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E350/7

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

សាធារណៈ / Public

TRIAL CHAMBER

TO: Mr. Michael G. KARNAVAS
Mr. ANG Udom
Mr. SO Mosseny
Ms. Suzana TOMANOVIĆ

Date: 23 June 2015

FROM: NIL Nonn, President of the Trial Chamber



CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer; All Parties, Case 002/02

SUBJECT: Decision on requests for leave to file *amicus curiae* briefs or to participate as intervener on the admissibility and use of torture-tainted evidence (E350/5 and E350/6)

1. The Chamber is seised of a request by the Defence team for MEAS Muth (“Case 003 Applicant”) to intervene in Case 002/02 or, in the alternative, submit an *amicus curiae* brief on the admissibility and use at trial of torture-tainted evidence before the ECCC (E350/5). The Chamber is also seised of a request by the Defence team for a Suspect in Case 004 (“Case 004 Applicant”) to file an *amicus curiae* brief on the admissible use of torture-tainted evidence (E350/6) (altogether “Requests”).

2. Following a request by the Co-Prosecutors dated 7 May 2015, the Chamber instructed the parties in Case 002/02 to file, by 21 May 2015, written submissions on the admissibility and permissible uses of evidence that may have been obtained through torture (E350/4.2). Written submissions were received from all parties (E350, E350/1, E350/3, E350/4) and oral submissions on the subject were heard on 25 May 2015 (E1/304.1).

3. Case 003 Applicant contends that its intervention is warranted on the basis that a decision by the Trial Chamber on the admissibility and permissible uses of potentially torture-tainted evidence “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” (E350/5, para. 14). It further contends that leave to submit an *amicus curiae*

brief on the matter would protect MEAS Muth's rights and interests in Case 003 (E350/5, para. 24). Case 004 Applicant submits that in order to establish legal certainty in the interpretation of the law by the ECCC and for the proper adjudication of Case 002/02, Case 003 and Case 004, it should be granted leave to submit an *amicus curiae* brief on the proposed issue (E350/6, paras 7-8).

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 Chamber and the Supreme Court Chamber have denied 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 (*see e.g.*, D99/3/17, D158/5/1/14, F16/3). In addition, the Supreme Court Chamber has held that an *amicus curiae* should be "unaffiliated with the court or any of its offices" (F20/1, para. 9). The Supreme Court Chamber has also held that, in contrast to the role of *amici curiae*, there are no specific provisions in the applicable law of the ECCC concerning interveners in the proceedings (F20/1, para. 10). However, the Supreme Court Chamber has stated that the primary consideration in allowing an intervention is "whether it is in the legitimate interests of the requesting entity, and denial thereof could cause them prejudice" (F20/1, para. 11). The Supreme Court Chamber concluded that applications to participate in the proceedings as interveners "are to be granted, if at all, on a case-by-case basis where the interests of justice so dictate" (F20/1, para. 12).

5. The Chamber adopts the above reasoning. An *amicus curiae* is traditionally an independent and impartial adviser to the court whose role is simply to inform and not to advocate (E306/3/1, para. 5; *see also* D99/3/18.31). The Chamber notes that Case 003 Applicant has supported the adoption of such standard in prior submissions before the Pre-Trial Chamber in Case 001 (D99/3/18, para. 11). The Chamber considers that, as Case 003 Applicant and Case 004 Applicant are affiliated with the court or its offices by virtue of their roles as defence counsel in Case 003 and Case 004, they cannot be considered impartial and independent advisers to the Chamber. Moreover, taking into account the nature and extent of submissions received by the parties in Case 002/02, the Trial Chamber considers that authorising *amici curiae* briefs in this case would not be necessary for the proper determination of the issue litigated.

6. The Chamber also considers that the interests of justice do not warrant Case 003 Applicant's alternative request to participate in the current proceedings as intervener. In this respect, the Trial Chamber notes that investigations are ongoing and that Case 003 is currently pending before the OCIJ. As a result, the interest claimed by Case 003 Applicant and any prejudice that could result from denying the request to intervene are abstract and speculative at this stage. Moreover, the Trial Chamber considers that, in the interest of judicial comity, it would be appropriate for Case 003 Applicant to seize the relevant chamber that has jurisdiction on Case 003.

7. In light of the foregoing, the Requests are denied.