

**BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**RESPONSE TO CO-PROSECUTORS' IMMEDIATE APPEAL OF DECISION
CONCERNING THE SCOPE OF TRIAL IN CASE 002/01
ANNEX I**

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002/19-09-2007-ECCC-TC/SC (18)

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Date: 09/04/2012 09:50 AM
Subject: Re: Indications provided by the parties of various categories of individuals proposed to be heard at trial

Dear Susan,

I have the following comment to make regarding point 7 of the compilation,

'Additional individuals the other parties would seek to call if these proposed extensions were granted.'

During the TMM I made it clear that *if* S-21 is to be included in the expanded scope of the trial, the Nuon Chea defence team would wish to hear numerous witnesses relating to S21, including former prisoners, former staff members, and experts.

It is *prima facie* clear that it is in the direct interest of Nuon Chea to hear witnesses that can assist in challenging the credibility of Duch, both with regard to the alleged direct involvement of Nuon Chea in the affairs of S-21, as well as Duch's credibility more generally. Moreover, it is evident that hearing such witnesses will bear fruit: in case 001 it became clear that both former prisoners as well as former staff members have relevant things to say regarding the credibility of Duch, as well as his tendency to blame either superiors or subordinates for actions that, in fact, he undertook.

In Case 001, both the Trial Chamber and the OCP have acknowledged the problems regarding Duch's credibility. However, for obvious reasons, the findings and testimony in Case 001 cannot be 'imported' into Case 002 directly, if only because the procedural stance of Duch was

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one of (limited and self-serving) cooperation. This stance was naturally reflected in the legal positions that Duch's defence team adopted, and the ways in which his lawyers chose to question witnesses. In other words: the Nuon Chea defence team would question each and every witness that was heard in Case 001 with a different approach, a different interest, and a different purpose than the Duch defence team in Case 001, and we would accordingly obtain (most likely) different outcomes by way of trial testimony of these witnesses. Moreover, we would want to hear several witnesses in addition to those that were heard in Case 001.

Of course, Nuon Chea's alleged involvement with S-21 hinges to a major extent on Duch's description of Nuon Chea's role. Prosecuting Nuon Chea for S-21-related offenses, then, while not allowing the Defence the opportunity to present witness testimony that directly challenges Duch's credibility, would violate our client's fair trial rights.

In our initial list of witnesses [E9/10.1] we identified a certain number of witnesses as relevant to S-21 and the credibility of Duch; we have done a cursory review of this list and removed certain individuals that seem less relevant, and will attach the list of witnesses that are *prima facie* relevant when assessing the credibility of Duch. These are the witnesses that we would request to hear, *if* S21 gets to be included in Case 002/001. (*See attachment*) If you so desire, we could analyze this list further to see if we can limit it even more, and we could provide you with the finalized list by the end of this week. Of course, in case the Trial Chamber would not be inclined to include S-21 as part of the new extension, there would be no need for us to do so. Please do inform us accordingly.

As stated during the TMM, if indeed S-21 gets to be included as part of Case 002/001, it is an important and complicated enough topic to deserve serious and extended attention by the Trial Chamber. Merely hearing the (clearly less-than-truthful) former leader of the institution will not do justice to S-21 as a trial topic; if it gets to be discussed, it must be discussed comprehensively and thoroughly, in a fashion similar to the other sub-topics that form part of Case 002/001. Several important witnesses are still alive, and should be easily traceable in order to testify before the Chamber.

We want to stress that this e-mail should not be construed to constitute our full reasoning underlying our request to hear those witnesses (in addition to what I stated during the TMM); if the Trial Chamber indeed intends to include S-21, we would want to provide additional considerations as to why we want to hear (several of our earlier-proposed) witnesses with regard to this topic.

Please do not hesitate to ask for further clarifications on our position if anything remains unclear.

Kind regards,

Jasper

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-----Susan Lamb/UNAKRT wrote: -----

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From: Susan Lamb/UNAKRT

Date: 08/31/2012 02:52PM

Subject: Indications provided by the parties of various categories of individuals proposed to be heard at trial

Dear parties,

Following submissions made at the Trial Management Meeting and information sent to me subsequently, I have compiled the requests of all parties to hear (or withdraw) various categories of individuals at trial. I would be grateful if the parties could review this attachment and inform me of any errors as soon as possible.

Best regards,
Susan

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Annex I