



# Forced Marriage Case Notes

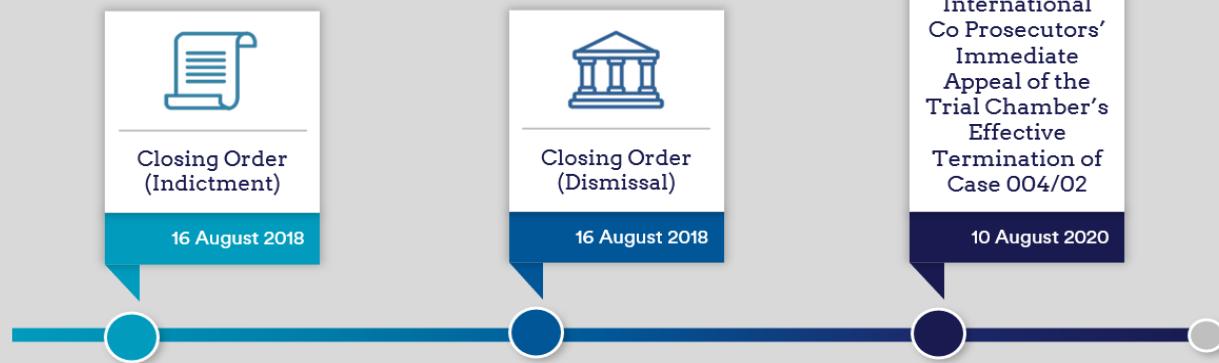
## *Ao An Case*

*The Prosecutor v Ao An*

Case 004/2

July 2021

# Key dates of the case



## What happened?

### The Khmer Rouge

From April 1975 to January 1979 the ruling party in Cambodia, called the Communist Party of Kampuchea (CPK) or Khmer Rouge, planned and created policies to build their version of a socialist state. To achieve their goals, the Cambodian population was forcibly transferred from their homes to worksites where they faced harsh conditions, starvation, forced labour, mistreatment, torture, disappearances and killings. As part of their collectivist approach, the Khmer Rouge practiced forced marriages and targeted groups such as Buddhists and the Cham because of their religion and ethnicity. The Khmer Rouge also targeted the Vietnamese population with widespread killings, torture, rape and other inhumane acts because they fought the CPK.

Ao An was the Deputy Secretary of the Central Zone under the Khmer Rouge. He used his position of authority to persecute, enslave, starve and kill people, including Cham, in the area under his control. He also implemented the Khmer Rouge's policy of forced marriage.

## The Extraordinary Chambers in the Courts of Cambodia

In 1997, the Cambodian government requested the United Nations to assist in establishing a tribunal to prosecute Khmer Rouge senior leaders and those most responsible for the crimes committed during the Khmer Rouge reign. The Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (ECCC) were created in 2003. It is a hybrid court in that it combines Cambodian and international judges, prosecutors and defence lawyers and applies both Cambodian and international law. It is based in Phnom Penh, Cambodia.

The ECCC's Co-Investigating Judges issued two separate closing orders in the case against Ao An. The National Co-Investigating Judge was of the view that Ao does not fall under the ECCC's personal jurisdiction and dismissed the case. The International Co-Investigating Judge was of the view that Ao An is subject to the ECCC's personal jurisdiction as one of the most responsible persons for crimes committed under the Khmer Rouge and that there is sufficient evidence to indict him for the genocide of the Cham and crimes against humanity including enslavement and forced marriage as another inhumane act, as well as domestic offences under Cambodian law. Both decisions were appealed. After considering the appeals, the Pre-Trial Chamber declared that filing two conflicting closing orders was illegal. However, it failed to reach a majority decision on whether Ao's case falls under the court's jurisdiction. The case was terminated in August 2020.



## What does the case say about forced marriage and modern slavery?

In his [Closing Order](#), the International Judge highlighted that the Khmer Rouge pursued a policy of forced marriage with the aim to further the Khmer Rouge's socialist revolution by creating a new society of "desirable citizens" through marriage and birth. The Khmer Rouge matched couples regardless of their family status based on their ethnic and class background. However, who of those within a group of people with matching backgrounds would be married could be determined randomly. Some women were also married to disabled soldiers.

favoured individuals or people who had particularly good relationship with their superiors could also request to marry a person of their choice and have their choice approved by the authorities. Parents could also make a request on their son's behalf. In some cases, people also agreed to get married with the erroneous hope of avoiding hard labour or being sent to the battlefield.

Some forced spouses had never met before, while others had worked together. They were married often without advance notice in groups of up to 150 couples. Some forced spouses, for example, thought they were being taken to be killed when they were actually being taken to be married. Their parents were not allowed to play a role in the marriage process.

After the ceremony, forced spouses were allowed to meet three times per months for procreative purposes. Generally, people could not refuse their marriage or its consummation and they could not get divorced. They were threatened with or feared repercussions or punishment such as being taken away, arrested, tortured, disappeared, killed, or sent to re-education or a security centre. Forced spouses also feared reduced food rations, torture, physical violence, rape or death.

Rape within marriage had serious physical and mental consequences. Additionally, the arbitrary matching or separation from a preferred spouse was a traumatic experience that caused forced spouses great mental suffering. The violation of Khmer traditions also caused serious distress which was compounded by the coercive circumstances surrounding the wedding. The failure to follow tradition also caused some victims to suffer from social stigmatisation about their forced marriage. Some, however, gradually accepted their marital situation, for example due to Khmer tradition or pregnancy, and stayed with their forced spouse even after the fall of the Khmer Rouge. Other couples, however, separated when they could.

The International Judge highlighted that the Khmer Rouge's policy of forced marriage deprived people of their fundamental human rights of autonomy and self-determination in deciding who and when to marry as well as of the right to sexual autonomy and bodily integrity.



# Significance and points to note

More so than other cases before the ECCC, Case 004/02 appears to emphasise marital rape and the coercive circumstances surrounding it, including close monitoring of the consummation of a forced marriage. Arguably this led to men complaining that their wives refused to have sexual intercourse and as a result, the couple or more often just the wife being sent for re-education.

## Learning from institutions and decisions in the Indictment

### Enslavement

- Prosecutor v Kaing Guek Eav (Trial Judgment) 001/18-07-2007/ECCC/TC “Case 001” (26 July 2010): para 75
- Prosecutor v Milorad Krnojelac (Trial Judgment) IT-97-25-T (15 March 200): para 4875
- Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković (Trial Judgment) ICTY IT-96-23-T and IT-96-23/1-T “Foča case” (22 February 2001): para 75
- Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković (Appeals Chamber Judgment) ICTY IT-96-23 and IT-96-23/1-A “Foča case” (12 June 2002): para 75
- United States of America v Pohl and others (13 January 1947 - 11 August 1948) “Pohl/WVHA case”: para 75

### Forced Marriage

- Prosecutor v Nuon Chea and Khieu Samphan (Closing Order) 002/19-09-2007/ECCC/OCIJ “Case 002/02” (15 September 2010): para 84

## Additional reading and resources

The Centre for Justice and Accountability, ‘International or Hybrid Tribunal: Case 004 and Case 004/2’ (available [here](#))

Extraordinary Chambers in the Courts of Cambodia, ‘Case 004/02’ (available [here](#))

Extraordinary Chambers in the Courts of Cambodia, ‘Forced Marriage’ (04 November 2014) (available [here](#))

Open Society Justice Initiative, ‘Recent Developments at the Extraordinary Chambers in the Courts of Cambodia’ (2019) (available [here](#))

Open Society Justice Initiative, ‘Recent Developments at the Extraordinary Chambers in the Courts of Cambodia: Deadlock Continues in Ao An Case’ (2020) (available [here](#))

Sokhean B, ‘KR Tribunal Clears Ao An: SCC ‘Terminates’ Crimes Against Humanity Charges’ (12 August 2020) (available [here](#))