



**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

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

**ឯកសារដើម**  
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**ព្រះរាជាណាចក្រកម្ពុជា**  
**ជាតិ សាសនា ព្រះមហាក្សត្រ**

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**ANNEX – TRIAL CHAMBER**

**សាធារណៈ / Public**

**Date: 3 August 2012**

**TO: All parties, Case 002**

**FROM: Judge NIL Nonn, President, Trial Chamber**

**CC: All Trial Chamber Judges; Trial Chamber Senior Legal Officer**

**SUBJECT: Co-Prosecutors’ proposed extension of scope of trial in Case 002/1 (E163)**

1. In its Severance Order pursuant to Internal Rule 89ter (E124), the Trial Chamber indicated that it “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>1</sup> The Trial Chamber has since repeatedly indicated that, in the exercise of its trial management discretion, an extension of the scope of the trial may be considered if practicable to do so, at which stage the Co-Prosecutors’ suggestions regarding possible additional topics for inclusion in the first trial would be taken into account.<sup>2</sup>

2. The Chamber has considered the suggestions of the Co-Prosecutors regarding the extension of the scope of the first trial in Case 002/01, and in particular its request to include the following three additional crime sites and factual allegations from the Closing Order:

- i) executions in District 12;
- ii) executions of former Lon Nol soldiers and officials at Tuol Po Chrey and
- iii) Security Centre S-21 and related execution site at Choeng Ek.<sup>3</sup>

<sup>1</sup> Severance Order pursuant to Internal Rule 89ter, E124, 22 September 2011, paras 6-7 (“Severance Order”).

<sup>2</sup> Decision on the Co-Prosecutors’ Request for Reconsideration of the Terms of the Trial Chamber’s Severance Order (E124/2) and Related Motions and Annexes, E124/7, 18 October 2011, para. 12; see also Memorandum of the Trial Chamber entitled “Next group of witnesses, Civil Parties and Experts to be heard in Case 002/01,” E172, 17 February 2012, p. 4.

<sup>3</sup> Co-Prosecutors’ Request to Include Additional Crime Sites within the Scope of Trial in Case 002/1, E163, 27 January 2012, para. 4 (“Request”) (detailing the suggested three sites as follows: 1) 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); 2) Executions of former Lon Nol soldiers and officials in 1975 at Tuol Po Chey, Kandieng District, Pursat Province (Sector 7 of the Northwest Zone) (paras 698-711 of the Closing Order); and 3) Security centre S-21 and related execution site at Choeng Ek, Kandal

3. The Trial Chamber agrees with the Co-Prosecutors that addition of these proposed additional sites may be in keeping with the chronological and logical sequence of events to be heard in Case 002/01. Adequate notice to the parties could be satisfied in relation to proposed new witnesses or those yet to be heard by deferring this evidence to later phases of the trial.<sup>4</sup>

4. The Trial Chamber is, however, concerned by the overall impact that these proposed extensions may have upon its ability to conclude the trial in Case 002/01 expeditiously. In view of the evidence heard before the Chamber to date, it further considers some features of the extensions proposed by the Co-Prosecutors to be unlikely to add significantly to the evidence already before it or to be otherwise superfluous.

5. To guide discussion of these proposed extensions to the scope of Case 002/01 at the Trial Management Meeting, the Trial Chamber provides the following analysis of the extensions sought by the Co-Prosecutors, and indicates areas it may be prepared to contemplate including within the scope of Case 002/01. It highlights a number of areas of concern upon which it will seek the input of the Co-Prosecutors at the Trial Management Meeting, in addition to allowing for comment by the other parties.

A. Impact of these proposed extensions on witness testimony

6. In Motion E163, the Co-Prosecutors contend that 31 Civil Parties, witnesses and Experts already appearing on the provisional list of witnesses, Experts and Civil Parties (E131/1.1) may also be able to give evidence on these proposed extensions. On this basis, the Co-Prosecutors submit that the hearing of these individuals on an expanded scope of trial would not significantly prolong proceedings.<sup>5</sup>

7. The Chamber notes that of these 31 individuals, 11 are either unavailable or deceased, or have been determined by the Chamber to be unnecessary to hear in Case 002/01 on grounds of minimal relevance to the subject-matter of that trial. 10 of these 31 individuals have already been heard before the Chamber. Of the remaining 10 individuals who have yet to be heard, four are relevant to the current trial segment and are scheduled to be heard imminently, whereas six have yet to be scheduled. However, of these six, three are currently considered by the Chamber to be candidates for removal from list E131/1.1 (on grounds of limited relevance) in order to safeguard an expeditious trial. It follows that the goal of hearing these 31 individuals on an expanded list of factual allegations is not straightforward and may, contrary to the Co-Prosecutor's submission, entail a substantial lengthening of proceedings (principally by undercutting the Trial Chamber's efforts to streamline proceedings by reducing the number of individuals to be heard in Case 002/01). The Chamber agrees that questioning of witnesses who have yet to be heard on an expanded scope

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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>4</sup> Request, footnotes 49 and 50 (listing TCW-604, TCCP-142, TCW-542, TCW-797, TCW-601, TCW-320, TCW-609 (August), TCW-475, TCW-694 (early August), TCW-586, TCW-724, TCW-323, TCW-796, TCW-490 (August), TCW-707, TCW-794, TCW-234, TCW-583, TCW-321, TCW-91 (standby in mid August), TCCP-186, TCW-428, TCW-645, TCW-487, TCW-297, TCW-110, TCW-326, TCW-281, TCE-11, TCE-41, TCE-44).

<sup>5</sup> E163, para. 30.

of trial is unlikely to significantly prolong proceedings and invites the Co-Prosecutors to indicate at the Trial Management Meeting whether these proposed extensions are still desired given the limited number of individuals who may still testify to them.<sup>6</sup> The Chamber would prefer not to recall any of the 10 relevant witnesses already heard to date, but motions to enable this may be a further consequence of the Chamber's granting these extensions, and would further detract from its ability to expeditiously conclude Case 002/01.

8. The Co-Prosecutors further request that an additional 23 Civil Parties and witnesses from their initial Rule 80 list of witnesses be called to address these proposed extensions.<sup>7</sup> The Chamber notes that the addition of testimony from a further 23 individuals would equate to a prolongation of proceedings by at least four to six months. Upon a review of the statements of the individuals proposed, the Chamber further considers the likely testimony of a number of them to be duplicative or unnecessary. It would consequently be willing to entertain only a far more limited number of additional witnesses as follows:

*i. Executions of 17 April 1975 evacuees at sites in Kampong Tralach Leu District (District 12)*

9. In its Request, the Co-Prosecutors seek to call 12 additional witnesses to address these allegations.<sup>8</sup> The Chamber considers this request to be excessive in relation to the factual allegations concerned and thus likely to be unnecessarily duplicative. The Chamber may, however, be willing to contemplate the calling of a maximum of 5-6 additional witnesses, and considers the testimony of TCW-386, TCW-162, TCW-160, TCW-422, TCW-298 and TCW-347 to be likely to have the greatest probative value in relation to these allegations. The Co-Prosecutors are invited to further consider whether all of these individuals need be heard orally before the Chamber and whether the statements of some may instead be appropriate for admission pursuant to the provisions of Decision E96/7.

*ii. Executions of former Lon Nol soldiers and officials in 1975 at Tuol Po Chrey, Kandieng District, Pursat Province*

10. The Chamber considers that the calling of 5 witnesses in order to address these allegations to be unnecessary and considers that the following two are likely to have the greatest probative value in relation to them: TCW-752 and TCW-389.

*iii. S-21 and Choeng EK*

11. The Trial Chamber is mindful to grant this proposed extension but in view of KAING Guek Eav's testimony to date (in addition to the totality of crime base evidence already before

<sup>6</sup> The witnesses in question are TCW-428, TCW-310 and TCW-326. At this stage, the Chamber would prefer not to hear the testimony of TCW-475, TCW-645 and TCCP-186 on grounds of their lesser relevance overall to Case 002/01.

<sup>7</sup> See Request, para. 32 and related Annex E9/4.1 (listing, in relation to execution sites in District 12, TCW-386, TCW-162, TCW-160, TCW-422, TCW-519, TCW-155, TCW-789, TCW-651, TCW-298, TCW-786, TCW-347 and TCW-610, in addition to TCW-752, TCW-689, TCW-389, TCW-644, and TCW-699 (Toul Po Chrey) and TCW-281, TCW-698, TCCP-21, TCW-540, TCW-410 and TCW-232 (S-21 and Choeng Ek)).

<sup>8</sup> Proposed new witnesses P-023 – P-034 (E9/4.1) (corresponding to TCW-386, TCW-162, TCW-160, TCW-422, TCW-519, TCW-155, TCW-789, TCW-651, TCW-298, TCW-786, TCW-347 and TCW-610.

the Chamber in relation to these topics and admissible in consequence of Decision E96/7), the Chamber is unconvinced of the need to hear further witnesses or Civil Parties to address crimes committed at S-21 and Choeng Ek. All additional witnesses proposed by the Co-Prosecutors in this regard were functionaries at S-21 subordinate to KAING Guek Eav and therefore unlikely to be able to address the responsibility of the Accused in Case 002/01.

12. The Chamber notes that this limb of the Co-Prosecutors' request includes the purge of cadres from the new North, Central (old North) and East Zones sent to S-21. However, the Chamber is unclear whether the scope of this request is intended to encapsulate commission of these purges, or merely evidence that cadres from these zones were executed at S-21. Whereas the latter may readily be encapsulated within the above, the former would appear to amount to a significant extension of the parameters of Case 002/01 and cannot at this stage be entertained.

*iv. Witnesses sought by the other parties on these areas*

13. The Chamber considers that if additional witnesses sought by the Co-Prosecutors are to be heard in relation to these proposed extensions, in accordance with the ECCC's legal framework, the other parties must also be provided an opportunity to indicate whether they seek the testimony of additional witnesses or Civil Parties in consequence of them. The Chamber would appreciate receiving early indications from the other parties at the Trial Management Meeting of the identity of a limited number of witnesses or Civil Parties sought by them in the event the extensions identified in Section A(i)-(iii) (above) are granted.

**B. Documents**

14. If the above extensions are accepted by the Chamber, the parties will further require an opportunity to identify and propose documents relevant to the additional portions of the Closing Order added to the scope of Case 002/01 in consequence of it. The other parties must then be permitted the opportunity to pose objections, if any, to these documents. In the event the Chamber decides to expand the scope of trial in Case 002/01, further directions in relation to documents will follow in due course.

**C. Relevant Closing Order paragraphs**

15. By far the largest area of uncertainty for the Chamber concerns the full extent of the additional portions of the Closing Order that may need to be incorporated into Case 002/01 in the event these proposed extensions are adopted (*see* E124/7.2). The Co-Prosecutors have indicated a number of Closing Order paragraphs that would need to be added to the scope of trial in Case 002/01 should the Chamber agree to the above extensions.<sup>9</sup> The paragraphs identified by the Co-Prosecutors concern mainly crime base allegations and generally do not

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<sup>9</sup> The additional Closing Order paragraphs sought by the Co-Prosecutors in support of these proposed extensions are paragraphs 691, 693-697 (in relation to executions of 17 April 1975 evacuees at sites in Kampong Tralach Leu District (District 12)), 698-711 (in relation to executions of former Lon Nol soldiers and officials in 1975 at Toul Po Chrey) and 415-475 and 192-204 (in relation to Security centre S-21 and related execution site at Choeng Ek, including the purges of cadre from the new north, Central (old North) and East Zones sent to S-21 but excluding the worksite at Prey Sar).

address the underlying policies leading to these crimes (killing of enemies and targeting of specific groups) and the role of the Accused in relation to them. A review by the Trial Chamber of the totality of the Case 002 Closing Order indicate that a significant number of further Closing Order paragraphs also appear relevant or necessary to add in order to render coherent these proposed extensions.<sup>10</sup> The Co-Prosecutors are requested to provide urgent clarification and to indicate whether any of the additional paragraphs identified by the Chamber are not contemplated by them in their request to extend the scope of trial.

16. Inclusion of further paragraphs of the Closing Order to those sought by the Co-Prosecutors may have an additional consequential impact on witnesses to be heard and documents relevant to the trial (above), as well as Civil Party reparations.

#### D. Summary

17. The Co-Prosecutors are invited to address, at the Trial Management Meeting, whether they would seek proposed extensions within the above parameters. As indicated, the other parties will also be afforded an opportunity for comment. The Chamber estimates that the calling of a minimum of an additional eight new witnesses – a substantial refinement of the Co-Prosecutors' request – would amount to a prolongation of trial in Case 002/01 by at least three months, when taking account of the need to address the documentary and other consequential issues identified above.

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<sup>10</sup> Additional Closing Order paragraphs that may be relevant or even integral to these proposed extensions are, in relation to the role of the Accused NUON Chea, paragraphs 916-977, paragraphs 178-191 (execution sites and security centers), 207-209 (targeting of specific groups – former officials of the Khmer Republic), 975-977 (targeting of groups – former officials of the Khmer Republic) and 949-974 (S-21); in relation to the role of the Accused IENG Sary, 1048-1066, 1105-1113 (targeting of groups – former officials of the Khmer Republic) and 1067-1089 (S-21) and in relation to the role of the Accused KHIEU Samphan, 1172-1181 (execution sites and security centres), 1191-1193 (targeting of groups – former officials of the Khmer Republic) and (1182-1190) (S-21).