

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

FILING DETAILS

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**INTERNATIONAL CO-PROSECUTOR'S REQUEST FOR AN EXTENSION OF
THE TIME AND PAGE LIMITS FOR HER APPEAL AGAINST THE ORDER
DISMISSING THE CASE AGAINST YIM TITH (D381)**

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All Civil Parties in Case 004

I. INTRODUCTION

1. The International Co-Prosecutor (“ICP”) respectfully requests the Pre-Trial Chamber (“PTC” or “Chamber”) to extend the time and page limits for her appeal of the National Co-Investigating Judge’s (“NCIJ”) Dismissal Order,¹ permitting her to file a 100-page appeal (*i.e.* an additional 70 pages to those already prescribed) by 4 November 2019, an extension of 30 days to the currently applicable deadline. The ICP also seeks leave to file her appeal in English first, with the Khmer translation to follow at the first opportunity.
2. The ICP submits that this request is warranted by a number of factors including the complexity of the appeal and the importance of the legal and factual questions at issue, as well as the quality of the English translation of the Dismissal Order that is currently available.
3. The ICP has responded separately to Yim Tith’s Request regarding the English translation of the NCIJ’s Dismissal Order,² confirming, *inter alia*, that she does not object to a suspension of the deadlines for appeal submissions until the revised translation has been filed by the Interpretation and Translation Unit. Whatever the impact of the PTC’s decision in this matter on the appeal time limits, the ICP respectfully requests that the deadline for her appeal brief fall no earlier than 4 November 2019.

II. PROCEDURAL HISTORY

4. On 28 June 2019, the Co-Investigating Judges (“CIJs”) issued two separate and conflicting Closing Orders in Case 004. The NCIJ issued his 558-page Dismissal Order in Khmer.³ The International Co-Investigating Judge issued his 482-page Closing Order (“Indictment”)⁴ in English.
5. On 19 July 2019, the PTC granted all Case 004 parties permission to file their notices of appeal within 14 days after the translations of both Closing Orders had been notified.⁵ The Khmer translation of the Indictment was notified on 15 August 2019, while the English translation of the Dismissal Order was notified on 5 September 2019.

¹ **D381** Order Dismissing the Case Against Yim Tith, 28 June 2019 (“Dismissal Order”).

² **D381/5 & D382/5** 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, 12 September 2019.

³ **D381** Dismissal Order.

⁴ **D382** Closing Order, 28 June 2019 (“Indictment”).

⁵ **D381/3 & D382/3** Decision on Yim Tith’s Request for Extension of Deadline for Notice of Appeal of Closing Orders in Case 004, 19 July 2019 (“Extension Decision”), para. 7, Disposition.

6. On 10 September 2019, the ICP filed her notice of appeal against the Dismissal Order.⁶ On 17 September 2019, Yim Tith filed his notice of appeal against both the Dismissal Order and the Indictment.⁷

III. APPLICABLE LAW

7. Internal Rule⁸ 75(3) provides that submissions on appeal must be filed within 30 days from the date the relevant decision or order was received. Under article 8.5 of the Practice Direction on the Filing of Documents before the ECCC⁹ (“Practice Direction”), time limits commence on the first calendar day following the day of service of the notification in Khmer and one other official language of the ECCC. Article 8.1 of the Practice Direction and Internal Rules 39(4) and 75(3) provide that under exceptional circumstances, the Chamber may extend time limits on the motion of a party.
8. The Practice Direction requires that any document filed to the PTC shall not exceed 30 pages in English, but the PTC may extend the page limit “in exceptional circumstances” at the request of a party.¹⁰
9. Finally, the Practice Direction requires documents to be filed in Khmer and one other language but provides that in “exceptional circumstances”, the PTC may authorise a party to file in French or English first, provided that a Khmer translation will be filed at the first opportunity.¹¹

IV. SUBMISSIONS

10. The ICP seeks extensions of both the time and page limits prescribed for appeals due to several factors that together constitute exceptional circumstances. First, in order for the ICP to make informed decisions on the appeal of the Dismissal Order, she needs time to fully and meaningfully review and analyse both CIJs’ Closing Orders, which both contain findings and reasoning relevant to whether Yim Tith falls within the ECCC’s jurisdiction.

⁶ **D381/4** Appeal Register of International Co-Prosecutor’s Notice of Appeal Against the Order Dismissing the Case Against Yim Tith (D381), 10 September 2019.

⁷ **D382/9** Appeal Register of Yim Tith’s Notice of Appeal against the International Co-Investigating Judge’s Closing Order, 17 September 2019; **D381/7** Appeal Register of Yim Tith’s Notice of Appeal against the National Co-Investigating Judge’s Order Dismissing the Case against Yim Tith, 17 September 2019.

⁸ Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 January 2015 (“Internal Rules” or “Rules”).

⁹ Practice Direction on Filing of Documents before the ECCC (Rev. 8), amended on 7 March 2012 (“Practice Direction”).

¹⁰ Practice Direction, arts 5.2, 5.4.

¹¹ Practice Direction, arts 7.1, 7.2.

As the PTC has already noted, both the Dismissal Order and the Indictment are long and complex, and raise wide-ranging and significant factual and legal matters.¹²

11. Second, the English translation of the Dismissal Order - the Closing Order the ICP intends to appeal - has only been available since 5 September 2019. Since the ICP works primarily in English, it is particularly important for her to have the time to review this translation in order to draft her appeal. Preparation of the ICP's appeal will also require additional time, as it has been hindered by the current inaccurate translation of this document.
12. Finally, the ICP's appeal will concern complex legal and factual issues that will be decisive as to the future of Case 004, and its preparation will require considerable time and resources. This Chamber previously held in similar circumstances in Case 004/2 that the existence of two separate and complex closing orders and the possibility of cross appeals meant that additional time and pages were warranted to allow parties to draft effective appeals.¹³
13. In Case 004/2, the PTC allowed all parties to file 100-page appellate submissions in one language within 45 days (*i.e.* an additional 15 days) from notification of the translations of both closing orders.¹⁴ The ICP anticipates that she will require 100 pages in total in English for her appeal of the NCIJ's Dismissal Order, and that a 30-day extension would afford her sufficient time to prepare the appeal in one language. Whilst of a similar complexity, the Case 004 Dismissal Order (558 pages in Khmer) is considerably longer than the Case 004/2 Dismissal Order (461 pages in Khmer),¹⁵ and covers a greater factual scope.
14. The ICP will require the requested page and time extensions in order to adequately address the issues raised in this complex Dismissal Order. These extensions would not cause any undue delay in the proceedings.
15. The ICP submits that the reasons stated above constitute exceptional circumstances so as to warrant granting the requested extensions, which are commensurate with the extensions granted in other cases.

¹² D381/3 & D382/3 Extension Decision, para. 7.

¹³ Case 004/2-D360/7 Decision on Request for Extension of Time and Page Limit for [REDACTED] Appeal Against the Closing Order (Indictment), 8 November 2018 ("Case 004/2 Extension Decision"), para. 6.

¹⁴ Case 004/2-D360/7 Case 004/2 Extension Decision, para. 6, Disposition.

¹⁵ Case 004/2-D359 Order Dismissing the Case Against Ao An, 16 August 2018, Khmer version, p. 461 (end).

V. RELIEF REQUESTED

16. For the reasons stated above, the ICP respectfully requests that the PTC allow her to:
- a. Extend the time limit for her appeal by 30 days (to 60 days) to 4 November 2019;
 - b. Extend the page limit for her appeal of the Dismissal Order by 70 pages in English (to 100 pages); and
 - c. File the appeal in English only with the Khmer translation to follow at the first opportunity.

Respectfully submitted,

Date	Name	Place	Signature
19 September 2019	William SMITH International Deputy Co-Prosecutor for Brenda J. HOLLIS International Co-Prosecutor (Reserve)	Phnom Penh	