



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

អង្គបុរេជំនុំជម្រះ  
Pre-Trial Chamber  
Chambre Preliminaire

D381/16

*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

Date: 30 October 2019

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PUBLIC

DECISION ON YIM TITH'S REQUEST FOR EXTENSION OF PAGE AND TIME LIMITS FOR HIS APPEAL OF THE CLOSING ORDERS IN CASE 004

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**THE PRE-TRIAL CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia (the “ECCC”) is seised of the “YIM Tith’s Request for Extension of Pages and Time Limits for His Appeal of the Closing Orders” dated 17 September 2019 (the “Request”).<sup>1</sup>

1. On 28 June 2019, the Office of the Co-Investigating Judges issued two separate conflicting Closing Orders in Case 004. While the National Co-Investigating Judge issued his “Order Dismissing the Case against YIM Tith” (“Dismissal Order”)<sup>2</sup> in Khmer, the International Co-Investigating Judge issued his “Closing Order”,<sup>3</sup> in English (collectively the “Closing Orders”).

2. On 19 July 2019, the Pre-Trial Chamber ordered the Parties to file any Notices of Appeal against the Closing Orders in Case 004 within fourteen days after translation of both Closing Orders had been notified.<sup>4</sup>

3. On 10 September 2019, the International Co-Prosecutor filed her “Notice of Appeal against the National Co-Investigating Judge’s Order Dismissing the Case against YIM Tith”,<sup>5</sup> and on 17 September 2019, the Co-Lawyers for YIM Tith (“Co-Lawyers”) filed their “Notice of Appeal against the Closing Orders in Case 004”.<sup>6</sup> The National Co-Prosecutor filed her “Appeal against the International Co-Investigating Judge’s Closing Order (Indictment) in Case 004”<sup>7</sup> on 13 September 2019, following her Notice of Appeal,<sup>8</sup> filed on 23 August 2019.

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<sup>1</sup> Case 004/07-09-2009-ECCC/OCIJ (“Case 004”), YIM Tith’s Request for Extension of Page and Time Limits for His Appeal of the Closing Orders, 17 September 2019, D381/8 and D382/10 (“Request”).

<sup>2</sup> Case 004, Order Dismissing the Case against YIM Tith, 28 June 2019, D381.

<sup>3</sup> Case 004, Closing Order, 28 June 2019, D382.

<sup>4</sup> Case 004, 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. *See also* Case 004, YIM Tith’s Request for Extension of Deadline for Notice of Appeal of Closing Order, dated 8 July 2019 and filed 9 July 2019, D381/1 and D382/1.

<sup>5</sup> Case 004, International Co-Prosecutor’s Notice of Appeal against the Order Dismissing the Case against YIM Tith (D381), 10 September 2019, D381/4.

<sup>6</sup> Case 004, YIM Tith’s Notice of Appeal against the National Co-Investigating Judge’s Order Dismissing the Case against Yim Tith, 17 September 2019, D381/7; Case 004, YIM Tith’s Notice of Appeal against the International Co-Investigating Judge’s Closing Order, 17 September 2019, D382/9.

<sup>7</sup> Case 004, National Co-Prosecutor’s Appeal against the International Co-Investigating Judge’s Closing Order (Indictment) in Case 004, 13 September 2019, D382/4/1.

<sup>8</sup> Case 004, National Co-Prosecutor’s Notice of Appeal against the International Co-Investigating Judge’s Closing Order (Indictment), 23 August 2019, D382/4.



4. The Khmer translation of the International Co-Investigating Judge's Closing Order was filed on 14 August 2019 and notified on 15 August 2019. The English translation of the National Co-Investigating Judge's Dismissal Order was filed and notified on 5 September 2019.

5. On 17 September 2019, the Co-Lawyers filed the Request.<sup>9</sup> The International Co-Prosecutor responded on 25 September 2019 (the "Response")<sup>10</sup> and the Co-Lawyers replied on 4 October 2019 (the "Reply").<sup>11</sup>

6. On 26 September 2019, the Pre-Trial Chamber ordered a suspension of the time limit for the Parties to file their appeals against the Closing Orders in Case 004 until the notification of the Interpretation and Translation Unit's corrected English translation of the National Co-Investigating Judge's Dismissal Order.<sup>12</sup>

7. On 16 October 2019, the corrected English translation of the National Co-Investigating Judge's Dismissal Order was filed and notified.

8. The Co-Lawyers request that, for their appeal of the Closing Orders, the Pre-Trial Chamber exercises its discretion under Article 5(4) of the Practice Direction on Filing of Documents and Internal Rules 39(4) and 75(3) to extend the page limit from 30 to 150 pages, and the time limit from 30 to 45 days, commencing on the date of their receipt of the translations of both Closing Orders.<sup>13</sup> They submit that (i) the issuance of two separate and opposing Closing Orders;<sup>14</sup> (ii) the magnitude and

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<sup>9</sup> Request, paras 15, 16, 28.

<sup>10</sup> Case 004, 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.

<sup>11</sup> Case 004, 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 and D382/18.

<sup>12</sup> Case 004, Decision on YIM Thith'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. *See also* Case 004, 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, 11 September 2019, D381/5 and D382/5; Case 004, The Office of the Co-Prosecutors' Email concerning Correction of Case 004 Dismissal Order (D381) Translation, 12 September 2019, D382/6.

<sup>13</sup> Request, paras 15, 16, 28.

<sup>14</sup> Request, paras 17-22.



complexity of the Closing Orders;<sup>15</sup> and (iii) the consequent extensiveness and intricacy of the necessary appeal<sup>16</sup> constitute exceptional circumstances that justify the Request.

9. The International Co-Prosecutor responds that while she does not oppose the Request globally, considering the “differing nature of the Closing Orders”, the Co-Lawyers should address their two appeals against each Closing Order in two separate documents, with neither appeal individually exceeding 100 pages, to enable the Pre-Trial Chamber and the Parties to clearly distinguish their arguments pertaining to each Closing Order.<sup>17</sup> The International Co-Prosecutor further requests that the Chamber synchronise the timelines for the Parties’ appeal briefs.<sup>18</sup>
10. The Co-Lawyers reply that the International Co-Prosecutor (i) misstates their Request;<sup>19</sup> (ii) inappropriately requests the Pre-Trial Chamber to modify the remedy sought in their Request and to order the Co-Lawyers to file two appeals in two separate documents;<sup>20</sup> and (iii) inappropriately raises an irrelevant and unrelated request in her Response without submitting her own request.<sup>21</sup> For these reasons, the Co-Lawyers request the Chamber to disregard the Response as irrelevant.<sup>22</sup>
11. Pursuant to Internal Rules 39(2) and (4), the Pre-Trial Chamber may set and/or extend any time limits for the filing of documents relating to an appeal. The Chamber may also, pursuant to Article 5.4 of the Practice Direction on Filing of Documents, extend the page limit of a document in exceptional circumstances.
12. At the outset, the Pre-Trial Chamber recalls Internal Rules 67(1) and 74, and notes the conflicting nature of the two Closing Orders in Case 004, which may consequently require application of different procedural steps in handling submissions of appeal against each of these Closing Orders. The Chamber thus considers that

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<sup>15</sup> Request, paras 17, 23-24.

<sup>16</sup> Request, paras 17, 25-27.

<sup>17</sup> Response, para. 2.

<sup>18</sup> Response, para. 3.

<sup>19</sup> Reply, paras 3-4.

<sup>20</sup> Reply, paras 5-7.

<sup>21</sup> Reply, paras 8-9.

<sup>22</sup> Reply, p. 3.



authorising the filing of a consolidated appeal against both Closing Orders is not appropriate and finds that the Parties should address each Closing Order individually.

13. Turning to the page and time limits, the Pre-Trial Chamber notes the length and complexity of the Closing Orders with the scope and significance of the factual and legal issues raised therein as well as the Chamber's duty to balance fair trial rights and expeditiousness of the proceedings. Accordingly, the Pre-Trial Chamber finds it justified to grant all the Parties reasonable extensions of time and pages to file their appeals.
14. However, the Pre-Trial Chamber considers that the quality and effectiveness of a submission of appeal do not depend on its length, but rather on the clarity and cogency of the arguments presented and that, therefore, excessively long submissions do not necessarily facilitate the efficient administration of justice.<sup>23</sup>
15. Accordingly, the Pre-Trial Chamber finds it appropriate, in the interests of justice and in order to balance fair trial rights and efficiency, to grant all Parties a limited extension of 70 additional pages and of 15 days from the notification of the corrected English translation of the Dismissal Order on 16 October 2019 to file their appeals against each Closing Order in separate documents.

**FOR THESE REASONS, THE PRE-TRIAL CHAMBER UNANIMOUSLY HEREBY:**

**GRANTS** the Request in part;

**ORDERS** the Parties to file separate appeals against each Closing Order in separate documents;

**ALLOWS** the Parties to file appeals against the Closing Orders within 45 days from the notification of the corrected English translation of the Dismissal Order on 16 October 2019;

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<sup>23</sup> See Mechanism for International Criminal Tribunal (MICT), *Prosecutor v. Karadžić*, MICT-13-55-A, Decision on a Motion for an Extension of a Word Limit, Appeals Chamber, 8 September 2016, p. 2.



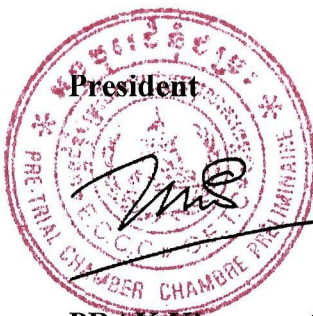
**ALLOWS** the Parties to file 100-page submissions on appeals;

**INSTRUCTS** the ITU to ensure that requested translations are issued within 30 days from the filing of the appeals;

**DENIES** the remainder of the Request.

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

**Phnom Penh, 30 October 2019**



**Pre-Trial Chamber**

**PRAK Kimsan** **Olivier BEAUVALLET** **NEY Thol** **Kang Jin BAIK** **HUOT Vuthy**

