



អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia
Chambres extraordinaires au sein des tribunaux cambodgiens

**ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ**

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

Phnom Penh, 28 June 2019

**OFFICE OF THE CO-INVESTIGATING JUDGES
BUREAU DES CO-JUGES D'INSTRUCTION**

**CO-INVESTIGATING JUDGES ISSUE TWO
SEPARATE CLOSING ORDERS IN THE CASE AGAINST YIM TITH**

Case No. 004/07-09-2009-ECCC/OCIJ

Today, the Co-Investigating Judges issued two separate closing orders in the case against Yim Tith, due to a disagreement about whether Yim Tith is subject to the ECCC's personal jurisdiction as a senior leader or one of the persons most responsible for crimes committed during the period of Democratic Kampuchea.

The National Co-Investigating Judge is of the view that Yim Tith does not fall under the ECCC's personal jurisdiction under either category and dismisses the case against Yim Tith for that reason. In reaching that decision, he considered the degree of participation by Yim Tith and the gravity of the crimes, and other factors such as the substance of the ECCC Law and Agreement as well as the intentions of their drafters.

The International Co-Investigating Judge is of the view that Yim Tith is subject to the ECCC's personal jurisdiction as one of the most responsible persons, and that there is sufficient evidence to indict him for the genocide of the Khmer Krom, crimes against humanity, war crimes as well as domestic offences under Cambodian law. Some charges could not be substantiated during the investigation and were accordingly dismissed.

Both Judges filed their closing order in their own working language with a translation to follow as soon as possible. However, they each provide a summary of their reasons in both languages, to ensure the public is adequately informed of the outcome until the full translations are filed. The summaries are attached to this press release, and both Judges refer to them for more details.

Both Judges also made separate decisions on civil party admissions.

The full text of the public redacted versions of the two Closing Orders can be found here:

https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/D381_KH_Redacted.PDF
https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/D382_EN_redacted.PDF

The Co-Investigating Judges jointly signed an order terminating the remainder of the investigation in Case 004. This marks the end of all investigations which the Co-Investigating Judges had still been seized of.

Phnom Penh, 28 June 2019

SUMMARY BY THE NATIONAL CO-INVESTIGATING JUDGE

National Co-Investigating Judge (NCIJ), since the Case 001, recognized the committed crimes throughout the country in the context of the policy implementation of Democratic Kampuchea (DK) with severe and unlimited harm. There might be many suspects who participated. Therefore, the Extraordinary Chambers in the Courts of Cambodia (ECCC) choose selective jurisdiction whereby only two types of individuals- senior leaders and those who are most responsible- fall within the ECCC's personal jurisdiction. In deciding who are within the jurisdiction, the NCIJ considered positions and participation level of suspects. The NCIJ focused much on the participation and made comparison of participation, as well, of suspects under consideration with ones of other suspects.

There are alleged 50 crime scenes. Most of them were created or put into operation since 1975 or 1976 till the end of the DK regime in 1978 before Southwest Zone cadres arrived in Northwest Zone (NZ). Few of them started operation after the arrival of the Southwest Zone cadres in NZ (Trayoung security centre). There was one crime scene under the control of the Central Committee (Wat Kandal security centre). Some scenes were established before YIM Tith held position as Kirivong District Secretary and some in Sector 1 were closed in mid-1978 while YIM Tith was appointed as Sector 1 Secretary replacing HENG Teav alias Ta Pet.

Of 50 crime scenes, 24 crime scenes were placed under judicial investigation by the International Co-Investigating Judge. 4 and 7 of 24 were respectively in Kirivong District and Sector 1. Remaining 26 were reduced from investigation since they were not much related to YIM Tith (2 under Kirivong District and 6 under Sector 1). Remaining 39 were allegedly indirectly involved by YIM Tith because of his being Sector 13 Secretary (Southwest Zone) or Member of Northwest Zone committee. There are numbers of facts shown to be involved by YIM Tith, such as Wat Pratheat security centre, Kanghort dam construction site, Kampongkol sugar factory worksite and forced marriage in Samlaut District.

International Co-Prosecutor asserted that YIM Tith was Sector 13 Secretary and Kirivong district secretary thereof. He was Sector 1 Secretary of Northwest Zone and member of this zone committee. Ta Mok and ROS Nhem were respectively secretary of Southwest Zone and Northwest Zone and replaced the latter in mid-1978 while at the same time he remained the secretary of Southwest Zone.

Evidence confirmed positions of YIM Tith through hearsay of witnesses and without any official documents of DK to verify. Moreover, it was unclear when he took those positions. Evidence likely to suggest that YIM Tith held those positions in mid- 1978 in Northwest Zone or during short period of times in Southwest Zone before moving to Northwest Zone in mid-1977 for suppression of Northwest Zone cadres pursuant to policy purge of DK. The investigation of NCIJ did not show that YIM Tith was a member of the Central Committee or people representative. He did not hold any positions in military field.

NCIJ examined remaining original documents of DK, such records of meetings of Standing Committee, corresponding telegrams between lower (Sectors or Zones) and high ranking cadres (Standing Committee), did not reveal any mentions of YIM Tith and his positions. Comparison with other charged persons- AO AN (Sector 41 Secretary) and MEAS Muth (Secretary of Central Division 164) whose cases were dismissed- there were mentions of AO An in one telegram of KE Pork to the Central Committee and ones of MEAS Muth.

YIM Tith was ranked level 4 amongst at least 100 cadres down from the top to sectorial levels. He was not one of 13 high ranked cadres, including Ta Mok, who had power to smash enemies based on the decision dated 30 March 1976. Both in Southwest and Northwest Zone, YIM Tith was under supervisions of influential zone secretary Ta Mok and ROUS Nhem respectively and the latter was replaced by Ta Mok after his arrest six months before the fall of DK regime.

YIM Tith ranked equal to AO An, but higher than one of Duch. Logically, high ranking official does not mean having much power. YIM Tith did not have clear numbers of subordinates, different from Duch- chief of S21 prison having clear structural management, caused him to actively participate in crime commission. As result, there were more than 12000 victims died or killed by his direct involvement through leading, managing and controlling effectively of the prison during the whole period of DK.

Overall, the participation of YIM Tith, especially in 4 mentioned crime bases above, was just not much active, without initiative plan, and was similar to ones of normal sector or district cadre level to enforce policy that shall be followed. Otherwise, he would be subjected to killing.

Above mentioned participation does not fall in criterion for “most responsible person”, which mainly focuses on active, actual and direct participation. NCIJ did not find evidence that YIM Tith is senior leader or most responsible person. Therefore, the ECCC does not have jurisdiction upon him.

SUMMARY BY THE INTERNATIONAL CO-INVESTIGATING JUDGE

The International Co-Investigating Judge found that the ECCC have personal jurisdiction over Yim Tith as one of the persons most responsible for the crimes committed during the regime of DK. He was a Khmer Rouge official during the time of the Court’s temporal jurisdiction and during the period when the alleged offences attributed to him occurred.

As far as his official rank is concerned, he rose very quickly from the position of a deputy district secretary in the Southwest Zone to that of a deputy zone secretary and, towards the end of DK, possibly even full zone secretary in the Northwest Zone. He was moreover sector secretary for a number of sectors in the Northwest Zone. His authority under CPK law thus stretched very far, both geographically and hierarchically.

His official position – and his meteoric rise – were supported by his close family ties to a cadre at the apex of the CPK hierarchy, Ta Mok, whose brother-in-law he was. Even before his formal installation in the Northwest Zone, he could be seen travelling all over that Zone with Ta Mok, attending meetings etc. He was the *de facto* second-in-command of Ta Mok, and, as the evidence has shown, he also retained *de facto* authority over his previous area of activity in the Southwest Zone, even after moving to the Northwest Zone.

The gravity of his conduct also supports the finding that he was one of those most responsible for the crimes committed during DK. Even after reducing the crime sites resulting from the original list based on the Introductory Submission by nearly half under Internal Rule 66 *bis*, he still is being held responsible for crimes at over 20 sites in both the Southwest and Northwest Zones, i.e. in the Southwest Zone in Sector 13 (Wat Pratheat Security Centre, Kraing Ta Chan Security Centre, Preil Village Killing Site, Wat Angun Killing Site, Slaeng Village Forest Killing Site, Prey Sokhon and Wat Ang Serei Muny Killing Site) and in the Northwest Zone in Sector 1 (Koas Krala Security Centre, Thipakdei Cooperative (including Wat Thipakdei Security Centre and Tuol Mtes Security Centre and Worksite), Kang Hort Dam Worksite, Khnang Kou Security Centre, Kampong Kol Sugar Factory Worksite, Banan Security Centre, Samlaut District); in Sector 2 (Phum Veal Security Centre, Svay Chrum Security Centre, Tuol Seh Nhauv Killing Site, Prey Krabau Killing Site); in Sector 3 (Wat Kirirum Security Centre); in Sector 4 (Wat Samdech Security Centre, Kampong Prieng Commune (Wat Po Laingka/Kach Roteh Security Centre, Kach Roteh, Thmei and Sala Trav Villages), Reang Kesai Commune) and in Sector 7 (Prison No. 8, Veal Bak Chunching Killing Site).

The crimes Yim Tith is responsible for range from genocide and extermination to a wide array of other crimes against humanity, war crimes and homicide under domestic law.

Prominent in this respect is his participation in, and orchestration of, the genocide of the Khmer Krom in his areas of responsibility. As with the charged persons in Cases 004/2 and 003, this fact alone places him solidly within the bracket of personal jurisdiction. The extent of the genocidal targeting of the Khmer Krom based on their ethnicity is highlighted by the fact that in some cases, they were transferred from Kampuchea Krom in Vietnam to DK and then killed there. The evidence in this case on the numbers of Khmer Krom killed has suffered from the typical effect of deterioration of witness evidence in particular, but even bearing that in mind, a picture still emerges of a ruthless campaign of ethnic cleansing that was cut short merely by the arrival of the Vietnamese and the end of DK, and the death toll, which even at a conservative estimate based on the evidence unearthed in the investigation ran well into the thousands, would have kept rising otherwise.

Apart from the genocidal targeting of the Khmer Krom, other civilians and former CPK cadres were victimised under and by Yim Tith in their tens of thousands, based on the CPK’s misguided and delusional political vision, through serial and well-organised mass killings, as well as cruel and inhuman treatment through imprisonment and hard labour in unspeakable conditions, in security centres and at

worksites. The level of disdain for human dignity shown in these facilities and the degree of inhumanity of those operating them is comparable to the horror of the concentration camps in Nazi Germany.

The same level of contempt for individual life choices and especially sexual self-determination was implemented through the policy on forced marriages. Men and women were subjected by Yim Tith, and those he collaborated with, to the CPK’s abhorrent social experiment of reducing the institution of marriage to a mere instrument in the propagation of the species and to increasing the Khmer population, devoid of any human emotion but fear, revulsion, anger and lingering resentment. The implementation of this policy marred the lives of many Khmer for decades. While both men and women suffered, the main impact was nonetheless felt by the female victims, who were often treated as mere rewards and recompense for soldiers who had been disabled in combat and were thus facing difficulties finding a partner through normal courtship. These women were in essence not treated any different from chattels, based on an archaic attitude that even under the ostensibly communist and egalitarian ideology of the CPK implicitly still claimed that men – or society – have some sort of innate right to, or control over, women’s bodies and sexuality. This proprietary attitude in many cases found its expression in the monitoring of the ‘consummation of the marriage’, in this context nothing but a euphemism for rape.

Yim Tith played a major role in all of the atrocities described above and wholeheartedly subscribed to the ideology at the core, and the implementation, of the CPK’s inhuman societal model. His role and actions easily compare with those of Ao An or Meas Muth, for example, and certainly with those of Kaing Guek Eav alias “Duch”; they even exceed some of those significantly. There can thus be no doubt that Yim Tith is subject to the Court’s jurisdiction. He should stand trial for his crimes.