

**BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CO-PROSECUTORS' REQUEST TO ADMIT S-21 LISTS PURSUANT TO RULES 87(3)
AND 87(4)**

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I. Introduction

1. Pursuant to Rules 87(3) and (4)¹, the Co-Prosecutors' request the admission into evidence of (i) the list of 1,606 S-21 prisoners for whom the Office of the Co-Prosecutors ("OCP") has identified contemporaneous S-21 documentation, but who do not appear on the list produced by the Office of the Co-Investigating Judges ("OCIJ")² ("2016 OCP S-21 List"),³ and (ii) contemporaneous S-21 lists D05928, D06025, D06815 and D13430 in which some of the missing 1,606 individuals are recorded ("DC-Cam S-21 Lists").⁴ As explained below, these documents meet the admission criteria set down in the Rules.

II. Procedural History

2. On 19 May 2009, the OCP filed a revised list of S-21 prisoners in Case 001 which identified 12,273 names with contemporaneous S-21 documentation ("OCP Revised List").⁵ The list was subsequently placed on Case File 002. On 30 March 2016, the OCIJ provided to the Trial and Supreme Court Chambers a list of 15,101 S-21 prisoners based on contemporaneous S-21 documentation ("OCIJ S-21 List").⁶ The Trial Chamber admitted the OCIJ S-21 List into evidence on 5 April 2016⁷ and the underlying S-21 documents supporting the list on 11 May 2016.⁸
3. On analysis of the OCIJ S-21 List and the S-21 documentation available on the Case File and comparing with the OCP Revised List, the OCP identified contemporaneous S-21 records, all of which are already on Case File 002, for 1,606 individuals not included in the OCIJ S-21 List. Names and information from the list of 1,606 individuals appear in 92 contemporaneous S-21 documents not included in the underlying S-21 records relied on by

¹ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 January 2015 ("Rule(s)").

² **E393.2** OCIJ S-21 Prisoners List, 30 March 2016.

³ **E393/2.1** Annex A: List of S-21 Prisoners not included OCIJ S-21 List but for whom contemporaneous S-21 records exist on the Case 002 Case File, 8 August 2016.

⁴ See, **E393/2.2** Annex B: DC-Cam documents not included in the list of S-21 documents supporting the "OCIJ S-21 list", 8 August 2016.

⁵ **E3/342** Annex 1 – Revised S-21 Prisoner List. The list was annexed to **E68** Co-Prosecutors' Rule 92 motion to disclose analysis of the revised S-21 prisoner list, 19 May 2009.

⁶ **E393.1** Interoffice Memorandum entitled 'The OCIJ S-21 Prisoner List and explanation of the applied methodology', 30 March 2016.

⁷ **E393** Decision admitting new OCIJ prisoner list, 5 April 2016 ("Chamber Decision admitting OCIJ S-21 List").

⁸ **E393/1** Admission of documents underlying S21 prisoners list produced by the Office of the Co-Investigating Judges (OCIJ), 11 May 2016.

the OCIJ in preparing the OCIJ S-21 List. On 8 August 2016, the OCP filed the 2016 OCP S-21 List – containing the names and other information of the 1,606 individuals – and the list of 92 contemporaneous S-21 Lists in which some of these 1,606 individuals appeared, for the Chamber’s consideration.⁹ Eighty-eight of these 92 lists are already admitted into evidence. The “DC-Cam S-21 Lists” are the four remaining S-21 lists collected by DC-Cam that have previously been put on the Case 002 Case File but have not yet been admitted into evidence and assigned E3 numbers. For completeness, the OCP now requests these four documents be admitted into evidence in addition to the 2016 OCP S-21 List.

III. Applicable Law

4. This Chamber has recently re-iterated the applicable law concerning the admission of new evidence:

[A]ccording to Internal Rule 87(4), the Trial Chamber may admit, at any stage of the trial, all evidence that it deems conducive to ascertaining the truth, where that evidence also satisfies the *prima facie* standards of relevance, reliability, and authenticity required under Rule 87(3). The Chamber determines the merit of a request to admit new evidence in accordance with the criteria in Rule 87(3). Rule 87(4) also requires that any party seeking the admission of new evidence shall do so by a reasoned submission. The requesting party must satisfy the Trial Chamber that the proposed evidence was either unavailable prior to the opening of the trial or could not have been discovered with the exercise of reasonable diligence. However, in certain cases, the Chamber has admitted evidence which does not strictly speaking satisfy this criterion, including in instances where evidence relates closely to material already before the Chamber and where the interests of justice require the sources to be evaluated together [...]¹⁰

IV. Submissions

5. The 2016 OCP S-21 List and the DC-Cam S-21 Lists meet the criteria for admission laid out in Rule 87(3), as they are authentic, reliable and directly relevant to Case 002/02

⁹ E393/2 Co-Prosecutors’ submission regarding office of the Co-Investigating Judges combined S-21 prisoner list with Annexes A & B, 8 August 2016. All of the S-21 lists contained in E393/2.2 Annex B: DC-Cam documents not included in the list of S-21 documents supporting the “OCIJ S-21 list” are already in evidence, asides the four lists being requested herein.

¹⁰ E390/2 Decision on Nuon Chea’s First Rule 87(4) Request to Call One Additional Witness and to Admit One Interview for the Case 002/02 Trial Segment on the Phnom Kraol Security Centre, 4 May 2016, para. 3. See also, E260 Response to Internal Rule 87(4) Requests to Place New Documents on the Case File concerning the Testimony of Witnesses, 18 January 2013, para. 5.

subject matter. The 2016 OCP S-21 List is based on contemporaneous S-21 documentation recording the details of the 1,606 individuals. The DC-Cam S-21 Lists are surviving contemporaneous documents containing the details of some of those 1,606 entries. Together, they offer the Chamber a more complete and accurate account of the individuals detained at S-21 – an issue of direct contention and relevance to the ongoing trial.

6. The 2016 OCP S-21 List and the DC-Cam S-21 Lists also satisfy the criteria for admission laid out in Rule 87(4). While the documents underlying the 2016 OCP S-21 List, including the DC-Cam S-21 Lists, were available prior to the commencement of trial in June 2011, the Co-Prosecutors submit that admission of the 2016 OCP S-21 List and the DC-Cam S-21 Lists is in the interests of justice. This comports with the Trial Chamber’s practice, whereby it implicitly considered that admission of the OCIJ S-21 List and underlying documentation was in the interests of justice¹¹ despite the OCIJ S-21 List consisting of an analysis of documents previously available to the parties.¹² The Co-Prosecutors submit that the same reasoning should apply here.
7. As noted, the Trial Chamber has stated that documents may be admitted, even if they are “not strictly speaking new,” where the document “relates closely to material already on the Case File and where the interests of justice require the sources to be evaluated together.”¹³ The 2016 OCP S-21 List and DC-Cam S-21 Lists are the product and equivalent of underlying S-21 records currently before the Chamber.¹⁴ Assessed together with the S-21 documentation in evidence, the 2016 OCP S-21 List and DC-Cam S-21 Lists provide significant new analysis and findings on the number of people detained at S-21. The Co-Prosecutors submit that the requested evidence demonstrates that 1,606 individuals not currently accounted for in the OCIJ S-21 List were prisoners at S-21. Combined with the 15,101 individuals on the OCIJ S-21 List, there is consequently S-21 documentation showing that 16,707 individuals were prisoners at S-21.

¹¹ **E393** Chamber Decision admitting OCIJ S-21 List, para. 2, admitting the OCIJ S-21 Prisoner List and underlying documents pursuant to Rule 87(4).

¹² **E393** Chamber Decision admitting OCIJ S-21 List, para. 3.

¹³ **E260** Response to Internal Rule 87(4) Requests to Place New Documents on the Case File concerning the Testimony of Witnesses, 18 January 2013, para. 5.

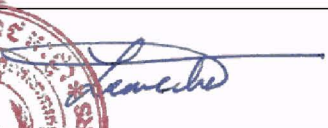
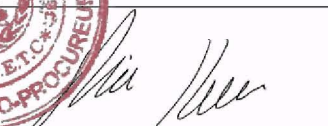
¹⁴ **E390/2** Decision on Nuon Chea’s First Rule 87(4) Request to Call One Additional Witness and to Admit One Interview for the Case 002/02 Trial Segment on the Phnom Kraol Security Centre, 4 May 2016, para. 3. See also, **E260** Response to Internal Rule 87(4) Requests to Place New Documents on the Case File concerning the Testimony of Witnesses, 18 January 2013, para. 5.

8. It is therefore in the interests of justice to admit the 2016 OCP S-21 List and DC-Cam S-21 Lists in order to establish the most accurate list possible and avoid excluding these individual prisoners from the trial record. Moreover, for the civil parties, other surviving family members and Cambodian society as a whole, a more complete and accurate list is important in order to preserve the memory of the victims of S-21.
9. Additionally, and in accordance with Rule 87(4), the Trial Chamber has stated that the identification and recognition of those who were detained at S-21 is conducive to ascertaining the truth on a topic directly at issue in the trial.¹⁵ The number of individuals at S-21 is significant in terms of the individual responsibility of the Accused. Case 002/02 involves a distinct trial segment relating to S-21. The Chamber will thus be called upon to adjudicate the culpability of the Accused for events at S-21, necessarily requiring the most accurate numbers of persons detained there.

V. Relief Requested

10. On the basis of the foregoing, the Co-Prosecutors respectfully request that the Trial Chamber admit into evidence the 2016 OCP S-21 List and DC-Cam S-21 Lists.

Respectfully submitted,

Date	Name	Place	Signature
31 August 2016	CHEA Leang Co-Prosecutor	Phnom Penh	
	Nicholas KOUMJIAN Co-Prosecutor		

¹⁵ E393 Chamber Decision admitting OCIJ S-21 List, para. 2.