

BEFORE THE TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 002/19-09-2007-ECCC/TC**Party Filing:** The Defence for MEAS Muth**Filed to:** The Trial Chamber**Original language:** ENGLISH**Date of document:** 05 June 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:**

**MEAS MUTH'S REQUEST TO INTERVENE IN CASE 002/02 TO ADDRESS
THE USE OF TORTURE-TAINTED EVIDENCE AT THE ECCC
OR, IN THE ALTERNATIVE,
REQUEST FOR LEAVE TO SUBMIT *AMICUS CURIAE* BRIEF ON THE USE
OF TORTURE-TAINTED EVIDENCE AT THE ECCC**

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**MEAS MUTH'S REQUEST TO INTERVENE IN CASE 002/02 TO ADDRESS
THE USE OF TORTURE-TAINTED EVIDENCE AT THE ECCC**

OR, IN THE ALTERNATIVE,

**REQUEST FOR LEAVE TO SUBMIT *AMICUS CURIAE* BRIEF ON THE USE
OF TORTURE-TAINTED EVIDENCE AT THE ECCC**

Mr. MEAS Muth, through his Co-Lawyers (“the Case 003 Defence”), hereby requests to intervene in writing in the matter of “Submissions regarding evidence obtained through the use of torture,”¹ in which the Trial Chamber granted the Co-Prosecutors’ request for oral and written submissions on the admissibility and permissible uses of evidence that may have been obtained through torture. This request is made necessary because a decision on the admissibility and use at trial of evidence that may have been obtained through torture necessarily will impact Mr. MEAS Muth as well as the parties in Case 002. In the alternative, pursuant to Rule 33 of the ECCC Internal Rules (“Rules”),² the Case 003 Defence seeks leave to file the attached *amicus curiae* brief on the issue of the admissibility and use at trial of evidence that may have been obtained through torture. The brief demonstrates the limited purpose for which torture-tainted evidence can be used at trial under Cambodian and international criminal law. The brief is intended to aid the Trial Chamber in its determination of the issue. This is an issue of concern to all international criminal law jurists with an interest in the appropriate use (or exclusion) of torture-tainted evidence in international criminal trials. A decision by the Trial Chamber will have important implications for Case 003 and other international tribunals, and will contribute to the development of international criminal law on this issue. The Trial Chamber’s scheduling email to the parties was not notified until 21 May 2015; hence, the timing of the Case 003 Defence’s Request.

I. BACKGROUND

1. On 28 July 2009, in Case 002, the Office of the Co-Investigating Judges (“OCIJ”) issued an Order on the use of statements which were or may have been obtained by

¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Email from Trial Chamber concerning “Submissions regarding evidence obtained through use of torture,” 7 May 2015, E350/4.2.

² Rule 33 provides in relevant part:

1. At any stage of the proceedings, the Co-Investigating Judges or 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 Co-Investigating Judges and the Chambers concerned shall determine what time limits, if any, shall apply to the filing of such briefs.

torture (“Order”).³ The OCIJ stated that Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Torture Convention”)⁴ only applies to evidence established as resulting from torture, and that annotations that appear on confessions, preliminary biographical material and objective information included in a confession that exists independently of the interrogation were not obtained from torture and would not be excluded.⁵ The OCIJ stated that the reliability of the statements is at issue only when using the statements for the truth of their contents, but that the reliability of the statements cannot be assessed until the end of the investigation, when the Case File is deemed complete.⁶

2. On 10 May 2010, in a decision finding inadmissible IENG Sary’s appeal⁷ of the constructive denial of two requests to the OCIJ regarding torture-tainted evidence⁸ and the OCIJ’s guidelines for using such evidence,⁹ the Pre-Trial Chamber stated:

Notwithstanding any observations to the contrary by the Co-Investigating Judges in the Order, Article 15 of the [Convention Against Torture] is to be strictly applied. There is no room for a determination of the truth or for use otherwise of any statement obtained through torture.¹⁰

3. On 31 January 2012, in Case 002/01, the Trial Chamber issued a Memorandum regarding the use at trial of torture-tainted evidence, in which it “[drew] the parties’ attention to the decision made in Case 001, specifically in hearings of 20 and 28 May 2009 concerning the use of confessions as evidence.”¹¹

³ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Order on use of statements which were or may have been obtained by torture, 28 July 2009 (“OCIJ Order”), E3/1555.

⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984, entered into force on 26 June 1987, 1465 U.N.T.S. 113 (1984).

⁵ OCIJ Order, para. 17.

⁶ *Id.*, para. 28.

⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ(PTC31), IENG Sary’s Appeal Against the OCIJ’s Constructive Denial of IENG Sary’s Requests Concerning the OCIJ’s Identification of and Reliance on Evidence Obtained through Torture, 19 November 2009, D130/7/3/1.

⁸ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Request Concerning the OCIJ’s Identification of, and Reliance on, Evidence Obtained through Torture, 17 July 2009, D130/7.

⁹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ, Letter Concerning the OCIJ’s Identification of, and Reliance on, Evidence Obtained through Torture, 7 August 2009, D130/7/21.

¹⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/OCIJ(PTC31), Decision on Admissibility of IENG Sary’s Appeal against the OCIJ’s Constructive Denial of IENG Sary’s Requests Concerning the OCIJ’s Identification of and Reliance on Evidence Obtained through Torture, 10 May 2010, D130/7/3/5, para. 38.

¹¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Memorandum titled “Trial Chamber response to Motions E67, E57, E56, E58, E23, E59, E20, E33, E71 and E73 following Trial Management Meeting of 5 April 2011,” 8 April 2011 (“Case 002/01 Trial Chamber Memorandum”), E74, p. 3.

4. On 7 August 2014, in the Case 002/01 Trial Judgement, the Trial Chamber stated:

“certain evidence admitted for a limited purpose, such as proof that a statement was obtained through torture, may be relied upon only for that limited purpose and not as to the truth of the statement.”¹²
5. On 28 April 2015, in Case 002/02 in response to the NUON Chea Defence’s questioning of a witness, the Trial Chamber stated:

[T]he Chamber would like to advise you that the content of the records as a result of tortures will not be allowed to be read. When the Chamber allows the Prosecution to read that record, only the annotation part was allowed by the Chamber. So, there is a difference between allowing the annotation or the content of that record as a result of torture.¹³
6. On 7 May 2015, the International Co-Prosecutor requested oral or written submissions on the use at trial of evidence obtained by torture.¹⁴ The International Co-Prosecutor requested submissions, *inter alia*, because:

[T]he issue has been coming up a lot with past witnesses in the past few weeks, but I would submit that all of those questions that were asked were improper questions for other reasons; they were irrelevant. ...There is no reason at this time to go into the issue of these confessions which the Prosecution will – continue to submit – cannot be used by the Defence to prove the truth of the matter asserted, because to do so, first, they’re completely unreliable; and secondly, it encourages torture when you are allowing those who are responsible for the torture to use confessions that they obtained through torture to justify their torture and other killings.¹⁵
7. On 7 May 2015, the Trial Chamber Greffier sent an email to the Case 002/02 parties, which was placed on the public Case 002 Case File on 25 May 2015, granting the International Co-Prosecutor’s request for submissions on the admissibility and permissible uses of evidence that may have been obtained through torture.¹⁶ The Trial Chamber scheduled oral submissions for 25 May 2015, with written submissions to be filed by the parties by 21 May 2015.

¹² *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Case 002/01 Judgement, 7 August 2014, E313, para. 35, citing *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 5 April 2011, E1/2.1, p. 96-97; Case 002/01 Trial Chamber Memorandum, p.3; *Case of Kaing Guek Eav alias “Duch”*, 001/18-07-2007-ECCC/TC, Decision on Parties Requests to Put Certain Materials Before the Chamber Pursuant to Internal Rule 87(2), 28 October 2009, D288/6.176, para. 8.

¹³ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 28 April 2015, E1/294.1, p. 42.

¹⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Transcript, 7 May 2015, E1/298.1, p. 3.

¹⁵ *Id.*, p. 4-5.

¹⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Email from Trial Chamber concerning “Submissions regarding evidence obtained through use of torture,” 7 May 2015, E350/4.2.

8. On 21 May 2015, the NUON Chea Defence filed its written submissions.¹⁷ The NUON Chea Defence submitted, *inter alia*, that the only reasonable interpretation of Article 15 of the Torture Convention is that it applies “only to the use of the content of torture-tainted statements by state authorities *against* individuals, rather than *by* individuals *for* their defence.”¹⁸ The Co-Prosecutors may not use torture-tainted evidence against NUON Chea.¹⁹
9. On 21 May 2015, the Co-Prosecutors filed their written submissions.²⁰ The Co-Prosecutors submitted, *inter alia*, that Article 15 of the Torture Convention recognizes that torture-tainted evidence “is admissible when it is being offered ‘against the person accused of torture as evidence the statement was made.’”²¹ The Co-Prosecutors submitted that the following parts of S-21 and other interrogation records were permissible, in accordance with the Torture Convention: (i) biographical data recorded in confessions or prison notebooks, such as name, age, residence, former occupation, and unit or position;²² (ii) the dates of arrest and interrogations;²³ (iii) written annotations and reports from interrogators;²⁴ (iv) reports by S-21 cadres and Kraing Ta Chan notebooks summarizing the interrogations;²⁵ (v) lists of implicated cadres in S-21 confessions and Kraing Ta Chan notebooks;²⁶ (vi) detainees’ statements prior to interrogations expressing their innocence and loyalty;²⁷ and (vii) statements in confessions that are *prima facie* unlikely to have been made by torture, such as statements regarding Party policies, administrative structures, leaders’ identities, and official meetings or Congresses.²⁸ The Co-Prosecutors submitted that these statements either could not be considered statements obtained as a result of torture, or were not going to be used for the truth of the statements, or there was a

¹⁷ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, NUON Chea’s Submissions Regarding the Use of “Torture-Tainted Evidence” in the Case 002/02 Trial, 21 May 2015, E350.

¹⁸ *Id.*, para. 17.

¹⁹ *Id.*, para. 30.

²⁰ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Co-Prosecutors’ Submission Regarding the Application of the Torture Convention to S-21 Confessions and Other Records Relating to Interrogations of Prisoners, 21 May 2015, E350/1.

²¹ *Id.*, para. 7.

²² *Id.*, para. 9.

²³ *Id.*, para. 10.

²⁴ *Id.*, para. 11.

²⁵ *Id.*, paras. 12-13.

²⁶ *Id.*, para. 15.

²⁷ *Id.*, para. 16.

²⁸ *Id.*, para. 17.

good faith basis to conclude that the statements were accurate and reliable.²⁹ The Co-Prosecutors submitted that the Trial Chamber should assess the admissibility and weight of such statements after all evidence in the case is completed.³⁰

10. On 21 May 2015, the Civil Parties filed their written submissions.³¹ The Civil Parties submitted, *inter alia*, that the law is clear that a statement obtained by torture or cruel or inhuman treatment is inadmissible for the truth of its contents and can only be used against a person accused of torture as evidence that the statement was made.³² Annotations or markings by interrogators and officials are admissible as evidence, as is evidence relating to the motivations behind interrogations and the subsequent use of the confessions by interrogators or officials.³³

11. On 21 May 2015, the KHIEU Samphan Defence filed its written submissions.³⁴ The KHIEU Samphan Defence submitted, *inter alia*, that torture-tainted evidence or evidence tainted by physical or mental duress should only be admitted as evidence of the particular statement.³⁵

II. ADMISSIBILITY OF REQUEST

12. The Supreme Court Chamber has held that intervention by one Accused in another Accused's case may be permitted "on a case-by-case basis where the interests of justice so dictate,"³⁶ when intervention is in the "legitimate interests" of the requesting party and denial thereof could cause him prejudice.³⁷ Mr. MEAS Muth has a legitimate interest in the rules set by the Trial Chamber on the admissibility and use of torture-tainted evidence during trial. This decision will impact significantly the presentation of evidence in Case 003 and will guide the Co-Investigating Judges as to

²⁹ *See, e.g., id.*, paras. 9-10, 15, 17.

³⁰ *Id.*, para. 22.

³¹ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Civil Party Lead Co-Lawyers' Submissions Relating to the Admissibility and Permissible Uses of Evidence Obtained Through Torture, 21 May 2015, E350/3.

³² *Id.*, para. 16.

³³ *Id.*, para. 17.

³⁴ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Conclusions de la Défense de M. KHIEU Samphan concernant l'usage des informations obtenues sous la torture, 21 May 2015, E350/4.

³⁵ *Id.*, paras. 12-13.

³⁶ *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/SC, Decisions on Requests to Intervene or Submit *Amici Curiae* Briefs in Case 002/01 Appeal Proceedings, 8 April 2015, F20/1, para. 12, dismissing requests by the Case 003 Defence and a party to Case 004 to intervene in the Case 002/01 appeal proceedings or submit an *amicus curiae* brief regarding the applicability of JCE III, because the subject matter had been extensively litigated in Case 002.

³⁷ *Id.*, para. 11.

how it can use torture-tainted evidence during its investigation. The Trial Chamber must permit the Case 003 Defence to intervene by filing written submissions. There is no Cambodian or ECCC law or procedural rule that prevents such intervention.

13. Should the Trial Chamber decide not to permit the Case 003 Defence to directly intervene in Case 002/02 for the purpose of addressing the admissibility and use of torture-tainted evidence, the Case 003 Defence requests to be permitted to act as an *amicus curiae*. Rule 33 does not limit or restrict who may act as an *amicus curiae*: any person or organization may be granted leave to submit an *amicus curiae* brief if the Chamber considers it desirable for the proper adjudication of the case. The Supreme Court Chamber has held that it is “preferable” that an *amicus curiae* has an “abstract interest” in the particular issue, rather a motive to obtain a particular outcome.³⁸ However, there is no *requirement* at the ECCC that an *amicus curiae* be a disinterested party. Permitting the Case 003 Defence to intervene as an *amicus curiae* would assist the Trial Chamber in the proper adjudication of this issue.

III. ARGUMENTS IN SUPPORT OF THE CASE 003 DEFENCE’S INTERVENTION AS AN INTERESTED PARTY IN CASE 002/02

14. Mr. MEAS Muth would be prejudiced if he is not permitted to intervene in Case 002 on the issue of the use of torture-tainted evidence at trial. Mr. MEAS Muth is charged with the offense of torture under the 1956 Cambodian Penal Code and torture as a grave breach of the Geneva Conventions.³⁹ Accordingly, a determination as to the admissibility and use of torture-tainted evidence will significantly impact Mr. MEAS Muth’s interests in Case 003. The decision will create a precedent on the admissibility and use of such evidence, affecting both Mr. MEAS Muth’s presentation of evidence in the Case 003 trial proceedings and the Co-Investigating Judges by providing guidance on the use of such material. Mr. MEAS Muth has a legitimate interest in the Trial Chamber’s consideration of this issue in Case 002.
15. Although judicial decisions are operative only between parties to a case and only regarding that particular case, in reality, judicial decisions resound beyond particular cases and can, and regularly do, impact other cases. This is particularly true where, as

³⁸ *Id.*, para. 9.

³⁹ *Case of MEAS Muth*, 003/07-09-2009-ECCC-OCIJ, Decision to Charge MEAS Muth *In Absentia*, Annex, 3 March 2015, D128.1, paras. 4, 10.

at the ECCC, one Trial Chamber will hear multiple cases with different Accused. In recognition of the fact that a decision in one ECCC case can affect parties in another case, ECCC Chambers previously have permitted interventions when the issue under consideration is one that would affect parties in other cases.

16. For example, the Pre-Trial Chamber has invited submissions from Case 001 Civil Parties on an application made in Case 002, on the ground that determination of the application would lead to the issuance of general directions on the rights of unrepresented Civil Parties to address the Pre-Trial Chamber and thus would affect Civil Parties in both Cases 001 and 002.⁴⁰
17. Similarly, a decision by the Trial Chamber as to the admissibility and use of torture-tainted evidence in Case 002 will affect Mr. MEAS Muth because it will impact the evidence permitted in Case 003 and the means for which it can be used during the investigation and at trial.
18. Other international tribunals have permitted intervention when a decision would impact the interests of other accused before the tribunal. At the Special Court for Sierra Leone (“SCSL”), for example, the Appeals Chamber permitted Augustine Gbao and Moinina Fofana (Accused in other cases before the SCSL) to intervene in *Prosecutor v. Kallon & Kamara* regarding the applicability of the Lomé Accord amnesty.⁴¹ The Appeals Chamber also permitted Moinina Fofana to intervene in two matters in *Prosecutor v. Norman* regarding the SCSL’s jurisdiction to prosecute the Accused for child recruitment⁴² and the SCSL’s judicial independence.⁴³
19. Refusing to allow the Defence to intervene on the basis that the admissibility and use of torture-tainted evidence may be challenged in Case 003 at a later time does not

⁴⁰ See *Case of NUON Chea et al.*, 002/19-09-2007-ECCC-OCIJ (PTC02), Decision on IENG Sary’s Request to Make Submissions on the Application of the Theory of Joint Criminal Enterprise in the Co-Prosecutors’ Appeal of the Closing Order against Kaing Guek Eav “Duch”, 6 October 2008, D99/3/19, para. 11, referring to those Civil Party directions, which appear to be confidential.

⁴¹ See *Prosecutor v. Kallon & Kamara*, SCSL-2004-15-AR72(E), Decision on Challenge to Jurisdiction: Lomé Accord Amnesty, 13 March 2004, title page (listing Gbao and Fofana as interveners) and p. 3, noting that Gbao and Fofana had filed written submissions and were granted leave to intervene at the oral hearing.

⁴² See *Prosecutor v. Norman*, SCSL-2004-14-AR72(E), Decision on Preliminary Motion Based on Lack of Jurisdiction (Child Recruitment), 31 May 2004, title page (listing Fofana as an intervener), and p. 3, noting that Fofana had filed written submissions and was granted leave to intervene at the oral hearing.

⁴³ *Prosecutor v. Norman*, SCSL-2004-14-AR72(E), Decision on Preliminary Motion Based on Lack of Jurisdiction (Judicial Independence), 13 March 2004, title page (listing Fofana as an intervener).

sufficiently protect Mr. MEAS Muth's interests and would not be in the interest of judicial economy. The Trial Chamber is unlikely to reach a different decision in Case 003 than it will in Case 002. A different decision would, in any event, be improper and inappropriate, as it would violate Mr. MEAS Muth's right to equal treatment.

20. It is in the interests of judicial economy to permit the Case 003 Defence to intervene on this issue. Intervention at this stage will reduce the number of submissions filed and hearings ultimately held before the Trial Chamber on this issue, rendering future trial proceedings in Case 003 more efficient. The Trial Chamber would be best served by having all potential arguments before it now – including arguments from other Accused not in Case 002/02 – before a decision is taken.
21. Intervention by the Case 003 Defence would not prejudice any parties in Case 002. The Case 003 Defence's submission is intended to ensure that the Trial Chamber receives comprehensive arguments on all relevant points of law related to the use at trial of torture-tainted evidence. The submission is not intended to support or supplement any of the arguments by Case 002 parties.
22. Intervention by the Case 003 Defence would not delay Case 002. The Case 002 parties filed written submissions only on 21 May 2015, with oral submissions on 25 May 2015. Receiving the Case 003 Defence's submissions now would not cause a need for any additional time before the Trial Chamber begins to deliberate the issue.

IV. ARGUMENTS IN SUPPORT OF THE CASE 003 DEFENCE ACTING AS AN *AMICUS CURIAE* IN CASE 002/02

23. No party will be prejudiced by the filing of an *amicus curiae* brief on this issue, as Rule 33(2) provides that the parties have a right to respond to the brief. Further, as stated *supra* in paragraph 22, the proceedings will not be delayed.
24. There is no ulterior motive⁴⁴ underlying the Case 003 Defence's request for leave to file an *amicus curiae* brief. The Case 003 Defence does not intend to attempt to serve

⁴⁴ See *Prosecutor v. Kallon*, SCSL-2003-07-PT, Decision on Application by the Redress Trust, Lawyers Committee for Human Rights and the International Commission of Jurists for Leave to File Amicus Curiae Brief and to Present Oral Submissions, 1 November 2003 (“SCSL *Kallon* Decision on Application by Legal Organizations”), para. 7, in which the Appeals Chamber granted the applicants leave to intervene in the case orally and in writing, stating: “We do not consider that [the applicants] seek leave to intervene for

as substitute counsel for NUON Chea or KHIEU Samphan.⁴⁵ The Case 003 Defence has no interest in assisting with the defence of NUON Chea or KHIEU Samphan. The Case 003 Defence is solely interested in ensuring that Mr. MEAS Muth's rights and interests are fully protected in Case 003 through a proper determination of this issue.

25. The fact that the Case 003 Defence has an interest in the Trial Chamber's decision on torture-tainted evidence does not mean that it cannot be permitted to be an *amicus curiae* in Case 002. Although the International Criminal Court's Pre-Trial Chamber II has stated that *amici curiae* should be independent, impartial, and have no other standing in the proceedings,⁴⁶ other international tribunals have permitted organizations and persons with an interest in the case to act as *amicus curiae* on particular issues.
26. In *Bagosora*, the International Criminal Tribunal for Rwanda permitted the intervention of *amicus curiae* with a legal interest in the outcome of an issue. As Trial Chamber II noted: "[T]he general definition of *amicus curiae* does not call for impartiality on the part of the filing party. Rather it takes into consideration that such briefs are filed by a party, not a part of the action, but one with strong interests in or views on the subject matter before the court."⁴⁷ Thus, the Judges of the Chamber consider an intervener's interest in the subject matter when assessing the brief.
27. At the SCSL, the Appeals Chamber observed that an intervening party may have either a direct interest in the issue, "insofar as this decision will be likely to create a

any ulterior motive, for example to provide a publicity platform for themselves, or to use the Court's privileges and immunities to put declarations on the record or to promote some hidden agenda."

⁴⁵ See *Case of KAING Guek Eav alias "Duch"*, 001/18-07-2007-ECCC/SC, Decision on DSS Request to Submit an *Amicus Curiae* Brief to the Supreme Court Chamber, 9 December 2010, F7/2, paras. 8-9, in which the Supreme Court Chamber rejected a request by the Defence Support Section ("DSS") for leave to file an *amicus curiae* brief regarding Duch's appeal against the Case 001 Judgement, finding that the DSS intended to supplement Duch's Appeal Brief and, in effect, serve as substitute counsel for the Accused.

⁴⁶ *Situation in the Republic of Kenya*, ICC-01/09-35, Decision on Application for Leave to Submit *Amicus Curiae* Observations, 18 January 2011, para. 6, in which Mr. Ruto, who was under investigation by the Prosecutor, requested leave to act as an *amicus curiae* in regard to issuance of a summons or arrest warrant.

⁴⁷ *Prosecutor v. Bagosora*, ICTR-96-7-T, Decision on the *Amicus Curiae* Application by the Government of the Kingdom of Belgium, 6 June 1998, p. 3. This Decision was vacated in 2007 after the Government of Belgium failed to submit an *amicus curiae* brief and the taking of evidence had been completed. Trial Chamber II concluded that it had heard considerable evidence on the particular issue and that an *amicus curiae* brief would no longer assist the Chamber in the proper determination of the case. *Prosecutor v. Bagosora et al.*, ICTR-98-41-T, Reconsideration of Earlier Decision on *Amicus Curiae* Application by the Kingdom of Belgium, 13 February 2007, para. 6.

precedent affecting [it] in the future[.]”⁴⁸ or an indirect interest, “in the sense that a State or NGO or campaigning group may wish to have the law clarified or declared or developed in a particular way.”⁴⁹ The Appeals Chamber permitted three international legal organizations to act as *amicus curiae* regarding the question of the validity of an amnesty, finding:

a real reason to believe that written submissions, supplemented by oral argument by the applicants, will assist it in reaching the right decision on the issues before it.... It is therefore desirable for the proper determination of the Kallon Application to receive such assistance....⁵⁰

28. In reaching this decision, the Appeals Chamber observed: “the ‘proper determination’ of the case refers, quite simply, to the Court reaching the decision which most accords with the end of justice – i.e. that gets the law right.”⁵¹ The Appeals Chamber desired the assistance of the three international legal organizations in *getting the law right* regarding amnesty.

29. The International Criminal Tribunal for the former Yugoslavia (“ICTY”) similarly permits intervention by *amicus curiae* that have an interest in the case. The ICTY requires only that the organization or person notify the Chamber of their interest and of any contact or relationship they may have or have had with any party to the case.⁵² Accordingly, ICTY Chambers have permitted the Association of Defence Counsel Practising Before the ICTY to intervene as an *amicus curiae* on issues related to joint criminal enterprise and the conduct of counsel.⁵³

30. Taking into consideration the jurisprudence and practice of other international tribunals on the admission of *amicus curiae*, the Case 003 Defence’s direct interest in the outcome of the Case 002 submissions on torture-tainted evidence should not be deemed to prohibit it from intervening in this case. The Trial Chamber’s decision as

⁴⁸ SCSL *Kallon* Decision on Application by Legal Organizations, para. 4.

⁴⁹ *Id.*

⁵⁰ *Id.*, para. 12.

⁵¹ *Id.*, para. 5.

⁵² See Information Concerning the Submission of Amicus Curiae Briefs, 27 March 1997, IT/122, para. 3(a) and (f), available at

http://icty.org/x/file/Legal%20Library/Miscellaneous/it122_amicuscuriae_briefs_en.pdf.

⁵³ *Prosecutor v. Brđanin*, IT-99-36-A, Decision on Motion to Dismiss Ground 1 of the Prosecutor’s Appeal, 5 May 2005, p. 5; *Prosecutor v. Brđanin*, IT-99-36-A, Amicus Brief of Association of Defence Counsel – ICTY, 5 July 2005; *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.

to whether to grant the Case 003 Defence leave to file an *amicus curiae* brief should only be based on whether acceptance of this brief is desirable for the proper adjudication of the issue. The answer to this question is yes: the Case 003 Defence's *amicus curiae* brief will assist the Trial Chamber in determining the question of the admissibility and possible uses during trial of torture-tainted evidence. Accordingly, leave to file the *amicus curiae* brief should be granted.

WHEREFORE, for all of the reasons stated herein, the Defence respectfully requests the Trial Chamber to allow it to intervene in writing in the matter of "Submissions regarding evidence obtained through the use of torture." In the alternative, the Case 003 Defence seeks leave to file the attached *amicus curiae* brief on the issue of the admissibility and permissible uses at trial of evidence that may have been obtained through torture.

Respectfully submitted,



 ANG Udom





 Michael G. KARNAVAS

Co-Lawyers for Mr. MEAS Muth

Signed in Phnom Penh, Kingdom of Cambodia on this 5th day of June, 2015