

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

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**CO-PROSECUTORS' PROPOSED WITNESS, CIVIL PARTY AND EXPERT LIST
AND SUMMARIES FOR THE TRIAL IN CASE FILE 002/02
(WITH 5 CONFIDENTIAL ANNEXES I, II, IIA, III and IIIA)**

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SUBMISSION

1. Pursuant to the Trial Chamber's "Decision on Additional Severance of Case 002 and Scope of Case 002/02" dated 4 April 2014¹ and their "Order to File Updated Material in Preparation for Trial in Case 002/02" dated 8 April 2014,² the Co-Prosecutors submit their list and related summaries of proposed witnesses, civil parties and experts to be heard in the Case 002/02 trial in the following five confidential attached annexes:
 - (1) **Annex I:** Combined Witness, Civil Party and Expert List (including alternates) for Case 002/02 in Recommended Order of Trial Segments and Appearance ;
 - (2) **Annex II:** Updated List of Proposed Witnesses, Civil Parties and Experts;
 - (3) **Annex IIA:** Updated List of Proposed Alternate Witnesses, Civil Parties and Experts (Reserves) ;
 - (4) **Annex III:** Updated Information (Summaries) Required in Relation to Proposed Witnesses, Civil Parties and Experts; and
 - (5) **Annex IIIA:** Updated Information (Summaries) Required in Relation to Proposed Alternate Witnesses, Civil Parties and Experts (Reserves).
2. **Annexes I, II and III** combined contain the names and other particulars of **97 witnesses, 22 civil parties and 8 experts** that the Co-Prosecutors propose to be heard at trial. The particulars provided include, to the extent that this information is available to the Co-Prosecutors: each individual's gender; place and date of birth; current address or contact details; document reference numbers of the most relevant written records of interview of that individual; the type of oath that it is expected each individual will take or, alternatively, where an oath is not required, their relationship to individuals in the case that precludes them from taking an oath as prescribed in Rule 24(2); the expected language of the individual's testimony; and the estimated length of time required for their testimony.
3. **Annex I** is filed to provide the Trial Chamber and the Parties an overview of the witnesses, civil parties and experts that the Co-Prosecutors seek to call, as well as

¹ **E301/9/1** Decision on Additional Severance of Case 002 and Scope of Case 002/02, 4 April 2014.

² **E305** Order to File Updated Material in Preparation for Trial in Case 002/02, 8 April 2014.

the proposed order it is recommended that these individuals be called to testify. This Annex also includes proposed alternate witnesses.

Protective Measures

4. **Annex II** contains the details of all witnesses, civil parties and experts the Co-Prosecutors intend to call at trial. The Co-Prosecutors are not in a position to state whether these individuals require protective measures and to what extent, as the Co-Prosecutors have no mandate to meet and discuss these issues with them. Therefore, in accordance with Article 33 new of the ECCC Law and Rule 29 (3), by virtue of the fact that the Co-Prosecutors have not been in contact with the witnesses, civil parties and experts, the Co-Prosecutors request that the Trial Chamber direct the Witnesses & Expert Support Unit (“WESU”) to assist the Trial Chamber in determining whether protective measures should be sought for the individuals contained in the Co-Prosecutors’ lists. It is also requested that WESU obtain specific information from each witness, civil party or expert as to the type of protection they may deem necessary.

Oath or Affirmation Preference

5. The Co-Prosecutors have, wherever possible, included the type of oath or affirmation that each expert and witness is expected to take during the trial. Generally, however, this information is not available to the Co-Prosecutors. While the written records of witnesses interviewed by OCIJ investigators usually indicate whether the individual took an oath or affirmation in accordance with Rule 31 or 24 (1), the records do not indicate the type of oath taken. In addition, all individuals who have not been interviewed by OCIJ have not yet been required to take an oath. As such, their preference in this respect is presently unknown.
6. The Co-Prosecutors also note, in relation to Rule 80 (1), that they do not have access to sufficient information to allow them to state whether witnesses have a relationship to a civil party that would preclude them from taking an oath under Rule 24 (2). This is due to the fact that the majority of Case 002 civil parties were not admitted and identified by the Co-Investigating Judges until after the interviews

of witnesses had already taken place. The Co-Prosecutors therefore also request that the Trial Chamber request the assistance of WESU for the purposes of determining whether the witnesses on the Co-Prosecutors lists are related to any admitted civil party.

Selection Considerations

7. The Co-Prosecutors have proposed witnesses, civil parties and experts for this trial with a view to balancing the search for the truth of the facts alleged in the Indictment, protecting the fair trial rights of the Accused and facilitating the need for judicial economy. The testimony of at least these individuals will be central to the Co-Prosecutors' ability to prove beyond reasonable doubt, as required by Rule 87 (1), the crimes and modes of individual criminal responsibility alleged in the Indictment as severed by the Trial Chamber in Case 002/02.
8. The majority of the witnesses, civil parties and experts on the Co-Prosecutors' lists were identified to the Trial Chamber in April 2011 when they were required to file their lists of individuals they intended to call in the trial in Case 002 before it was severed. However, some of those witnesses, civil parties and experts were not on the prior list, as at that time the Co-Prosecutors were either unaware of the information provided by the individuals or, although aware of the information they had provided, were of the view their testimony was comparatively less important than other witnesses being proposed in the first trial particularly given the limitation of numbers of witnesses, civil parties and experts that could be called to testify.
9. The Co-Prosecutors have now reassessed the value of the evidence of these witnesses, in light of the now defined scope of Case 02/02 and in consideration of the evidence and oral testimony heard in Case 002/01. These individuals are the subject of a request to the Trial Chamber which was filed jointly by all Parties. In this request, relating to the Internal Rule 87(4) evidence admissibility provision concerning new evidence proposed by a party, the Parties requested that this provision only apply to new evidence being proposed after the opening of the trial,

that is after the upcoming Initial Hearing.³ As of the date of this filing no decision has been delivered on this request.

10. Some individuals have not been placed on the Co-Prosecutor's witness, civil party and expert lists on the basis that they will be permitted to introduce into evidence their witness statements and related documents, in addition to those documents that have already been admitted in Case 002/02 from Case 002/01,⁴ pursuant to Rule 87. However, in the event that certain witness statements or related documents are not admitted, the Co-Prosecutors reserve the right to request further witnesses, civil parties or experts to be heard at trial, if in the opinion of the Co-Prosecutors such exclusion of documentary evidence jeopardizes their ability to meet the standard of proof required on any particular material issue in the Case 002/02 trial.
11. Where witnesses, civil parties and experts identified in the Co-Prosecutors' lists cannot appear at trial for any reason, or if they appear at trial and are unable to establish the facts contained in their written statements, the Co-Prosecutors also provide notice to the Trial Chamber that they may request that alternative witnesses, civil parties or experts be heard in order to testify on the same or similar issues. The names of these individuals are provided, where possible, in **Annexes I, IIA and IIIA**.
12. In **Annex I**, these alternate witnesses, civil parties and experts are listed as "reserves" under the segment of the trial to which it is believed they would provide the most probative evidence. The Co-Prosecutors have made a good faith effort to identify potential alternative witnesses at this stage, though the use of such alternates will depend on the specific circumstances of trial, which may necessitate different witnesses or civil parties than those presently listed as "reserves." **Annexes IIA and IIIA** provide the same information for "alternate" or "reserve" witnesses, civil parties or experts as required by the Trial Chamber for the Co-Prosecutors proposed individuals they intend to call at trial in **Annex II** and **Annex III** respectively.

³ **E307** "Parties' Joint Request for Clarification Regarding the Application of Rule 87(4) in Case 002.02," 30 April 2014.

⁴ **E302/5** Trial Chamber Memorandum titled "Clarification regarding the use of evidence and the procedure for recall of witnesses, civil parties and experts from Case 002/01 in Case 002/2," 7 February 2014.

13. More generally, if as the trial progresses the Co-Prosecutors believe that further witnesses need to be called on any particular issue in order to satisfy their burden of proof, they reserve the right to propose further such witnesses to the Trial Chamber at that time.
14. Some individuals that the Co-Prosecutors propose to call have not been interviewed by OCIJ. These include most of the experts who are requested. OCIJ did not interview individuals who already have extensive expertise on issues relating to some of the subject matters alleged in the Indictment. Instead, their publications were placed on the Case File. The fact that these experts did not testify before the Co-Investigating Judges does not diminish the value of their testimony. Indeed, these individuals are in a position to offer unique insights, often on a wide range of issues pertinent to this case and in a concise manner conducive to judicial economy.

Trial Organisation, Witness Order and Time Estimates

15. As with the Case 002/01 trial, it is proposed that the Case 002/02 trial be divided into phases which focus on different joint criminal enterprise policies and related criminal events and crime sites which are the subject of the trial. Within each such phase, witnesses, civil parties and experts are divided into groups based on the particular event or crime site for which they can provide the most probative evidence. In addition to the crime sites and events that have been selected by the Trial Chamber for inclusion in Case 002/02, the Co-Prosecutors propose an additional phase to hear further witnesses on the Accused's role in the crimes charged and participation in the joint criminal enterprise. The Co-Prosecutors submit that their proposal for the structure of the presentation of evidence in Case 002/02 will maximize the efficiency of the proceedings and facilitate the parties, Trial Chamber and public's understanding of the case.
16. The Co-Prosecutors therefore propose that the Case 002/02 trial be divided into the following five phases and corresponding segments:
- (1) **Role of Accused**
 - (2) **Security Centres:** (a) S-21, (b) Internal Purges, (c) Kraing Ta Chan/Tram Kak Cooperatives, (d) Au Kanseng and (e) Phnom Kraol. In this phase, it is requested that the ***Co-operative Policy*** (limited to the Tram Kak area) also be heard, due to the numerous common witnesses, documents and issues with Kraing Ta Chan, which was the Tram Kak District security office.

- (3) **Treatment of Targeted Groups:** (a) Vietnamese and (b) Cham. In this phase, it is requested that the ***Movement of the Population Policy*** (limited to the treatment of the Cham in Phase 2) be heard, due to the common evidence relating to the Cham policies.
 - (4) **Worksites:** (a) 1st January Dam, (b) Trapeang Thma Dam and (c) Kampong Chhnang Airport.
 - (5) **Regulation of Marriage (Nationwide)**
17. The Co-Prosecutors submit that the Case 002/02 trial should begin with the S-21 Security Centre, the one and only crime site that was located in Phnom Penh and reported directly to the Case 002 Accused, as well as the related issue of Internal Purges. The evidence that will be heard relating to S-21 will set the stage and provide context for the remaining Case 002/02 crime sites and events. For the same reason, it is proposed that the additional witnesses regarding the Role of the Accused be heard at the outset of the trial, either before or immediately after the segment on S-21 and Internal Purges.
18. The Co-Prosecutors propose that the above issues be followed by the Kraing Ta Chan Security Centre and Tram Kak Cooperatives, which for purposes of efficiency of the trial should be heard together, and then the two remaining security offices (Au Kanseng and Phnom Kraol). The crimes that are charged in the Closing Order relating to the Tram Kak Cooperatives and Kraing Ta Chan involve common witnesses and documents, including numerous contemporaneous records recovered from that district. Because of the breadth of the crimes charged in Tram Kak District, and because Tram Kak was recognized by the CPK as a model district for all of Democratic Kampuchea, the hearing of the evidence relating to those crime sites at an early stage of the Case 002/02 trial will also provide important context to and facilitate the trial of the remaining crime sites and events.
19. Within each segment, the Co-Prosecutors have proposed a general order of witnesses. The Co-Prosecutor have proposed hearing experts at the beginning or end of the particular phase or segment that addresses subject matters within their expertise. By doing so, the evidence of eye witnesses can be put in the context of similar evidence examined by those experts, thereby allowing a greater

comprehension of that evidence. For similar reasons, it is proposed that a Victim Impact segment be conducted at the conclusion of each individual crime site or event, in which Civil Parties affected by those crime sites or events could be heard.

20. Many witnesses, civil parties and experts will provide evidence in connection with multiple issues, crime sites and events. In order to avoid multiple appearances by the same witness or compartmentalised testimony, the Co-Prosecutors submit that parties should be able to question such individuals on all issues relevant to Case 002/02 on which they are able to testify.
21. The Co-Prosecutors are of course aware that the Civil Parties and Defence will put forward their own requests for witnesses, civil parties and experts to testify at trial. The Co-Prosecutors would request that these individuals be ordered within the structure put forward by the Co-Prosecutors, so that evidence favorable to any party can be heard in the most relevant context.
22. Time estimates have been made on the basis that the Co-Prosecutors would be able to question the witnesses, civil parties and experts for at least one third to one half of the time indicated in **Annex I**.
23. A limited number of witnesses on the Co-Prosecutors' list have their identifying information redacted, and are instead referred to by a pseudonym such as OCP-01. These are witnesses whose evidence only came to the attention of the Co-Prosecutors through interviews conducted by the Co-Investigating Judges, and which are presently classified as confidential. The International Co-Prosecutor filed requests to the International Co-Investigating Judge to disclose these interviews to the Trial Chamber and the Parties, alongside other material from ongoing judicial investigations which may be relevant to Case 002/02.
24. On 8 May 2014, the International Co-Investigating Judge denied these requests "at this stage" but "remained seised" thereof,⁵ on the basis that, for the time being, such disclose "could potentially endanger the investigation."⁶ The International Co-Investigating Judge noted that "no fixed date has been set for the commencement of

⁵ **CF003-D100/1** Decision on the International Co-Prosecutor's Request to Disclose Case 003 Interviews relevant to Case 002/02, 8 May 2014 at para. 17; **CF004-D193/1** Decision on the International Co-Prosecutor's Request to Disclose Case 003 Interviews relevant to Case 002/02, 8 May 2014 at para. 17.

⁶ *Ibid.*

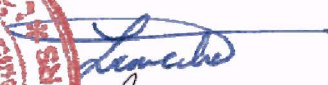
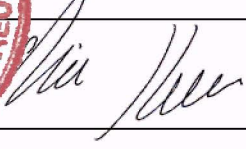
trial in Case 002/02,”⁷ and confirmed that “Once the International CIJ deems that disclosure of the documents is no longer capable of jeopardising the investigation, he will authorise the [International Co-Prosecutor] to seek their admission in Case 002/02”⁸ and “will inform the Co-Prosecutors as soon as it becomes prudent to oblige the Request.”⁹ Once a trial date is set, the International Co-Prosecutor undertakes to immediately notify the International Co-Investigating Judge and to reiterate his request for disclosure.

REQUEST

25. The Co-Prosecutors therefore request that the Trial Chamber:

- (1) summon the witnesses, civil parties and experts identified in **Annexes I, II, and III** to give evidence at trial in Case 002/02;
- (2) hear the testimonies in the order outlined in this request, whereby the trial is divided into phases focusing on particular joint criminal enterprise policies and corresponding segments relating to the implementation of those policies at the crime sites or during the criminal events that constitute Case 002/02 (as detailed in **Annex I**);
- (3) consider as reserve witnesses, civil parties and experts those individuals identified as such in **Annexes I, IIA and IIIA**;
- (4) order that WESU provide all information necessary to the Trial Chamber in order for them to make a determination as to whether protective measures are necessary for the experts, witnesses and civil parties throughout these proceedings pursuant to Article 33 new and Rule 29.

Respectfully submitted,

Date	Name	Place	Signature
9 May 2014	CHEA Leang Co-Prosecutor	Phnom Penh	
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⁷ *Ibid.* at para. 11 [both Decisions].

⁸ *Ibid.* at para. 12 [both Decisions].

⁹ *Ibid.* at para. 13 [both Decisions].