

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

FILING DETAILS

Case No.: 004/07-09-2009-ECCC/OCIJ (PTC61)
Filed to: The Pre-Trial Chamber
Date of Document: 13 September 2019
Filing Party: National Co-Prosecutor
Original Language: Khmer

CLASSIFICATION

Classification of the document suggested by the filing party: CONFIDENTIAL

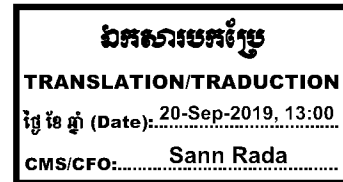
Classification by PTC: សម្ងាត់/Confidential

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:



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

Filed by:

CHEA Leang
National Co-Prosecutor

Copied to:

Brenda J. HOLLIS
**International Co-Prosecutor
(Reserve)**

Co-Lawyers for YIM Tith:
SO Mosseny
Suzana TOMANOVIĆ

**All Civil Party Lawyers in
Case 004**

Distributed to:

Pre-Trial Chamber
Judge PRAK Kimsan
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Kang Jin BAIK
Judge HUOT Vuthy

I. Introduction

1. On 28 June 2019, the Co-Investigating Judges issued two separate Closing Orders, in which the National Co-Investigating Judge issued Order Dismissing the Case against **YIM Tith** on the grounds that the Extraordinary Chambers in the Courts of Cambodia (ECCC) has no personal jurisdiction over **him**,¹ while the International Co-Investigating Judge issued Closing Order (Indictment).²
2. The National Co-Investigating Judge's Closing Order dropping the case against **YIM Tith** was issued in Khmer with the English translation to follow.³ The International Co-Investigating Judge'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 2019, the National Co-Prosecutor submitted a notice of appeal against the International Co-Investigating Judge's Closing Order (Indictment).⁶ On 10 September 2019, the International Co-Prosecutor submitted a notice of appeal against the National Co-Investigating Judge's Order Dismissing the Case against **YIM Tith**.⁷
5. Pursuant to the Internal Rules,⁸ Rules 67(5),⁹ 73(a)¹⁰ and 74(2),¹¹ the National Co-Prosecutor appealed against the International Co-Investigating Judge's Closing Order indicting **YIM Tith**.¹²

¹ **D381**, National Co-Investigating Judge's Order Dismissing the Case against **YIM Tith**, 28 June 2019.

² **D382**, International Co-Investigating Judge's Closing Order (Indictment), 28 June 2019.

³ **D381**, National Co-Investigating Judge's Order Dismissing the Case against **YIM Tith**, 28 June 2019, with the English translation to follow on 5 September 2019.

⁴ **D382**, International Co-Investigating Judge's Closing Order (Indictment), 28 June 2019, with the Khmer translation to follow on 15 August 2019.

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

⁶ **D382/4**, Record of Appeals of the Office of the Co-Investigating Judges, 23 August 2019.

⁷ **D318/4**, Record of Appeals of the Office of the Co-Investigating Judges, 10 September 2019.

⁸ Internal Rules of the Extraordinary Chambers in the Courts of Cambodia.

⁹ 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.

¹⁰ 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.

II. Procedural History

6. On 18 November 2008, the National and International Co-Prosecutors discussed disagreement on additional prosecutions and suspects at the ECCC so as to forward them to the Co-Investigating Judges to open investigations.¹³ The International Co-Prosecutor indicated during the discussion that he wished to send additional suspects (Cases 003 and 004) to the Co-Investigating Judges to open investigations, while the National Co-Prosecutor disagreed to additional suspects beyond those described in Cases 001 and 002.¹⁴
7. The disagreement was reasoned by the National and International Co-Prosecutors for the Pre-Trial Chamber to examine and decide in accordance with the legal proceedings. As a consequence, the Pre-Trial Chamber did not receive the affirmative vote of at least four judges required to have a decision on the disagreement.¹⁵
8. The Pre-Trial Chamber concluded that as it could not reach a decision on the disagreement brought before it, pursuant to Internal Rule 74.1, the International Co-Prosecutor shall send a new Introductory Submission [to the Co-Investigating Judges] for opening a judicial investigation pursuant to Internal Rule 53.1.¹⁶
9. Pursuant to the considerations of the Pre-Trial Chamber dated 18 August 2009 regarding the disagreement between the Co-Prosecutors, pursuant to Internal Rule 71,¹⁷ on 7 September 2009, the Acting International Co-Prosecutor forwarded to the Co-Investigating Judges the Introductory Submissions regarding Cases 003 and 004 to open judicial investigations of the two Cases;¹⁸ in particular, Case 004 was later severed into [Cases 004/01, 004/02, and] Case 004 in which YIM Tith¹⁹ is the charged person.

¹¹ 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.

¹² **D382**, International Co-Investigating Judge's Closing Order (Indictment), 28 June 2019.

¹³ 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.

¹⁴ Record of disagreement between the International and National Co-Prosecutors on indicting additional suspects, 18 November 2008.

¹⁵ D1/1.1 and D1/1.3, the Pre-Trial Chamber, 18 August 2009.

¹⁶ D1/1.1, the Pre-Trial Chamber, 18 August 2009.

¹⁷ D1/1.3, Considerations of the Pre-Trial Chamber regarding the Disagreement between the Co-Prosecutors Pursuant to Internal Rule 71, 18 August 2009.

¹⁸ D1/1, Acting International Co-Prosecutor's Notice of Filing of the Second and Third Introductory Submissions, 07 September 2009.

¹⁹ Case 004, **D334/1**, Order for Severance of YIM Tith [AO An] from Case 004, 16 December 2016.

10. On 15 June 2011, the International Co-Prosecutor issued a Supplementary Submission regarding Sector 1 crime sites and persecution of Khmer Krom.²⁰
11. On 16 [15] June 2011, the International Co-Prosecutor filed a request for investigative action regarding Case 004 crime sites in Central Zone and responsibility of Suspect YIM Tith.²¹
12. On 24 April 2014, the International Co-Prosecutor filed a Supplementary Submission regarding forced marriage and sexual or gender-based violence.²²
13. On 13 June 2017, the Co-Investigating Judges issued a notice of conclusion of judicial investigation against YIM Tith, informing the parties that they may request further investigative action within 15 days from the date of notification of this notice.²³
14. On 16 June 2017, the YIM Tith Defence submitted a request for adequate preparation time.²⁴ On 23 June 2017, the International Co-Prosecutor filed a response to YIM Tith's request.²⁵ On 5 July 2017, the Co-Investigating Judges issued a decision on YIM Tith's request for adequate preparation time.²⁶
15. On 27 April 2017, the YIM Tith Defence submitted an application to annul the investigative material produced by Paolo STOCCHI.²⁷ On 25 August 2017, the Pre-Trial Chamber issued a decision on application to annul the investigative material produced by Paolo STOCCHI.²⁸
16. On 5 September 2017, the Co-Investigating Judges issued the second notice of conclusion of judicial investigation against YIM Tith and informed the parties that no period for further investigative action was required (Second Notice of Conclusion of

²⁰ **D27**, International Co-Prosecutor's Supplementary Submission regarding Sector 1 Crime Sites and Persecution of Khmer Krom, 15 June 2011.

²¹ **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.

²² **D191**, International Co-Prosecutor's Supplementary Submission regarding Forced Marriage and Sexual or Gender-Based Violence, 24 April 2014.

²³ Case 004, **D358**, Notice of Conclusion of Judicial Investigation against YIM Tith, 13 June 2017.

²⁴ Case 004, **D361**, YIM Tith's Request for Adequate Preparation Time, 16 June 2017.

²⁵ Case 004, **D361/2**, International Co-Prosecutor's Response to YIM Tith's Request for Additional Time, 23 June 2017.

²⁶ Case 004, **D361/4**, Co-Investigating Judges' Decision on YIM Tith's Request for Adequate Preparation Time, 5 July 2017.

²⁷ Case 004, **D351/1/2**, Application to Annul the Investigative Material Produced by Paolo STOCCHI dated 27 April 2017 and notified on 28 April 2017.

²⁸ Case 004, **D351/1**, Decision on Application to Annul the Investigative Material Produced by Paolo STOCCHI, 11 April 2017.

Judicial Investigation).²⁹ On 1 March 2018, the Co-Investigating Judges issued a Forwarding Order pursuant to ECCC Internal Rule 66(4).³⁰

17. On 31 May 2018, the National Co-Prosecutor filed her Final Submission concerning YIM Tith.³¹ On 4 June 2018, the International Co-Prosecutor filed his Final Submission against YIM Tith.³²
18. On 12 June 2018, the YIM Tith Defence filed an estimate regarding time required to respond to the International Co-Prosecutor's Final Submission.³³ On 20 June 2018, the Co-Investigating Judges issued a decision on time granted to the Defence to respond to the Final Submissions by the Co-Prosecutors.³⁴

III. Submission

The Creation of the Communist Party of Kampuchea (CPK)

19. The roots of the Communist Party of Kampuchea can be traced to the founding of the Indochinese Communist Party in 1930. In 1951, the Indochinese Communist Party was dissolved and separate revolutionary organisations were established for Vietnam, Laos and Cambodia, with the new party in Cambodia called the Khmer People's Revolutionary Party. On 30 September 1960, the Khmer People's Revolutionary Party was renamed the Worker's Party of Kampuchea 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 use "armed violence," in addition to 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 the imperialists, the places where the enemies of the revolution can concentrate great power to suppress us." Around twenty people participated in this Congress, which included 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.

²⁹ Case 004, **D368**, Second Notice of Conclusion of Judicial Investigation against YIM Tith, 5 September 2017.

³⁰ Case 004, **D378**, Forwarding Order pursuant to Internal Rule 66(4), 1 March 2018.

³¹ Case 004, **D378/1**, National Co-Prosecutor's Final Submission concerning YIM Tith pursuant to Internal Rule 66, 31 May 2018.

³² Case 004, **D378/2**, International Co-Prosecutor's Rule 66 (4) Final Submission against YIM Tith, 4 June 2018.

³³ Case 004, **D378/3**, YIM Tith's Estimate regarding Time Required to Respond to the International Co-Prosecutor's Final Submission, 12 June 2018.

³⁴ Case 004, **D378/4**, Decision on Time Granted to the Defence to Respond to the Final Submissions by the Co-Prosecutors, 20 June 2018.

Following the adoption of the new Party lines, all members were required to “resubmit their applications to join the Party.”

20. After the arrest and execution of Worker’s Party of Kampuchea Secretary Tou Samuth in 1962, a Second Party Congress was held in late February 1963, at which time Saloth 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 Sophal. Later in 1963, after the Sihanouk regime published a list of 34 known “leftists,” Pol Pot and a number of the other named Worker’s Party of Kampuchea 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 Worker’s Party of Kampuchea operations in the capital and most of the Zones.
21. In 1964, the Worker’s Party of Kampuchea began to hold regular meetings of its Central 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 Worker’s Party of Kampuchea leaders decided to change the party name to the Communist Party of Kampuchea (though that decision was kept secret until the next Party Congress), to relocate Office 100 to Ratanakiri, and for each Zone to begin preparations for armed struggle. In mid-1967, the Standing Committee members (Pol Pot, 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 Zone Secretary).
22. On 17 January 1968, pursuant to orders conveyed by Nuon Chea the prior month, Communist Party of Kampuchea forces attacked a government army post at Bay Damram village, south of Battambang city, seizing a number of weapons. This date was later marked by the Communist Party of Kampuchea as the birth of the Revolutionary Army of Kampuchea. In the following months, guerrilla attacks continued by Communist Party of Kampuchea forces throughout the country.
23. On 18 March 1970, Prince Norodom Sihanouk was overthrown by General Lon Nol and Prince Sirik Matak, who established a regime which was later called the Khmer

Republic. On 23 March 1970, Sihanouk announced the formation of the National United Front of Kampuchea, 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 Sihanouk and the Communist Party of Kampuchea, as well as a government-in-exile based in Beijing called the Royal Government of National Union of Kampuchea which included Khieu Samphan as Deputy Prime Minister and Minister of Defence and was officially announced on 5 May 1970. Ieng Thirith was listed Vice-Minister for Culture Education and Youth in the Royal Government of National Union of Kampuchea by August 1970.

Party Congress

24. The Communist Party of Kampuchea 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-Democratic Kampuchea 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 Democratic Kampuchea 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 1978, which was attended by roughly 60 participants.

Central Committee

25. Between Party Congresses, the Communist Party of Kampuchea 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 Muth, 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.”

Standing Committee

26. 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

Communist Party of Kampuchea and the Democratic Kampuchea 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.”³⁵

27. The Standing Committee created, directed and monitored the implementation of all Communist Party of Kampuchea and Democratic Kampuchea 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 Communist Party of Kampuchea 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.
28. 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.

Communist Party of Kampuchea Leadership

29. 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.

³⁵ Case 004, **D6.1.91**, Written Record of Interview of the Charged Person KAING Guek Eav *alias* Duch, 19 November 2008 p. 3; Case 004, **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.

30. The Communist Party of Kampuchea 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 Communist Party of Kampuchea established a state, Democratic Kampuchea, with no functioning parliament or judiciary, and one in which the Party's rule was ruthlessly enforced.
31. The Communist Party of Kampuchea 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.
32. 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.
33. Throughout the Democratic Kampuchea period, the Communist Party of Kampuchea 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 Communist Party of Kampuchea 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 Democratic Kampuchea period.

Geographic Administrative Structure

Zones

34. In the Democratic Kampuchea regime, there were six zones:³⁶ the Southwest (405), the West (401), the Northwest (560), the Central (former North), the Northeast (108), and the East (203) Zones. In addition, there were a number of autonomous sectors:³⁷ Mondulkiri (105), Kratie (505), Preah Vihear (103) and Siem Reap-Oddar Meanchey (106) Sectors.
35. 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 Communist Party of Kampuchea Central and Standing Committees throughout the country.
36. 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.

Southwest Zone

37. 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 Democratic Kampuchea period.

Central Zone

38. 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.
39. Initially, KOY Thuon *alias* Thuch was 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.
40. The Central Zone Committee consisted of KE Pauk as secretary, Ang as deputy secretary and Sim as member.

West Zone

³⁶ Case 004, **D6.1.975**, Book by the Ministry of Education, entitled "Political Geography of Democratic Kampuchea," 1st Edition, 1977, pp. 7, 12; Case 004, **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; Case 004, **D6.1.53**, Book by BEN Kiernan, entitled "Khmer bodies with Vietnamese minds," Kampuchea's Eastern Zone, 1975-1978, Centre of Southeast Asian Studies, Monash University, pp. 2-3; Case 004, **D6.1.460**, Map of Democratic Kampuchea, published by Ministry of Education of Democratic Kampuchea in 1976, p. 1.

³⁷ Case 004, **D6.1.975**, Book of the Ministry of Education, entitled "Political Geography of Democratic Kampuchea," 1st Edition, 1977, p. 12; Case 004, **D6.1.460**, Map of Democratic Kampuchea, published by Ministry of Education of Democratic Kampuchea in 1976.

41. 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.

Northwest Zone

42. The Northwest Zone had six sectors: Sectors 2, 3, 4, 5, 56, and 7. ROS Nhim, a candidate member, was secretary. In mid-1978, Zone Secretary ROS Nhim was arrested and replaced by *Ta* Mok.

Northeast Zone

43. 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.

East Zone

44. 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.

YIM Tith's Personal Background

45. **YIM Tith** *alias* **Ta Tith** or **Ta 17**,³⁸ Cambodian, retired,³⁹ was born on 30 December 1936, in Trapeang Kol or Trapeang Thom Village, Trapeang Thom Commune (Tbong), Tramkak District (former District 105), Takeo Province,⁴⁰ which was located in Sector 13 of the Southwest Zone.⁴¹
46. Many witnesses affirmed that **Ta Tith** served as a monk, staying at Tram Thom Pagoda in the early 1950s before he went to study at the Moha Montrey Pagoda in Phnom Penh.⁴² A witness stated that **Ta Tith** was one of the strongest guys at the

³⁸ Case 004, **D1.3.3.1**, YIM Tith's biography, p. 1.

³⁹ Case 004, **D281**, Written Record of Initial Appearance of YIM Tith, 9 December 2015, p. 2

⁴⁰ Case 004, **D1.3.3.1**, YIM Tith's biography, p. 1; Case 004, **D6.1.689**, Written Record of Witness Interview of NUT Nouv, 1 December 2009, pp. 16-17; Case 004, **D118/93**, Written Record of Witness Interview of PRAK Some, 1 September 2013, p. 7; Case 004, **D118/24**, Written Record of Witness Interview of KEO Chandara, 22 February 2013, pp. 3-4; Case 004, **D118/79**, Written Record of Witness Interview of PECH Chim, 26 June 2013, pp. 5-6; Case 004, **D281**, Written Record of Initial Appearance of YIM Tith, 9 December 2015, p. 2; Case 004, **D219/853**, Written Record of Witness Interview of CHAN Vicheth, 25 October 2016, p. 4.

⁴¹ Case 004, **D1.3.11.41**, Interview Notes of POUCH Seng, *alias* Set, 14 August 2008, by the Office of the Co-Prosecutors, p. 3; Case 004, **D6.1.688**, Written Record of Interview of Witness BUN Thien, 17 August 2014, pp. 9-10; Case 004, **D219/358**, Written Record of Witness Interview of LUON Mul, 8 June 2015, p. 4; Case 004, **D118/151**, Written Record of Witness Interview of KHIEU Neou, 23 November 2013, pp. 4-5.

⁴² Case 004, **D118/49**, Written Record of Interview of Witness CHEV Nhan, 26 April 2013, p. 5; Case 004, **D118/152**, Written Record of Witness Interview of POK Touch, 25 November 2013, p. 5 and 9-10; Case 004, **D118/153**, Written Record of Witness Interview of LONG Vun, 26 November 2013, pp. 11-12; Case 004, **D118/171**, Written Record of Witness Interview of KHIEV Nov, 23 January 2014, pp. 19-20; Case 004, **D118/181**, Written Record of Witness Interview of RIEL Son, 18 February, 2014, pp. 11-13.

time,⁴³ whilst other witnesses asserted that **Ta Tith** was a gentle, good and honest person.⁴⁴

YIM Tith's Position as Kirivong District (District 109) Secretary

47. The Kirivong District Office was located in Trapeang Run Village, Ream Andaeuk Commune, Kirivong District.⁴⁵ Kirivong District also known as District 109 was located in Takeo Province, part of Sector 13 of the Southwest Zone.⁴⁶ In Kirivong District, there were two offices: one was at **Ta Tith's** house in Trapeang Run Village and the other was at Ta Tom's house in front of the gate of Wat Soben in Chen Village, Ream Andaeuk Commune.⁴⁷ Various witnesses stated that the Kirivong District Office, a brick house belonging to *Kong Thik* in Kbal Damrei Village,⁴⁸ was located in between Wat Soben and Wat Preah Thiet while some others affirmed that the Kirivong District Office of **Ta Tith** and Ta Tom was located in Wat Sambour, Bour Village, Prey Rumdeng Commune, Kirivong District instead.⁴⁹
48. The secretaries of Kirivong District were Ta Nem, Ta Toeun *alias* Tom, *Yeay* Bau and **Ta Tith**.⁵⁰ Ta Tom was arrested as it was alleged that he had affiliated with KGB.⁵¹

⁴³ Case 004, **D1.3.11.19**, Interview Notes, Preliminary Investigation, the Office of the Co-Prosecutors, Witness KAO Cheng, 14 August 2008, p. 5.

⁴⁴ Case 004, **D219/521**, Written Record of Witness Interview of TOEB Kun [Phy], 14 September 2015, pp. 9-12 and 16-17.

⁴⁵ Case 004, **D219/521**, Written Record of Witness Interview of TOEB Phy, 14 September 2015, pp. 6-7.

⁴⁶ Case 004, **D1.3.11.18**, Interview Notes, Preliminary Investigation, the Office of the Co-Prosecutors, Witness Ho Yan, 27 August 2005, p. 1; Case 004, **D1.3.11.70**, Interview Notes, Preliminary Investigation, the Office of the Co-Prosecutors, Witness Yuos Kaen, 27 August 2005, p. 1; Case 004, **D1.3.11.48**, Interview Notes, Preliminary Investigation, the Office of the Co-Prosecutors, Witness Sieng Haom, 27 August 2005, p. 1; Case 004, **D1.3.11.57**, Interview Notes, Preliminary Investigation, the Office of the Co-Prosecutors, Witness Uk Ben, 27 August 2005, p. 1; Case 004, **D1.3.28.3**, [Documentation Center of Cambodia, Interview with Bun Thean], 25 May 2004, p. 47; Case 004, **D1.3.11.41**, Interview Notes, Preliminary Investigation, the Office of the Co-Prosecutors, Witness POUCH Seng, *alias* Set, 14 August 2008, p. 3; Case 004, **D1.3.11.14**, Interview Notes, Preliminary Investigation, the Office of the Co-Prosecutors, Witness HEM Chhuon, 15 August 2008, p. 3; Case 004, **D1.3.11.2**, Interview Notes, Preliminary Investigation, the Office of the Co-Prosecutors, Witness KHLOK Ly [AOK Chan], 5 August 2008, p. 3; Case 004, **D6.1.688**, Written Record of Interview of Witness BUN Thien, 17 August 2014, pp. 8-9; Case 004, **D219/358**, Written Record of Witness Interview of LUON Mul, 8 June 2015, pp. 3-4; Case 004, **D6.1.650**, Written Record of Interview of Witness PECH Chim, 25 August 2009, p. 4; Case 004, **D118/92**, Written Record of Witness Interview of NOP Nan, 31 August 2013, pp. 7-8; Case 004, **D119/82**, Written Record of Witness Interview of NEANG Ouch, 28 January 2014, pp. 6-7.

⁴⁷ Case 004, **D119/84**, Written Record of Witness Interview of MOENG Vet, 11 February 2014, p. 11; Case 004, **D119/85**, Written Record of Witness Interview of MOENG Vet, 12 February 2014, pp. 2-3.

⁴⁸ Case 004, **D118/22**, Written Record of Witness Interview of TUN Soun, 20 February 2013, pp. 5-7.

⁴⁹ Case 004, **D119/84**, Written Record of Witness Interview of HENG Brel [MOENG Vet], 25 April 2013 [11 February 2014], pp. 5-6.

⁵⁰ Case 004, **D118/22**, Written Record of Witness Interview of TUN Soun, 20 February 2013, pp. 2-4.

⁵¹ Case 004, **D219/488**, Written Record of Witness Interview of MOENG Vet, 1 September 2015, p. 5.

Ta Tith was secretary of Kirivong District in between 1976 and 1977 and later was transferred to Battambang around in mid-1977.⁵² Then, *Yeay* Khoeun who was on the District Committee came to replace **him**⁵³ and Ta Tom was deputy secretary of the district.⁵⁴ A witness stated that **Ta Tith** was secretary of Kirivong District; and that witness was arrested and detained at Sanlong Mountain Detention Centre.⁵⁵

YIM Tith's Positions in the Northwest Zone

49. YIM Tith served as Sector 1 Secretary of the Northwest Zone. He was claimed to be a member of the Zone Committee. This Zone was under ROS Nhim's control until mid-1978 and [he was] replaced by Ta Mok from the Southwest Zone.
50. There is no clear evidence as to when YIM Tith took up the position in Sector 1 of the Northwest Zone.
51. YIM Tith's arrival in the Northwest Zone roughly eight months before the 7 January 1979 liberation coincided with the announcement made by KHIEU Samphan that execution would stop.

International Co-Investigating Judge's Charges against YIM Tith

52. On 9 December 2015, the Initial Appearance of YIM Tith took place before International Co-Investigating Judge **Michael Bohlander**. International Co-Investigating Judge **Michael Bohlander** proceeded with the Initial Appearance and notified the following charges against YIM Tith:

Violations of Articles 501 and 506 of the 1956 Penal Code

- Premeditated murder punishable under Articles 3 new and 39 of the ECCC Law

Genocide

- Genocide by killing members of the group

Modes of liability: planning, ordering, instigating, superior responsibility, commission via joint criminal enterprise first category, and commission via joint criminal enterprise second category

Crimes against Humanity

⁵² Case 004, **D219/121**, Written Record of Witness Interview of LOEM Ngen, 11 December 2014, pp. 7-8; Case 004, **D118/259**, Written Record of Witness Interview of PECH Chim, 19 June 2014, pp. 20-21; Case 004, **D118/274**, Written Record of Witness Interview of BUN Thoeun, 10 July 2014, pp. 15-16; Case 004, **D219/228**, Written Record of Witness Interview of NUT Nov, 17 March 2015, pp. 2-3.

⁵³ Case 004, **D219/121**, Written Record of Witness Interview of LOEM Ngen, 11 December 2014, pp. 7-8.

⁵⁴ Case 004, **D219/121**, Written Record of Witness Interview of LOEM Ngen, 11 December 2014, pp. 7-8.

⁵⁵ Case 004, **D6.1.688**, Written Record of Interview of Witness BUN Thien, 17 August 2009, p. 10.

- Murder, extermination, persecution on political or religious grounds (the targeting of Central Zone CPK cadres and former officials of the Khmer Republic, including civil servants and former military personnel, Cham people and their families)
- Unlawful confinement and other inhumane acts such as confinement in inhumane conditions

These crimes are defined and punishable under Articles 5 and 39 of the ECCC Law.⁵⁶

National Co-Prosecutor's Viewpoint

Free of Liability

53. 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.⁵⁷
54. The same Decision clearly states that, for purges at the zone, if in the base framework, **“to be decided by the Zone Standing Committee.”**⁵⁸ Duch described it as “a historical document. It shows a turning point, because it reveals the beginning of internal purges.”⁵⁹
55. 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

⁵⁶ Case 004, **D281**, Written Record of Initial Appearance, 9 December 2015.

⁵⁷ Case 004, **D1.3.36.1**, Written Record of Interview of Charged Person KHIEU Samphan *alias* Hem (former-President of the State Presidium of Democratic Kampuchea), 13 December 2007, p. 9; Case 004, **D6.1.795**, Written Record of Interview of Charged Person KAING Guek Eav *alias* Duch, 2 December 2009, p. 3; Case 004, **D6.1.899**, Note takings (Khieu Samphan and Nuon Chea), Pailin, June 9-11, 2006, by Meng-Try Ea and Sopheak Loeung, p. 4; Case 004, **D6.1.1056**, Written Record of Interview of Charged Person KAING Guek Eav *alias* Duch, 27 March 2008, p. 7; Case 004, **D6.1.662**, Written Record of Witness Interview of UNG Ren, 23 October 2009, p. 3.

⁵⁸ Case 004, **D1.3.36.1**, Written Record of Interview of Charged Person KHIEU Samphan *alias* Hem (former-President of the State Presidium of Democratic Kampuchea), 13 December 2007, p. 9; Case 004, **D6.1.795**, Written Record of Interview of Charged Person KAING Guek Eav *alias* Duch, 2 December 2009, p. 3; Case 004, **D6.1.899**, Note takings (Khieu Samphan and Nuon Chea), Pailin, June 9-11, 2006, by Meng-Try Ea and Sopheak Loeung, p. 4; Case 004, **D6.1.1056**, Written Record of Interview of Charged Person KAING Guek Eav *alias* Duch, 27 March 2008, p. 7; Case 004, **D6.1.662**, Written Record of Witness Interview of UNG Ren, 23 October 2009, p. 3.

⁵⁹ Case 004, **D6.1.1063**, Written Record of Interview of Charged Person KAING Guek Eav *alias* Duch, 5 May 2008, pp. 6-7.

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.

56. 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.
57. 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.
58. 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 utilised widely. When someone was accused of being an enemy, he or she was taken away and killed without justice sought and judicial process.

Non-applicability of Personal Jurisdiction

59. 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.
60. 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 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.
61. 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 ECCC mandate is a restriction on the scope of the personal jurisdiction. Such a method was employed at the ICTY, ICTR and SCSL.
62. 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.⁶⁰ 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.⁶¹
63. 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.⁶²
64. 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 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.
65. 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 National Co-Prosecutor urges the International Co-Investigating Judge 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.
66. 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,

⁶⁰ 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, 28 August 2003, paras. 6-7; United Nations Security Council Resolution 1534, 26 March 2004, para. 5; United Nations Security Council Resolution 1966, 22 December 2010.”

⁶¹ United Nations Security Council Resolution 1534, as in footnote 25 above, para. 5.

⁶² *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.

- IENG Sary, KHIEU Samphan, KE Pauk, IENG Thearith, VAN Rith, and UNG Choeun *alias Ta Mok*, while “**those 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.
67. 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.
68. 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.
69. 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.
70. 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 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.”
71. 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 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.
72. Expanding the scope of the personal jurisdiction over YIM Tith 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.
73. The ECCC is quite clearly a court which exercises **selective** justice, pursuant to the ECCC Law and the Agreement between the United Nations and the Royal

Government of Cambodia, which means referring to just two categories of persons, namely **senior leaders** of Democratic Kampuchea and **those most responsible**.

74. The International Co-prosecutor's allegations, **in a selective manner**, against YIM Tith are arbitrary and do not specify whether YIM Tith was a member of the CPK Central Committee or even his role in the army; in addition, even his name does not appear in DK contemporary documents such as meeting minutes of the Standing Committee, telegrams between Sector and Zone cadres and the Standing Committee. Therefore, the National Co-Prosecutor finds that as a consequence of the implementation of Party policies, YIM Tith did not have any authority, but other than that he just followed Party lines.
75. In conclusion, the National Co-Prosecutor still considers that YIM Tith does not fall within the ECCC personal jurisdiction as stated in Article 1 of the ECCC Law.

IV. Request

76. For the foregoing reasons, the National Co-Prosecutor requests the Pre-Trial Chamber to dismiss the case against **YIM Tith** because the ECCC has no personal jurisdiction over **him**.

Date	Name	Place	Signature
13 September 2019	CHEA Leang National Co-Prosecutor	Phnom Penh	