



ព្រះរាជាណាចក្រកម្ពុជា

ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia  
Nation Religion King

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

Royaume du Cambodge  
Nation Religion Roi

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**NOTICE OF INTENTION TO ADD MODES OF LIABILITY BY  
WAY OF JUDICIAL ORDER AND OF PROVISIONAL  
DISCONTINUANCE**

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## PART I – NOTICE OF INTENTION TO ADD MODES OF LIABILITY BY WAY OF JUDICIAL ORDER

### I. PROCEDURAL HISTORY

1. On 9 December 2015, Yim Tith attended an initial appearance pursuant to Internal Rule 57 at the Extraordinary Chambers in the Courts of Cambodia and was charged with crimes in relation to 37 crime sites.<sup>1</sup>

### II. DISCUSSION

2. After evaluation of the existing evidence and for the sake of consistency, I have decided to add additional modes of liability in relation to the crimes charged on 9 December 2015. I intend to do so by way of written order amending the charges, rather than a further appearance of Yim Tith.
3. The additional modes of liability are listed below:

#### *Crime Site 2<sup>2</sup> – Kraing Ta Chan security centre*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crime of genocide;
- Planning, ordering, instigating, and superior responsibility in relation to the charged crimes against humanity;
- Planning, ordering, instigating, and superior responsibility in relation to the charged Grave Breaches of the 1949 Geneva Conventions; and
- Planning and ordering in relation to the violation of Articles 501 and 506 of the 1956 Penal Code.

#### *Crime Site 3 – Preil Village execution site*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crime of genocide;
- Superior responsibility in relation to the charged crimes against humanity; and
- Superior responsibility in relation to the charged Grave Breaches of the 1949 Geneva Conventions.

#### *Crime Site 4 – Wat Angkun execution site*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crime of genocide;
- Superior responsibility in relation to the charged crimes against humanity; and
- Superior responsibility in relation to the charged Grave Breaches of the 1949 Geneva Conventions.

<sup>1</sup> Case File No. 004-D281, *Written Record of Initial Appearance*, 9 December 2015 (“Initial Appearance”)

<sup>2</sup> The numbering of crime sites used in this document refers to the numbers used in the Initial Appearance.



*Crime Site 5 – Slaeng Village forest execution site*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crime of genocide;
- Superior responsibility in relation to the charged crimes against humanity; and
- Superior responsibility in relation to the charged Grave Breaches of the 1949 Geneva Conventions.

*Crime Site 6 – Prey Sokhon execution site and Wat Ang Serei Muny*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crime of genocide;
- Planning, ordering, instigating, and superior responsibility in relation to the charged crimes against humanity; and
- Planning and ordering in relation to the violation of Articles 501 and 506 of the 1956 Penal Code.

*Crime Site 8 – Anlong Vil Breng and related execution site*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crimes against humanity; and
- Planning and ordering in relation to the violation of Articles 501 and 506 of the 1956 Penal Code.

*Crime Site 13 – Kampong Kol sugar factory*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crime of genocide;
- Planning, ordering, instigating, and superior responsibility in relation to the charged crimes against humanity; and
- Planning and ordering in relation to the violation of Article 501 of the 1956 Penal Code.

*Crime Site 15 – Banteay O Ta Krey execution site*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crimes against humanity; and
- Planning and ordering in relation to the violation of Article 501 of the 1956 Penal Code.

*Crime Site 17 - Phum Veal security centre*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crime of genocide;
- Planning, ordering, instigating, and superior responsibility in relation to the charged crimes against humanity; and
- Planning and ordering in relation to the violation of Articles 501 and 506 of the 1956 Penal Code.



*Crime Site 18 – Svay Chrum security centre*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crime of genocide;
- Planning, ordering, instigating, and superior responsibility in relation to the charged crimes against humanity; and
- Planning and ordering in relation to the violation of Articles 501 and 506 of the 1956 Penal Code.

*Crime Site 19 – Tuol Seh Nhauv execution site*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crime of genocide;
- Planning, ordering, instigating, and superior responsibility in relation to the charged crimes against humanity; and
- Planning and ordering in relation to the violation of Articles 501 and 506 of the 1956 Penal Code.

*Crime Site 20 – Prey Krabau execution site*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crime of genocide;
- Planning, ordering, instigating, and superior responsibility in relation to the charged crimes against humanity; and
- Planning and ordering in relation to the violation of Articles 501 and 506 of the 1956 Penal Code.

*Crime Site 21– Chanreangsei pagoda execution site*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crimes against humanity; and
- Planning and ordering in relation to the violation of Articles 501 and 506 of the 1956 Penal Code.

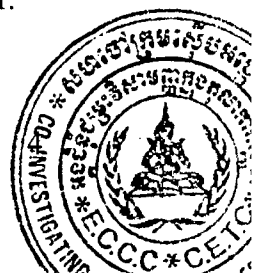
*Crime Site 36 – Prison No. 8*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crimes against humanity; and
- Planning and ordering in relation to the violation of Articles 501 and 506 of the 1956 Penal Code.

*Crime Site 37 – Veal Bak Chunching execution site*

- Planning, ordering, instigating, and superior responsibility in relation to the charged crimes against humanity; and
- Planning and ordering in relation to the violation of Articles 501 and 506 of the 1956 Penal Code.

4. In addition, upon review of the written record of the initial appearance, I noticed an oversight in relation to Crime Site 28 - Raeng Kesei commune. I intend to add the modes of liability of planning and ordering relative to the violation of Articles 501 and 506 of the 1956 Penal Code by way of a corrigendum in the same order.



5. As addressed in detail in Part II, I also intend to discontinue the investigation into the facts relating to Crime Sites 8, 14, 15, 23, 24, and 25. Nonetheless, applying the same evidentiary and legal considerations as regards the remaining facts, the order will include amendments to the modes of liability in respect to these six crime sites. While intended to be discontinued, the investigation into any of these crime sites may in theory be resumed if compelling circumstances present themselves. In that case, it is material that the modes of liability are correctly stated in the charges.

## PART II – NOTICE OF PROVISIONAL DISCONTINUANCE

### I. PROCEDURAL HISTORY

6. On 25 August 2016, I issued the Notice of Provisional Discontinuance Regarding Individual Allegations<sup>3</sup> (“August 2016 Notice”) in which I identified three categories of alleged facts, Categories A, B and C. Category A referred to facts, which would *prima facie* appear to be subject to Internal Rule 66 *bis*, while Category B covered Facts which would *prima facie* appear to be subject to Dismissal pursuant to Internal Rule 67. I informed the parties that the investigation into a number of facts which fall into Categories A or B (labelled as Facts 1 to 10, and 12 to 14) will be discontinued. Where discontinued, the investigation may be resumed if compelling circumstances present themselves (provisional discontinuance).

### II. DISCUSSION

7. After evaluation of the existing evidence and possible investigative leads in relation to the remaining facts relevant to the charges, I have identified additional facts that fall under said Category A. I do not intend to take the investigations further regarding these facts, which relate to the following crimes sites:
- Crime Site 8 – Anlong Vil Breng and related execution site
  - Crime Site 14 – Phnom Tra Chet Chet worksite
  - Crime Site 15 – Banteay O Ta Krey execution site
  - Crime Site 23 – Wat Kandal security centre
  - Crime Site 24 – Wat Banteay Neang security centre
  - Crime Site 25 – Wat Thoamayutt security centre
8. I indicate the reasons for my current intentions below.

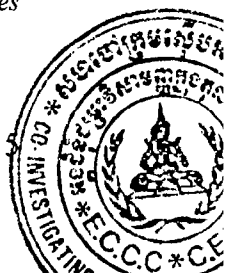
#### *Crime Site 8 - Anlong Vil Breng and related execution site*

9. The International Co-Prosecutor (“ICP”) alleges that Yim Tith is responsible<sup>4</sup> for mass executions of detainees, workers and other residents of Koas Krala district at Anlong Vil Breng in late 1978.<sup>5</sup> On 9 December 2015, Yim Tith was charged with the crimes against humanity of murder, extermination and enslavement through

<sup>3</sup> Case File No. 004-D302/3, *Notice of Provisional Discontinuance Regarding Individual Allegations*, 25 August 2016 (“August 2016 Notice”).

<sup>4</sup> Case File No. 004-D65, *Co-Prosecutors’ Supplementary Submission regarding Sector 1 Crime Sites and Persecution of Khmer Krom*, 18 July 2011 (“1SS”), paras 21 and 23.

<sup>5</sup> 1SS, para.7.



commission via joint criminal enterprise (“JCE”)<sup>6</sup> and domestic murder through commission via co-perpetration<sup>7</sup> at Anlong Vil Breng and its related execution site in Russei Preah village, Chhnal Moan commune, Koas Krala district, Sector 1, Northwest Zone.

10. This crime site is partially investigated. At present stage, only one witness provided relevant evidence of one incident of killings of 10-20 persons by Southwest Zone cadres. The evidence on enslavement was provided by two witnesses. Currently, there are only a few possible investigative leads left with no indication on whether exploring those fully will lead to the discovery of relevant evidence.
11. Yim Tith was charged, *inter alia*, with the crimes against humanity of murder, extermination and/or enslavement through planning, ordering, instigating, superior responsibility and commission via JCE<sup>8</sup> and domestic murder through commission via co-perpetration<sup>9</sup> at Koas Krala security centre, Thipakdei cooperative, and Kang Hort Dam worksite all located in Koas Krala district, Sector 1. Yim Tith was charged with having committed the crimes in furtherance of a common plan which may have extended from early or mid-1977 to at least 6 January 1979.<sup>10</sup> It should be noted that overall the charges relating to these crime sites are broader than those relating to Anlong Vil Breng and its related execution site, as they include the crimes against humanity of imprisonment persecution and/or torture.
12. The investigation into the crime sites listed in paragraph 11 is very advanced and has led to evidence on alleged victim numbers and the timeframe of alleged crimes.
13. I am of the view that even after the exclusion of the facts concerning Anlong Vil Breng and its related execution site at the time of the conclusion of the investigation, the remaining facts relating to Koas Krala security centre, Thipakdei cooperative, and Kang Hort Dam worksite will be representative of the scope of the OCP’s Introductory and Supplementary Submissions (“Submissions”) geographically, temporally and substantively, that is in terms of the nature and scale of crimes and the categories of victims.

*Crime Site 14 – Phnom Tra Chek Chet worksite*

14. The ICP alleges that Yim Tith is responsible<sup>11</sup> for mass executions of detainees, workers and other residents of Koas Krala district at Phnom Tra Chek Chet in late 1978.<sup>12</sup> On 9 December 2015, Yim Tith was charged with the crime against humanity of enslavement through planning, ordering, instigating, superior responsibility, and commission via JCE<sup>13</sup> and domestic murder through commission via co-perpetration<sup>14</sup> at Phnom Tra Chek Chet worksite, Rong village, Prey Tralach commune, Moung Russei district, Sector 1, Northwest Zone.

<sup>6</sup> Initial Appearance, p. 8.

<sup>7</sup> Initial Appearance, p. 14.

<sup>8</sup> Initial Appearance, p. 8.

<sup>9</sup> Initial Appearance, p. 14.

<sup>10</sup> Initial Appearance, pp 15-16.

<sup>11</sup> ISS, paras 21 and 23.

<sup>12</sup> ISS, para.7.

<sup>13</sup> Initial Appearance, p. 9.

<sup>14</sup> Initial Appearance, p. 14.



15. In my August 2016 Notice, I notified the Parties of my intention not to further investigate allegations relating to mass executions at this crime site.<sup>15</sup>
16. With respect to the crime against humanity of enslavement, at this stage, two witnesses provided relevant evidence. A third witness appears referring to acts committed after 6 January 1979. I believe there is insufficient evidence to support the ICP's allegations of specific crimes committed at this site since the evidence does not allow determining the number of victims or the time frame of any alleged crimes. I currently do not have any immediate further investigative leads. To continue investigating these aspects of the allegations is in theory possible, but would at this time represent an inefficient use of time and resources.
17. Yim Tith was charged, *inter alia*, with the crimes against humanity of murder, extermination and/or enslavement through planning, ordering, instigating, superior responsibility and commission via JCE<sup>16</sup> and domestic murder through commission via co-perpetration<sup>17</sup> at Koas Krala security centre, Thipakdei cooperative, and Kang Hort Dam worksite in Koas Krala district, Sector 1, and Khnang Kou security centre in Sangkae district, Sector 1. Yim Tith was charged with having committed the crimes in furtherance of a common plan which may have extended from early or mid-1977 to at least 6 January 1979.<sup>18</sup> It should be noted that overall the charges relating to these crime sites are broader than those relating to Phnom Tra Cheak Chet worksite, as they include the crimes against humanity of murder, extermination, imprisonment and persecution.
18. The investigation into the crime sites listed in paragraph 17 is very advanced and has led to evidence on alleged victim numbers and the timeframe of alleged crimes.
19. I am of the view that, even after the exclusion of the facts concerning Phnom Tra Cheak Chet worksite at the time of the conclusion of the investigation, the remaining facts relating to Koas Krala security centre, Thipakdei cooperative, Kang Hort Dam worksite and Khnang Kou security centre will be representative of the scope of the Submissions geographically, temporally and substantively, that is in terms of the nature and scale of crimes and the categories of victims.

*Crime Site 15 – Banteay O Ta Krey execution site*

20. The ICP alleges that Yim Tith is responsible<sup>19</sup> for the execution of 1,500 persons transported “from the East” between 1977 and early 1979 to be executed at Banteay O Ta Krey.<sup>20</sup> On 9 December 2015, Yim Tith was charged with the crimes against humanity of murder and extermination through commission via JCE<sup>21</sup> and domestic murder through commission via co-perpetration<sup>22</sup> at Banteay O Ta Krey execution site, Phcheav village, Treng commune, Battambang district, Sector 1, Northwest Zone.

<sup>15</sup> August 2016 Notice, paras 1, 27, 30 and 34.

<sup>16</sup> Initial Appearance, p. 8.

<sup>17</sup> Initial Appearance, p. 14.

<sup>18</sup> Initial Appearance, pp 15-16.

<sup>19</sup> Case File No. 004-D1, *Co-Prosecutors' Third Introductory Submission*, 20 November 2008 (“3IS”), para. 96.

<sup>20</sup> 3IS, para. 61.

<sup>21</sup> Initial Appearance, p. 9.

<sup>22</sup> Initial Appearance, p. 14.



21. This crime site is partially investigated. At present stage, only one witness provided relevant evidence on alleged crimes committed at this site. There remains ambiguity in the evidence as to the time frame and the number of victims of any crimes alleged. Currently, I have two remaining possible investigative leads. There is no indication on whether exploring those fully will lead to the discovery of relevant evidence.
22. Yim Tith was charged, *inter alia*, with the crimes against humanity of murder and extermination through planning, ordering, instigating, superior responsibility, and/or commission via JCE<sup>23</sup> and domestic murder through commission via co-perpetration<sup>24</sup> at Koas Krala, Banan, Khnang Kou security centres, and Tuol Mtes and Thipakdei security centres within Thipakdei cooperative, as well as the work sites at Kang Hort Dam and within Thipakdei cooperative in Sector 1. Yim Tith was charged with having committed the crimes in furtherance of a common plan which may have extended from early or mid-1977 to at least 6 January 1979.<sup>25</sup> It should be noted that overall the charges relating to these crime sites are broader than those relating to Banteay O Ta Krey execution site, as they include the crimes against humanity of imprisonment and persecution.
23. Furthermore, Yim Tith was charged with crimes committed against the “East Zone Evacuees” in relation to Chanreangsei pagoda execution site in Sector 2, Northwest Zone,<sup>26</sup> and Prison No. 8<sup>27</sup> and Veal Bak Chunching execution site<sup>28</sup> in Sector 7, Northwest Zone<sup>29</sup> through commission via JCE, in furtherance of a common plan which may have extended from early or mid-1977 to at least 6 January 1979,<sup>30</sup> and domestic murder through commission via co-perpetration.
24. The investigation into the crime sites listed in paragraphs 22 and 23 is very advanced and has led to evidence on alleged victim numbers and the timeframe of alleged crimes.
25. I am of the view that, even after the exclusion of the facts concerning Banteay O Ta Krey execution site at the time of the conclusion of the investigation, the remaining facts relating to Prison No. 8, Koas Krala, Banan, Khnang Kou security centres, and Tuol Mtes and Thipakdei security centres within Thipakdei cooperative, and the work sites at Kang Hort Dam and within Thipakdei cooperative, as well as Chanreangsei pagoda and Veal Bak Chunching execution sites will be representative of the scope of the Submissions geographically, temporally and substantively, that is in terms of the nature and scale of crimes and the categories of victims.

*Crime Site 23 – Wat Kandal security centre*

26. The ICP alleges that Yim Tith is responsible<sup>31</sup> for imprisoning, mistreating, interrogating, torturing, and killing prisoners at Wat Kandal security centre in

<sup>23</sup> Initial Appearance, pp 8-9.

<sup>24</sup> Initial Appearance, p. 14.

<sup>25</sup> Initial Appearance, pp 15-16.

<sup>26</sup> Initial Appearance, pp 10 and 14.

<sup>27</sup> Initial Appearance, pp 12 and 15.

<sup>28</sup> Initial Appearance, pp 12 and 15.

<sup>29</sup> Initial Appearance, p. 13.

<sup>30</sup> Initial Appearance, pp 15-16.

<sup>31</sup> 3IS, para. 96.





1977 and 1978.<sup>32</sup> On 9 December 2015, Yim Tith was charged with the crimes against humanity of murder; extermination; imprisonment; torture; persecution on political grounds against Northwest Zone cadres, their families and subordinates through the underlying offences of imprisonment, torture and other inhumane acts (confinement in inhumane conditions); other inhumane acts (confinement in inhumane conditions) through commission via JCE<sup>33</sup> and domestic murder through commission via co-perpetration<sup>34</sup> at Wat Kandal security centre, Battambang city, Sector 3, Northwest Zone.

27. The investigation into this crime site is advanced. At present stage, one witness (now deceased) provided relevant evidence on alleged crimes committed at this site. His evidence is partially corroborated by a second witness, who would need to be re-interviewed to obtain additional information on the time frame and numbers of victims of the alleged crimes. There is currently indication of alleged crimes in late 1976 to early 1977, but the evidence does not allow determining the time frame or the number of victims of any alleged crimes. Presently, in addition to the re-interview, there are two investigative leads remaining, of which one potential witness cannot be located.
28. Yim Tith was charged with the crimes against humanity of murder; extermination; enslavement; imprisonment; persecution on political grounds against Northwest Zone cadres, their families and subordinates through murder, enslavement, imprisonment and other inhumane acts (confinement/working in inhumane conditions); other inhumane acts (confinement/working in inhumane conditions) through planning, ordering, instigating, superior responsibility and commission via JCE<sup>35</sup> and domestic murder through commission via co-perpetration<sup>36</sup> at Wat Kirirum security centre in Sector 3. It should be noted that the modes of liability charged in relation to this crime site are broader than regarding Wat Kandal security centre.
29. Furthermore, Yim Tith was charged, *inter alia*, with the crime against humanity of torture through planning, ordering, instigating, superior responsibility and/or commission via JCE at Thipakdei cooperative<sup>37</sup> and at Banan security centre,<sup>38</sup> Sector 1, Northwest Zone.
30. Yim Tith was charged with having committed these crimes in furtherance of a common plan which may have extended from early or mid-1977 to at least 6 January 1979.<sup>39</sup>
31. The investigation into the crime sites listed in paragraphs 28 and 29 is very advanced and has led to evidence on alleged victim numbers and the timeframe of alleged crimes.
32. I am of the view that, even after the exclusion of the facts concerning Wat Kandal security centre at the time of the conclusion of the investigation, the remaining facts relating to Wat Kirirum and Banan security centres and Thipakdei

<sup>32</sup> 3IS, paras 65 and 66.

<sup>33</sup> Initial Appearance, p. 10.

<sup>34</sup> Initial Appearance, p. 14.

<sup>35</sup> Initial Appearance, p. 10.

<sup>36</sup> Initial Appearance, p. 14.

<sup>37</sup> Initial Appearance, p. 8.

<sup>38</sup> Initial Appearance, p. 9.

<sup>39</sup> Initial Appearance, pp 15-16.



cooperative will be representative of the scope of the Submissions geographically, temporally and substantively, that is in terms of the nature and scale of crimes and the categories of victims.

*Crime Site 24 – Wat Banteay Neang security centre*

33. The ICP alleges that Yim Tith is responsible<sup>40</sup> for detaining and mistreating prisoners and killing of 3,500 to 5,000 victims at Wat Banteay Neang security centre.<sup>41</sup> He does not provide an explicit timeframe for these allegations. On 9 December 2015, Yim Tith was charged with the crimes against humanity of murder; extermination; enslavement; imprisonment; torture; persecution on political grounds against Northwest Zone cadres, their families and subordinates through the underlying offences of murder, extermination, enslavement, imprisonment, torture, other inhumane acts (confinement/working in inhumane conditions); other inhumane acts (confinement/working in inhumane conditions) through commission via JCE<sup>42</sup> and domestic murder through commission via co-perpetration<sup>43</sup> at Wat Banteay Neang security centre, Phnum village, Banteay Neang commune, Mongkul Borei district, Sector 3, Northwest Zone.
34. The investigation into this crime site is advanced. At present stage, three witnesses have provided relevant information and the alleged victim numbers of crimes allegedly committed are low. Among the remaining three potential witnesses, one resides abroad at unknown addresses and two are uncooperative. There is no clear indication that further investigative efforts, which are likely to be resource-intensive, will yield additional relevant evidence.
35. Yim Tith was charged with the crimes against humanity of murder; extermination; enslavement; imprisonment; persecution on political grounds against Northwest Zone cadres, their families and subordinates through murder, enslavement, imprisonment and other inhumane acts (confinement/working in inhumane conditions); other inhumane acts (confinement/working in inhumane conditions) through planning, ordering, instigating, superior responsibility and commission via JCE<sup>44</sup> and domestic murder through commission via co-perpetration<sup>45</sup> at Wat Kirirum security centre in Sector 3. Yim Tith was charged with having committed these crimes in furtherance of a common plan which may have extended from early or mid-1977 to at least 6 January 1979.<sup>46</sup> It should be noted that the modes of liability charged in relation to this crime site are broader than regarding Wat Banteay Neang security centre.
36. Furthermore, Yim Tith was charged, *inter alia*, with the crimes against humanity of murder; extermination; torture and persecution on political grounds against Northwest Zone cadres, their families and subordinates through the underlying offences of, *inter alia*, murder, extermination, and torture, through planning, ordering, instigating, superior responsibility and commission *via* JCE at Thipakdei cooperative and Khnang Kou security centre, Sector 1, and Kampong Prieng

<sup>40</sup> 3IS, para. 96.

<sup>41</sup> 3IS, para. 69.

<sup>42</sup> Initial Appearance, p. 11.

<sup>43</sup> Initial Appearance, p. 14.

<sup>44</sup> Initial Appearance, p. 10.

<sup>45</sup> Initial Appearance, p. 14.

<sup>46</sup> Initial Appearance, pp 15-16.



commune, Sector 4, both Northwest Zone.<sup>47</sup> In addition, Yim Tith was charged with having committed these crimes in furtherance of a common plan which may have extended from early or mid-1977 to at least 6 January 1979.<sup>48</sup> The modes of liability charged in relation to this crime site are broader than regarding Wat Banteay Neang security centre.

37. The investigation into the crime sites listed in paragraph 35 and 36 is very advanced and has led to evidence on alleged victim numbers and the timeframe of alleged crimes.
38. I am of the view that, even after the exclusion of the facts concerning Wat Banteay Neang security centre at the time of the conclusion of the investigation, the remaining facts relating to Wat Kirirum and Khnang Kou security centres, Thipakdei cooperative and Kampong Prieng commune will be representative of the scope of the Submissions geographically, temporally and substantively, that is in terms of the nature and scale of crimes and the categories of victims.

*Crime Site 25 – Wat Thoamayutt security centre*

39. The ICP alleges that Yim Tith is responsible<sup>49</sup> for detaining, mistreating and interrogating prisoners and killing 1,000 persons, including Northwest Zone leaders, at Wat Thoamayutt security centre from August 1977 to December 1978.<sup>50</sup> On 9 December 2015, Yim Tith was charged with the crimes against humanity of murder; extermination; enslavement; imprisonment; torture; persecution on political grounds of “East Zone Evacuees” through the underlying offences of murder, extermination, enslavement, imprisonment, torture and other inhumane acts (confinement/working in inhumane conditions); other inhumane acts (confinement/working in inhumane conditions) through planning, ordering, instigating, superior responsibility and commission via JCE<sup>51</sup> and domestic murder through commission via co-perpetration<sup>52</sup> at Wat Thoamayutt security centre, Ream Kun village, Kea commune, Moug Ruessei district, Sector 4, Northwest Zone.
40. The investigation into this crime site is advanced. At this stage, there is a need to corroborate the evidence on murder and for evidence on alleged victim numbers before mid-1978. The evidence gathered so far suggests a low number of victims of crimes allegedly committed after mid-1978. There remain a few investigative leads. There is no indication on whether exploring those fully will lead to the discovery of relevant evidence.
41. Yim Tith was charged, *inter alia*, with the crimes against humanity of murder; extermination; enslavement; imprisonment; torture; and other inhumane acts (confinement/working in inhumane conditions) through planning, ordering, instigating, superior responsibility and commission via JCE<sup>53</sup> and domestic murder through commission via co-perpetration<sup>54</sup> in Kampong Prieng commune

<sup>47</sup> Initial Appearance, p 8 and 11.

<sup>48</sup> Initial Appearance, pp 15-16.

<sup>49</sup> 3IS, para. 96.

<sup>50</sup> 3IS, para. 63-64.

<sup>51</sup> Initial Appearance, p. 11.

<sup>52</sup> Initial Appearance, p. 14.

<sup>53</sup> Initial Appearance, p. 11.

<sup>54</sup> Initial Appearance, p. 14.



in Sector 4. He was also charged with the crimes against humanity of murder; extermination; persecution on political grounds against Northwest Zone cadres, their families and subordinates through the underlying offences of murder and extermination through planning, ordering, instigating, superior responsibility and commission via JCE<sup>55</sup> and domestic murder through commission via co-perpetration<sup>56</sup> at Wat Samdech security centre in Sector 4. Yim Tith was charged with having committed these crimes in furtherance of a common plan which may have extended from early or mid-1977 to at least 6 January 1979.<sup>57</sup>

42. The investigation into the crime sites listed in paragraphs 41 is very advanced and has led to evidence on alleged victim numbers and the timeframe of alleged crimes.
43. The ICP does not allege that “East Zone Evacuees” were among the victims in Wat Thoamayutt security centre. Thus, the lack of charges of crimes committed against “East Zone Evacuees” in relation to Wat Samdech security centre and Kampong Prieng commune does not impact on the representativeness of the remaining facts after exclusion of those relating to Wat Thoamayutt security centre.
44. I am of the view that, even after the exclusion of the facts concerning Wat Thoamayutt security centre at the time of the conclusion of the investigation, the remaining facts relating to Kampong Prieng commune and Wat Samdech security centre will be representative of the scope of the Submissions geographically, temporally and substantively, that is in terms of the nature and scale of crimes and the categories of victims.

### PART III – CONCLUSION

45. In light of the above, I have decided to add the modes of liability listed in Part I of the present notification to those already listed in the Written Record of Initial Appearance,<sup>58</sup> by way of judicial order and to exclude from the investigation the facts relating to the remaining allegations regarding Crime Sites 8, 14, 15, 23, 24 and 25. I seek the views of the parties on these matters.

### FOR THE FOREGOING REASONS, I:

46. **INFORM** the parties that I have decided to add the modes of liability listed in Part I to those already listed in the Written Record of Initial Appearance, and that I intend to notify Yim Tith by way of judicial order rather than through a further appearance;

<sup>55</sup> Initial Appearance, p. 11.

<sup>56</sup> Initial Appearance, p. 15.

<sup>57</sup> Initial Appearance, pp 15-16.

<sup>58</sup> Initial Appearance.



- 47. **INFORM** the parties that I do not intend to investigate further the facts relating to the remaining allegations regarding Crime Sites 8, 14, 15, 23, 24 and 25 and propose to use Internal Rule 66 *bis* at the appropriate juncture;
  - 48. **INVITE** the parties to provide comments, if they so wish, on the process of using a judicial order to amend charges and on the envisaged discontinuance within 10 days from the date of the filing of this notice; and
  - 49. **INFORM** the parties that responses and replies will not be admitted.
50. This decision is filed in English, with a Khmer translation to follow.

Done at Phnom Penh, 20 January 2017, Phnom Penh



Judge Michael Bohlander

សហចៅក្រមស៊ើបអង្កេតអន្តរជាតិ

**International Co-Investigating Judge  
Co-juge d'instruction international**