

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

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CIVIL PARTIES' SUBMISSION ON THE SCOPE OF CASE 002/02

Filed by:

Lead Co-Lawyers for Civil Parties

PICH Ang
Elisabeth SIMONNEAU-FORT

Co-Lawyers for Civil Parties

CHET Vanly
HONG Kim Suon
KIM Mengkhy
KONG Phallack
LOR Chunthy
MOCH Sovannary
SIN Soworn
KONG Pisey
YUNG Phanith
SAM Sokong

Before:

Trial Chamber

Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sakhan
Judge Jean-Marc LAVERGNE
Judge YOU Ottara

Distribution to:

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Fabienne TRUSSES NAPROUS
Nushin SARKARATI
Jeanne SULZER
Philippine SUTZ
Beini YE

The Accused

KHIEU Samphan
NUON Chea

Co-Lawyers for the Defence

SON Arun
Victor KOPPE

KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN
Jacques VERGES

Co-Lawyers for the Civil Parties

Pascal AUBOIN

I. INTRODUCTION

1. In addition to the scope proposed by the Prosecution,¹ which the Civil Parties support, the Civil Parties seek the expansion of the reach of the charges of forced marriage and treatment of the Buddhists to a nationwide scope and not limited to specific crime sites. Additionally, they seek the inclusion of three sites and one additional charge in the scope of Case 002/02: Trapeang Thma Dam worksite, North Zone Security Centre, Koh Kyang Security Centre and forced transfer phase 3, including the related purges of the East Zone.
2. In support of their proposal on the scope of Case 002/02, the Civil Parties seek to ensure that the interests of civil parties and their experiences as victims are adequately represented in the factual allegations and legal characterization of the facts adjudicated in Case 002/02. They have developed and support their request primarily on the basis of the nature, scale and geographic scope of the alleged crimes, and the degree to which particular crimes or sites relate to fundamental themes of the case.

II. PROCEDURAL HISTORY

3. On December 2013, the Office of the Co-Prosecutor (“OCP”) proposed a set of crimes sites and factual allegations to be included in Case 002/02.²
4. On 11 December 2013, during the first trial management meeting on Case 002/02, the Civil Parties indicated that they agreed in principle with the Office of the Co-Prosecutor’s proposed scope of trial for Case 002/02,³ but not necessarily with the exclusion (or “dropping”) of the remaining charges or factual allegations contained in the Case 002 Closing Order from Case 002 proceedings.⁴
5. On 24 December 2013, the Trial Chamber issued a workplan and called upon parties to file any written submissions they wished to make on the scope of Case 002/02 by 31 January 2014.⁵

III. APPLICABLE LAW

¹ E301/2, Co-Prosecutors’ Submission Regarding the Scope of Case 002/02 and Trial Schedule with Annex A, 5 December 2013 (hereinafter “E301/2”).

² *Ibid.*

³ E1/238.2, Transcript of Proceedings, 11 December 2013, ERN 00966140 at lines 23-25.

⁴ *Ibid.*, ERN 00966141 at lines 23-25, ERN 00966142 at lines 1-3 and ERN 00966143 at lines 9-12.

⁵ E301/5, Trial Chamber Memorandum: Trial Chamber Workplan for Case 002/02 and Schedule for Upcoming Filings, 24 December 2013 (hereinafter “E301/5”).

6. The Supreme Court Chamber (“SCC”) has set a minimum threshold that the Trial Chamber must meet in determining the scope of Case 002/02, requiring that the scope of this case be “reasonably representative”⁶ and that it include “the charges related to S-21, a worksite, a cooperative, and genocide.”⁷
7. In balancing the interests of a fair and speedy trial against the need to ensure a trial that is reasonably representative of the Closing Order, the SCC identifies Rule 73bis(d) of the Rules of Procedure and Evidence of the International Criminal Tribunal for the Former Yugoslavia and related jurisprudence as instructive in determining the proper scope of trial.⁸ Accordingly, the Chamber identifies seven factors which may be relevant to a determination of representativity: 1) the crimes charged in the indictment; 2) the classification and nature of the crimes; 3) the places where the crimes are alleged to have been committed; 4) the scale of the crimes; 5) the victims of the crimes charged; 6) the time period of the crimes charged; and 7) the fundamental nature of the case.⁹

IV. ARGUMENTS

A. Office of the Co-Prosecutor’s Proposal on the Scope of Case 002/02

8. The Civil Parties support the inclusion of the security centers at S-21, Kraing Ta Chan, Au Kanseng and Phnom Kraol, the worksites at 1st January Dam and Kampong Chhnang Airport, the Tram Kok Cooperatives, the treatment of Cham and Vietnamese, forced marriages at 1st January dam and Tram Kok Cooperatives, and the persecution of Buddhist at the latter crime site and the arguments put forward by OCP to justify their inclusion. The combination of these crime sites and factual allegations meet a number of the factors identified by the SCC in establishing a reasonably representative scope of trial. In addition, the interest of the consolidated group of Civil Parties is represented to a certain extent by the geographical diversity of the crime sites and the number of civil parties affected by the charges proposed.
9. The Civil Parties are of the view that the addition of crime sites and the extension of factual allegations beyond those proposed by the OCP are necessary to reach the threshold of reasonably representative as mandated by the SCC. As a matter of **first**

⁶ E284/4/8, Decision on Immediate Appeals against Trial Chamber’s Second Decision on Severance of Case 002, 25 November 2013, para. 70 (hereinafter “E284/4/8”).

⁷ *Ibid.*, dispositive at ERN 00964331.

⁸ *Ibid.*, para. 64. *See also* E163/5/1/13, Decision on the Co-Prosecutors’ Immediate Appeal of the Trial Chamber’s Decision Concerning the Scope of Case 002/01, 8 February 2013, para. 42 and fn. 107.

⁹ E284/4/8, para. 64.

priority, the Civil Parties urge the Trial Chamber to adopt the Prosecution's proposed scope with the addition of forced marriage on a nationwide basis, as described below.

B. Civil Parties' Proposal on the Scope of Case 002/02

i. Forced Marriage on a Nationwide Basis

10. Civil Parties propose that the crimes of forced marriage and rape within the context of forced marriages are included in the scope of Case 002/02 as crimes alleged to have occurred on a nationwide basis.¹⁰ Inclusion of the crime of forced marriage as proposed by Civil Parties is supported by nearly all the factors elaborated by in the Supreme Court Chamber's decision to determine a reasonably representative scope for Case 002/02.
11. The inclusion of forced marriage will ensure broad geographical and temporal representativity in the case, as it is alleged to have occurred throughout the territory and time period of Democratic Kampuchea. Moreover, the crimes of other inhumane acts through rape/sexual violence and forced marriages as charged for the underlying factual allegations are of a severe nature given that one of the most basic human rights, to marry a spouse of your own choosing, was rejected as vast numbers of the Cambodians were coerced into conjugal relationships in which sexual relations were often imposed or forced and traditional Cambodian marriage practices were rejected.¹¹ Forced marriage is also the only context in Case 002 through which the Trial Chamber will have the opportunity to consider explicit allegations of sexual and gender-based crimes, which are unique in their legal elements and nature to the other crimes against humanity alleged in Case 002 and, thus, indispensable to reasonably represent the nature of the crimes. The charges of forced marriage form an integral part of the fundamental nature of Case 002, which scrutinizes the absolute control over the individual through the implementation of the five policies, including that on the regulation of marriage.
12. Seven hundred seventy-nine (779) civil parties are admitted to Case 002 as victims of forced marriage —placing this group among the largest sub-sets within the consolidated group of civil parties and demonstrating the massive number of victims of this alleged crime—victims who come from all levels of society, both within and outside of the Communist Party of Kampuchea (“CPK”). A total of at least 474 of these civil parties are direct victims who are available to provide detailed and highly probative evidence on the

¹⁰ **D427**, Case 002 Closing Order, 15 September 2010, para. 1442 (hereinafter “**D427**”).

¹¹ *Ibid.*, paras. 849-860.

practice of forced marriage throughout each of the zones of Democratic Kampuchea and most, if not all, of Cambodia's present-day provinces. Accordingly, including forced marriage on a nationwide scale will strengthen the evidence base for the chapeau elements of "widespread or systematic" attack of crimes against humanity.

13. The inclusion of charges of forced marriage nationwide will not impact on the trial's expeditiousness. The Civil Parties proposal envisages the efficient treatment of this topic at trial whereby the expansion to a nationwide scope will not require an extensive number of additional trial days. Civil Parties propose the hearing of one witness or civil party from each zone and one expert on the overall practice of forced marriage supplemented by a representative sample of civil party written statements and written records of interview from each zone. A great deal of this evidence has already been put before the Chamber and was relied upon in the Civil Parties' Case 002/01 Closing Brief section on the policy of forced marriage.¹² Civil Parties estimate that the presentation of civil party evidence on forced marriage and rape/sexual violence in the context of forced marriage will require approximately 5 hearing days.
14. In addition to the first priority proposals described in paragraphs 8-13 above, the Civil Parties propose the following additional crime sites and allegations for the Chamber's consideration, as **second priority**.

ii. Treatment of Buddhists on a Nationwide Basis

15. Extending upon the Prosecution's proposal to try crimes related to the treatment of Buddhists through the Tram Kok Cooperatives,¹³ the Civil Parties propose that the treatment of Buddhists be tried on a nationwide scale, as alleged in the Case 002 Closing Order.¹⁴
16. A vast number of Cambodians living in Democratic Kampuchea would have been victims of the alleged abolition and assault on religious/spiritual practice and practitioners which covers the full temporal scope of Case 002.¹⁵ Accordingly, the scope and scale of the alleged crimes associated with the treatment of Buddhists is severe, undermining the

¹² See **E295/6**, Civil Parties Closing Brief to Case 002/01 with Confidential Annexes 1-4, 26 September 2013, paras. 205-225.

¹³ **E301/2**, para. 14.

¹⁴ **D427**, para. 743 (noting "The abolition of religion, destruction of pagodas and use of pagodas for other purposes occurred throughout every area of Cambodia during the CPK regime [...]").

¹⁵ **D427**, para. 205.

spiritual foundations and cultural norms that sustained most Cambodians. The magnitude of this crime encompasses the vast majority of the population of Democratic Kampuchea over the full expanse of the regime and this reality should be reflected in the scope of Case 002/02. Moreover, the alleged nationwide mistreatment of Buddhists goes toward a fundamental aspect of the Communist Party of Kampuchea's (CPK's) alleged goal "to implement rapid socialist revolution"¹⁶ through the establishment of an "atheistic and homogenous society."¹⁷

17. At least 30 civil party direct victims, and possibly many more, are available to provide evidence on the treatment of Buddhists.¹⁸ Civil Parties estimate that the presentation of civil party evidence on the treatment of Buddhists will require approximately 5 hearing days.

iii. Trapeang Thma Dam Worksite

18. The Trapeang Thma Dam worksite is included in the Civil Parties proposal in part because it addresses a fundamental theme of the case, the alleged use of forced labor and other alleged crimes at the site to achieve the economic and political goals of Democratic Kampuchea as expressed in the push for rapid economic growth through drastic increases in rice production.¹⁹
19. Importantly, this worksite is a vital complement to the Prosecution's proposal of the 1st of January Dam Worksite, as it provides geographic representativity for the Northwest Zone of the country, an area not covered by the Prosecution's proposed scope of Case 002/02. Moreover, the severity of the crimes, which include murder (including the targeted killing of pregnant women),²⁰ extermination, enslavement, political persecution, forced marriage, enforced disappearances,²¹ among others, as well as the number of victims to have been affected by the crimes (reportedly in the thousands to tens of thousands)²² alleged to have taken place at Trapeang Thma Dam are very high.

¹⁶ *Ibid.*, para. 156.

¹⁷ *Ibid.*, para. 207.

¹⁸ Analysis of an additional 101 civil parties admitted by the Pre-Trial Chamber to Case 002/02 is currently being undertaken in order to determine which experienced harm as an immediate victim.

¹⁹ **D427**, para. 324 (quoting a CPK exhortation to workers to "sacrifice[] everything for maximum rice production.").

²⁰ *Ibid.*, para. 1373 and 349.

²¹ *Ibid.*, paras. 1381 (extermination), 1391 (enslavement), 1416 and 346 (political persecution), 1447 (forced marriage), and 1470 (enforced disappearance).

²² *Ibid.*, para. 334.

20. A total of at least 59 civil party direct victims are available to provide evidence on the operation of and conditions at Trapeang Thma Dam Worksite. Civil Parties estimate that the presentation of civil party evidence on this worksite will require approximately 4 hearing days.

iv. North Zone Security Centre

21. The Civil Parties' proposal of the North Zone Security Centre within the scope of Case 002/02 addresses the geographic representativity of the North Zone in the allegations to be tried in the next case and complements the proposal set forth by the Prosecution.
22. As alleged in the Closing Order, the scale of the crimes alleged at the North Zone Security Centre is severe and affects a large number of victims. A wide variety of individuals, including women (sometimes pregnant), children and babies, CPK cadre, affiliates of the Khmer Republic as well as new and base people were imprisoned at the North Zone Security Centre, which is reported to have had a capacity of 500 prisoners.²³ The crimes charged at this site are among the most severe, including murder, extermination, enslavement, imprisonment, torture, political persecution and enforced disappearance.²⁴
23. The Security Centre is also alleged to have been in operation over nearly the full duration of Democratic Kampuchea and therefore incorporates crimes occurring throughout the regime.²⁵ The fact that interrogations undertaken by Security Centre functionaries are alleged to have taken place in a former pagoda in the immediate vicinity²⁶ also provides relevant evidence on the abolition of religion and the policy of targeting Buddhists in the North Zone. Furthermore, the acts alleged to have taken place at the North Zone Security Centre relate closely to the fundamental nature of the case with respect to the common purpose of "defend[ing] the Party against internal and external enemies by whatever means necessary."²⁷

²³ *Ibid.*, para. 576.

²⁴ *Ibid.*, paras. 1373 (murder), 1381 (extermination), 1391 (enslavement), 1402 (imprisonment), 1408 (torture), 1416 (political persecution), 1470 (enforced disappearance).

²⁵ *Ibid.*, para. 572.

²⁶ *Ibid.*, para. 573.

²⁷ *Ibid.*, para. 156.

24. A total of at least 18 civil party direct victims are available to provide evidence on these and other key elements related to the operation of the North Zone Security Centre.²⁸ Civil Parties estimate that the presentation of civil party evidence on this security centre will require approximately 3 hearing days.

v. Koh Kyang Security Centre

25. Civil Parties propose the inclusion of Koh Kyang Security Centre in the Scope of Case 002/02. The acts alleged to have been carried out at this site were particularly severe and unique to other security centres of the CPK—leading the Co-Investigating Judges to describe the living conditions at Koh Kyang as “*particularly harsh*.”²⁹ The Closing Order sets out allegations that children, infants and pregnant women are alleged to have been imprisoned at the Security Centre;³⁰ that prisoners were starved and forced to sleep in their own excrement;³¹ and that entire families were drowned.³² Witnesses and civil parties report that prisoners were disemboweled and their internal organs eaten by prison cadre.³³ As well, female prisoners are alleged to have been subjected to forced nakedness, sexual humiliation and sexual abuse.³⁴
26. Accordingly, the crimes charged in the Closing Order for Koh Kyang Security Centre are among the most severe, including acts of genocide, murder, extermination, enslavement, torture, political persecution, and enforced disappearance.³⁵
27. Additionally, the Security Centre is alleged to have been in operation over a large extension of the temporal jurisdiction of the ECCC³⁶ and the acts alleged to have taken place at Koh Kyang relate closely to the fundamental nature of the case with respect to the common purpose of “defend[ing] the Party against internal and external enemies by whatever means necessary.”³⁷

²⁸ This figure represents civil parties were admitted to Case 002 by the OCIJ on the basis of harm as an immediate victim at the North Zone Security Centre, but does not include direct victims who may have been admitted by the PTC on the basis of evidence related to this site.

²⁹ **D427**, para. 527 (emphasis added).

³⁰ *Ibid.*, para. 525.

³¹ *Ibid.*, para. 527.

³² *Ibid.*, para. 531.

³³ *Ibid.*, para. 531 and fns. 2295 and 2296.

³⁴ *Ibid.*, para. 529.

³⁵ *Ibid.*, paras. 530 (genocide), 1373 (murder), 1381 (extermination), 1391 (enslavement), 1408 (torture), 1416 (political persecution) and 1470 (enforced disappearance).

³⁶ *Ibid.*, para. 516.

³⁷ *Ibid.*, para. 156.

28. A total of at least 9 civil party direct victims are available to provide evidence on these and other key elements related to the operation of Koh Kyang Security Centre.³⁸ Civil Parties estimate that the presentation of civil party evidence on this security centre will require approximately 3 hearing days.

vi. Forced Transfer Phase 3 and Related Purges of the East Zone

29. Civil Parties seek the inclusion of the crime of forced transfer phase 3 and the related purges of the East Zone in the scope of Case 002/02 both as a means to ensure the proper geographic representativity of the case as well as to ensure that the unique nature of this phase of forced transfer is represented in the proceedings. The inclusion of phase 3 forced transfers and the related purges would complement the Prosecution's proposal on scope by ensuring that this crime and the region of the country it is centered in, the East Zone, is not excluded from the proceedings. The allegations associated with phase 3 forced transfers and the related purges are closely linked to and complement evidence on S-21 Security Centre—particularly the alleged purges of East Zone CPK cadre and members of the Revolutionary Army of Kampuchea.³⁹
30. The allegations regarding forced transfer phase 3 and related purges also encompass a wide variety of victims, including CPK cadre, soldiers and others linked to East Zone Secretary SAO Phim, former affiliates of the Khmer Republic, new people, Buddhist monks, the Cham, the Chinese, the Khmer Kampuchea Krom and the Vietnamese.⁴⁰ The crimes alleged against one or more of these groups are among the most severe, including murder and racial and political persecution.⁴¹
31. The purges alleged to have been one of the motivating forces behind the phase 3 forced transfers⁴² also closely relate to the fundamental nature of the case with respect to the common purpose of “defend[ing] the Party against internal and external enemies by whatever means necessary.”⁴³
32. A total of 139 civil party direct victims are available to provide evidence on these and other key elements related to phase 3 forced transfers. Civil Parties estimate that the

³⁸ This figure represents civil parties were admitted to Case 002 by the OCIJ on the basis of harm as an immediate victim at the Koh Kyang Security Centre, but does not include direct victims who may have been admitted by the PTC on the basis of evidence related to this site.

³⁹ See **D427**, paras. 285, 290, 296 and 431.

⁴⁰ *Ibid.*, para. 285.

⁴¹ *Ibid.*, paras. 1373 (murder), 1422 (racial persecution) and 1415 (political persecution).

⁴² *Ibid.*, para. 283.

⁴³ *Ibid.*, para. 156.

presentation of civil party evidence on forced transfer phase 3 and the related purges will require approximately 5 hearing days.

33. With respect to the timing proposed for each of the additional crime sites and factual allegations discussed above, the Civil Parties note that these proposals are made solely on the basis of the civil party evidence. However, they also highlight that this evidence overlaps with that proposed by the Prosecution and, therefore, the actual time required to hear both the Prosecution's and the Civil Parties' evidence for these sites and factual allegations would be less than the sum of the trial days estimated by each party.
34. In conclusion, the Civil Parties' proposal for the addition crime sites or factual allegations to the scope of Case 002/02 as indicated above would require the inclusion of the Closing Order paragraph numbers indicated below, which correspond to the relevant sections on Factual Findings of Crimes:
 - a. *forced marriage and rape within the context of forced marriage*: paragraphs 842-861, ;
 - b. *treatment of the Buddhists*: paragraphs 740-743;
 - c. *Trapeang Thma Dam Worksite*: paragraphs 323-350;
 - d. *North Zone Security Centre*: paragraphs 572-588;
 - e. *Koh Kyang Security Centre*: paragraphs 516-534; and
 - f. *forced transfer phase 3 and related purges*: paragraphs 283-301.
35. Additionally, the Civil Parties' proposal requires the inclusion of the following related paragraphs in the sections of the Closing Order on Factual Findings of Joint Criminal Enterprise, Role of the Accused and Armed Conflict:
 - a. *Factual Findings of Joint Criminal Enterprise*: paragraphs 156-159, 163 and 166-220;
 - b. *Role of the Accused*: paragraphs 902-976, 978-992, 1163-1192 and 1194-1199; and
 - c. *Armed Conflict*: 150-155, 993 and 1200.

B. On the Dropping of Charges

36. The Civil Parties strongly oppose any solution that favors the express or *de facto* dropping of charges and/or their related factual circumstances (such as crime sites) from Case 002 as doing so works against the interests of justice and principles of Cambodian

criminal law.⁴⁴ Furthermore, it is the express wish of many civil party victims to maintain every possibility that all of the allegations included in the Case 002 Closing Order are adjudicated. However, Civil Parties do not believe that deliberations on this issue present any obstacle to the Chamber making a timely determination on the scope of Case 002/02.

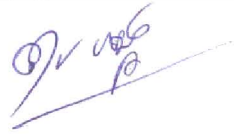
V. CONCLUSION

37. The Civil Parties urge the Trial Chamber to find that the need for geographic representation in the scope of Case 002/02, particularly in the North, Northwest and East Zones; the linkages between the proposed crime sites and factual allegations to the fundamental nature of the case, and the severity and magnitude (scale) of the crimes, including the number of victims impacted by the crimes, require the adoption of the Civil Parties' proposed scope in order to reach the threshold of reasonable representativity in Case 002/02.


WHEREFORE, Civil Parties request that the Trial Chamber:

- a. **Adopt** the Office of the Co-Prosecutor's proposals concerning crime sites and crimes to be included in the scope of Case 002/02;
- b. **Determine** that Trapeang Thma Dam Worksite, North Zone Security Centre and Koh Kyang Security Centre and forced transfer 3 and the related East Zone purges shall be included in the scope of Case 002/02; and
- c. **Order** that the scope of Case 002/02 shall include the charges of forced marriage and the underlying offense of rape in the context of forced marriage as well as the factual allegations related to the treatment of Buddhists on a nationwide basis.

Respectfully submitted,

Date	Name	Place	Signature
31 January 2014	PICH Ang Lead-Co-Lawyer	Phnom Penh	

⁴⁴ See e.g. Article 7 of the Cambodian Code of Criminal Procedure, 2007 (providing an exhaustive list of the conditions under which a criminal action may be extinguished, including death of the offender, expiration of the statute of limitations, a grant of general amnesty, abrogation of the criminal law and *res judicata*).

	Elisabeth SIMONNEAU-FORT Lead Co-Lawyer	Montpellier	
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