

Trial Chamber Defines the Scope of Charges in Case 002/01
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Nearly a year after the start of the second trial in the Extraordinary Chambers in the Courts of Cambodia (ECCC), the Trial Chamber has determined the final scope of the charges against the three accused senior Khmer Rouge leaders. The joint subjects of a 400-page indictment in 2010, the accused are now facing abridged allegations due to the Trial Chamber’s decision — unprecedented at any international or hybrid court — to “separate the proceedings ... into a number of discrete cases that incorporate particular factual allegations and legal issues.”¹

Case 002/01, the first of an envisioned sequence of trials against the same accused, is limited to the following topics:

- a) The structure of Democratic Kampuchea;
- b) Roles of each accused during the period prior to the establishment of Democratic Kampuchea, including when these roles were assigned;
- c) Roles of each accused in the Democratic Kampuchean government, their assigned responsibilities, the extent of their authority, and the lines of communication throughout the temporal period with which the ECCC is concerned;
- d) Policies of Democratic Kampuchea on the issues raised in the indictment;
- e) Factual allegations described in the indictment as population movement phases 1 and 2; and
- f) Crimes against humanity including murder, extermination, persecution (except on religious grounds), forced transfer, and forced disappearances (insofar as they pertain to the movement of population phases 1 and 2).²

“Population movement phase 1” refers to the weeks-long chaotic dispersal of the civilian population of Phnom Penh — swollen by refugees from provincial fighting to an estimated two or more million persons — by the Khmer Rouge forces who captured the capital on April 17, 1975. “Population movement phase 2” refers to the forced movement of hundreds of thousands of people, including some of those previously displaced from Phnom Penh, from the central, southwestern, and other parts of the country primarily to the north, starting from around September 1975 and continuing into 1977.³ Both population transfers resulted in thousands of disappearances and deaths.

“[W]orksites, security centres, execution sites or facts relevant to the third phase of population movements” will not be considered. Moreover, the Trial Chamber explicitly excluded consideration of specific legal characterizations, including genocide and the crime against humanity of religious persecution,⁴ although the indictment highlights the impact of the second

¹ Severance Order Pursuant to Internal Rule 89*ter*, ¶ 2 (Sept. 22, 2011).

² *See id.* at ¶¶ 1, 5.

³ *See* Closing Order, ¶¶ 211-26, 262-65 (Sept. 15, 2010).

⁴ Severance Order, ¶ 7.

population movement on the Cham Muslim minority.⁵

In issuing the original severance order, the Trial Chamber reserved the right to decide “at any time” to incorporate additional portions of the indictment, subject to the rights of the Defense. The Prosecution agreed that the indictment should be cut, but it immediately sought reconsideration of the manner in which the case was split, expressing skepticism that more than one trial could be held of the octogenarian defendants and seeking to include a more representative selection of charges.⁶ When this request was rejected, they sought the addition of three crimes and allegations:

- a) Executions of 17 April 1975 evacuees at sites in Kampong Tralach Leu District (District 12), Kampong Chhnang Province;
- b) Executions of former Lon Nol soldiers and officials [of the defeated regime] in 1975 at Tuol Po Chrey, Kandieng District, Pursat Province; and
- c) Security Center S-21 and the related execution site at Choeng Ek, Kandal Province.⁷

The Trial Chamber has agreed to add only the execution of former Lon Nol soldiers and officials at Tuol Po Chrey, which occurred immediately after the evacuation of Phnom Penh in 1975 when “all former officers” were summoned to a meeting and told they would be reeducated and integrated into the Khmer Rouge forces, but then were transported to the execution site, killed, and buried in mass pits.⁸ The Trial Chamber found this to be a logical extension of the allegations already at issue and agreed to call two of the five witnesses requested by the Prosecution.⁹

The Trial Chamber has rejected the inclusion of the other two crime sites. Although the indictment describes mass killings of families evacuated from Phnom Penh upon their arrival to the area of District 12 in April and May 1975,¹⁰ the Trial Chamber said it “remains unconvinced that these additional crime sites are closely connected to the existing factual allegations in Case 002/01 or that their inclusion fits within the logical sequence of the trial.” This objection seems more pertinent to the establishment of S-21, which the Prosecution also sought to link to the Phnom Penh population movement but the indictment discusses in the context of a different policy — internal party purges.¹¹

In rejecting both sites, Chamber also highlighted trial delays occasioned by the necessity of evaluating Ieng Thirith’s mental fitness and the ongoing hospitalization of her husband Ieng Sary and reasoned that the inclusion of the two sites “would risk a substantial prolongation of the

⁵ See Closing Order, ¶¶ 266, 268.

⁶ See Co-Prosecutors’ Request for Reconsideration of “Severance Order Pursuant to Internal Rule 89*ter* (Oct. 3, 2011).

⁷ See Co-Prosecutors’ Request to Include Additional Crime Sites Within the Scope of Trial in Case 002/1, ¶ 4 (Jan. 27, 2012).

⁸ See Closing Order, ¶¶ 705-11.

⁹ See Notification of Decision on Co-Prosecutors’ Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E163) and Deadline for Submission of Applicable Law Portion of Closing Briefs, ¶ 3 (Oct. 8, 2012). See also Co-Prosecutors’ Proposed Extension of Scope of Trial in Case 002/1 (E163), ¶ 10 (Aug. 3, 2012).

¹⁰ See Closing Order, ¶¶ 693-697.

¹¹ See Co-Prosecutors’ Request of Jan. 27, ¶¶ 10-11; Closing Order, ¶¶ 192-204.

trial,” due to the number of witnesses sought, potential difficulty in limiting the scope of evidence discussed, and likely Defense objections.¹²

With the scope of Case 002/01 now finally determined, it remains to be seen if the accused will ever be brought to trial on the remaining charges. Unlike the Trial Chamber, all parties and most observers believe that these proceedings will be the first and last opportunity to bring to justice Khmer Rouge leaders who held positions at the zenith of the Democratic Kampuchea hierarchy.¹³

¹² See Notification of Oct. 8, ¶ 2. See also *Decision to Release Accused Ieng Thirith from Detention*, at <http://www.cambodiatribunal.org/blog/2012/09/expert-commentary-legal-filings-decision-release-accused-ieng-thirith-detention>.

¹³ See discussion in *Reconsidering the Scope of the First “Mini-Trial” in the Case against Khmer Rouge Senior Leaders*, at <http://www.cambodiatribunal.org/blog/2012/08/expert-commentary-legal-filings-reconsidering-scope-first-“mini-trial”-case-against>.