

**BEFORE THE PRE-TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

FILING DETAILS

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**YIM TITH'S URGENT REQUEST FOR EXTENSION OF PAGE
AND TIME LIMITS FOR HIS RESPONSES TO THE APPEALS
OF THE CLOSING ORDERS**

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Co-Prosecutors:
CHEA Leang
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All Civil Parties in Case 004

Mr YIM Tith, through his Co-Lawyers ('Defence'), respectfully submits *Yim Tith's Urgent Request for Extension of Page and Time Limits for His Response to the Appeals of the Closing Orders* ('Request') pursuant to Rules 21 and 39(4) of the ECCC Internal Rules ('Rules') and Article 5(4) of the Practice Direction on Filing Documents before the ECCC ('Practice Direction'). The Request is filed on an urgent basis due to filing of the English and Khmer versions of the *Civil Party Co-Lawyers' Appeal against the National Co-Investigating Judge's Closing Order in Case 004* ('Civil Party Appeal of the NCIJ's Closing Order') notified on 6 December 2019.¹

I. PROCEDURAL HISTORY

1. On 28 June 2019, the National Co-Investigating Judge ('NCIJ') issued his *Order Dismissing the Case against Yim Tith* ('NCIJ's Closing Order') in Khmer.² On the same day, the International Co-Investigating Judge ('ICIJ') issued his *Closing Order* ('ICIJ's Closing Order') in English.³
2. An English translation of the NCIJ's Closing Order was issued on 5 September 2019. In view of 'palpable inaccuracies' in the translation, a revised version was notified on 16 October 2019.⁴
3. On 13 September 2019, the National Co-Prosecutor ('NCP') filed her *National Co-Prosecutor's Appeal Against The International Co-Investigating Judge's Closing Order (Indictment) in Case 004*.⁵
4. On 17 September 2019, in accordance with the extended notification period granted by the Pre-Trial Chamber ('PTC'),⁶ the Defence filed the *Notice of Appeal against the*

¹ *Civil party co-lawyers' appeal against the national co-investigating judge's closing order in case 004*, 1 December 2019, D381/20.

² *Order Dismissing the Case against Yim Tith*, 28 June 2019, D381 ('NCIJ's Closing Order').

³ *Closing Order*, 28 June 2019, D382 ('ICIJ's Closing Order').

⁴ *Decision on Yim Tith's Request that the Pre-Trial Chamber Order the Urgent Provision of an Accurate English Translation of the Order Dismissing the Case against Yim Tith and Suspend the Closing Order Appeal Time Limits*, 26 September 2019, D381/12 and D382/13, para. 8. See also: *Decision on Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders in Case 004*, 30 October 2019, D381/16 and D382/19, pp. 4 to 5.

⁵ *National Co-Prosecutor's Appeal Against The International Co-Investigating Judge's Closing Order (Indictment) in Case 004*, 13 September 2019, D382/4/1.

⁶ *Decision on Yim Tith's Request for Extension of Deadline for Notice of Appeal of Closing Orders in Case 004*, 19 July 2019, D381/3 and D382/3.

*Closing Orders.*⁷

5. On the same day, the Defence filed *Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders.*⁸
6. On 25 September 2019, the International Co-Prosecutor ('ICP') filed the *International Co-Prosecutor's Response to Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders.*⁹
7. On 30 September 2019, the ICP filed the *International Co-Prosecutor's Response to the National Co-Prosecutor's Appeal of the Case 004 Indictment (D382).*¹⁰
8. On 4 October 2019, the Defence filed *Yim Tith's Reply to the International Co-Prosecutor's Response to Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders.*¹¹
9. On 30 October 2019, the PTC issued the *Decision on Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders in Case 004.*¹²
10. On 1 December 2019, the Co-Lawyers for the Civil Parties filed the Civil Party Appeal of the NCIJ's Closing Order of 18 pages at length in English, together with the Khmer version.¹³
11. On 2 December 2019, the Defence filed *Yim Tith's Appeal of the Issuance of Two Closing Orders in Case 004* of 12 pages¹⁴ and *Yim Tith's Appeal of the International Co-*

⁷ *Yim Tith's Notice of Appeal against the Closing Orders*, notified as: *Yim Tith's Notice of Appeal against the National Co-Investigating Judge's Order Dismissing the Case*, 17 September 2019, D381/7; and *Yim Tith's Notice of Appeal against the International Co-Investigating Judge's Closing Order*, 17 September 2019, D382/9.

⁸ *Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders*, 17 September 2019, D381/8.

⁹ *International Co-Prosecutor's Response to Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders*, 25 September 2019, D381/13 and D382/16.

¹⁰ *International Co-Prosecutor's Response to the National Co-Prosecutor's Appeal of the Case 004 Indictment (D382)*, 30 September 2019, D382/16.

¹¹ *Yim Tith's Reply to the International Co-Prosecutor's Response to Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders*, 4 October 2019, D381/15.

¹² *Decision on Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders in Case 004*, 30 October 2019, D381/16 and D382/19.

¹³ *Civil Party Co-Lawyers' Appeal against the National Co-Investigating Judge's Closing Order in Case 004*, 1 December 2019, D381/20.

¹⁴ *Yim Tith's Appeal of the Issuance of Two Closing Orders in Case 004*, 2 December 2019, D381/18.

Investigating Judge's Closing Order in Case 004 of 100 pages.¹⁵ These appeals were notified on 3 December and 4 December 2019, respectively.

12. On 2 December 2019, the ICP filed the *International Co-Prosecutor's Appeal of the Order Dismissing the Case Against YIM Tith (D381)* ('ICP's Appeal of the NCIJ's Closing Order') of 72 pages.¹⁶ Notification was received on 5 December 2019.

13. On 6 December 2019, the Defence received notification of the English and Khmer versions of the Civil Party Appeal of the NCIJ's Closing Order, and on 9 December 2019, the Defence received notification of the supporting authorities thereto.

II. RELEVANT LAW

14. Article 31 of the Constitution of the Kingdom of Cambodia requires Cambodia to recognise and respect all 'covenants and conventions related to human rights'. The UN-RGC Agreement and the Law on the Establishment of the Extraordinary Chambers ('Establishment Law') demand that the ECCC exercise its jurisdiction in accordance with the minimum fair trial standards enshrined in the International Covenant on Civil and Political Rights ('ICCPR'), Article 14(3)(b) of which mandates that Mr YIM Tith be afforded adequate time and facilities to prepare his Defence.

15. Article 35^{new} of the Establishment Law afforest the accused the right to adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing.

16. Rule 21 provides that the law applicable at the ECCC 'shall be interpreted so as to always safeguard the interests of Suspects, Charged Persons, Accused and Victims and so as to ensure legal certainty and transparency of proceedings.'

17. Rule 39(4) provides:

The Co-Investigating Judges or the Chambers may, at the request of the concerned party or on their own motion:

a) Extend any time limits set by them; or

¹⁵ *Yim Tith's Appeal of the International Co-Investigating Judge's Closing Order in Case 004*, 2 December 2019, D382/22.

¹⁶ *International Co-Prosecutor's Appeal of the Order Dismissing the Case Against YIM Tith (D381)*, 2 December 2019, D381/19.

- b) Recognise the validity of any action executed after the expiration of a time limit prescribed in these IRs on such terms, if any, as they see fit.

18. Article 5(2) of the Practice Direction provides that ‘a document filed to the Pre-Trial Chamber [...] shall not exceed 30 pages in English, unless otherwise provided in the Internal Rules or this Practice Direction or ordered by the ECCC.’ Pursuant to Article 5(4) of the Practice Direction, the PTC may, at the request of a party and in exceptional circumstances, extend the page limit.

19. Article 8(3) of the Practice Direction states that ‘[a]ny response to an application or pleadings shall be filed together with any list of authorities within 10 calendar days of notification of the document to which the participant is responding’. Article 8(4) states that ‘[a] reply to a response shall only be permitted where there is to be no oral argument on the request and such reply shall be filed within 5 calendar days of notification of the response to which the participant is replying’.

III. SUBMISSIONS

20. The Defence notes the PTC’s instruction to the Interpretation and Translation Unit (‘ITU’) to ensure that requested translations are issued within 30 days from the filing of the appeals.¹⁷ The Defence further notes the ICP’s request to synchronise the timelines for the Parties’ appeal briefs.¹⁸

21. The Defence respectfully requests the PTC to exercise its discretion under Rule 39(4)(a) to extend the time limits for the submission, in English only with the Khmer translation to follow at the earliest opportunity, of (i) Mr YIM Tith’s responses to both the ICP Appeal of the NCIJ’s Closing Order and the Civil Party Appeal of the NCIJ’s Closing Order to 45 days from the date on which the Defence receives notification of the translations of both appeals, and (ii) any replies from Mr YIM Tith to responses filed by the ICP or the Co-Lawyers for the Civil Parties to the two Defence appeals to 25 days from the date on which the Defence receives notification of the translations of all responses.

22. The Defence further requests the PTC to exercise its discretion under Article 5(4) of

¹⁷ *Decision on Yim Tith’s Request for Extension of Page and Time Limits for His Appeal of the Closing Orders in Case 004*, 30 October 2019, D381/16 and D382/19, pp. 4 to 5.

¹⁸ *International Co Prosecutor’s Response to YIM Tith’s Request for Extension of Page and Time Limits for His Appeal of the Closing Orders 25 September 2019*, D381/13 and D382/16, para. 3.

the Practice Direction to extend the page limits for (i) Mr YIM Tith's response to the ICP Appeal of the NCIJ's Closing Order to 50 pages in English, (ii) Mr YIM Tith's response to the Civil Party Appeal of the NCIJ's Closing Order to 30 pages in English, and (iii) any replies from Mr YIM Tith to responses filed by the ICP or the Co-Lawyers for the Civil Parties to 30 pages in English each.

23. The requested extensions under Rule 39(4)(a) and Article 5(4) of the Practice Direction are necessary due to the lengthy and complex appeal proceedings arising from the issuance of two separate and conflicting Closing Orders in Case 004.

24. The 72-page ICP Appeal of the NCIJ's Closing Order raises six grounds of appeal while the 18-page Civil Party Appeal of the NCIJ's Closing Order raises one ground of appeal and one alternative argument, requiring the Defence to respond to a total of 90 pages of labyrinthine appellate submissions on a wide range of alleged errors of law and fact in the NCIJ's Closing Order.¹⁹ The appeal grounds concern the vital issue of the ECCC's personal jurisdiction over Mr YIM Tith and, furthermore, the determination of the appeals engages his fundamental fair trial rights.

25. The multiple Appeal filings in Case 004 require the Defence to undertake careful analysis of each party's appellate submission in and of itself, as well as its relationship to the other appellate submissions, particularly in light of the National and International Co-Prosecutors opposing positions in their respective appeals. It is incumbent upon the Defence to ensure that Mr YIM Tith fully understands the relationship between each of the Appeals and is afforded the full and proper opportunity to provide his instructions thereon.


WHEREFORE, for all the reasons stated herein, the Defence respectfully requests the Pre-Trial Chamber to:


1. **EXTEND** the time limit for Mr YIM Tith's responses to the ICP Appeal of the NCIJ's Closing Order and the Civil Party Appeal of the NCIJ's Closing Order to 45 days from the date on which the Defence receives notification of the translations of both appeals, and

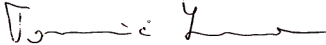
¹⁹ In Case 004/2, by comparison, the Civil Party Co-Lawyers did not file any appeal of the closing orders, while the ICP's appeal of the NCIJ's closing order was 56 pages in total.

2. **EXTEND** the time limit for any replies from Mr YIM Tith to responses filed by the ICP or the Co-Lawyers for the Civil Parties to the two Defence appeals to 25 days from the date on which the Defence receives notification of the translations of all responses, and
3. **EXTEND** the page limit for Mr YIM Tith's response to the ICP's Appeal of the NCIJ's Closing Order to 50 pages in English, and
4. **EXTEND** the page limit for Mr YIM Tith's response to the Civil Party Appeal of the NCIJ's Closing Order to 30 pages in English, and
5. **EXTEND** the page limit for any replies from Mr YIM Tith to responses filed by the ICP or the Co-Lawyers for the Civil Parties to 30 pages in English each, and
6. **ORDER** that the Defence responses and replies may be filed in English only with the Khmer translation to follow at the earliest opportunity.

Respectfully submitted,


SO Mosseny




Suzana TOMANOVIĆ

Co-Lawyers for Mr YIM Tith

Signed in Phnom Penh, Kingdom of Cambodia on this 11th day of December 2019.