

BEFORE THE PRE-TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

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**NATIONAL CO-PROSECUTOR'S APPEAL AGAINST THE INTERNATIONAL
CO-INVESTIGATING JUDGE'S CLOSING ORDER (INDICTMENT) IN CASE 004/02**

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Case 004/02**

I. Introduction

1. On 16 August 2018, the Co-Investigating Judges (CIJs) issued two separate Closing Orders, in which the National Co-Investigating Judge (NCIJ) issued Order Dismissing the Case against AO An on the grounds that the Extraordinary Chambers in the Courts of Cambodia (ECCC) has no personal jurisdiction¹ over him, while the International Co-Investigating Judge (ICIJ) issued Closing Order (Indictment).²
2. The NCIJ's Closing Order dropping the case against AO An was issued in Khmer with the English translation to follow.³ The ICIJ's Closing Order (Indictment) was issued in English with the Khmer translation to follow.⁴
3. In accordance with the Practice Direction, all documents shall be filed in Khmer as well as in English or French. In exceptional circumstances, a Chamber of the ECCC may authorise a party to file a document in French or in English in the first instance, provided however, that a Khmer translation must be filed before the Chamber at the first opportunity.⁵
4. On 23 August 2018, the Co-Prosecutors filed a request for extension of deadlines for notices of appeal of Closing Orders in Case 004/02.⁶ In response to this request, the Pre-Trial Chamber (PTC) ordered the parties to file any notices of appeal against the Closing Orders in Case 004/02 within fourteen days after translations of both Closing Orders have

¹ D359, Order Dismissing the Case Against AO An, 16 August 2018.

² D360, Closing Order (Indictment), 16 August 2018.

³ D359, National Co-Investigating Judge's Order Dismissing the Case against AO An, 16 August 2018, and the English translation was done on 05 November 2018.

⁴ D360, International Co-Investigating Judge's Closing Order (Indictment), 16 August 2018, and the Khmer translation was done on 31 October 2018.

⁵ Practice Direction on Filing Documents before the ECCC, Articles 7.1 and 7.2.

⁶ D359/1, Co-Prosecutors' Request for Extension of Deadlines for Notices of Appeal of Closing Order in Case 004/02.

been notified.⁷ On 5 October 2018, AO An's Co-Lawyers filed a request for extension of time and page limit for the appeal against the Closing Order and a notice of appeal against the ICIJ's Closing Order (Indictment).⁸ The Co-Prosecutors filed a response to AO An's request.⁹ In response, the PTC hereby allows the parties:¹⁰

- to file appeal(s) against the Closing Orders in Case 004/02 within 45 days from the notification of the translations of both Closing Orders;
 - to file 100-page submissions on the appeals; [and]
 - to file their appeal(s) in one language with translation to follow.
5. On 12 November 2018, the National Co-Prosecutor (NCP) filed a notice of appeal against the ICIJ's Closing Order (Indictment), and on the same day the International Co-Prosecutor (ICP) filed a notice of appeal against the NCIJ's Order Dismissing the Case against AO An.

⁷ D359/2, Decision on Co-Prosecutors' Request for Extension of Deadlines for Notices of Appeal of Closing Order in Case 004/02, 05 September 2018.

⁸ D360/4, Request for Extension of Time and Page Limit for AO An's Appeal against Closing Order (Indictment); D360/5, Notice of Appeal [from AO An] against International Co-Investigating Judge's Closing Order (Indictment).

⁹ D360/6, Co-Prosecutors' Response to AO An's Request for Extension of Time and Page Limit for his Appeal against Closing Order (Indictment), 26 October 2018.

¹⁰ D360/7, Decision on Request for Extension of Time and Page Limit for AO An's Appeal against Closing Order (Indictment), 08 November 2018.

6. Pursuant to the Internal Rules,¹¹ Rules 67(5),¹² 73(a)¹³ and 74(2),¹⁴ the NCP appealed against the ICIJ's Closing Order indicting AO An.¹⁵

II. Procedural History

7. On 18 November 2018, the NCP and ICP discussed a disagreement on additional prosecutions and suspects at the ECCC so as to forward them to the CIJs to open investigations.¹⁶ The ICP indicated during the discussion that he wished to send additional suspects (Cases 003 and 004) to the CIJs to open investigations, while the NCP disagreed to additional suspects beyond those described in Cases 001 and 002.¹⁷
8. The disagreement was reasoned by the NCP and ICP for the PTC to examine and decide in accordance with the legal proceedings. As a consequence, the PTC did not receive the affirmative vote of at least four judges required to have a decision on the disagreement.¹⁸
9. The PTC concluded that as it could not reach a decision on the disagreement brought before it, pursuant to Internal Rule 74.1, the ICP shall send the New Supplementary

¹¹ Internal Rules of the ECCC.

¹² Rule 67(5) of the Internal Rules (Closing Orders by Co-Investigating Judges) provides the Co-Prosecutors with immediate notification upon issuance of a Closing Order which is subject to appeal.

¹³ Rule 73(a) of the Internal Rules (Additional Jurisdiction of the Pre-Trial Chamber) gives jurisdiction to the Pre-Trial Chamber over appeals against decisions of the Co-Investigating Judges.

¹⁴ Rule 74(2) of the Internal Rules (Grounds for Pre-Trial Appeals) grants right to the Co-Prosecutors to appeal against all orders by the Co-Investigating Judges.

¹⁵ D360, International Co-Investigating Judge's Closing Order, 16 August 2018.

¹⁶ The International Co-Prosecutor opened secret, preliminary investigation unilaterally without notifying and engaging the National Co-Prosecutor. This is against the ECCC Law which requires both Co-Prosecutors to work together within the Office of the Co-Prosecutors.

¹⁷ Record of disagreement between the International and National Co-Prosecutors on indicting additional suspects, 18 November 2008.

¹⁸ D1/1.1 and D1/1.3, the Pre-Trial Chamber, 18 August 2009.

Submission [to the CIJs] for opening a judicial investigation pursuant to Internal Rule 53.1.¹⁹

10. Pursuant to the considerations of the PTC dated 18 August 2009 regarding the disagreement between the Co-Prosecutors, pursuant to Internal Rule 71,²⁰ on 7 September 2009, the acting ICP forwarded to the CIJs the Introductory Submissions regarding Cases 003 and 004 to open judicial investigations of the two Cases,²¹ especially Case 004, which was later severed into Case 004/02.
11. On 15 June 2011, the ICP filed a supplementary submission regarding Sector 1 crime sites and persecution of Khmer Krom.²²
12. On 16 [15] June 2011, the ICP filed a request for investigative action regarding Case 004 crime sites in the Central Zone and responsibility of Suspect *Ta An*.²³
13. On 24 April 2014, the ICP filed a supplementary submission regarding forced marriage and sexual or gender-based violence.²⁴
14. On 16 December 2016, the CIJs issued a notice of conclusion of the judicial investigation against AO An, notifying the parties that they may request further investigative action within 15 days, and ordered the severance of AO An from Case 004.²⁵ On 26 December

¹⁹ D1/1.1, the Pre-Trial Chamber, 18 August 2009.

²⁰ D1/1.3, Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors Pursuant to Internal Rule 71, 18 August 2009.

²¹ D1/1, Acting International Co-Prosecutor's Notice of Filing of the Second and Third Introductory Submissions, 07 September 2009.

²² D27, Co-Prosecutors' Supplementary Submission regarding Sector 1 Crime Sites and Persecution of Khmer Krom, 15 June 2011.

²³ D41, International Co-Prosecutor's Request for Investigative Action regarding Case 004 Crime Sites in Central Zone and Responsibility of Suspect *Ta An*, 16 [15] June 2011.

²⁴ D191, Co-Prosecutors' Supplementary Submission regarding Forced Marriage and Sexual or Gender-based Violence, 24 April 2014.

²⁵ Case 004/02, D334, Notice of Conclusion of Judicial Investigation against AO An, 16 December 2016; Case 004/02, D334/1, Order for Severance of AO An from Case 004, 16 December 2016.

2016, the ICIJ extended the deadline for filing requests for additional investigative action to 16 January 2017.²⁶

15. On 19 December 2016, AO An's Co-Lawyers filed an application to seize the PTC with a view to annulment of certain written records of interview of three investigators of the Office of the Co-Investigating Judges.²⁷ On 23 January 2017, the ICIJ granted the request and ordered the Greffier to forward Case File 004/02 to the PTC pursuant to Internal Rule 76(3).²⁸ On 11 May 2017, the PTC dismissed the Application.²⁹
16. On 21 [20] December 2016, AO An's Co-Lawyers filed a request to place certain documents pertaining to Henri Locard on the Case File.³⁰ The Co-Prosecutors did not respond to this request.
17. On 21 December 2016, the ICP filed a request for investigative action to place maps and Case 002 materials onto Case File 004/02.³¹ The Defence did not respond to this request.
18. On 16 January 2017, the Defence filed a thirteen request for investigative action for the CIJs to provide an analysis verifying the errors in the written records of interview.³² The Co-Prosecutors did not respond to the request.

²⁶ Case 004/02, D340/1, Decision on AO An's Request of Extension of Time Limit for Requesting Further Investigative Action following Rule 66 Notice, 26 December 2016.

²⁷ Case 004/02, D338, Application to Seize the Pre-Trial Chamber with a view to Annulment of Written Records of Interview of Three Investigators, 19 [16] December 2016.

²⁸ Case 004/02, D338/1, Decision on AO An's Application to Seize the Pre-Trial Chamber with a view to Annulment of Written Records of Interview of Three Investigators, 23 January 2017.

²⁹ Case 004/02, D338/1/5, 11 May 2017, Decision on AO An's Application to Annul Written Records of Interview of Three Investigators, 11 May 2017.

³⁰ Case 004/2, D339, Request to Place Certain Documents Pertaining to Henri Locard on the Case File, 20 December 2016.

³¹ Case 004/02, D342, International Co-Prosecutor's Request for Investigative Action to Place Maps and Case 002 Materials onto Case File 004/02, 21 December 2016.

³² Case 004/02, D345, Thirteen Request for Investigative Action, 16 January 2017.

19. On 8 February 2017, the ICIJ issued decisions on the *request to place certain documents pertaining to Henri Locard on the case file* and on the ICP's request for investigative action to place maps and Case 002 materials onto Case File 004/02.³³
20. On 16 March 2017, the CIJs issued a decision on AO An's thirteen request for investigative action.³⁴
21. On 29 March 2017, the CIJs issued the second notice of conclusion of judicial investigation against AO An and informed the parties that, after this second notice, no period for further investigative action is required under the Internal Rules and hence none is granted.³⁵
22. On 2 May 2017, the Defence filed an appeal before the PTC against the ICIJ's previous notification on the interpretation of 'attack against the civilian population' in the context of crimes against humanity with regard to a state's or regime's own armed forces.³⁶
23. On 3 May 2017, the Defence filed an application to seize the PTC with a view to annulment of the investigation, or alternatively, a stay to allow the Defence to conduct investigative acts necessary to re-file its investigative requests.³⁷ On 8 May 2017, the ICIJ denied the

³³ Case 004/02, D339/1, Decision on Request to Place Certain Documents pertaining to Henri Locard on the Case File, 8 February 2016; Case 004/02, D342/1, Decision on International Co-Prosecutor's Request for Investigative Action to Place Maps and Case 002 Materials onto Case File 004/02, 08 February 2016.

³⁴ Case 004/02, D345/1, Decision on AO An's Thirteen Request for Investigative Action, 16 March 2017.

³⁵ Case 004/02, D334/2, Second Notice of Conclusion of Judicial Investigation against AO An, 29 March 2017.

³⁶ Case 004/02, D347.1, Notification on the Interpretation of 'Attack against the Civilian Population' in the context of Crimes against Humanity with regard to a State's or Regime's Own Armed Forces, 10 [7] February 2017; Case 004/02, D347.1/1/3, Appeal against the International Co-Investigating Judge's Notification on the Interpretation of 'Attack Against the Civilian Population' in the context of Crimes against Humanity with regard to a State's or Regime's Own Armed Forces, 2 [1] May 2017.

³⁷ Case 004/02, D350, Application to Seize the Pre-Trial Chamber with a view to Annulment of the Investigation, 3 May 2017.

request for annulment.³⁸ On 11 May 2017, the Defence filed a notice of appeal against the ICIJ's decision on AO An's application to annul the entire investigation.³⁹

24. On 19 May 2017, the CIJs forwarded the case file to the Co-Prosecutors for the purpose of their final submission.⁴⁰ The NCP filed her final submission on 18 August 2017, requesting a dismissal of the case against AO An on the grounds that he is outside the ECCC personal jurisdiction.⁴¹ The ICP filed his final submission on 21 August 2017, requesting the CIJs to indict AO An for all the charges contained in the final submission.⁴²
25. On 24 October 2017, AO An's Co-Lawyers filed a response, requesting [the CIJs] to dismiss the case against AO An on the grounds that the Introductory Submission and all subsequent investigative acts were null and void; the CIJs cannot safeguard the integrity and fairness of the investigation; the ECCC does not have personal jurisdiction over AO An; and there is insufficient evidence to indict and send AO An to trial for the charged crimes.⁴³

III. Submission

The Creation of the Communist Party of Kampuchea (CPK)

26. The roots of the CPK can be traced to the founding of the Indochinese Communist Party in 1930. In 1951, the Indochinese Communist Party was dissolved and separate revolutionary organizations were established for Vietnam, Laos and Cambodia, with the new party in Cambodia called the Khmer People's Revolutionary Party (KPRP). On 30 September 1960, the KPRP was renamed the Worker's Party of Kampuchea (WPK), and the First Party Congress was held in Phnom Penh to decide the basic "strategic and tactical lines of the Party." One of the key Party lines adopted at this Congress was the decision to

³⁸ Case 004/02, D350/1, Decision on AO An's Application to Annul the Entire Investigation, 8 May 2017.

³⁹ Case 004/02, D350/1/1, Notification of Appeal against Decision on AO An's Application to Annul the Entire Investigation, 11 May 2017.

⁴⁰ D351, Forwarding Order pursuant to Internal Rule 66(4), 19 May 2017.

⁴¹ D351/4, Final Submission Concerning AO An pursuant to Internal Rule 66, 18 August 2017.

⁴² D351/5, International Co-Prosecutor's Rule 66 Final Submission, 21 August 2017.

⁴³ D351/6, AO An's Response to the Co-Prosecutor's Rule 66 Final Submissions, 24 October 2017.

use “armed violence” in addition to the political action “to attack and bring down the feudalists, capitalists, and reactionaries in Kampuchea.” The Party also determined at this early point that the countryside was the “important base for the revolution” and that the cities were “the nerve-centre of the ruling class and imperialists, the places where the enemies of the revolution can concentrate great power to suppress us.” Around twenty people participated in this Congress, including NUON Chea (elected Deputy Secretary of the Party), SALOTH Sar *alias* POL Pot (member of the Standing Committee), IENG Sary and SAO Phim (alternate members of the Standing Committee), and VORN Vet. Following the adoption of the new Party lines, all members were required to “resubmit their applications to join the Party.”

27. After the arrest and execution of WPK Secretary TOU Samuth in 1962, a Second Party Congress was held in late February 1963, at which time SALOT Sar became the new Party Secretary while NUON Chea remained Deputy Secretary. This Congress was held on Charles de Gaulle Street in Phnom Penh, and the participants were again a small group that included IENG Sary and SAO Phim, (both of whom were elected full rights members of the Standing Committee), *Ta* Mok, VORN Vet, SON Sen, ROS Nhim, and KONG Sopal. Later in 1963, after the Sihanouk regime published a list of 34 known as “leftists,” POL Pot and a number of the other named WPK leaders, including IENG Sary and SON Sen, fled the capital and took refuge at a Vietnamese military base on the border, later establishing an office at the site known as Office 100. By 1965, they were joined at Office 100 by their spouses KHIEU Ponnary, IENG Thirith, and YUN Yat. NUON Chea, whose identity had remained secret and hence was not on the list of 34, stayed in Phnom Penh and assumed responsibility for WPK operations in the capital and most of the Zones.
28. In 1964, the WPK began to hold its regular meetings of its Standing Committee at Office 100, and in January 1965 they approved a resolution that rejected the possibility of a “peaceful transition” to socialism and confirmed that “it was absolutely necessary to use revolutionary violence” in the struggle against the imperialists. In a Central Committee meeting held in September or October 1966, the WPK leaders decided to change the party name to the CPK (although that decision was kept secret until the next Party Congress), to relocate Office 100 to Ratanakiri, and for each Zone to begin operations for armed struggle. In mid-1967 the Standing Committee members (POL Pol, NUON Chea, IENG Sary, and SAO Phim) met at Office 100 and agreed to launch a general uprising in early 1968.

Shortly thereafter, a new Central Committee headquarters (also called Office 100) was established in Ratanakiri, a few kilometres away from Office 102, the Northeast Zone office used by IENG Sary (who had been appointed Sector Secretary).

29. On 17 January 1968, pursuant to orders conveyed by NUON Chea the prior month, the CPK forces attacked a government army post at Bay Damran village, south of Battambang city, seizing a number of weapons. This date was later marked by the CPK as the birth of the Revolutionary Army of Kampuchea. In the following months, guerrilla attacks continued by CPK forces throughout the country.
30. On 18 March 1970, Prince Norodom Sihanouk was overthrown by General LON Nol and Prince Siri Matak, who established a regime which was later called the Khmer Republic. On 23 March 1970, Prince Norodom Sihanouk announced the formation of the National United Front of Kampuchea (FUNK), and called on his country to launch a campaign of guerrilla attacks and civil disobedience against the Khmer Republic government. An alliance was formed between Prince Sihanouk and the CPK, as well as a government-in-exile based in Beijing called the Royal Government of National Union of Kampuchea (GRUNK), which included KHIEU Samphan as Deputy Prime Minister and Minister of National Defence and was officially announced on 5 May 1970. By August 1970, IENG Thirith was listed Vice-Minister of Culture and Education and Youth in the GRUNK.

Party Congress

31. The CPK Statute vested the “highest power rights throughout the country” in the “General Conference” (i.e., the Party Congress), which was to be convened “once every four years” in order to (i) “examine and deliberate on the old Central Committee activities,” (ii) “designate the political line and Statute” and (iii) “elect and appoint the new Central Committee.” As described above, in the pre-DK period, Party Congresses were held in 1960, 1963, and 1971, the first two being attended by 20 delegates and the third by approximately 60 delegates. During the DK period, the Fourth Party Congress was held in January 1976 at the Borei Keila sports centre in Phnom Penh, and the Fifth Party Congress in the fall of 1978, which was attended by roughly 60 participants.

The Central Committee

32. Between Party Congresses, the CPK Statute identified the Central Committee as the “highest operational unit throughout the country.” The Central Committee had a total of at least 30 members. In addition to the members of the Standing Committee, the members of the Central Committee included Zone and Sector Secretaries such as KE Pauk, MEN San *alias* Ya, SAM Bit, and PRING Sarun, Ministry Secretaries such as KOY Thuon, Division Commanders such as MEAS Mut, and KHIEU Samphan, who started as a “candidate” member in 1971 and became a full-rights member at the Fourth Party Congress in January 1976. The Central Committee met every six months. Its designated tasks under the Party Statute were to “implement the Party political line and Statute throughout the Party,” instruct all Zone, Sector and Party organisations to “carry out activities according to the political line” and to “govern and arrange cadres and Party members throughout the entire Party, along with all core organisations, by constantly, clearly, and closely grasping personal histories, political, ideological, and organisational stances.”

The Standing Committee

33. In practice, it was a sub-committee of the Central Committee known as the Standing Committee, which acted as the highest and most authoritative unit within the CPK and the DK government. KHIEU Samphan has testified that “both political line and decision-making process were established at the standing committee,” and KAING Guek Eav has stated that it was “the most important body in the Party.”⁴⁴
34. The Standing Committee created, directed and monitored the implementation of all CPK and DK government policies. Specifically, the Standing Committee controlled policies regarding internal and external security, foreign affairs, domestic affairs including finance, commerce, industry, agriculture, health and social affairs, propaganda and re-education, and CPK and State personnel and administrative matters. The Standing Committee discussed and ordered large-scale forced movements, the use of forced labour and the arrest and interrogation of the “enemies,” monitored living conditions throughout the country, and had the authority to order the summary execution of people at will.

⁴⁴ D6.1.91, Written Record of Interview of the Charged Person KAING Guek Eav *alias* Duch, 19 November 2008 p. 3; D6.1.1073, Submission of the Response of the Charged Person KAING Guek Eav *alias* Duch, former Chairman of S-21, to the Co-Investigation Judges’ Written Questions, 21 October 2008, p. 3.

35. Directives of the Central and Standing Committees were sent to zone offices, military divisions and ministries, from where they were disseminated to sectors, districts, and other lower echelons. In the words of one CPK cadre, “everything” originated from the Party Centre. The Party Centre provided explicit instructions in its directives on how they were to be communicated and implemented. For example, in the June 1978 Central Committee statement revising the Party’s policy on CIA, KGB, and Yuon enemies, the following instructions were provided: “It is requested to all the zones, sectors and military units to take this above Guideline to educate and to conduct meetings inside their respective parties, core organisations, ministries and offices, in the military units, cooperatives, factories, and worksites in order that all the masses of people will learn about this policy of the Party. From now until the end of 1978, it is requested to each cooperative, each factory, each worksite, each unit, each place to educate and organise meetings for five to six times.” Members of the Standing Committee also conducted inspections of the Zones, sometimes travelling as a group.

CPK Leadership

36. Starting on the first day of the CPK rule, three million residents who lived in Phnom Penh and other urban centres were forcibly evicted from their homes and moved to the countryside, where the country’s entire civilian population was confined to agricultural cooperatives and other worksites.
37. The CPK proceeded to create a new society in which they enslaved Cambodian citizens, exercised absolute control over their lives, and deprived them of their most basic human rights and freedoms. Private property was confiscated, money was abolished, and markets, businesses, schools and pagodas were closed. Cambodian people were no longer allowed to live with their families in their homes, or to practise their religions. They were subjected to a policy of sexual oppression involving forced marriages and pregnancies. They were not allowed to leave the country, or to move within it. They were subjected to psychological abuse through indoctrination, criticism and self-criticism enforced under threat of severe punishment. The CPK established a state, Democratic Kampuchea, with no functioning parliament or judiciary, and one in which the Party’s rule was ruthlessly enforced.

38. The CPK evacuated people and separated their groups that had been targeted by the Party, namely officials and soldiers of the overthrown Khmer Republic regime and the Party's "class enemies" – capitalists, feudalists, and the bourgeoisie. Those groups were summarily executed, while the remaining evacuees (labelled the 'new people') were enslaved in cooperatives with the local or base people, and later in the regime, in large-scale irrigation and infrastructure projects.
39. Whilst enslaved, Cambodian people were subjected to inhumane conditions including hard manual labour, denial of sufficient rest, food, medical care and shelter, and psychological and physical abuse. Those accused of any type of non-compliance received severe punishments, including imposition of harsher working conditions, beatings, withdrawal of food rations, tempering, and arrest, torture and execution.
40. Throughout the DK period, the CPK established and operated over 260 re-education and security offices which formed an integral component of its criminal plan to identify, suppress and destroy all "enemies" of the regime. These enemies included individuals with suspect backgrounds and those viewed as disloyal to the Party. Potential "enemies" were identified by two primary means. People living in cooperatives or worksites were closely monitored by the CPK through the preparation of individual biographies and daily "criticism sessions." In addition, individuals taken to security offices were interrogated using torture in order to obtain detailed confessions identifying purported "networks" of enemies. Hundreds of thousands of Cambodians were unlawfully arrested, detained, tortured and executed at these security offices during the DK period.

Geographic Administrative Structure

Zones

41. In the DK regime, there were six zones:⁴⁵ the Southwest (405), the West (401), the Northwest (560), the Central (former North), the Northeast (108), and the East (203)

⁴⁵ D6.1.975, Book by the Ministry of Education, entitled "Political Geography of Democratic Kampuchea", 1st Edition, 1977, pp. 7, 12; D6.1.532, Book by KHIEU Samphan, entitled "Considerations on the History of Cambodia From the Early Stage to the Period of Democratic Kampuchea," October 2007, p. 58; D6.1.53, Book by BEN Kiernan, entitled "Khmer bodies with Vietnamese minds": Kampuchea's Eastern Zone, 1975-1978,

Zones. In addition, there were a number of autonomous sectors:⁴⁶ Mondulkiri (105), Kratie (505), Preah Vihear (103) and Siem Reap-Oddar Meanchey (106) Sectors.

42. Zones were sub-divided into sectors, which were in turn divided into districts. A district was composed of several communes, which contained numerous villages. Zones, sectors, districts, communes, and villages were instrumental in implementing the directives of the CPK Central and Standing Committees throughout the country.
43. A zone was led by a secretary, deputy secretary, and member, and so was an autonomous sector. Zone secretaries were members of the Party Central Committee, and a small number of zone members could be Party Standing Committee members.

The Southwest Zone

44. The Southwest Zone was composed of four sectors: Sectors 35, 13, 33, and 25. UNG Choeun *alias* Chhit Choeun *alias* Ta Mok, a member of the Party Standing Committee, was secretary. He was appointed for a period of time during the DK period.

The Central Zone

45. Perhaps two or three months after 17 April 1975, the North Zone was renamed the Central Zone by the *Angkar*. It had three sectors: Sectors 41, 42, and 43.
46. KOY Thuon *alias* Thuch was the first secretary, and KE Pauk was his deputy. KE Pauk was appointed by *Angkar* as secretary of the North Zone after KOY Thuon was appointed as secretary of the Commerce Committee in Phnom Penh.
47. The Central Zone Committee consisted of KE Pauk as secretary, Ang as deputy secretary and Sim as member. Witness TEP Pauch, former secretary of Baray District stated that, “*As far as I knew, Sim was one of his deputies and Chên, who was Sector 43 Secretary,*

Centre of Southeast Asian Studies, Monash University, pp. 2-3; D6.1.460, Map of Democratic Kampuchea, published by DK’s Ministry of Education in 1976, p. 1.

⁴⁶ D6.1.975, Book of the Ministry of Education, entitled “Political Geography of Democratic Kampuchea” 1st Edition, 1977, p. 12; D6.1.460, Map of Democratic Kampuchea, published by DK’s Ministry of Education in 1976.

*was also another deputy of his.*⁴⁷ This Zone Committee was composed of KE Pauk, secretary, Sreng, deputy secretary, TOL, Chên and Oeun, members.⁴⁸

48. Upon arrival of Southwest Zone cadres, the composition of the Central Zone Committee was changed: **AO An** as deputy secretary, Oeun, Sim and Yuth as members. Witness KUCH Ra stated that, “*Ta An’s* position of the zone deputy secretary was officially announced in a zone congress.”

The West Zone

49. The West Zone had four sectors: Sectors 31, 32, 37, and 11. CHOU Chet *alias* Si, a member of the Party Central Committee, was secretary.

The Northwest Zone

50. The Northwest Zone had six sectors: Sectors 2, 3, 4, 5, 56, and 7. ROS Nhim, a candidate member, was secretary.

The Northeast Zone

51. The Northeast Zone had four sectors: Sectors 101, 102, 104 and 107. MEN San *alias* Ya, a member of the Party Central Committee, was secretary

The East Zone

52. The East Zone had five sectors: Sectors 20, 21, 22, 23 and 24. SAO Phim, a full-rights member of the Standing Committee, was secretary.

AO An’s Personal Background

53. **AO An** named AOM Yoeurng at birth was born in 1933 or 1936 in Taing Svay Village, Peam Commune, Kampong Tralach District, Kampong Chhnang Province. He was ordained and served as a Buddhist monk from approximately 1954 to 1960. He left the monkhood due to illness in 1960. He later worked as a rice farmer in his birth village.

⁴⁷ D117/19, Written Record of Witness Interview of TEP Pauch, 4 March 2013, p. 4.

⁴⁸ D6.1.385, Written Record of Witness Interview of SUO Seoun, 5 July 2009, p. 8; D1.3.16.1, Handwriting concerning the History of Struggle of KE Pauk, former Secretary of Central Zone from 1975 until now, pp. 4-5.

54. Following LON Nol's coup against Prince Norodom Sihanouk on 18 March 1970, **AO An** joined the *Ta* "15" led resistance movement – later **AO An** realised that *Ta* "15" was actually *Ta* Mok. He was initially assigned to a 12-member propaganda group. In 1971, *Ta* Mok appointed him as secretary of Kandal Stung District to the south of Phnom Penh. Shortly thereafter, *Ta* Mok appointed him as the commander of Division 11 of the Khmer Rouge military. At the time of his appointment, Division 11 was part of the Southwest Zone, but it was later made part of the Special Zone. **AO An** remained with Division 11 in Kandal Stung until the final Khmer Rouge assault on Phnom Penh.
55. **AO An** and Division 11 participated in the attack on Phnom Penh on 17 April 1975, advancing up National Road 3 through Chaom Chao *en route* to Phnom Penh. Less than a month after the capture of Phnom Penh, **AO An** was summoned for a meeting with SON Sen at which he was appointed as a member of the committee for Sector 25 in the Southwest Zone. He was simultaneously made secretary of Sa'ang District.
56. In early 1976, *Ta* Mok transferred **AO An** to Sector 35 (Kampot), where he served on the Sector Committee. He was also responsible for the districts of Srae Khnong, Chhouk and Koh Sla. In Sector 35, **AO An** supervised work on various dam construction sites pursuant to plans given by and under the authority of *Ta* Mok.

AO An's Role in the Central Zone

57. Sometime between late January and late February 1977, a group of approximately 100 to 300 Southwest Zone cadres including **AO An** was transferred from the Southwest Zone to the Central Zone. Members of the group knew each other well, having worked together closely in the Southwest Zone. *Ta* Mok personally notified some of the cadres of their impending transfer, and Central Zone Secretary KE Pauk was informed of their imminent arrival by a "letter of mission." The group was escorted to Phnom Penh by Southwest Zone Secretary *Ta* Mok, and was then met there by Central Zone Secretary KE Pauk, who personally led the group on to the Central Zone.
58. When the group of Southwest Zone cadres arrived in the Central Zone, their first stop was KE Pauk's Zone Office in Kampong Cham town. There, they had a two or three-day meeting during which KE Pauk appointed **AO An** as Secretary of Sector 41 and also appointed the secretaries of Sectors 42 and 43. **AO An** also became the Deputy Secretary

of the Central Zone, a position that required him to act in KE Pauk's place when KE Pauk was absent. He became a member of the Central Zone Committee as well.

59. Following the meeting in Kampong Cham town, **AO An** and other cadres were transported to the Sector 41 Office in Prey Toteung by trucks belonging to the zone. There, **AO An** began exercising his authority as Sector Secretary by appointing the five district secretaries in Sector 41 who served as his direct subordinates.
60. **AO An**'s statements to his subordinates at this meeting echoed the instructions he received from KE Pauk. At meetings in Kampong Cham attended by **AO An** and other high-level cadres from the sectors of the Central Zone, KE Pauk said that there were orders from the upper echelon to carry out purges, stressing that the cadres "had to do whatever could be done to arrest all the enemies" and that "when digging up the grass," the cadres should "dig it up the roots and all." In addition to these general exhortations, **AO An** also received specific, written orders from KE Pauk to kill people. **AO An** himself admits that he received orders from KE Pauk to kill people and that he later told KE Pauk that he had followed those orders.

ICIJ's Charges against AO An

61. On 24 March 2015, ICIJ Mark Harmon issued a summon to AO An for initial appearance. On 27 March 2015, the ICIJ conducted the first initial appearance proceedings and notified the charges against AO An as follows:

Violations of Articles 501 and 506 of the 1956 Penal Code

- Premeditated homicide, punishable under Articles 3 (new) and 39 of the ECCC Law.

Crimes against Humanity

- Murder, extermination, persecution on political or religious grounds (of Central Zone CPK cadres; former officials of the Khmer Republic, including both civil servants and former military personnel; Chams; and their families); [and]
- Imprisonment and other inhumane acts namely inhuman conditions of detention.

These crimes are defined and punishable under Articles 5 and 39 of the ECCC Law.⁴⁹

62. On 7 July 2015, ICIJ Mark Harmon resigned and was replaced by Mr Michael Bohlander. Then Mr Michael Bohlander summonsed AO An to further appear.⁵⁰
63. ICIJ Michael Bohlander set the deadline of 14 March 2016 for AO An to further appear; however, AO An did not come, only his Co-Lawyers did. The ICIJ notified AO An's Co-Lawyers of the alleged criminal acts that the ICP requested to open judicial investigations through the following submissions and a number of responses:
- the Third Introductory Submission, dated 20 November 2008;
 - the Supplementary Submission regarding Sector 1 Crime Sites and Persecution of Khmer Krom, dated 18 July 2011;
 - the Supplementary Submission regarding Forced Marriage and Sexual or Gender-Based Violence, dated 24 April 2014;
 - the Response to Forwarding Order and Supplementary Submission regarding Wat Ta Meak, dated 4 August 2015; and
 - the Response to Forwarding Order D237, dated 4 February 2015.
64. Through the ICP's above submissions and responses, AO An is alleged by the ICIJ to be responsible for those criminal acts either as a senior leader of Democratic Kampuchea or as one of those most responsible for them. At the same time, the ICIJ notified the following additional charges against AO An:
- **Violations of Articles 209, 210, 500, 501, and 503 to 508 of the 1956 Penal Code** (Homicide, Torture and Religious Persecution);
 - **Violations of the Convention on the Prevention and Punishment of the Crime of Genocide of 1948** (Genocide);

⁴⁹ D242, Written Record of Initial Appearance, 27 March 2015.

⁵⁰ A497, Summons to Further Appearance, 25 February 2016, summoning AO An to further appear on 14 March 2016, at 10 a.m.

- **Crimes Against Humanity** (Murder, Extermination, Enslavement, Imprisonment, Torture, Rape, Persecution on political, racial and religious grounds, and Other Inhumane Acts); and
- **Grave Breaches of the 1949 Geneva Conventions** (Wilful Killing, Wilfully Causing Great Suffering or Serious Injury to Body or Health, Unlawful Deportation or Transfer, and Unlawful Confinement of a Civilians).

These offences are defined and punishable under Articles 3 (new), 4, 5, 6, 29, and 39 of the ECCC Law.⁵¹

65. Having considered the evidence on the case file, the ICIJ decided to charge AO An, in particular, in his former capacities as Deputy Secretary of the Central (old North) Zone, Member of the Central (old North) Zone Committee, Secretary of Sector 41 in the Central (old North) Zone as follows:

- Genocide committed in the Central Zone against the Cham of Kampong Cham Province;
- Crimes against Humanity committed as part of a widespread or systematic attack targeting a civilian population on national, political, ethnical, racial or religious grounds. These crimes were committed at [the following sites]: Anlong Chrey Dam Forced Labour Site, Kok Pring Execution Site, Met Sop Security Centre, Tuol Beng Security Centre and Execution Site, and Wat Angkuonh Dei, Wat Au Trakuon Security Centre, Wat Batheay Security Centre, Wat Phnom Pros Execution Site, Wat Ta Meak Security Centre, Chamkar Svay Chanty Security Centre, Wat Baray Chan Dek Security Centre, Wat Srange Security Centre, Forced Marriages and Sexual Violence in Kampong Siem and Prey Chhor Districts, Sector 41.
- Violation of Articles 501 and 506 of the 1956 Penal Code – [he is charged with the crime of] Premeditated Homicide, committed at [the following sites]: Anlong Chrey Dam Forced Labour Site (co-perpetration), Kok Pring Execution Site (co-perpetration), Met Sop (Kor) Security Centre (co-perpetration), Tuol Beng Security Centre and Execution Site, and Wat Angkuonh Dei (co-perpetration and, in the alternative,

⁵¹ D303, Written Record of Further Appearance, 14 March 2016.

planning or ordering), Wat Au Trakuon Security Centre (co-perpetration and, in the alternative, planning or ordering), Wat Batheay Security Centre (co-perpetration and, in the alternative, planning or ordering), Wat Phnom Pros Execution Site (co-perpetration), Wat Ta Meak Security Centre (co-perpetration and, in the alternative, planning or ordering), Svay Chanty Security Centre (co-perpetration), Wat Baray Chan Dek Security Centre (co-perpetration), Wat Srange Security Centre (co-perpetration); and

- The Joint Criminal Enterprise existed from approximately late 1976 to at least 6 January 1979, and included KE Pauk, AO An, and other CPK cadres who shared the common purpose of implementing, in the Central Zone of Democratic Kampuchea and through the commission of crimes under the ECCC jurisdiction, the following CPK policies: the establishment and operation of cooperatives and worksites; the re-education of bad elements and killing of enemies both inside and outside the CPK ranks; the targeting of specific groups, including Central Zone CPK cadres, former officials of the Khmer Republic, Cham ethnics, and their families; and the regulation of marriage through, *inter alia*, the forced marriage of the inhabitants of the Central Zone.

66. On 9 November 2016, the ICIJ issued a notification pursuant to Internal Rule 66 *bis*(2) regarding his intention to reduce the scope of the judicial investigation.⁵²

67. On 16 December 2016, the ICIJ issued a decision to reduce the scope of judicial investigation,⁵³ excluding the following alleged facts:

- All allegations relating to crime sites in Sectors 42 and 43: (Tuol Ta Phlong Security Centre, Wat Kandal Security Centre, Chamkar Svay Chanty Security Centre, Wat Baray Chan Dek Security Centre, Wat Srange Security Centre);
- The arrests and executions of Cham in the Eastern Zone;
- Torture at Tuol Beng/Wat Angkuonh Dei; [and]

⁵² D307/4, Notification pursuant to Internal Rule 66 *bis*(2), 09 November 2016.

⁵³ D337, Decision to reduce the scope of judicial investigation pursuant to Internal Rule 66 *bis*, 16 December 2016.

- Imprisonment and persecution at Wat Phnom Pros.

NCP's Viewpoint

Free of Liability

68. The purge policy was reflected in the Decision of the Central Committee on 30 March 1976 related to the right to smash inside and outside the ranks. Witness BAN Siek, former deputy secretary of Chamkar Leu district and former secretary of Krauch Chmar district, testified that, *“The zone was controlled by Secretary KE Pauk. He served as chief of the zone’s Standing Committee... To my knowledge, important decisions, for example, on a purge were made by the Standing Committee.”*⁵⁴
69. The same Decision clearly states that, for purges at the zone, if in the base framework, **“to be decided by the Zone Standing Committee.”**⁵⁵ Duch described it as “a historical document. It shows a turning point, because it reveals the beginning of internal purges.”⁵⁶
70. As Zone Secretary, KE Pauk always chaired the meetings, providing his subordinates advice on how to arrest enemies in order to achieve the CPK plans. Witness NHEM En [Chen] stated that, “KE Pauk said that in short, at that time, he ordered action to be taken to arrest the enemy in the districts on a continuous basis. The actions had to be taken quickly in order to meet the set plans.”⁵⁷

⁵⁴ D107/15, Written Record of Witness Interview of BAN Siek *alias* HANG Phos *alias* HANG Sunhau, 01 April 2012, p. 3.

⁵⁵ D1.3.19.1, Decision of the Central Committee regarding a Number of Matters, 30 March 1976, p. 1; D6.1.1073, Submission of the Response of the Charged Person KAING Guek Eav *alias* Duch, former Chairman of S-21, to the Co-Investigation Judges’ Written Questions, 21 October 2008, p. 3; D6.1.91, Written Record of Interview of the Charged Person KAING Guek Eav *alias* Duch, 19 November 2008, p. 3; D6.1.1060, Written Record of Interview of the Charged Person KAING Guek Eav *alias* Duch, 5 May 2008, p. 15.

⁵⁶ D6.1.1063, Written Record of Interview of the Charged Person KAING Guek Eav *alias* Duch, 5 May 2008, pp. 6-7.

⁵⁷ D219/855, Written Record of Interview of NHEM Chen, 27 October 2016, p. 5.

71. PRAK Yut *alias Yeay Yut*, former secretary of Kampong Siem district has given ten interviews.⁵⁸ First, she said she did not know AO An. Later she asserted that she knew him since they worked in the Southwest Zone and were transferred to the Central Zone together. KE Pich Vannak neither incriminated his father KE Pauk nor AO An. However, several witnesses, including VORNG Sokun and SA Nau, confirmed that they used to see KE Pauk standing and giving orders to kill people.⁵⁹
72. Some witnesses stated that KE Pauk strictly controlled and gave orders regarding all work in the zone. All work was required to go through KE Pauk,⁶⁰ including the authority to chair zone meetings. Many witnesses affirmed that AO An only held the position of Zone Deputy Secretary but he had no authority to make decisions. All the decisions were made by KE Pauk at the zone level after communicating and receiving instructions through telegrams that KE Pauk sent to or received from Office 870.
73. AO An's arrival in the Central Zone coincided with a statement of KHIEU Samphan *alias Hem*, President of the State Presidium, regarding the order to stop killing. Death rates still

⁵⁸ D6.1.730, Written Record of Witness Interview of PRAK Yut *alias Yeay Yut* (First), 21 July 2009, pp. 1-10; D6.1.733, Written Record of Witness Interview of PRAK Yut *alias Yeay Yut* (Second), 29 July 2009, pp. 1-3; D6.1.721, Written Record of Witness Interview of PRAK Yut *alias Yeay Yut* (Third), 18 July 2009, pp. 1-7; D6.1.722, Written Record of Witness Interview of PRAK Yut *alias Yeay Yut* (Fourth), 19 November 2009, pp. 1-7; D117/70, Written Record of Witness Interview of PRAK Yut *alias Yeay Yut* (Fifth), 28 May 2013, pp. 1-8; D117/71, Written Record of Witness Interview of PRAK Yut *alias Yeay Yut* (Sixth), 19 June 2013, pp. 1-12. D117/72, Written Record of Witness Interview of PRAK Yut *alias Yeay Yut* (Seventh), 21 June 2013, pp. 1-3; D117/73, Written Record of Witness Interview of PRAK Yut *alias Yeay Yut* (Eighth), 27 October 2013, pp. 1-5; D219/120, Written Record of Witness Interview of Prak Yut *alias Yeay Yut* (Ninth), 30 September 2014, pp. 1-24; D219/484, Written Record of Witness Interview of PRAK Yut *alias Yeay Yut* (Tenth), 21 August 2015, pp. 1-8.

⁵⁹ D3/19, Written Record of Witness Interview of VORNG Sokun, 2 December 2010, p. 5; D107/19.1, Written Record of Witness Interview of VORNG Sokun *alias Kun*, 17 February 2012, pp. 5-6; D3/10, Written Record of Witness Interview of NIV Sun, 19 October 2010, p. 4; D107/5, Written Record of Witness Interview of ORN Kim Eng, 18 February 2012, pp. 3-4; D107/19.1, Written Record of Witness Interview of VORNG Sokun *alias Kun*, 17 February 2012, pp. 5-6; D6.1.111, Written Record of Witness Interview of SA Matno, 17 August 2008, pp. 2-3.

⁶⁰ D6.1.697, Written Record of Witness Interview of SUON Kanil, revolutionary name Neang, 18 August 2009, p. 6.

continued because at that time DK was facing a nationwide famine as a consequence of the implementation of [DK] policies issued by the upper *Angkar*, requiring the base people to produce rice “**three tons per hectare.**” This caused nationwide deaths from starvation and diseases, and insufficient medication, especially in Sector 41 of the Central Zone where AO An served as secretary.

74. Witness RY Nha said that, “Before the Southwest Zone cadres came, all the Kampong Cham cadres, including the sector secretary, district secretaries and Phăn, were sent for education. They never returned. After that, the Southwest Zone cadres arrived.”⁶¹ Witness SAMRITH An similarly stated that, “Comrade Sim died before the Southwest took control.”⁶² Witness NHEM Chen, AO An’s former bodyguard, said that, “The arrests happened before the arrival of AO An... They were all arrested before Ta An arrived. At that time, only unit chiefs remained.”⁶³ AO An also stated in this regard that, “Everyone had been gone except KE Pauk.”⁶⁴
75. AO An held the position of Sector 41 Secretary for about one year and later Central Zone Secretary for a while before the collapse of the DK regime in 1979. Many witnesses stated that they did not know AO An, his participation and responsibilities, while some other witnesses said AO An just received orders from the upper echelon, which was referred to KE Pauk or the Party Central Committee who issued them.
76. No evidence shows that AO An took control in lieu of KE Pauk as Acting Zone Secretary during periods when KE Pauk was absent. Many witnesses testified that they never saw

⁶¹ D219/870, Written Record of Witness Interview of RY Nha, 10 November 2016, p. 3.

⁶² D219/609, Written Record of Witness Interview of SAMRITH An, 17 November 2015, p. 6.

⁶³ D219/855, Written Record of Witness Interview of NHEM Chen, 27 October 2016, p. 5 [D219/731, Written Record of Witness Interview of NHEM Chen, 15 March 2016, p. 4].

⁶⁴ D191.2, DC-Cam Interview of AO An (DC-Cam), 1 August 2011, by Long Dany and Vathan Peou Dara, p. 3; D117/62, Written Record of Witness Interview of KONG Yoeun, 4 August 2014, pp. 3-4; D117/35, Written Record of Witness Interview of BAN Siek *alias* HANG Phos *alias* HANG Sunhau, 24 March 2014, p. 8; D219/138, Written Record of Witness Interview of YOU Vann, 8 January 2015, pp. 14-15; D219/541, Written Record of Witness Interview of KIM Thoeurn, 5 October 2007, p. 5 (A16).

AO An at the Central Zone Office working on behalf of KE Pauk, except when AO An had to attend zone-level meetings.

77. Witness SUON Kanil, former chief of telegraph group at the Office of the Central Zone Committee asserted that “As I know, KE Pauk did not leave for anywhere during the DK period. He was absent only when he went to battlefields, attended meetings in Phnom Penh or oversaw dam/dyke construction for a short period of time.”⁶⁵ The witness added that, “In case KE Pauk was absent, people came to meet with the chairperson of the Central Zone office named Suor.”⁶⁶
78. The DK communist-based leadership vested its supreme power in the Party via the most influential institution known as “**the Central Committee of the CPK**” who made major decisions concerning the fate of the country. The committee consisted of approximately 30 members who met regularly (once every six months). In practice, the composition of meetings also included zone and sector committee leaders. As a matter of fact, [who had] the authority over decision-making was the Standing Committee who played a key role in a day-to-day leadership on behalf of the Central Committee of the CPK. The Standing Committee consisted of seven people, including POL Pot, Party Secretary, and NUON Chea, Party Deputy Secretary.

⁶⁵ D29, Written Record of Witness Interview of SUON Kanil, revolutionary name Neang, 10 June 2011, p. 5; D219/178, Written Record of Witness Interview of KUCH Ra, 5 February 2015, pp. 6-7; D6.1.4, Written Record of Witness Interview of OEUN Tan, 9 October 2008, p. 4; D117/26, Written Record of Witness Interview of PUT Kol, 25 September 2013, pp. 5-6; D191.2, DC-Cam Interview of AO An (DC-Cam), 01 August 2011, by Long Dany and Vathan Peou Dara, pp. 8-9; D29, Written Record of Witness Interview of SUON Kanil, revolutionary name Neang, 10 June 2011, p. 5; D74, Written Record of Witness Interview of ROTH Peou, 25 August 2011, p. 3; D6.1.379, Written Record of Witness Interview of KE Pich Vannak *alias* Vannak, Tha, Yuth, 4 June 2009, pp. 5-6, 13; D78, Written Record of Witness Interview of CHIN Sinal, 26 August 2011, p. 3-4; D6.1.1070, Written Record of Interview of the Charged Person KAING Guek Eav *alias* Duch, 2 June 2008, pp. 6-7; D6.1.1085, Written Record of Witness Interview of THA Sot, 19 January 2008, pp. 4-5; D6.1.1076, Written Record of Witness Interview of SAO Sarun, 7 December 2007, pp. 2-3; D1.3.27.5, Interview with Kampuchean Refugees at Thai-Cambodia Border prepared for Ishiyama Committee, Annual Report 1980, February-March 2008, p. 15; D6.1.475, Written Record of Interview of the Civil Party Mrs AFFONCO Denise, 3 June 2009, p. 8.

⁶⁶ D6/1/707, Written Record of Interview of Witness SUON Kanil, revolutionary name Neang, 19 August 2009, p. 3.

79. The CPK was established prior to the DK regime coming to power from 1975 to 1979. The DK regime was a communist-led regime in which the Party led the state. CPK policies aimed to sweep clean feudalist class and intellectuals among others who were considered enemies and they were accused of exploiting and oppressing people. Thus, the CPK laid out policies, taking revenge against those people.
80. In the DK regime, there was also suppression policy requiring its cadres to follow, or otherwise any anti-policy cadres would be purged. The suppression began with arrests of a number of zone leaders to be executed at S-21 Security Centre, namely, KOY Thuon, SAO Phim, VORN Vet, RUOS Nhim, and KANG Chab *alias* Se, etc.
81. The suppression became widespread across the country, particularly in 1976, after the Central Committee of the CPK's decision dated 30 June 1976, and coincided with the word "enemies" whose meaning was broadened and utilized widely. When someone was accused of being an enemy, he or she was taken away and killed without justice sought and judicial process.
82. As mentioned earlier, AO An's role was not officially appointed. He acted upon orders from and instructions of the upper echelon, especially KE Pauk, who regularly led the Central Zone. Witness NHEM Chen stated that KE Pauk received orders from POL Pot and *Ta* An received orders from KE Pauk. KE Pauk was the most powerful and influential man in the Central Zone and had a close relationship with the members of the CPK Standing Committee. Former Chairman of S-21 Security Centre KAING Guek Eav said that sometimes KE Pauk was invited to attend a meeting of the Standing Committee of the CPK Central Committee. Duch added that one day someone from the Central Zone said in his confession that KE Pauk had betrayed by stocking arms in Kampong Cham province at Dey Dos pagoda, and Duch made his report to NUON Chea and he (NUON Chea) replied that KE Pauk had not betrayed. In addition, Duch said that at one time KOY Thuon began to implicate KE Pauk; however, SON Sen decided to have KOY Thuon be evasive about KE Pauk temporarily. Later, SON Sen authorised [KOY Thuon] to give responses

involving KE Pauk, but when the responses were finished, SON Sen had the S-21 remove only KE Pauk's name in any copy.⁶⁷

83. The above statements show that AO An had no autonomy and de facto authority – he was under KE Pauk. AO An could not communicate with the upper echelon directly. Moreover, policies and plans which were to be implemented were organised by senior cadres and disseminated widely to all places, further down to the bases through dissemination meetings. The work plan and direction were implemented by cadres based on their roles without argument. In case of complaint or failure to fulfil their tasks, or being undisciplined, cadres of all levels would be tempered, and in some cases, they would be arrested and executed. In this case, AO An asserted that he had to comply absolutely [with all orders] and feared for his life if he did not.

Non-applicability of Personal Jurisdiction

84. The ECCC has a mandate—not a permanent court. It follows the pattern of the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone (SCSL), which have ended their mandates one after the other.
85. The ECCC was established under the Agreement between the Royal Government of Cambodia (RGC) and the United Nations (UN), and the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia. The purpose of this Law is to bring to trial **senior leaders of Democratic Kampuchea and those who were most responsible** for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognised by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.
86. The RGC, a founder of the ECCC Agreement, may have an influence on the functioning of the ECCC and the termination of its mandate. A method acceptable for terminating the

⁶⁷ D359, NCIJ's Order Dismissing the Case against AO AN, paras. 206, 207, and 511 dated 16 August 2018.

ECCC mandate is a restriction on the scope of the personal jurisdiction. Such a method was employed at the ICTY, ICTR and SCSL.

87. In reality, the UN Security Council, the founder of the ICTY, instructed this tribunal through numerous rules and instruments to concentrate on senior leaders who were suspected of being most responsible for the crimes under its jurisdiction.⁶⁸ UN Security Council Resolutions 2004 and 1503 called on each tribunal to ensure that, in reviewing and confirming new allegations, new indictments focus only on senior leaders who were suspected of being most responsible for the crimes under the jurisdiction of the tribunal concerned.⁶⁹
88. With regard to the determination of the personal jurisdiction, ICTY judges have created several new rules in line with the instructions of the UN Security Council, for example, Rule 11 *bis* and Rule 28(a) of the ICTY Rules of Procedure and Evidence. The judges are not concerned that the creation of such rules violates the ICTY Statute and the prosecutorial independence. Since the creation of these rules, the ICTY has transferred case files to national jurisdictions in line with the instructions of the UN Security Council to implement the ICTY Completion Strategies.⁷⁰
89. As far as the jurisdiction of the ECCC is concerned, the RGC and the UN did not agree to provide the jurisdiction to national courts for the prosecution of the crimes committed by those in the categories of “**senior leaders of Democratic Kampuchea**” and “**those who were most responsible**” for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognised by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.

⁶⁸ Press Statement “United Nations Security Council adopts referral mechanisms to national jurisdictions for a number of specific cases in relation to Crimes Against Humanity in Former Yugoslavia; UNSC, 23 July 2001; United Nations Security Council Resolution 1503, dated 28 August 2003, paras. 6-7; United Nations Security Council Resolution 1534, dated 26 March 2004, para. 5; United Nations Security Council Resolution 1966, dated 22 December 2010.”

⁶⁹ United Nations Security Council Resolution 1534, as in footnote 25 above, para. 5.

⁷⁰ *Stankovic* (IT-96-23/2-PT), RB Decision on Referral of Case under Rule 11 *bis*, 14 September 2005, para. 96; *D.Milosevic* (IT-98-29/1-PT), RB Decision on Referral of Case under Rule 11 *bis*, 8 July 2005, para. 24; *Lukic & Lukic* (IT-98-23/1-PT), RB Decision on Referral of Case under Rule 11 *bis*, 5 April 2007, paras. 128-29.

90. This suggests that founders of international tribunals may have an influence on the scope of the personal jurisdiction and judicial affairs without prejudice to impartiality and independence of tribunals. For the restriction of the ECCC personal jurisdiction, the RGC is playing a role as the UN Security Council did with the ICTY, ICTR and SCSL. Therefore, the NCP urges the ICIJ and the Chamber to act in line with the RGC determination and the spirit of the ECCC Law that requires [the Court] to bring to investigation and trial only **senior leaders** and **those most responsible** during the DK period.
91. The RGC idea for the ECCC Agreement was to screen just a small number of “**senior leaders**” within the ECCC personal jurisdiction, i.e. aiming at the Members of the Party Central and Standing Committees, including POL Pot, NUON Chea, SON Sen, IENG Sary, KHIEU Samphan, KE Pauk, IENG Thearith, VAN Rith, and UNG Choeun *alias Ta Mok*, while “**those who were most responsible**” is referred to just S-21 Security Centre Chairman KAING Guek Eav *alias Duch* as he played a key role in the commission of the crimes, having the autonomy and de facto authority. The limitation on the small number of those to be brought to trial had been raised on several occasions and hotly debated during the National Assembly sessions before passing the ECCC Draft Law, in which the number of those falling under the ECCC jurisdiction is very limited and restricted.
92. Therefore, in March 1999, during the course of negotiation for establishing the ECCC Law, UNG Choeun *alias Ta Mok* and KAING Guek Eav *alias Duch* were arrested and temporarily detained at the military court on charges of war crimes, violations of the 1949 Geneva Conventions, and crimes against Internationally Protected Persons, punishable under Articles 6 and 8 of the 2001 ECCC Law.
93. UNG Choeun *alias Ta Mok* died in July 2006. KAING Guek Eav *alias Duch* was transferred from the Phnom Penh Military Court to the ECCC detention facility on 30 July 2007 by order of the Co-Investigating Judges of the Extraordinary Chambers in the Courts of Cambodia.⁷¹
94. In the preamble of the ECCC Agreement between the United Nations and the Royal Government of Cambodia adopted by the General Assembly of the United Nations, in its

⁷¹ C4/2 [C4], Detention Order of KAING Guek Eav *alias Duch*, 31 July 2007.

resolution 57/228 of 18 December 2002 concerning the prosecution under Cambodian law of crimes committed during the period of DK, the United Nations recognised the legitimate concern of the Government and the people of Cambodia in the pursuit of justice, national reconciliation, stability, peace, and security, which means striking a balance between “justice” and “national reconciliation.”

95. With this recognition, the ECCC Law and Agreement between United Nations and the Royal Government of Cambodia aim at just two categories of persons to be brought to trial, i.e. DK senior leaders and those who were most responsible for the crimes and violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognised by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979.
96. Expanding the scope of the personal jurisdiction over AO An beyond the scope of the existing Cases 001 and 002 will lengthen the time and spend money unnecessarily. In addition, as regards the number of victims who lost their lives in the DK regime and the suffering of surviving victims, justice has been brought to them through the trial of Cases 001 and 002.
97. In conclusion, the NCP still considers that AO An does not fall within the ECCC personal jurisdiction as stated in Article 1 of the ECCC Law.

IV. Request

98. For the foregoing reasons, the NCP requests the PTC to dismiss the case against **AO An** because the ECCC has no personal jurisdiction over him.

Date	Name	Place	Signature
14 December 2018	CHEA Leang National Co-Prosecutor	Phnom Penh	