

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

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**CO-PROSECUTORS' REQUEST TO CLARIFY CLOSING ORDER PARAGRAPHS
INCLUDED FOLLOWING 29 MARCH 2013 SEVERANCE ANNOUNCEMENT**

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REQUEST

1. On 29 March 2013, the Trial Chamber announced its intention to sever Case 002 by confining the scope of trial to charges related to forced movement (Phases 1 and 2) and the Tuol Po Chrey execution site.¹ Because witness testimony was scheduled to resume on 8 April 2013 and the Trial Chamber had not yet issued its written decision regarding severance, the Office of Co-Prosecutors sent an e-mail to the Senior Legal Officer on 7 April 2013 requesting confirmation that the same paragraphs of the Case 002 Closing Order that were previously included in Case 002/01² are also included in the newly severed case. In an e-mail circulated to all parties on 8 April 2013 prior to the commencement of testimony, the Senior Legal Officer confirmed that “the applicable Closing Order paragraphs are those which were previously identified in relation to forced movement and Toul Po Chrey, as described in E124/7.3.”
2. The Co-Prosecutors further request that the Trial Chamber clarify the scope of allegations and charges relating to forced movement of the Cham population that are included in the newly severed case. Allegations regarding the forced movement of the Cham were included in the previous scope of Case 002/01. For example, paragraph 266 of the Closing Order alleges: "A number of Cham people were also amongst the persons moved. This occurred in late 1975, after the Cham rebellion in two East Zone locations. Many Cham people were moved from their home villages in Kampong Cham Province and sent to other various villages within the same province. Some were sent further to villages in the provinces of Kratie, Kampong Thom and Battambang. Telegram #15 and other evidence suggests that a decision was made by the CPK Central Committee and subsequently implemented to relocate thousands of Cham people to the North and Northwest Zones."³
3. Paragraph 268 of the Closing Order alleges: "A number of witnesses declare that the Cham people were dispersed through Khmer villages with only a minority of Cham people allowed in each village. There is evidence that Cham men, women and children were split up and moved to different places. Three witnesses explain that they were made to live in the open spaces under the houses of Khmer people. Two others state that the elders and religious leaders in their village were arrested and killed before the movement of the

¹ **E1/176.1** Transcript of Trial Proceedings, 29 March 2013, p. 4 (09:11:10).



² **E124/7.3** List of Paragraphs and Portions of the Closing Order Relevant to Case 002/01, Amended Further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163).

³ **D427** Closing Order, 15 September 2010, para. 266 [footnotes omitted].

population occurred."⁴ And paragraph 281 contains the following allegations: "Telegram #15 specifically refers to a problem raised by the movement of Cham people from the East Zone This happened a few weeks after the rebellion of Cham people in Koh Phal and Svay Kleang. When read in that context, this document suggests that the underlying reason for the movement and planned separation of the Cham people was to address the security concern they represented, illustration of the CPK policy to 'break up' the Cham."⁵

4. While the above allegations regarding the Cham are included within the scope of Case 002/01, charges of religious persecution are specifically excluded from the relevant underlying offences.⁶ The Co-Prosecutors thus request the Trial Chamber to confirm that the same allegations regarding the forced movement of the Cham population and the CPK policy to break up the Cham are included as part of the newly severed trial, and to clarify whether those factual allegations are potentially subject to legal characterisation as persecution on religious grounds, pursuant to the Chamber's authority under Rule 98(2).
5. The Co-Prosecutors also note that no witnesses have yet been heard regarding the forced movement of the Cham. The Trial Chamber has previously included TCCP-215 (TCW-674) as a reserve witness on forced movement.⁷ The Co-Prosecutors submit that TCCP-215 should be heard, and further propose that the Chamber also hear testimony from TCW-269 on these issues.

Respectfully Submitted,

| Date | Name | Place | Signature |
|--------------|--------------------------------|------------|---|
| 8 April 2013 | CHEA Leang Co-Prosecutor | Phnom Penh |  |
| | Andrew CAYLEY Co-Prosecutor | |  |

⁴ **D427** Closing Order, para. 268 [footnotes omitted].

⁵ **D427** Closing Order, para. 281 [footnotes omitted].

⁶ **E124/7.3** List of Paragraphs and Portions of the Closing Order Relevant to Case 002/01, para. 4, footnote 1.

⁷ **E236/1** Preliminary indication of individuals to be heard during population movement trial segments in Case 002/01, 2 October 2012.