



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

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PRESS RELEASE

Today, the Pre-Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia issued its “Considerations on the Appeals against Closing Orders” on the five Appeals in Case 004. On 28 June 2019, the International Co-Investigating Judge issued his Closing Order (“Indictment”) sending YIM Tith for trial, while on the same day, the National Co-Investigating issued his Order Dismissing the Case against YIM Tith (“Dismissal”).

Common Disposition— Unanimously Decided by the Pre-Trial Chamber

The Pre-Trial Chamber found that the Appeals of the National and International Co-Prosecutors, the Co-Lawyers for Civil Parties (paras 39, 41 and 43), and YIM Tith’s Appeal on the Issuance of the Two Closing Orders (para. 45) were admissible. As to the YIM Tith’s Appeal of the Indictment, the Chamber found Grounds 2.2, 3, 4 and 5 to be admissible (paras 57-66), while dismissing the remaining Grounds as inadmissible (paras 67-83).

As a preliminary issue, the Pre-Trial Chamber concluded that the Co-Investigating Judges’ simultaneous issuance of the two conflicting Closing Orders was illegal, violating the legal framework of the ECCC (paras 84-115).

Since the Chamber had not assembled an affirmative vote of at least four judges for a decision based on common reasoning on the merits, the Opinions of the various members of the Pre-Trial Chamber were attached. The Decision is not subject to appeal (para. 116, p. 49).

National Judges’ Opinion

Recalling the ECCC’s fundamental purpose to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible, the National Judges of the Pre-Trial Chamber considered that the ECCC is a special tribunal—with distinct prosecutorial and judicial procedures—and that no other persons remain to be prosecuted and tried before the ECCC (paras 117-123, 125-129). The National Judges further considered that the International Co-Prosecutor’s preliminary investigation was conducted unilaterally and without the knowledge of the National Co-Prosecutor, resulting in the illegality of the entire of Case File (para. 130).

While concluding that the issuance of the two conflicting Closing Orders was illegal, the National Judges held that YIM Tith did not fall within the personal jurisdiction of the Court and that dismissing the Case was just. Accordingly, the National Judges concluded to Close Case File 004 against YIM Tith, sending the Case File to archives (para. 131).

International Judges' Opinion

As to YIM Tith's Appeal on the Two Closing Orders, having found no violation of *in dubio pro reo* nor the right to a fair trial, the International Judges declined to overturn both conflicting Closing Orders on the basis of the illegality of the issuance (paras 161-167). The International Judges concluded that the Dismissal was without legal basis and void; they reasoned that this violated the principle of continuation of investigation and prosecution, which governs disagreements between the Co-Investigating Judges (paras 168-177). The Indictment, despite the Co-Investigating Judges' erroneous agreement to issue simultaneous Closing Orders, stands as it was in conformity with the ECCC legal framework. The Appeal was dismissed (paras 172, 175-177).

As to YIM Tith's Appeal of the Indictment, concluding that the International Co-Investigating Judge did not err in finding that YIM Tith was among those most responsible and fell within the ECCC's personal jurisdiction (paras 178-476), the International Judges dismissed the Appeal and confirmed the Indictment (paras 477-478, p. 225).

As to the National Co-Prosecutor's Appeal of the Indictment, the International Judges dismissed the Appeal as it did not demonstrate any error (paras 490-497). They declared both the International Co-Prosecutor's Appeal and the Co-Lawyers for Civil Parties' Appeal of the Dismissal as moot given that the Dismissal was void (paras 510, 515).

In conclusion, the International Judges found that, pursuant to Internal Rule 77(13)(b), as the required majority to reverse an indictment was not attained, the Trial Chamber shall be seised of the Indictment and, by virtue of Internal Rule 77(14), the Co-Investigating Judges shall proceed in accordance with the Considerations (paras 522-523).

Further, the International Judges concluded that the criminal facts brought to light in Cases 003 and 004 call for urgent consideration of serious charges in relation to the responsibility of the Cambodian judicial authorities, including the obligations of the Royal Government of Cambodia under the Article VI of the Genocide Convention (paras 524-539).

The Pre-Trial Chamber's decision is available at:

https://eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/D381_45_EN.PDF

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