# BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

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#### AMICUS CURIAE BRIEF FOR CASES 003 AND 004

# TABLE OF AUTHORITIES

Filed by:	<b>Distribution:</b>	
		SAM Sokong
Amici Curiae	Co-Prosecutors	TY Srinna
		VEN Pov
Catherine DRUMMOND	CHEA Leang	Philippe CANONNE
Philippa WEBB	Nicholas KOUMJIAN	Laure DESFORGES
Dapo AKANDE		Ferdinand DJAMMEN
	<b>Meas Muth Defence</b>	NZEPA
		Nicole DUMAS
	ANG Udom	Isabelle DURAND
	Michael G. KARNAVAS	Francoise GAUTRY
		Martine JACQUIN
	Office of the Administration	Christine MARTINEAU
		Barnabe NEKUI
	Civil Party Lawyers	Lyma NGUYEN
	HONG Kimsuon	Nushin SARKARATI
	KIM Mengkhy	Fabienne TRUSSES
	MOCH Sovannary	

### **CAMBODIAN LAW**

#### **Statute**

1. Law on the ECCC, Article 5. *Not included – ECCC Legal Compendium*.

#### **ECCC Case Law**

- 2. Case No 001/18-07-2007-ECCC/SC, Document **No F28**, KAING Guek Eav *alias* 'Duch', Appeal Judgment, 3 February 2012, paras 93, 98-100, 226-278. *Authority exceeds 10 pages in English. Extract attached*.
- 3. Case No 001/18-07-2007/ECCC/TC, Document **No E188**, KAING Guek Eav *alias* 'Duch', Trial Judgment, 26 July 2010, paras 288, 304-306, 311, 313-314, 318. *Authority exceeds 10 pages in English. Extract attached*.
- 4. Case No 002/19-09-2007/ECCC/TC, Document **No E313**, Case 002/01, Judgment, 7 August 2014, paras 183, 185, 187. *Authority exceeds 10 pages in English. Extract attached*.

#### INTERNATIONAL LAW

# Treaties, Statutes, International Instruments

- 5. Protocol Additional to the Geneva Convention of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977, Articles 44(3), 50(3), 51(7), 75(1). Authority exceeds 10 pages in English. Extract attached.
- 6. Geneva Convention relative to the Treatment of Prisoners of War, III, 12 August 1949 ("Third Geneva Convention"), Articles 3, 4A. *Authority exceeds 10 pages in English. Extract attached.*
- 7. London Charter of the International Military Tribunal, Article 6(c). *Attached*.
- 8. Charter of the International Military Tribunal for the Far East, Article 5(c). *Attached*.
- 9. Control Council Law No 10, Article II(1)(c). Attached.
- 10. Principles of International Law recognized in the Charter of the Nürnberg Tribunal and in the Judgment of the Tribunal, Yearbook of the ILC (1950), Article VI(c). *Attached*.

11. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 754 UNTS 73 (opened for signature 26 November 1968, entered into force 11 November 1970), Article I(b). *Attached*.

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- 12. Prosecutor v. Mrkšić and Šljivančanin, IT-95-13/1-A, Appeal Judgement, 5 May 2009, paras 32, 36, 42-43. Authority exceeds 10 pages in English. Extract attached.
- 13. *Prosecutor v. Martić*, IT-95-11-A, Appeal Judgment, 8 October 2008, paras 297-301, 306-313. *Authority exceeds 10 pages in English. Extract attached*.
- 14. United States v. Wilhelm von Leeb et al, "The High Command Case", Judgment, 27 October 1948, Military Tribunal V, Law Reports of the Trials of War Criminals, vol XII, pp 3, 71, 118. Authority exceeds 10 pages in English. Extract attached.
- 15. United States v. Ernst Von Weizsaecker et al, "The Ministries Case", Judgment, 11-13 April 1949, Military Tribunal IV, Law Reports of the Trials of War Criminals, vol XIV, pp 541-546. Authority exceeds 10 pages in English. Extract attached.
- Fédération Nationale des Déportés et Internés Résistants et Patriotes and Others v.
  Barbie, French Court of Cassation (Criminal Chamber), 20 December 1985, 78 ILR
  125. Authority exceeds 10 pages in English. Extract attached.
- 17. *Touvier*, Court of Appeal of Paris (First Chamber of Accusation), 13 April 1992; French Court of Cassation (Criminal Chamber), 27 November 1992, 100 ILR 338. *Authority exceeds 10 pages in English. Extract attached*.
- 18. Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06-309, Decision on the Confirmation of Charges, 9 June 2014, paras 77-80. Authority exceeds 10 pages in English. Extract attached.
- 19. *In re Pilz*, District Court of The Hague (Special Criminal Chamber), 21 December 1949; Special Court of Cassation, 5 July 1950, 17 ILR 391. *ILR attached*.
- In re Motosuke, Netherlands East Indies, Temporary Court-Martial at Amboina,
  28 January 1948, 15 ILR 682. ILR attached.
- Prosecutor v. Issa Hassan Sesay et al, SCSL-04-15-T, Special Court for Sierra Leone,
  Trial Judgment, 2 March 2009, paras 1451-1454. Authority exceeds 10 pages in English. Extract attached.

- 22. Prosecutor v. Kupreškić, IT-95-16-T, Trial Judgment, 14 January 2000, paras 547, 568. Authority exceeds 10 pages in English. Extract attached.
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- 24. Prosecutor v. Akayesu, ICTR-96-4-T, Trial Judgment, 2 September 1998, para 582. Authority exceeds 10 pages in English. Extract attached.
- 25. *Prosecutor v. Bagasora et al*, ICTR-98-41-T, Trial Judgement and Sentence, 18 December 2008, fn 2353. *Authority exceeds 10 pages in English. Extract attached*.
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- 27. Prosecutor v. Akayesu, ICTR-96-4-A, Appeal Judgment, 1 June 2001, paras 464-465. Authority exceeds 10 pages in English. Extract attached.
- 28. Prosecutor v. Gotovina and Markač, IT-06-90-A, Appeal Judgment, 16 November 2012, paras 96, 114. Authority exceeds 10 pages in English. Extract attached.
- 29. *Prosecutor v. Vişinescu*, Case No 3986/2/2014, Romanian High Court of Cassation and Justice, 16 February 2016, pp 2-3, 23, 26-28, 140-141. *Original authority in Romanian exceeds 20 pages. Romanian extract and English translation attached.*
- 30. "ESMA" (Navy Mechanics School-GT 3.3.2.), Buenos Aires Federal Criminal Court, 28 December 2011, pp 766, 1272-1273, 1986-1988. Original authority in Spanish exceeds 20 pages. Spanish extract and English translation attached. Original Spanish authority available at <a href="http://www.derechos.org/nizkor/arg/esma/esmaindex.html">http://www.derechos.org/nizkor/arg/esma/esmaindex.html</a>.
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#### **OTHER**

- 33. Sir Michael Wood, Second report on identification of customary international law, UN Doc A/CN.4/672, 22 May 2014, paras 21-31, 52-59. *Authority exceeds 10 pages in English. Extract attached.*
- 34. United Nations War Crimes Commission, Report by Committee III on the Yugoslav-Italian Charges of Crimes Against Humanity referred to Committee III by Committee I, 22 November 1946, paras VII, X, XIII, XV-XVI. Attached.
- 35. Antonio Cassese, International Criminal Law (2nd ed, 2008), pp 119-122. Authority exceeds 10 pages in English. Extract attached. Cases in German discussed therein on file with amici curiae.
- 36. Kai Ambos and Steffen Wirth, "The Current Law of Crimes Against Humanity" (2002) 13 Criminal Law Forum 1, pp 24-25. Authority exceeds 10 pages in English. Extract attached.
- 37. Gerhard Werle and Florian Jeßberger, *Principles of International Criminal Law* (3rd ed, 2014), paras 888, 890. *Authority exceeds 10 pages in English. Extract attached*.
- 38. United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War* (1948), p 178. *Authority exceeds 10 pages in English. Extract attached.*
- 39. Draft Code of Offences against the Peace and Security of Mankind, Report of the International Law Commission (1954), UN Doc A/2693, p 10. Authority exceeds 10 pages in English. Extract attached.
- 40. William A. Schabas, Genocide in International Law (2000), p 254. Authority exceeds 10 pages in English. Extract attached.
- 41. Report of the Group of Experts for Cambodia, UN Doc A/53/850-S/1999/231, 18 February 1999, paras 66(b), 68, 69. *Not included ECCC Legal Compendium*.
- 42. Yves Sandoz, Christophe Swinarski and Bruno Zimmerman (eds), Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (International Committee of the Red Cross, 1987), paras 1913-1914. Authority exceeds 10 pages in English. Extract attached.