



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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## INTERNATIONAL CO-PROSECUTOR’S PRESS RELEASE

On 28 December 2021, the Supreme Court Chamber (SCC) issued its decision dismissing the International Co-Prosecutor’s (ICP) appeal requesting the SCC to send the case against Yim Tith to the ECCC Trial Chamber for trial. The appeal was based on the ECCC’s legal framework that includes a ‘default mechanism’ requiring a case to go to trial unless at least four of the five Pre-Trial Chamber (PTC) Judges overturn the Indictment, which they did not do in their September 2021 decision.

The SCC Judges all agreed that it was in the interests of justice to hear the ICP’s application. With one dissent, the SCC concluded that the absence of a definitive and enforceable indictment following the PTC’s decision justified terminating the case before any determination could be made regarding Yim Tith’s guilt. The SCC decision is final and will not be appealed.

In her dissent, Judge Maureen Harding Clark agreed that Yim Tith’s case should be terminated but for reasons beyond the absence of a valid indictment. Recognising the ICP’s legitimate arguments, she found that under the rules of justice, the PTC Judges’ decision ought to have been quashed for its lack of legal certainty and clarity and its failure to allow the default mechanism to operate. However, she concluded that, due to irreconcilable differences between ECCC’s national and international components, it would be futile for the SCC to order the PTC to reconsider the disagreement between the Co-Investigating Judges on whether Yim Tith fell within the ECCC’s personal jurisdiction. Therefore, no realistic avenue existed to correct the PTC’s defective decision, and for that ultimate reason, she determined the case should be terminated.

It is important for the victims of crimes alleged in the Indictment against Yim Tith, and Cambodian society in general, to understand what the SCC dismissal does not mean. The SCC did not find that Yim Tith was innocent of the very serious crimes for which he was indicted, including genocide, crimes against humanity such as murder, enslavement, torture, persecution and other inhumane acts such as forced marriage, and grave breaches of the Geneva Conventions. The SCC made no finding on his guilt or innocence. Rather, the dismissal means that there will be no trial before the ECCC to judicially determine his criminal liability.

The responsibility once again rests with the Cambodian domestic courts to deliver justice by determining whether Yim Tith is criminally liable for these very serious crimes, in an independent, impartial trial decided only on the law and the facts and ensuring fairness for all parties, including the defence and civil parties.