

**BEFORE THE OFFICE OF THE CO-INVESTIGATING JUDGES  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

**Case No:** 004/07-09-2009-ECCC/OCIJ

**Party Filing:** The Defence for YIM Tith

**Filed to:** The Co-Investigating Judges

**Original language:** ENGLISH

**Date of document:** 19 May 2016

**CLASSIFICATION**

**Classification of the document  
suggested by the filing party:** PUBLIC



**Classification by OCIJ  
or Chamber:**

**Classification Status:**

**Review of Interim Classification:**

**Records Officer Name:**

**Signature:**

---

**YIM TITH'S SUBMISSION ON THE INTERPRETATION OF THE TERM  
'CIVILIAN POPULATION' FOR THE PURPOSES OF ARTICLE 5 OF THE  
ESTABLISHMENT LAW**

**TABLE OF AUTHORITIES**

---

Filed by:

**The Co-Lawyers:**

SO Mosseny  
Suzana TOMANOVIĆ

**Co-Lawyers for AO An:**

MOM Luch  
Göran SLUITER  
Richard ROGERS

Distribution to:

**The Co-Investigating Judges:**

Judge YOU Bunleng  
Judge Michael BOHLANDER

**Co-Lawyers for MEAS Muth:**

AND Udom  
Michael G. KARNAVAS

**Co-Prosecutors:**

CHEA Leang  
Nicholas KOUMJIAN

**All Civil Parties in Case 004**

**Co-Lawyers for IM Chaem:**

BIT Seanglim

**ECCC Filings and Jurisprudence for Case 004 – Already on the Case File**

1. Call for Submissions by the Parties in Cases 003 and 004 and Call for Amicus Curiae Briefs, 19 April 2016, D306.

**ECCC Filings and Jurisprudence – Already on the Case File**

2. Case 002, Case 002/01 Judgment, 7 August 2014, E313.

**International Conventions**

3. Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land (adopted 18 October 1907 entered into force 27 January 1910), International Peace Conference, The Hague – *Attachment 1*.

**International Jurisprudence**

4. *Judgment of the Nuremberg International Military Tribunal 1946* (1947) 41 AJIL 172 – Available via ECCC Legal Compendium.
5. *Neddermeier*, Control Commission Courts established under Control Council Law No. 10, Court of Appeals, 10 March 1949 in *Germany- British Zone of Control, Control Commission Courts, Court of Appeal Reports, Criminal Cases* (1948) No. 1 – *Attachment 2*.
6. *Pilz*, Dutch Special Court of Cassation, Judgment of 5 July 1950, *Nederlandse Jurisprudentie*, 1950, No. 681, summary in A Cassese, *The Human Dimension of International Law*, Oxford University Press, 2008 – *Attachment 3*.
7. *R.*, Decision of 27 July 1948, *Entscheidungen des Obersten Gerichtshofes für die Britische Zone in Strafsachen*, Berlin 1950, Vol. 1, summary in A Cassese, *The Human Dimension of International Law*, Oxford University Press, 2008 – *Attachment 3*.
8. *P et al.*, *Entscheidungen des Obersten Gerichtshofes für die Britische Zone in Strafsachen*, Berlin 1950, Vol. 1, summary in A Cassese, *The Human Dimension of International Law*, Oxford University Press, 2008 – *Attachment 3*.

9. *H.*, Supreme Court in the British Occupied Zone, Judgment of 18 October 1949, *Entscheidungen des Obersten Gerichtshofes für die Britische Zone in Strafsachen*, Vol. 2. summary in A Cassese, *The Human Dimension of International Law*, Oxford University Press, 2008 – Attachment 3.
10. *Barbie*, Cour de cassation, Judgment, 20 December 1985, summary in A Cassese, G Acquaviva, M Fan and A Whiting, *International Criminal Law: Cases and Commentary*, Oxford University Press, 2011, E43.1.1 – Already on Case File.
11. International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Milan Martić*, Case No. IT-95-11-A, Appeal Judgment, 8 October 2008 – Attachment 4.
12. Special Court for Sierra Leone, *Prosecutor v. Issa Hassan Sesay, Morris Kallon, Augustine Gbao*, Case No. SCSL-04-15-A, Trial Judgment, 2 March 2009 – Attachment 5.

#### **Books, Articles and Miscellaneous**

13. M Lippman, ‘Crimes Against Humanity’ (1997) 17 *Third World Law Journal* – Attachment 6.
14. United Nations War Crimes Commission, *History of the United Nations War Crimes Commission and the Development of the Laws of War*, United Nations War Crimes Commission by His Majesty’s Stationary Office, 1948 – Attachment 7.
15. The Avalon Project, *Nuremberg Trial Proceedings Vol. 1 Charter of the International Military Tribunal*, 11 May 2016, available at <http://avalon.law.yale.edu/imt/imtconst.asp#art6> – Attachment 8.
16. M Bassiouni, *Crimes Against Humanity in International Criminal Law*, Kluwer Law International, 1999 – Attachment 9.
17. A Cassese, *The Human Dimension of International Law*, Oxford University Press, 2008 – Attachment 3.
18. The Avalon Project, *International Conference on Military Trials: London, 1945, Minutes of Conference Session of July 23, 1945*, 11 May 2016, available at <http://avalon.law.yale.edu/imt/jack44.asp> – Attachment 10.

19. S Kirsch, 'Two Kinds of Wrong: On the Context of Crimes against Humanity' (2009) 22 *Leiden Journal of International Law – Attachment 11*.
20. Draft Code against the Peace and Security of Mankind (1951) Documents of the Third Session including Report of the Committee to the General Assembly, in United Nations, *Yearbook of the International Law Commission* (1951) Vol. II – *Attachment 12*.
21. Draft Code against the Peace and Security of Mankind (1954) Report of the International Law Commission on the Work of its Sixth Session, in United Nations, *Yearbook of the International Law Commission* (1954) Vol. II – *Attachment 13*.
22. Draft Code of Crimes against the Peace and Security of Mankind (1991) Report of the International Law Commission on the Work of its Forty- Third Session, in United Nations, *Yearbook of the International Law Committee* (1991) Vol. II, Part Two – *Attachment 14*.
23. M Boot, *Genocide, Crimes Against Humanity, War Crimes: Nullum Crimen Sine Lege and the Subject Matter Jurisdiction of the International Criminal Court*, School of Human Rights Research, 2002 – *Attachment 15*.
24. Draft Code of Crimes against the Peace and Security of Mankind with Commentaries (1996) Report of the International Law Commission on the Work of its Forty- Eighth Session, in United Nations, *Yearbook of the International Law Committee* (1996) Vol. II, Part Two – *Attachment 16*.
25. A Cassese, *Cassese's International Criminal Law (3<sup>rd</sup> Ed.)*, Oxford University Press, 2013 – *Attachment 17*.
26. A Cassese, *The Oxford Companion to International Criminal Justice*, Oxford University Press, 2009 – *Attachment 18*.
27. A Cassese, G Acquaviva, M Fan and A Whiting, *International Criminal Law: Cases and Commentary*, Oxford University Press, 2011 – *Attachment 19*.
28. D Robinson, 'Defining "Crimes Against Humanity" at the Rome Conference' (1999) 93:1 *The American Journal of International Law – Attachment 20*.

**Inter-Office Communication**

29. Email from Interpretation and Translation Unit to the Defence, 'Translation of Motion ERN 01240540-01240554', 16 May 2016 – *Attachment 21*.