



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

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

Kingdom of Cambodia
Nation Religion King

Royaume du Cambodge
Nation Religion Roi

អង្គបុរេជំនុំជម្រះ

Pre-Trial Chamber
Chambre Préliminaire

D381/41 & D382/40

In the name of the Cambodian people and the United Nations and pursuant to the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea

Case File N° 004/07-09-2009-ECCC/OCIJ (PTC61)

Before: Judge PRAK Kimsan, President
Judge Olivier BEAUVALLET
Judge NEY Thol
Judge Kang Jin BAIK
Judge HUOT Vuthy

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 18-Mar-2021, 16:00
CMS/CFO: Sann Rada

Date: 18 March 2021

PUBLIC

DECISION ON ORAL HEARING IN CASE 004

Co-Prosecutors

CHEA Leang
Brenda J. HOLLIS

Co-Lawyers for YIM Tith

SO Mosseny
Suzana TOMANOVIĆ

Co-Lawyers for Civil Parties

CHET Vanly
HONG Kimsuon
KIM Mengkhy
LOR Chunthy
SAM Sokong
SIN Soworn
TY Srinna
VEN Pov

Laure DESFORGES
Isabelle DURAND
Emmanuel JACOMY
Martine JACQUIN
Daniel MCLAUGHLIN
Lyma NGUYEN
Nushin SARKARATI



THE PRE-TRIAL CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) is seised of the Parties’ submissions regarding an oral hearing on the Closing Order appeals in Case 004.¹

I. PROCEDURAL BACKGROUND AND SUBMISSIONS

1. On 1 March 2021, the Pre-Trial Chamber invited the Parties to Case 004, via email, to file submissions on whether the Pre-Trial Chamber should conduct an oral hearing on the appeals against the Closing Orders in Case 004. The Parties were instructed to file their submissions within 3 days of the notification of the email.²

2. On 3 March 2021, the International Co-Prosecutor filed her Submissions,³ requesting an oral hearing on the Case 004 appeals,⁴ or in the alternative, that the Parties be allowed to file written submissions on the significance of the Supreme Court Chamber’s Decision in Case 004/2 for the disposition of Case 004.⁵

3. On 3 March 2021, the Co-Lawyers for the Civil Parties (“Civil Party Lawyers”), via email, requested a filing extension of one (1) day necessitated by certain deactivated ECCC accounts and time differences between the various Co-Lawyers.⁶ On the same day, the Pre-Trial Chamber, via email, granted the Civil Party Lawyers’ request and extended the filing deadline by one (1) day.⁷

¹ Case 004/07-09-2009-ECCC/OCIJ (“Case 004”), International Co-Prosecutor’s Submissions regarding an Oral Hearing on the Appeals against the Closing Orders in Case 004 (YIM Tith), 3 March 2021, D381/36 & D382/35 (“International Co-Prosecutor’s Submissions (D381/36 & D382/35)”; Case 004, National Co-Prosecutor’s Submissions regarding an Oral Hearing on the Appeals against the Closing Orders, Email dated 4 March 2021, D381/40 & D382/39; Case 004, YIM Tith’s Submissions to the Pre-Trial Chamber on the Necessity for an Oral Hearing in Case 004, 4 March 2021, D381/38 & D382/37 (“YIM Tith’s Submissions (D381/38 & D382/37)”; Case 004, Civil Party Co-Lawyers’ Views on Oral Hearings on Appeals to the Closing Order in Case 004, 5 March 2020, D381/39 & D382/38 (“Civil Party Co-Lawyers’ Views (D381/39 & D382/38)”).

² Case 004, Pre-Trial Chamber Instructions to the Parties, Email dated 1 March 2021.

³ International Co-Prosecutor’s Submissions (D381/36 & D382/35).

⁴ International Co-Prosecutor’s Submissions (D381/36 & D382/35), para. 1.

⁵ International Co-Prosecutor’s Submissions (D381/36 & D382/35), para. 4 *referring to* Case 004/2/07-09-2009-ECCC/TC-SC, Decision on International Co-Prosecutors’ Immediate Appeal of the Trial Chamber’s Effective Termination of Case 004/2, 10 August 2020, E004/2/1/1/2.

⁶ Case 004, Email from the Co-Lawyers for Civil Parties to the Pre-Trial Chamber regarding Request for Filing Extension on Issue of Case 004 Oral Hearing, 3 March 2021.

⁷ Case 004, Email from Pre-Trial Chamber to the Co-Lawyers for Civil Parties regarding Response to Request for Filing Extension on Issue of Case 004 Oral Hearing, 3 March 2021.



4. On 4 March 2021, the National Co-Prosecutor, via email, submitted that pursuant to the Internal Rules, the Pre-Trial Chamber may decide the appeals on the basis of the Parties' written submissions or decide to hold an oral hearing. The National Co-Prosecutor defers this decision to the Pre-Trial Chamber.⁸

5. On 4 March 2021, the Co-Lawyers for YIM Tith ("Co-Lawyers") filed their Submissions, requesting the Pre-Trial Chamber to schedule an oral hearing in Case 004.⁹

6. On 5 March 2021, the Civil Party Lawyers filed their Views,¹⁰ requesting the Pre-Trial Chamber to (i) schedule an oral hearing on the appeals against the Case 004 Closing Orders; (ii) provide adequate advance notice of the hearing dates; (iii) provide lawyers with alternative means of participation through videolink, and; (iv) order that all reasonable precautions be taken to mitigate the risk of Covid-19 transmission through participation in the hearing.¹¹ A number of Civil Party Lawyers reserved their right not to participate in an oral hearing, in light of the Covid-19 situation in Cambodia.¹²

II. MERITS

7. The Pre-Trial Chamber recalls its broad discretion, pursuant to Internal Rule 77(3)(b), to decide an appeal or application on the basis of the written submissions of the parties only. Having duly considered the Parties' views,¹³ the Pre-Trial Chamber decides to proceed and determine the appeals against the Closing Orders in Case 004 on the basis of the written submissions only.

⁸ Case 004, National Co-Prosecutor's Submissions regarding an Oral Hearing on the Appeals against the Closing Orders, Email dated 4 March 2021, D381/40 & D382/39.

⁹ YIM Tith's Submissions (D381/38 & D382/37).

¹⁰ Civil Party Co-Lawyers' Views (D381/39 & D382/38).

¹¹ Civil Party Co-Lawyers' Views (D381/39 & D382/38), paras 1-2, 18.

¹² Civil Party Co-Lawyers' Views (D381/39 & D382/38), para. 16

¹³ With regard to the Parties' arguments related to the public nature and transparency of the proceedings, the Chamber observes that apart from certain questions raised by the Bench, the oral arguments presented during the hearings on the appeals against the Closing Orders in Case 004/1, Case 004/2 and Case 003, were confined to the written submissions of the parties and held *in camera* (apart from the introduction and public reading of the Case Report). The Parties' submissions on the various appeals in Case 004 will be re-classified as public at the relevant time.



8. The Chamber further notes that it remains seized of the International Co-Prosecutor's Request to File Additional Submissions on Her Appeal of the Order Dismissing the Case against YIM Tith.¹⁴

III. DISPOSITION

THEREFORE, THE PRE-TRIAL CHAMBER UNANIMOUSLY HEREBY:

DECIDES to proceed and determine the appeals against the Closing Orders in Case 004 on the basis of the written submissions only.

In accordance with Internal Rule 77(13), this decision is not subject to appeal.

In accordance with Internal Rule 77(3)(c), this decision shall be notified to the Co-Investigating Judges and the Parties by the Greffier of the Pre-Trial Chamber.

Phnom Penh, 18 March 2021

President

Pre-Trial Chamber



PRAK Kimsan

Olivier BEAUVALLET

NEY Thol

Kang Jin BAIK

HUOT Vuthy

¹⁴ Case 004, International Co-Prosecutor's Request to File Additional Submissions on Her Appeal of the Order Dismissing the Case against YIM Tith, 26 August 2020, D381/29. *See further* Case 004, YIM Tith's Response to the International Co-Prosecutor's Request to File Additional Submissions on Her Appeal of the Order Dismissing the Case against YIM Tith, 7 September 2020, D381/31.

