



# Forced Marriage Case Notes

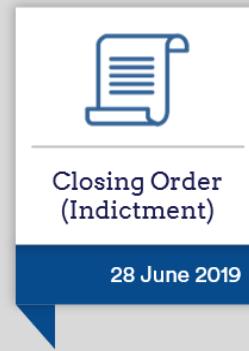
## *Yim Tith Case*

*The Prosecutor v Yim Tith*

Case 004

June 2021

# Key dates of the case



## What happened?

### The Khmer Rouge

From April 1975 to January 1979 the ruling party in Cambodia, called the Communist Party of Kampuchea (CPK) or Khmer Rouge, planned and created policies to build their version of a socialist state. To achieve their goals, the Cambodian population was forcibly transferred from their homes to worksites where they faced harsh conditions, starvation, forced labour, mistreatment, torture, disappearances and killings. As part of their collectivist approach, the Khmer Rouge practiced forced marriages and targeted groups such as Buddhists and the Cham because of their religion and ethnicity. Because they resisted the CPK, the Vietnamese population was also targeted with widespread killings, torture, rape and other inhumane acts.

[Yim Tith](#) held several high positions across two zones of the country and assumed authority over communities there. Through these positions of authority, Yim ordered and facilitated crimes that resulted in large-scale atrocities including genocide of Vietnamese and the ethnic minority Khmer Krom, murder, torture, deportation, enslavement and forced marriage.

## The Extraordinary Chambers in the Courts of Cambodia (ECCC)

In 1997, the Cambodian government requested the United Nations to assist in establishing a tribunal to prosecute Khmer Rouge senior leaders and those most responsible for the crimes committed during the Khmer Rouge reign. The [Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea \(ECCC\)](#) were created in 2003. It is a hybrid court in that it combines Cambodian and international judges, prosecutors and defence lawyers and applies both Cambodian and international law. It is based in Phnom Penh, Cambodia.

In 2019, the ECCC's Co-Investigating Judges issued two separate closing orders in the case against Yim Tith. (Closing orders are written judicial decisions that are issued once investigations of a case are concluded.) The National Co-Investigating Judge was of the view that Yim Tith did not fall under the ECCC's personal jurisdiction and dismissed the case. In contrast, the International Co-Investigating Judge found that Yim Tith is subject to the ECCC's personal jurisdiction as one of the most responsible persons for crimes committed during the Khmer Rouge reign, and that there is sufficient evidence to indict him for genocide, crimes against humanity including enslavement and forced marriage as another inhumane act, war crimes and domestic offences under Cambodian law. The Co-Lawyers for Yim Tith and National Co-Prosecutor appealed against the International Co-Investigating Judge's Closing Order (Indictment), and the International Co-Prosecutor appealed against the National Co-Investigating Judge's Closing Order (Dismissal). The Co-Lawyers also appealed against the issuance of two separate closing orders.



## What does the case say about forced marriage and modern slavery?

In his [Closing Order](#), the International Judge highlighted that the Khmer Rouge pursued a policy of forced marriage with the aim to further the Khmer Rouge's socialist revolution by creating a new society of "desirable citizens" through marriage and birth. The Khmer Rouge assumed a "parental" role and matched couples, mostly workers from mobile units from nearby areas who were in their mid to late teens or twenties, based on their biographies and political status.

Some women were also married to disabled soldiers as compensation and reward for their service. Some men could request to marry a person of their choice, either after a previous agreement between the spouses' parents or upon request from the groom and the bride's parents, and have their choice approved by the authorities. In some cases, such requests were also made because the spouses erroneously expected to have better living conditions or not have to work near the front line once they got married.

Some forced spouses had never met before their wedding ceremony. Often, they were efficiently married in the morning without advance notice in groups of up to 83 couples. Some forced spouses were told they were going for political training when it was actually their wedding.

Most wedding ceremonies were only attended by the forced spouses and members of the authorities. The parents of forced spouses were generally not allowed to attend and often not even aware of the wedding. Wedding ceremonies were conducted without regard to religious or Cambodian traditions. After announcing that no one could refuse, Khmer Rouge officials called out the names of the couples and ordered them to sit in two lines facing each other. Each couple was then ordered to stand, hold hands and make a declaration to love each other forever and work hard. In some ceremonies, forced spouses had to sit next to each other at an assigned place at a long table.

After the ceremony, forced spouses were given beds, mosquito nets and hammocks and taken to their matrimonial home where they were forced or coerced to consummate the marriage and to produce children.

Generally, people could not refuse their marriage, or its consummation and they could not get divorced. They were threatened with or feared repercussions or punishment such as being sent for re-education; or to another site where they would face a high risk of malaria, only be able to see their parents once a year and have no hope of returning home. Forced spouses also feared torture, physical violence, rape or death.

In case 004, the Judges considered evidence that forced spouses felt angry and were unhappy with the wedding ceremony itself. They experienced emotional difficulties, revulsion and resentment because they had to marry a stranger in a ceremony devoid of Khmer traditions. Forced spouses also suffered great and often long-lasting psychological harm and mental anguish, to the point that some women committed suicide after their wedding ceremony. Many couples who were forcibly married separated after the fall of the Khmer Rouge. Some victims of sexual violence continue to suffer from physical injury and pain as well as psychological problems including anger, grief, fear, nightmares, depression and suicidal thoughts.

In addition to engaging with the Khmer Rouge's marriage policy, the International Judge also noted situations of forced separation of families when,

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"Khmer people were forced to decide whether to join their Khmer Krom spouses when they were being sent to a detention centre or execution site, or to stay behind and survive. Similarly, children born from ethnically mixed parents sometimes had to choose whether to join the Khmer Krom parent being arrested or stay behind with the Khmer parent." (para 202)

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In giving his account of forced marriage and forced separation, the International Judge highlighted,

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"a level of contempt for individual life choices and ... sexual self-determination" (para 998).

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When recounting the experiences of women who had been forced into marriage with disabled soldiers, he placed forced marriage within the context of the crime of sexual slavery by stating:

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"These women were in essence not treated any different from chattels, based on an archaic attitude that ... 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." (para 998)

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## Significance and points to note

In Case 004, the International Judge highlighted different facets of forced marriage that go beyond the act of forcing someone into a conjugal association and the conjugal life of the couple. He emphasised that forced separation from a spouse or child can also be an element of the crime.

Additionally, while charging forced marriage as another inhumane act and highlighting the human rights that the crime of forced marriage protects, he also used quite striking language and places forced marriage in the context of (sexual) slavery.

In comparison to [Case 002/02](#) and [Case 003](#), the International Judge in Case 004 appears to place a greater emphasis on forced marriages that involved a civilian woman being married to a former, and now disabled, combatant. In that sense, the instances of forced marriage considered here might be more similar to forced marriages perpetrated in Sierra Leone and Uganda.

## Learning from institutions and decisions in the Indictment

### Enslavement

- [Prosecutor v Kaing Guek Eav \(Trial Judgment\) 001/18-07-2007/ECCC/TC “Case 001” \(26 July 2010\): para 48](#)
- [Prosecutor v Milorad Krnojelac \(Trial Judgment\) IT-97-25-T \(15 March 200\): para 48](#)
- [Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković \(Trial Judgment\) ICTY IT-96-23-T and IT-96-23/1-T “Foča case” \(22 February 2001\): para 48](#)
- [Prosecutor v Dragoljub Kunarac, Radomir Kovač and Zoran Vuković \(Appeals Chamber Judgment\) ICTY IT-96-23 and IT-96-23/1-A “Foča case” \(12 June 2002\): para 48](#)
- [Prosecutor v Milomir Stakić \(Appeal Judgment\) IT-97-24-A \(22 March 2006\): para 48](#)
- [United States of America v Pohl and others \(13 January 1947 - 11 August 1948\) “Pohl/WVHA case”: para 48](#)

### Forced Marriage

- [Prosecutor v Nuon Chea and Khieu Samphan \(Closing Order\) 002/19-09-2007/ECCC/OCIJ “Case 002/02” \(15 September 2010\): para 58](#)

## Additional reading and resources

The Centre for Justice and Accountability, 'International or Hybrid Tribunal: Case 004 and Case 004/2' accessed 15 January 2021 (available [here](#))

Extraordinary Chambers in the Courts of Cambodia, 'Case 004' accessed 15 January 2021 (available [here](#))

Extraordinary Chambers in the Courts of Cambodia, 'Forced marriage' (04 November 2014) accessed 15 January 2021 (available [here](#))

Open Society Justice Initiative, 'Recent Developments at the Extraordinary Chambers in the Courts of Cambodia' (2019) accessed 15 January 2021 (available [here](#))

Phnom Penh Post, 'Prosecutors at ECCC issue summaries of Case 004 statements' (03 July 2018) accessed 15 January 2021 (available [here](#))