

**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)**

**COMPLETION PLAN**

**REVISION 22**

**30 September 2019**

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Annex - Chart of projected timelines for the completion plan including milestones

**Note to the reader:**

The ECCC Completion Plan is revised on a quarterly basis for planning purposes. It contains the best possible estimates for projection of timelines in the remaining cases before the ECCC at the time of revision. A number of factors, including developments in the judicial proceedings may impact these projections. As such the timelines do not reflect statutory requirements on when the different milestones will be reached. The ECCC Completion Plan is prepared and issued by the Office of Administration with input from the judicial offices.

## **Summary**

The Completion Plan for the Extraordinary Chambers in the Courts of Cambodia (“Extraordinary Chambers”) was initially developed in March 2014 through consultation by the Office of Administration with the judges of the chambers, the co-investigating judges and the co-prosecutors for their respective responsibilities. This is the twenty-second quarterly update of the Completion Plan covering the quarter ending 30 September 2019.

During this quarter, the Supreme Court Chamber terminated further appellate proceedings against Nuon Chea in case 002 following his death on 4 August, however decided to remain seized of a request to clarify the legal consequences of Nuon Chea’s death at this stage of appellate proceedings. The Office of the Co-Investigating Judges registered four notices of appeal against closing orders in case 004.

## I. INTRODUCTION

1. The Extraordinary Chambers in the Courts of Cambodia (“Extraordinary Chambers”) began its operations in February 2006 and became fully operational after the adoption of its Internal Rules in June 2007. The mandate of the Extraordinary Chambers is to prosecute “senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979”.<sup>1</sup>
2. This Completion Plan is elaborated by the Extraordinary Chambers in the context of the General Assembly resolution A/RES/68/247B, which *inter alia* mandates the Extraordinary Chambers’ preparation of a completion strategy with a clear road map. The document has been developed by the Extraordinary Chambers through consultation by the Office of Administration with the judges of the Pre-Trial Chamber, the Trial Chamber and the Supreme Court Chamber, with the co-investigating judges, and with the co-prosecutors for their respective responsibilities. The Extraordinary Chambers updates this Completion Plan on a quarterly basis. The current document is the twenty-second revision, and it incorporates adjustments based on the developments in the ongoing judicial proceedings between 1 July and 30 September 2019.
3. The document focuses in particular on the recent developments in the remaining cases before the Extraordinary Chambers and provides information on the status of those cases as well as what steps will have to be completed before the judicial proceedings in respect of the cases reaching legal finality. The co-prosecutors have stated publicly that there will be no further cases after cases 003 and 004.<sup>2</sup> The existing caseload thus represents the totality of the caseload to be addressed by the Extraordinary Chambers.
4. Case 001, against Kaing Guek Eav (alias *Duch*), was the first case tried before the Extraordinary Chambers. On 3 February 2012, the Supreme Court Chamber pronounced its judgement in the appeal against the Trial Chamber judgement which brought the case to a conclusion. The accused person was sentenced to life imprisonment.
5. The charges in case 002 were severed into two trials. The Trial Chamber rendered judgement in the first trial, styled as case 002/01, on 7 August 2014, against Nuon Chea and Khieu Samphan. Two further accused in the case, Ieng Sary and Ieng Thirith, passed away on 14 March 2013 and 22 August 2015 respectively, and proceedings against them were therefore terminated. The Trial Chamber found Khieu Samphan and Nuon Chea guilty of crimes against humanity committed between 17 April 1975 and December 1977 and sentenced them each to life imprisonment. Appeal proceedings in the case were concluded on 23 November 2016, with the pronouncement of the Supreme Court Chamber’s judgement. The Chamber affirmed the sentence of life imprisonment imposed on both accused.
6. The second trial in this case, styled as case 002/02, focused on a representative selection of the remaining charges against Nuon Chea and Khieu Samphan. These comprised charges of genocide, war crimes and crimes against humanity on topics including the treatment of the Cham and the Vietnamese, the Tram Kak Cooperatives (including Kraing Ta Chan Security Centre and the

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<sup>1</sup> Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, 6 June 2003.

<sup>2</sup> Statement of Acting International Co-Prosecutor – Filing of Two New Introductory Submissions, 8 September 2009 ([www.eccc.gov.kh/sites/default/files/media/ECCC\\_Act\\_Int\\_Co\\_Prosecutor\\_8\\_Sep\\_2009\\_\(Eng\).pdf](http://www.eccc.gov.kh/sites/default/files/media/ECCC_Act_Int_Co_Prosecutor_8_Sep_2009_(Eng).pdf)); Public Statement by the Co-Prosecutors regarding Investigation in Case 003, 5 June 2012 ([www.eccc.gov.kh/sites/default/files/media/ECCC\\_OCP\\_5\\_June\\_2012\\_En.pdf](http://www.eccc.gov.kh/sites/default/files/media/ECCC_OCP_5_June_2012_En.pdf)); and Statement by the International Co-Prosecutor regarding ECCC Caseload, 26 November 2014 ([www.eccc.gov.kh/en/articles/statement-international-co-prosecutor-regarding-eccc-caseload](http://www.eccc.gov.kh/en/articles/statement-international-co-prosecutor-regarding-eccc-caseload)).

treatment of Buddhists), 1st January Dam worksite, the Kampong Chhnang Airfield Construction site, Trapeang Thma Dam worksite, the Au Kanseng, Phnom Kraol and S-21 security centres, internal purges, and the regulation of marriage. Evidentiary hearings commenced on 8 January 2015 and concluded on 11 January 2017. The Trial Chamber delivered an oral summary of the findings and the disposition of the judgement on 16 November 2018 and issued its written judgement in all three working languages on 28 March 2019. The Chamber found Khieu Samphan and Nuon Chea guilty of genocide, war crimes and crimes against humanity, and sentenced them each to life imprisonment.<sup>3</sup> After registering notices of appeal by Nuon Chea and Khieu Samphan, the Trial Chamber forwarded the case file to the Supreme Court Chamber.

7. On 4 August 2019, Nuon Chea passed away aged 93 while admitted to the Khmer-Soviet Friendship Hospital. The Supreme Court Chamber terminated further appellate proceedings against him on 13 August, however decided to remain seized of the defence's request to clarify the legal consequences of his death at this stage of proceedings.
8. On 27 February 2017, the Trial Chamber issued a ruling by which it decided to terminate the proceedings concerning the facts set out in the closing order in case 002 which were not included in case 002/01 or case 002/02. Therefore, the judicial proceedings in case 002 will be completed upon the final adjudication of case 002/02.
9. Judicial investigations in cases 003 and 004 were initiated following introductory submissions filed by the international co-prosecutor in 2009 and subsequent supplementary submissions. Case 004 was severed into three case files: case 004/01 regarding Im Chaem; case 004/02 related to Ao An; and with case 004 remaining the case against Yim Tith.
10. On 10 July 2017, the co-investigating judges issued the closing order with reasons for the dismissal of case 004/01 against Im Chaem. The international co-prosecutor filed an appeal against the closing order before the Pre-Trial Chamber. On 29 June 2018, the Pre-Trial Chamber disposed of the appeal on personal jurisdiction concluding the judicial proceedings in the case. The decision of the co-investigating judges that the Extraordinary Chambers has no jurisdiction over Im Chaem stands; ending the judicial proceedings in the case.
11. The progress of cases 003, 004/02 and 004 stands as follows:
  - a) On 28 November 2018, the co-investigating judges issued two separate closing orders in case 003 against Meas Muth in each judge's working language only (Khmer and English, respectively), with translations to follow. The international co-investigating judge indicted Meas Muth for genocide, crimes against humanity, war crimes and domestic offences. The national co-investigating judge dismissed the case for lack of personal jurisdiction. The closing orders were accompanied by decisions on civil party applications. The English and Khmer translations of the closing orders in this case were notified on 1 February and 6 February 2019, respectively. Three appeals were filed against the closing orders: the defence and national co-prosecutor appealed the international co-investigating judge's closing order (indictment), while the international co-prosecutor appealed the national co-investigating judge's dismissal order. All responses and replies to the appeals were filed by the parties in English and Khmer by the end of the third quarter of 2019. On 25 September 2019 the Pre-Trial Chamber informed the parties of its intention to hold three days of hearings on 27 to 29 November 2019. The Pre-Trial Chamber projects its judgement(s) on appeals against the closing orders by the first quarter of 2020.
  - b) On 16 August 2018, the co-investigating judges issued two separate closing orders in case 004/02 against Ao An in each judge's working language only (Khmer and English, respectively), with translations to follow. The international co-investigating judge indicted Ao An for genocide, crimes against humanity and domestic offences. The national co-

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<sup>3</sup> Case File No. 002/19-09-2007/ECCC/TC ([www.eccc.gov.kh/en/document/court/case-00202-judgement](http://www.eccc.gov.kh/en/document/court/case-00202-judgement)).

investigating judge dismissed the case for lack of personal jurisdiction. The closing orders were accompanied by decisions on civil party applications. The Khmer and English translations of the closing orders in this case were notified on 30 October and 5 November 2018, respectively. Three appeals were filed against the closing orders: the defence and national co-prosecutor appealed the international co-investigating judge's closing order (indictment), while the international co-prosecutor appealed the national co-investigating judge's dismissal order. The Pre-Trial Chamber held three days of hearings on the appeals against the closing orders in June 2019 and withdrew for deliberations. The Chamber projects its judgement(s) on appeals against the closing orders by the fourth quarter of 2019.

- c) On 28 June 2019 the co-investigating judges issued two separate closing orders in case 004 against Yim Tith in each judge's working language only (Khmer and English, respectively), with translations to follow. The international co-investigating judge indicted Yim Tith for genocide, crimes against humanity, war crimes and domestic offences. The national co-investigating judge dismissed the case for lack of personal jurisdiction. The closing orders were accompanied by decisions on civil party applications. The Khmer and English translations of the closing orders in this case were notified on 14 August and 5 September 2019, respectively. The national and international co-prosecutors registered their respective notices of appeal on 26 August and 10 September, while the defence registered their notice of appeal against both closing orders on 17 September. The national co-prosecutor filed her submissions on appeal on 20 September. The Pre-Trial Chamber projects the judgement(s) on appeals against the closing orders by the fourth quarter of 2020.
12. In view of progress over the quarter, this Completion Plan identifies five remaining milestones for the cases of which the Extraordinary Chambers are seised. The remaining two milestones in case 002 and associated indicative forecasts are:
    - (i) deadline for filing the remaining appeal against the trial judgement (first quarter of 2020); and
    - (ii) issuance of an appeal judgement in all three working languages (fourth quarter of 2022).
  13. In cases 003, 004/02, and 004 a total of three distinct milestones have been identified for the investigation appeals phase. In the case that indictments are found to stand, additional milestones will be identified for the trial and appellate phases.<sup>4</sup> The milestones for the remainder of the investigation appeals phase are:
    - (iii) disposal by the Pre-Trial Chamber of appeals against the closing orders in case 003, either sending the case for trial or ending the judicial proceedings in the case (first quarter of 2020);
    - (iv) disposal by the Pre-Trial Chamber of appeals against the closing orders in case 004/02, either sending the case for trial or ending the judicial proceedings in the case (fourth quarter of 2019); and
    - (v) disposal by the Pre-Trial Chamber of any appeals against the closing orders in case 004, either sending the case for trial or ending the judicial proceedings in the case (fourth quarter of 2020).

## **II. MEASURES THAT MAY ASSIST EXPEDITIOUS COMPLETION OF PROCEEDINGS**

14. The effective functioning of the Extraordinary Chambers has in the past been hampered by significant and persistent financial insecurity, which resulted in two walkouts of national staff during 2013 as well as unwarranted staff turnover. The General Assembly's approval of subventions for the calendar years 2014 through 2018 for the international component of the Extraordinary Chambers were essential measures that stabilized the funding situation and enabled concentrated

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<sup>4</sup> Given the current state of proceedings, it is premature at this point to forecast specific time points in respect of eventual trial milestones.

focus on progressing the court's judicial mandate. On the national side, cash-flow difficulties led to repeated delays in payment of national staff salaries in the course of the second half of 2015, with attendant impact on staff focus and morale.

15. Following the expression of support from the Royal Government of Cambodia, the General Assembly authorized the Secretary-General on 22 December 2018, as an exceptional measure, to enter commitments in an amount not to exceed \$7.5 million to supplement the voluntary financial resources of the international component of the Extraordinary Chambers for the period from 1 January to 31 December 2019. This timely action greatly facilitated the uninterrupted operations of the Extraordinary Chambers for the first seven months of 2019, opening space for continued solicitation of voluntary contributions. In addition, the Royal Government's commitment of direct contribution of \$3.9 million to the national component, to cover, as in 2018, the first six months of national staff costs as well as operational costs arising in 2019 is a key measure facilitating the ongoing operation of the Extraordinary Chambers' national component. In combination, these measures have ensured that the ongoing workload of the Extraordinary Chambers continues to receive sustained attention. Voluntary contributions for 2019 are currently projected to amount to \$6.3 million for the international component while the national component received a voluntary contribution of \$1 million from an international donor. This is against the approved budget of \$16.01 million for the international component and \$5.37 million for the national component. Of these projected contributions, the international component has received \$4.9 million as of 30 September 2019, with the balance expected in the last quarter of the year.
16. In January 2015, the Plenary of the Extraordinary Chambers adopted amendments to the court's Internal Rules that permit a reduction of the scope of judicial investigation, so long as the reduced scope of the investigation is representative of the charges and alleged criminal responsibility of the suspect.<sup>5</sup> The international co-investigating judge reduced the scope of the judicial investigations in relation to Meas Muth in case 003, Ao An in case 004/02 and Yim Tith in case 004 pursuant to this provision. Similarly, the Trial Chamber is authorized to reduce the scope of a trial by excluding certain facts set out in the indictment, as long as the remaining facts subject to trial are representative of the scope of the indictment.<sup>6</sup> On this basis, the Trial Chamber terminated the proceedings concerning the facts set out in the closing order in case 002 which were not included in case 002/01 or case 002/02.
17. The Office of Administration retained the services of a number of additional linguistic personnel to support the judicial offices to ensure timely translation and transcription services.

### **III. JUDICIAL INVESTIGATIONS COMPLETION PLAN**

18. The judicial investigation stage encompasses the jurisdictions of (a) the Office of the Co-Investigating Judges; and (b) the Pre-Trial Chamber at appellate instance.
19. Judicial investigations in cases 003 and 004 were initiated following introductory submissions filed by the international co-prosecutor in 2009 and subsequent supplementary submissions. Case 004 was severed into three case files: case 004/01 regarding Im Chaem; case 004/02 related to Ao An; and with case 004 remaining the case against Yim Tith.

#### ***A. Office of the Co-Investigating Judges***

20. On 17 September 2019, the greffier of the Office of the Co-Investigating Judges registered the last of four notices of appeal against the closing orders in case 004 and forwarded the case file to the Pre-Trial Chamber. Accordingly, the Office is not seized with any case at this point. The statutory mandate of the co-investigating judges is completed on the same day as for the mandate of the Pre-Trial Chamber.

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<sup>5</sup> Rule 66*bis*.

<sup>6</sup> Rule 89*quater*.

## ***B. Pre-Trial Chamber***

21. In the third quarter of 2019, the Pre-Trial Chamber was seized of eight appeals; four appeals in case 003 (one regarding civil party admissibility and three concerning the closing orders) and four appeals in case 004/02 (one regarding civil party admissibility and three concerning the closing orders). Within the reporting period, the Pre-Trial Chamber issued four interlocutory decisions in the cases before it.
22. The Pre-Trial Chamber intends to dispose of appeals against closing orders in cases 003 and 004/02 and any appeals against closing orders in case 004 within a reasonable time, which, subject to the nature of the submissions and the potential filing of several concomitant appeals, is currently estimated at two quarters from the time the appeals are fully briefed. With respect to any appeals against orders on civil party applications, the Chamber would need approximately one quarter after the decisions on any appeals against closing orders are issued to dispose of all such appeals.
23. For appeals to be fully briefed, all submissions on appeal, responses to those submissions, and replies to those responses must be filed in both Khmer and either English or French. The unprecedented issuance of two separate and contradicting closing orders in cases 003, 004 and 004/02, and the co-investigating judges' recent practice of issuing the respective closing orders in their own working language only extends accordingly the time required for the appeals to be fully briefed.
24. Subject to sufficient staffing of the Pre-Trial Chamber and to the expeditious translation of the parties' submissions and judicial decisions into all three working languages of the Extraordinary Chambers, the current projections are as follows:
  - a) In *case 004/02*, the appeals against the closing orders were fully briefed by 22 April 2019. The current projection for the completion of case 004/02 is to have any judgement(s) on appeals against the closing orders issued by the fourth quarter of 2019. The decision on the appeal against the international co-investigating judge's order on admissibility of civil party applications would then be expected by the first quarter of 2020.
  - b) In *case 003*, appeals against the closing orders were fully briefed by 2 September 2019. The current projection for the completion of case 003 is to have the judgement(s) on appeals against the closing orders issued by the first quarter of 2020. The decision on the appeal against the international co-investigating judge's order on admissibility of civil party applications would then be expected by the second quarter of 2020.
  - c) In *case 004*, the translations of the separate closing orders were filed by 5 September 2019. The Pre-Trial Chamber suspended time limits for filing submissions on appeal until a revised English translation of the national co-investigating judge's dismissal order is notified by the third week of October 2019. Therefore, appeals may not be fully briefed before the second quarter of 2020. The current projection is to have the judgement(s) on appeals against the closing orders, subject to the notification of their translations, and complexity and magnitude of the appeals, by the fourth quarter of 2020. The decision on any appeal(s) against an order on admissibility of civil party applications would then be expected by the first quarter of 2021.

## **IV. TRIALS COMPLETION PLAN**

### ***A. Case 002/02***

25. Evidentiary proceedings commenced on 8 January 2015 and concluded on 11 January 2017 after a total of 274 hearing days. In total, the Trial Chamber heard the testimony of 114 witnesses, 63 civil parties and 8 experts concerning eight crime sites, the regulation of marriage, and the treatment of Buddhists, Cham and Vietnamese. On 16 November 2018, the Trial Chamber orally pronounced

the verdict in case 002/02 along with a summary of its findings, and notified the trial judgement in all three working languages on 28 March 2019. The Chamber found Nuon Chea and Khieu Samphan guilty of crimes against humanity, grave breaches of the Geneva Conventions and genocide of the Vietnamese ethnic, national and racial group. The Chamber additionally convicted Nuon Chea of genocide of the Cham ethnic and religious group under the doctrine of superior responsibility. Both Nuon Chea and Khieu Samphan were sentenced to terms of life imprisonment. The Chamber took into consideration the life sentences imposed on Nuon Chea and Khieu Samphan in case 002/01 and merged the sentences in cases 002/01 and 002/02 into a single term of life imprisonment.

26. On 1 July 2019, the Trial Chamber registered Nuon Chea and Khieu Samphan's notices of appeal and accordingly forwarded the case file to the Supreme Court Chamber.

### ***B. Case 003, case 004/02 and case 004***

27. Judicial investigations in cases 003 and 004 were initiated following introductory submissions filed by the international co-prosecutor in 2009. Case 004 was subsequently severed into three separate case files of which two cases remain active: case 004/02 related to Ao An; and case 004 related to Yim Tith.
28. Until final decisions are made on whether all or any of case 003, case 004/02, case 004 are sent for trial, it is premature to make a projection on the required time to complete these trials. An assessment of the time required would depend on the number of defendants and legal and factual complexity of the charges included in the indictment(s).

## **V. APPEALS COMPLETION PLAN**

### ***A. Case 002/02***

29. On 4 August 2019, Nuon Chea passed away aged 93 while admitted to the Khmer-Soviet Friendship Hospital in Phnom Penh. The Supreme Court Chamber terminated further appellate proceedings against him on 13 August, however decided to remain seized of the defence's request to clarify the legal consequences of his death at this stage of proceedings.<sup>7</sup>
30. On 20 August 2019, the Co-Prosecutors filed their appeal against the trial judgement comprising only one ground. Taking into account the size, scale and complexity of case 002/02 proceedings, and the legal and/or factual issues presented by the Khieu Samphan defence in their notice of appeal,<sup>8</sup> the Supreme Court Chamber granted the defence additional 180 days to file their appeal.<sup>9</sup> The Chamber directed that any responses to the appeal submissions be filed within 120 days of its notification and notified the parties that any subsequent replies to those responses would be heard at an oral hearing projected to take place in the first quarter of 2021.
31. While it is premature to assess completion times before being seized of all the parties' submissions, and subject to revision according to the exigencies of the appeal process and factors including the health and fitness of the accused and timely and effective translation services, the Chamber anticipates at this stage that an appeals judgement will be delivered in all three official languages by the fourth quarter of 2022.

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<sup>7</sup> A decision on this request is expected in the fourth quarter of 2019.

<sup>8</sup> The defence presented some 1,824 alleged errors of law and/or fact in the trial judgement, as well as 355 other (159 oral and 196 written) decisions of the Trial Chamber.

<sup>9</sup> Internal Rule 107(4) provides that appeal briefs shall be filed within 60 days of the filing of the notice of appeal. The filing deadline is now on or by 27 February 2020 in one language only. The Supreme Court Chamber additionally granted an extension of page limits, from the Practice Direction's 60 pages to 750 pages.



***B. Case 003, case 004/02 and case 004***

32. Should case 003, 004/02, case 004 proceed to trial, immediate appeals as well as appeals against eventual trial judgements may arise. Nevertheless, given that it is currently not known which cases, if any, will proceed to trial and on which charges, it is premature to provide any estimate for time required to dispose of any appeal arising therefrom.

**VI. CONCLUSION**

33. For the remainder of 2019, it is expected that one milestone will be reached with (i) the disposal of appeals against the closing orders in case 004/02 against Ao An with a decision(s) of the Pre-Trial Chamber either to send the case for trial or to terminate the proceedings.
34. For 2020, three milestones are expected with: (ii) the filing of appeal brief in case 002; (iii) the disposal of appeals against the closing orders in case 003 against Meas Muth with a decision(s) of the Pre-Trial Chamber to either send the case for trial or terminate the proceedings; and (iv) the disposal of appeals against the closing order in case 004 with a decision(s) of the Pre-Trial Chamber either to send the case for trial or to terminate the proceedings.
35. For 2022, one milestone is expected with (v) the issuance of an appeal judgement in case 002/02 by the Supreme Court Chamber.
36. If all or any of case 003, case 004 and case 004/02 are sent for trial, in whole or in part, timelines in these cases will then be projected.
37. The various projected milestones are reflected in a chart attached to this plan.

## Chart of projected timelines, including milestones

Completion Plan, revision 22 - 30 September 2019

Case	2017				2018				2019				2020				2021				2022			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
<b>Case 002/02</b> <b>Khieu Samphan</b>	Trial phase								Appeals phase															
(a) Closing statements	(a)				(b)				(c)				(d)				(e)				(e)			
(b) Trial judgement - summary and disposition																								
(c) Trial judgement - reasoned, in three languages																								
(d) Deadline for appeals against trial judgement																								
(e) Appeal judgement																								
<b>Case 003</b> <b>Meas Muth</b>	Investigation phase								Appeals against the closing orders															
					(f)				(g)				(h)											
<b>Case 004/02</b> <b>Ao An</b>	Investigation phase								Appeals against the closing orders															
					(f)				(g)				(h)											
<b>Case 004</b> <b>Yim Tith</b>	Investigation phase								Appeal(s) against the closing orders															
					(f)				(g)				(h)											

(f) Separate closing orders in one language only

(g) Separate closing orders in both English and Khmer

(h) Pre-Trial Chamber decision(s) on appeals against closings orders