



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

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

**ឯកសារដើម**  
**ORIGINAL/ORIGINAL**  
ថ្ងៃ ខែ ឆ្នាំ (Date): 09-Feb-2012, 10:06  
CMS/CFO: Kouv Keoratanak

**Request for Correction**

**Case :** 002/19-09-2007-ECCC/TC

To Document No(s):	ERN(s):	Request Date:	Correction Type:
E163	00759910-00759921 (EN)	8 February 2012	<input checked="" type="checkbox"/> Change to Original <input type="checkbox"/> Change to Translation <input type="checkbox"/> Reclassification

**Reason for changes:**  
To correct a reference to Case 001 in lieu of Case 002 and to correct other typographical errors.

**Details:**

**Filed by:** PHANN Sochea / OCP Greffier

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**Approved by ITU (for translations):**

**Signature:**

## I. INTRODUCTION AND PROCEDURAL HISTORY

1. In its decision severing proceedings in Case 002 into several discrete trials,<sup>1</sup> the Trial Chamber ("Chamber") indicated that it:

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*...may at any time decide to include in the first trial additional portions of the Closing Order in Case 002, subject to the right of the Defence to be provided with opportunity to prepare an effective defence and all parties to be provided with timely notice.<sup>2</sup>*

2. Having considered and dismissed the Co-Prosecutors' request for reconsideration of the severance of the proceedings,<sup>3</sup> the Trial Chamber observed that it:

*...did not exclude the possibility of adding additional charges or counts to the first trial in Case 002 where circumstances permit. The Chamber takes note of the Co-Prosecutors' indication in its Request of possible additional topics for inclusion in the first trial and will be guided by its views as to the priority allegations for consideration during later phases of the trial...<sup>4</sup>*

3. At the informal trial management meeting of 2 December 2011, the Senior Legal Officer indicated, on behalf of the Chamber, that the Chamber remained open to extending the scope of the first trial to include additional crime sites and factual allegations, if circumstances allow.<sup>5</sup>

4. The Co-Prosecutors respectfully request that the Trial Chamber include the following crime sites and factual allegations from the Closing Order within the scope of Case 002/1:

- (a) Executions of 17 April 1975 evacuees at sites in Kampong Tralach Leu District (District 12), Kampong Chhnang Province (Sector 31 of the Western Zone) (paras. 691, 693-697 of the Closing Order);
- (b) Executions of former Lon Nol soldiers and officials in 1975 at Tuol Po Chrey, Kandieng District, Pursat Province (Sector 7 of the Northwest Zone) (paras. 698-711 of the Closing Order); and
- (c) Security centre S-21 and related execution site at Choeung Ek, Kandal Province (paras. 415-475 of the Closing Order), *including* the purges of cadres from the new North, Central (old North) and East Zones sent to S-21 (paras. 192-204 of the Closing Order) but *excluding* the worksite at Prey Sar, Dangkao District, Kandal Province.

<sup>1</sup> E124 Severance order pursuant to Rule 89ter, 22 September 2011 ("Severance Order").

<sup>2</sup> E124 *Ibid.* at para. 6.

<sup>3</sup> E124/7 Decision on Co-Prosecutors' request for reconsideration of the terms of the Trial Chamber's Severance Order (E124/2) and related motions and annexes, 18 October 2011 at para. 12.

<sup>4</sup> E124/7 *Ibid.* at para. 12.

<sup>5</sup> Notes of OCP representative present at the 2 December 2011 informal trial management meeting.

5. These crime sites reflect just three of the nine initially proposed by the Co-Prosecutors for inclusion in the first trial.<sup>6</sup> The Co-Prosecutors submit that the addition of these factual allegations is necessary in the interests of justice, and that the criteria relevant to the Chamber's assessment in this regard should include: (i) the interest in following, as far as possible, the chronology and logic of the Closing Order; (ii) the quality and sufficiency of the evidence; and (iii) the need for a reasonably representative factual scope in the trial.
6. In addition, the Co-Prosecutors submit that the proposed extension in the scope of the trial would meet and surpass international procedural standards regarding adequate time for the preparation of an effective defence and timely notice to the parties.
7. Finally, the Co-Prosecutors submit that a decision to extend the scope of trial can and should be made now, prior to the conclusion of that part of the proceedings relevant to historical background. This would facilitate effective preparations by all parties by favouring a more structured and well-integrated presentation of evidence; making effective use of the questioning time for witnesses who can potentially give evidence relevant to a more representative set of grave crimes as well as over-arching policies of the alleged joint criminal enterprise; and thus minimising the need for recall of a witness.

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## II. EXTENDING THE SCOPE OF TRIAL AS PROPOSED WOULD BE IN THE INTERESTS OF JUSTICE

### *a. The inclusion of the proposed crime sites reflects the logic and chronology of the Closing Order*

8. The Chamber has indicated that Case 002/1 will comprise phases 1 and 2 of the population movement as well as specified crimes against humanity insofar as they pertain to the relevant population movement phases.<sup>7</sup> The Chamber has also stated that the Severance Order serves the objective "[t]o follow as far as possible the chronology and/or logical sequence of the Closing Order..."<sup>8</sup> The Co-Prosecutors respectfully submit that, considering the chronological and logical sequence of the events contained in the Closing Order, the execution sites of District 12 and Tuol Po Chrey and the S-21 security centre should be included within the scope of case 002/1 for the reasons set out below.
9. Witness testimony confirms that, in the one to two month period immediately following the 17th April 1975, evacuees from Phnom Penh and Kampong Chhnang Town, who were identified as former Khmer Republic soldiers and officials, were executed at District 12

<sup>6</sup> E124/2 Co-Prosecutors' request for reconsideration of "Severance order pursuant to Internal Rule 89ter", 3 October 2011 at paras. 36-44.

<sup>7</sup> E124/7.2 Annex: List of paragraphs and portions of the Closing Order relevant to Trial One in Case 002, amended further to the Trial Chamber's Decision on Ieng Thirith's Fitness to Stand Trial, 30 November 2011.

<sup>8</sup> E124/7 *supra* note 3 at para. 10.

execution sites.<sup>9</sup> Additionally, in the immediate aftermath of the “liberation” of Phnom Penh, former Lon Nol soldiers and officials were rounded up and subsequently executed at Tuol Po Chrey execution site.<sup>10</sup> These executions, estimated to be between 2,000 and 3,000 people in Tuol Po Chrey alone,<sup>11</sup> occurred in the immediate aftermath of the CPK’s entry into Phnom Penh and were a direct result of the CPK’s evacuation of the population of Phnom Penh and other cities, during which enemies of the Party were identified and eliminated.

10. The decision to establish the S-21 security centre was taken at a meeting held in Phnom Penh on 15th August 1975,<sup>12</sup> with the centre becoming fully operational in October 1975.<sup>13</sup> The establishment of S-21 formed part of the CPK policy to use violence to eliminate political enemies, a policy that was developed starting at the First Party Congress of 1960. S-21 was integral to the realisation of this policy and served as a key organ of the CPK from October 1975, reporting to the highest echelons of the Party.<sup>14</sup> The decision to evacuate Phnom Penh was predicated on the basis that, in flushing out the cities, the Party would be able to identify “enemies” and eliminate them at security centres and killing sites. In Case 001, Duch testified that:

*...new people or the 17 April people...had no rights [...] Those people who were sent to S-21, the Party regarded them as the enemy already; and for the enemies, they all had to be smashed.*<sup>15</sup>

11. Accordingly, the crimes committed at S-21, which occurred as early as 1975, are also directly linked to the decision and subsequent implementation of the policy of forced transfer. All three proposed crime sites were operational in 1975, when the alleged crimes against humanity resulting from population movement took place. On this basis, the Co-Prosecutors respectfully submit that the inclusion of the proposed additional crime sites would be in the interests of justice, considering the logic and chronology of the Closing Order.

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<sup>9</sup> D427 Closing Order, 15 September 2010 at para. 691.

<sup>10</sup> D427 *ibid.* at paras. 709-710

<sup>11</sup> D427 *ibid.* at para. 711

<sup>12</sup> D427 *ibid.* at para. 416

<sup>13</sup> D427 *ibid.* at para. 416

<sup>14</sup> D427 *ibid.* at para. 422

<sup>15</sup> Transcript of Trial Proceedings, Questioning of the Accused, Kaing Guek Eav “Duch”, Case File No. 001/18-07-2007-ECCC/TC, 8 June 2009 at p. 5:15-20.