous external factors in violation of their ethical obligations.³⁶ In any event, the application of JCE III at the *ad*

³² Notice of Appeal, para. 8(2).

³³ Notice of Appeal, para. 8(3).

³⁴ Notice of Appeal, para. 8(3).

³⁵ Agreement, Art. 6(2); Establishment Law, Art. 19.

³⁶ Article 128 of the Constitution states that “[t]he Judicial power shall be an independent power. The Judiciary shall guarantee and uphold impartiality and protect the rights and freedoms of the citizens.” Article 3(3) of the Agreement and Article 10 new of the Establishment Law state in pertinent part that Judges: “shall be independent in the performance of their functions and shall not seek any instructions from any government or any other source.”

hoc tribunals is still in dispute.³⁷ The ICC has expressly rejected JCE as a mode of liability.³⁸

16. Fourth, the Co-Prosecutors assert that and that they “can find no evidence of developments in customary international law between 1975 and 1992 that would support any modification in the state of international law on JCE III.”³⁹ The Co-Prosecutors made the same argument before the Trial Chamber.⁴⁰ The Trial Chamber analyzed the cases relied upon in *Tadić*⁴¹ and the Special Tribunal for Lebanon to prove the existence of JCE III and found that the basis for conviction in those cases cannot be ascertained, thereby departing from the conclusion reached in *Tadić*.⁴² JCE III had no basis in customary international law in 1992.

17. Fifth, the Co-Prosecutors assert that “at present, the ECCC Pre-Trial and Trial Chambers’ findings on JCE III stand alone among their sister international and internationalised criminal tribunals.”⁴³ In their assertion, the Co-Prosecutors fail to mention that the ICC has expressly rejected JCE as a mode of liability.⁴⁴ Further, as stated *supra*, the Co-Prosecutors’ concerns are misplaced. The Co-Prosecutors should be more concerned as to whether JCE III formed part of customary international law during the temporal jurisdiction of the ECCC and not whether coming to the correct legal finding will result in the ECCC standing alone among international and internationalised criminal tribunals.

18. The Co-Prosecutors further assert that:⁴⁵

The harmonization and consistency of jurisprudence are also significant international legal policy objectives of the embryonic system of international criminal justice, which further the values of: (a) equal access to the protection of

³⁷ *Prosecutor v. Prlić et al.*, IT-04-74-T, Judgement, 28 May 2013, Separate and Partially Dissenting Opinion of Presiding Judge Antonetti, Judgement Volume VI, pp. 100-182.

³⁸ *Prosecutor v. Lubanga Dyilo*, ICC-01/04-01/06, Decision on the Confirmation of Charges, 29 January 2007 (“Lubanga Confirmation of Charges Decision”), paras. 322-41.

³⁹ Notice of Appeal, para. 8(3).

⁴⁰ *Case 002*, Co-Prosecutors’ Request for the Trial Chamber to Consider JCE III as an Alternative Mode of Liability, 17 June 2011, E100, para. 20.

⁴¹ Trial Chamber JCE III Decision, n. 71, *citing United States v. Haesiker*, Case No. 12-489-1, 16 October 1947, Review Judgement (based on the same facts as *United States of America v. Goebell, et. al.* 6 February-21 March 1946) (“*Borkum Island case*”). Trial Chamber JCE III Decision, n. 75, *citing Trial of Erich Heyer and Six Others*, British Military Court of the Trial of War Criminals, Essen, 18-19 and 21-22 December 1945, UNWCC, Vol. 1 (1949) (“*Essen Lynching case*”).

⁴² Trial Chamber JCE III Decision, paras. 30-35.

⁴³ Notice of Appeal, para. 8(4).

⁴⁴ Lubanga Confirmation of Charges Decision, paras. 322-41.

⁴⁵ Notice of Appeal, para. 9.

the law across the present patchwork of international jurisdictions; (b) legal certainty for persons charged and accused of core international crimes; (c) more effective deterrence of such crimes through uniform application of the law; and (d) providing a source of best practice for national systems of criminal justice, an express legacy objective of the ECCC.

While the Co-Prosecutors espouse noble aims, such aims cannot be achieved by applying law which did not exist at the relevant time. Applying law which did not exist at the relevant time is counter-productive to the principle of legal certainty and the ECCC acting as a model court.⁴⁶ In order for the Supreme Court Chamber to fulfil the noble aims championed by the Co-Prosecutors, it must find the OCP Request inadmissible.

19. The Co-Prosecutors assert that applying JCE III at the ECCC would “provid[e] a source of best practice for national systems of criminal justice, an express legacy objective of the ECCC.”⁴⁷ The 2009 Cambodian Penal Code, adopted years after the commencement of the ECCC incorporated the crimes of genocide,⁴⁸ war crimes⁴⁹ and crimes against humanity.⁵⁰ When given the opportunity, the Cambodian parliament did not expressly include any form of JCE in either the Establishment Law or the 2009 Penal Code.⁵¹ Applying JCE in a national court would require an amendment of the Establishment Law or the 2009 Cambodian Penal Code by the Cambodian Parliament.

III. CONCLUSION

20. For the reasons stated herein, the OCP Request is inadmissible. The OCP Request violates the Suspect’s fundamental rights by attempting to have a mode of liability declared applicable at the ECCC – and thereby also apply to the Suspect – which did not exist in customary international law during the temporal jurisdiction of the ECCC. Should the Supreme Court Chamber find the OCP Request admissible, in order to uphold

⁴⁶ The Trial Chamber has stated that, while the ECCC lacks the mandate to directly address alleged deficiencies in national mechanisms designed to uphold the independence of the judiciary, “[i]t may, as a model court, nonetheless serve to encourage and underscore the significance of institutional safeguards of judicial independence and integrity.” *Case 002*, Decision on IENG Sary’s Application to Disqualify Judge Nil Nonn and Related Requests, 28 January 2011, E5/3, para. 14 (emphasis added).

⁴⁷ Notice of Appeal, para. 9.

⁴⁸ 2009 Cambodian Penal Code, Arts. 183-187.

⁴⁹ 2009 Cambodian Penal Code, Arts. 193-198.

⁵⁰ 2009 Cambodian Penal Code, Arts. 188-192.

⁵¹ The 2009 Cambodian Penal Code covers: “Article 24: Principle of individual criminal responsibility;” “Article 25: Definition of perpetrator;” “Article 26: Definition of co-perpetrator;” “Article 27: Definition of attempt;” “Article 28: Definition of instigator;” “Article 29: Definition of accomplice;” “Article 30: Definition of public official and holder of public elected office.”

the Suspect's fundamental right to be tried only by law which was applicable at the time of the alleged offence and his right to equality of arms, he must be permitted to submit the Amicus in order to assist the Supreme Court Chamber in deciding the OCP Request to apply JCE III at the ECCC.

WHEREFORE, for all the reasons stated herein, the Defence respectfully requests the Supreme Court Chamber to:

1. Find the OCP Request inadmissible; or alternatively
2. Admit the Amicus.

Respectfully submitted,



SO Mosseny



Suzana TOMANOVIĆ

The stamp is circular with a red border. Inside the border, the text reads: 'ព្រះរាជាណាចក្រកម្ពុជា' (Kingdom of Cambodia) at the top, 'AVOCAT' and 'ATTORNEY AT LAW' in the center, and 'ROYAUME DU CAMBODGE' at the bottom.

Co-Lawyers for a named Suspect in Case 004

Signed in Phnom Penh, Kingdom of Cambodia on this 12TH day of **January**, 2015