



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

31 August 2017

STATEMENT BY THE OFFICE OF THE CO-PROSECUTORS ON CASE 004/2

The ECCC’s Internal Rules provide that while the Co-Prosecutors’ Final Submission(s) must be filed confidentially, the Co-Prosecutors may release to the public an objective summary of their submissions. In the interest of keeping the public informed, the Co-Prosecutors provide the following summary of information contained in their Final Submissions regarding the Ao An investigation. Readers should be aware that the summary below does not include the views of the Defence and are in no way intended to reflect the view of the Co-Investigating Judges (“CIJs”), who will make their own determination of the issues.

A Final Submission is issued by the Co-Prosecutors when they consider, like the Co-Investigating Judges (“CIJs”), that the investigation has been concluded, and when they may request the CIJs to either indict the Charged Person and send him for trial, or dismiss the case.

The National and International Co-Prosecutor filed their Final Submissions for Case 004/2, the investigation of Ao An, on 18 and 21 August 2017, respectively. Ao An’s Defence will now have the opportunity to respond to the Final Submissions with their view of the evidence. It will then be up to the Co-Investigating Judges to decide whether Ao An is subject to the personal jurisdiction of the ECCC and whether the investigation has established his responsibility for crimes within the ECCC’s jurisdiction to the standard required to indict him and send him to trial. As with all charged or accused persons at the ECCC, Ao An retains the presumption of innocence, which is lifted only if and when guilt is established at trial and through appeal.

The Co-Prosecutors filed separate Final Submissions in the case against Ao An, reflecting their differing views of the case.

National Co-Prosecutor’s Submissions

The National Co-Prosecutor submitted that she thoroughly reviewed the results of the initial investigation and conclusion of the investigative action by the Co-Investigating Judges, and reiterates that only the existing accused at the ECCC are the senior leaders and most responsible persons of Democratic Kampuchea. The priority, therefore, should be given to the prosecution of those accused in order to sufficiently fulfil the mandate of this tribunal, as the ECCC Law and the Agreement between the Royal Government of Cambodia and the United Nations envisaged only the prosecution of this small group of individuals. In particular, the ECCC law and the

Agreement—which was recognised by the UN on legitimate concerns of the Royal Government of Cambodia and its people in searching for justice, national reconciliation, stability, peace, and security—required that the Co-Prosecutors select only two types of individuals for trial, namely: senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of the Cambodian criminal code, international humanitarian law, customary law, and international conventions recognised by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979. Therefore, the National Co-Prosecutor stands on the ECCC Law and the Agreement that Ao An, named in case 004/2, is not subject to the personal jurisdiction of the ECCC that needs to be prosecuted.

International Co-Prosecutor's Submissions – Personal Jurisdiction

The International Co-Prosecutor submitted that in his view of the evidence, Ao An was both a “senior leader” and one of the persons “most responsible” within the meaning of the ECCC’s governing law, thus establishing the Court’s personal jurisdiction over the cases. The International Co-Prosecutor also provided his analysis of the evidence collected in the investigation and an explanation regarding why, in his view, it establishes Ao An’s responsibility for serious crimes within the jurisdiction of the ECCC to the standard necessary to indict him and send him to trial.

The International Co-Prosecutor’s Final Submission argues that Ao An held positions of responsibility that enabled him to make a significant contribution to crimes committed in areas over which he exercised authority. The case focuses on the period from early 1977-1979 when Ao An was the Deputy Secretary of the Central Zone (under Secretary Ke Pauk) as well as Secretary of Sector 41. The International Co-Prosecutor contends that these positions of authority placed Ao An in a small group of the most powerful cadres, or “senior leaders” at the top of the Communist Party of Kampuchea (“CPK”) hierarchy. As Deputy Secretary of one of just seven zones that existed in Democratic Kampuchea, Ao An held power and control over a significant portion of the territory and population as a whole. In addition, he frequently served as acting Secretary of the Central Zone in Ke Pauk’s absence. Ao An’s position as Deputy Zone Secretary also made him responsible for security in the zone, a critical role that gave him oversight and control of the 25 security centres in the Central Zone—a significant portion of the whole DK security apparatus. Ao An also received instructions directly from Ke Pauk and Ta Mok, demonstrating his close links to the highest levels of the CPK and the trust that the top Khmer Rouge leaders had in him to implement Party policies.

As Sector 41 Secretary, Ao An exercised full authority over five districts in Kampong Cham Province: Kampong Siem, Prey Chhor, Batheay, Cheung Prey, and Kang Meas. In these areas, Ao An was responsible for almost all aspects of life for the many thousands of people who lived there. Most significantly and as discussed more fully below, Ao An and his subordinates exercised the power of life and death over those who lived in the villages and communes of Sector 41 and over those unfortunate enough to find themselves within the area’s security centres.

The International Co-Prosecutor also submits that Ao An fits the second criteria for inclusion within the ECCC’s personal jurisdiction, as he was among those individuals “most responsible” for the crimes committed by the DK regime. During the time that Ao An held authority over Sector 41, the area was the focus of intense purges, resulting in the extrajudicial killings of many

thousands of men, women, and children. The crimes he is charged with are of the most serious gravity, including genocide. Ao An's level of responsibility for those crimes is extraordinarily high. In the International Co-Prosecutor's view, the evidence demonstrates a direct connection between Ao An and the crimes, including evidence that he personally ordered the killings of thousands, particularly the Cham and other groups targeted by the DK regime.

International Co-Prosecutor's submissions – Criminal Responsibility

The International Co-Prosecutor argues that Ao An should be indicted and tried for genocide of the Cham Muslims and for the crimes against humanity of murder, extermination, enslavement, imprisonment, torture, religious and political persecution, and other inhumane acts (specifically, inhumane conditions of detention, enforced disappearances, forced marriage, and rapes within the context of forced marriage). The evidence on the Case File shows that the purge in Sector 41 functioned as a single system, requiring coordinated action organised by the sector and zone leadership. At the heart of this system was Ao An, whose office was literally at the crossroads of the sector, next to the Prey Toteung market where thousands of prisoners collected from across the region were transferred to vehicles that then transported them to security centres or execution sites. The case against Ao An focuses on six security centres, two execution sites, and one worksite within Sector 41 that have direct links to Ao An during his tenure in the area:

1. Wat Ta Meak Security Centre was a sector-level facility in Prey Chhor district less than one kilometre from Ao An's sector office. The compound was used for political training sessions, detention, torture, and executions of prisoners.
2. Kor (Met Sop) Security Centre was a sector-level prison in Prey Chhor district where people were imprisoned, subjected to inhumane conditions, tortured, and executed. Approximately 2,000 corpses were found in the vicinity of the security centre after the DK regime, and there is evidence that a significant number of other bodies were cremated.
3. Phnom Pros Execution Site in Kampong Siem district was a location where large numbers of prisoners from security centres and other locations across the zone, particularly Sector 41, were executed. Killings began at this site after Ao An and the other cadres from the Southwest Zone took control of the area, and numerous mass graves were discovered at the site after the fall of the DK regime. These graves contained the remains of an estimated 7,300 victims or more.
4. Tuol Beng and Wat Angkuonh Dei Security Centres were district-level security facilities located in Kampong Siem District where victims were persecuted, imprisoned, and ultimately executed. Cham families were particularly targeted at Tuol Beng, including over 100 families from surrounding villages. The estimated number of victims for these sites ranges up to 1,000.
5. Kok Pring Execution Site was a large killing field located on the shores of a lake near Kdei Boeng Village in Kampong Siem District. Hundreds of people were murdered there on Ao An's direct orders, including "17 April people", Cham, and ordinary civilians suspected of disloyalty to the regime, as cadres and those with higher ranks from the former regime were usually sent to district or sector security centres.

6. Wat Batheay Security Centre in Batheay District served as a district-level security centre where Cham, people from the East Zone, ordinary civilians accused of offences, and ex-cadres perceived as enemies were imprisoned, tortured, persecuted, and killed. An estimated 8,000 to 10,000 people were killed and buried in 400 to 500 grave pits discovered at the site.
7. Wat Au Trakuon Security Centre in Kang Meas District was one of the deadliest prisons in operation during the DK period. More than 20,000 people are estimated to have been killed there, many after being subjected to inhumane conditions and torture. The site was a key location at which the CPK pursued its policy to eliminate “17 April people” and the Cham Muslim population.
8. Anlong Chrey Dam on the border of Prey Chhor and Cheung Prey districts was a sector-level worksite where tens of thousands of labourers from the sector were forced to construct the dam. The site was personally supervised and frequently visited by Ao An and his subordinates. Workers were confined to the site, performing back-breaking labour for arduous hours in deplorable conditions. Arrests, disappearances, and killings were frequent punishments for those who did not meet the work quotas set by DK officials.

The International Co-Prosecutor is also of the view that, in addition to crimes at the above sites, the evidence supports the indictment of Ao An for persecution and genocide of the Cham throughout the areas under his control, as well as for forced marriage and rape in Kampong Siem and Prey Chhor districts. In particular, the evidence shows:

1. Persecution and Genocide of the Cham: Ao An convened a meeting of all five district secretaries in Sector 41 at his office in Prey Chhor district, where he instructed them to identify all of the Cham in their districts and “smash” them. His subordinates drew up lists of Cham, who were then systematically arrested and killed, and reports that the orders had been carried out were sent back to Ao An. Unlike other arrested prisoners, the Cham were detained very briefly without interrogation or were executed immediately, indicating that they were killed not because they had committed “mistakes” or were part of “traitorous networks” but merely because they were Cham. Thousands of Cham were killed in Sector 41 due to the thoroughness and vigour with which Ao An and his subordinates pursued the objective to eliminate the entire group.
2. Forced Marriage and Rape: In Prey Chhor and Kampong Siem districts, Ao An and his subordinates implemented CPK policies on marriage and consummation. Ao An personally arranged, approved, and presided over marriages in his area of control. He also delivered instructions to his subordinates about matching couples based on their backgrounds, and he imposed a rule that newlywed spouses had to sleep together to produce children. In the pervasively coercive environment that existed during the DK regime, these instructions resulted in thousands of forced marriages. Newlyweds were then typically monitored by Ao An’s subordinates to ensure that they consummated their marriages, causing both men and women to have sexual intercourse without the free consent of one or both partners. Forcing individuals to engage in sexual relations in conditions where free consent is impossible has been recognised as rape. It is the International Co-Prosecutor’s position that by forcing the couples to have intercourse

without the true consent of either the women or the men involved, Ao An and his subordinates committed the crime of rape.

The International Co-Prosecutor's Final Submission consisted of 188 pages of substantive analysis accompanying 2,322 endnotes citing evidence collected during the investigation. This evidence comprised 10,100 documents, including approximately 1,600 Written Records of Interview; 2,000 Civil Party Applications; and numerous contemporaneous CPK and DK records; S-21 prisoner lists; Documentation Center of Cambodia interviews; trial transcripts from Cases 001, 002/01 and 002/02; photographs; maps; and academic books and articles. The International Co-Prosecutor intends to ask the Co-Investigating Judges to make the Co-Prosecutors' Final Submissions and the Defence response to those submissions public after appropriate redactions are made to protect the security and privacy of witnesses and victims.

Readers are again reminded that all suspects and charged or indicted persons are presumed innocent unless and until their guilt is proven beyond a reasonable doubt at trial.

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