

BEFORE THE PRE-TRIAL CHAMBER**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA****FILING DETAILS****Case No:** 004/07-09-2009-ECCC/OCIJ (PTC61) **Party Filing:** The Defence for YIM Tith**Filed to:** Pre-Trial Chamber**Original language:** ENGLISH**Date of document:** 4 October 2019**CLASSIFICATION****Classification of the document
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**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**

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Distribution to:**Pre-Trial Chamber:**

Judge PRAK Kimsan

Judge Olivier BEAUVALLET

Judge NEY Thol

Judge BAIK Kang Jin

Judge HUOT Vuthy

Reserve Judge PEN Pichsaly

Reserve Judge Steven J. BWANA

Co-Prosecutors:

CHEA Leang

Brenda J. HOLLIS

All Civil Parties in Case 004

Mr YIM Tith, through his Co-Lawyers ('the Defence'), files the following *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* ('Reply'), pursuant to Rule 21 of the Internal Rules ('Rules') of the Extraordinary Chambers in the Courts of Cambodia ('ECCC'). This Reply is made necessary because: (a) the International Co-Prosecutor ('ICP') misstates Mr YIM Tith's request; (b) the ICP inappropriately requests the Pre-Trial Chamber ('PTC') to modify the remedy sought by Mr YIM Tith; and (c) the ICP inappropriately raises an irrelevant and unrelated request.

I. PROCEDURAL HISTORY

1. On 17 September 2019, the Defence filed *Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders* ('Request').¹
2. On 25 September 2019, the 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* ('Response').²

II. REPLY

a. The ICP misstates Mr YIM Tith's request

3. The ICP states that Mr YIM Tith requested to 'extend the time limit to file Yim Tith's appeal in *two languages*'.³ Contrary to the ICP's assertion, the Defence requested the extension of the applicable time limits without reference to filing in two languages.
4. While the ICP enjoys the benefit of translators within her own office,⁴ the Defence is reliant on the services of the Interpretation and Translation Unit ('ITU'). As such, the Defence's ability to file in two languages by any deadline will be dependent on ITU's capacity ahead of filing. In accordance with established practice, this matter

¹ *Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders*, 17 September 2019, D381/8.

² *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.

³ *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, para 1 (emphasis added).

⁴ *International Co-Prosecutor's Request to File Her Response to the National Co-Prosecutor's Appeal Against the Indictment in English First*, 25 September 2019, D382/14, para 7.

will need to be assessed at a later stage, upon completion of the appeal arguments and in consultation with ITU. The Defence is unable to make a firm commitment in this regard at this stage, and it is not for the ICP to seek to impose such in this manner.

b. The ICP inappropriately requests the PTC to modify the remedy sought by Mr YIM Tith

5. The ICP requests the PTC to deviate from the remedy sought by Mr YIM Tith in the Request and require Mr YIM Tith to file ‘his two appeals in two separate documents’.⁵
6. Considering the established practice and case law of the Court, Rule 67(5) is unclear whether two appeals against a Closing Order are permissible.⁶ Also, based on current practice, the ICP’s request is inappropriate. A response may only address matters raised in the request or appeal to which it is responding. A response does not represent an opportunity for the responding party to raise new matters or modify the original request.
7. Moreover, the ICP’s request is based on the groundless assumption that ‘given the differing nature of the Closing Orders’, Mr YIM Tith’s appeal will be unclear.⁷ Mr YIM Tith’s appeal will deal with the same subject matter in both Closing Orders which necessitates the same remedy, and therefore only one appeal is necessary, as requested.⁸

c. The ICP inappropriately raises an irrelevant and unrelated request

⁵ *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, para 2.

⁶ *Decision on Co-Prosecutors’ Preliminary Observations in Respect of Ieng Sary’s Separate Appeals against the Closing Order on Provisional Detention and Jurisdiction*, 3 November 2010, D427/1/11, paras 6, 7; *Decision on Ieng Sary’s Expedited Request for Extension of Page Limit to Appeal the Jurisdictional Issues Raised by the Closing Order*, 1 October 2010, D427/1/3, para 10.

⁷ *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, para 2.

⁸ *Decision on Co-Prosecutors’ Preliminary Observations in Respect of Ieng Sary’s Separate Appeals against the Closing Order on Provisional Detention and Jurisdiction*, 3 November 2010, D427/1/11, para 7.

8. The ICP requests that the PTC ‘synchronise the timelines for the Parties’ appeal briefs as it has in previous cases.’⁹ In accordance with established practice, a response does not represent an opportunity for the responding party to submit their own requests.
9. Should the ICP wish to make novel requests regarding time limits, the ECCC framework allows her to do so, and, in turn, the Defence will have an opportunity to respond to any such requests, if necessary.

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


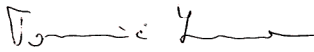
DISREGARD the ICP’s Response to Mr YIM Tith’s Request as irrelevant;

GRANT the Request.

Respectfully submitted,



SO Mosseny

Suzana TOMANOVIĆ

Co-Lawyers for Mr YIM Tith

Signed in Phnom Penh, Kingdom of Cambodia on this 4th day of October 2019.

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, para 3.