

**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:** International Co-Prosecutor

**Filed to:** Pre-Trial Chamber

**Original Language:** English

**Date of document:** 16 December 2019

**CLASSIFICATION**

**Classification of the document  
suggested by the filing party:** CONFIDENTIAL

**Classification by Pre-Trial Chamber:** សាធារណៈ/Public

**Classification Status:**

**Review of Interim Classification:**

**Records Officer Name:**

**Signature:**




---

**INTERNATIONAL CO-PROSECUTOR'S REQUEST FOR EXTENSIONS FOR HER  
RESPONSE AND REPLY RELATING TO THE APPEALS IN CASE 004**

---

**Filed by:**

**Co-Prosecutors**  
Brenda J. HOLLIS  
International Co-Prosecutor

**Copied to:**

CHEA Leang  
National Co-Prosecutor

**Distribution to:**

<b>Pre-Trial Chamber</b>	<b>Co-Lawyers for YIM Tith</b>
Judge PRAK Kimsan	SO Mosseny
Judge Olivier BEAUVALLET	Suzana TOMANOVIĆ
Judge NEY Thol	
Judge HUOT Vuthy	
Judge Kang Jin BAIK	

**All Civil Parties in Case 004**

## I. INTRODUCTION

1. The International Co-Prosecutor (“ICP”) respectfully requests the Pre-Trial Chamber (“PTC”) to extend the page and time limits for her to respond to Yim Tith’s appeal<sup>1</sup> of the International Co-Investigating Judge’s (“ICIJ”) closing order (“Indictment”)<sup>2</sup> and to extend the time limit of her reply to any responses to her appeal of the National Co-Investigating Judge’s (“NCIJ”) closing order (“Dismissal Order”).<sup>3</sup> The ICP submits that this request is warranted by several factors including the complexity of the appeals and the importance of the legal and factual questions at issue. The ICP also requests that she be allowed to file her response and reply in English first, followed by Khmer translations at the earliest opportunity.

## II. PROCEDURAL HISTORY

2. On 28 June 2019, the National Co-Investigating Judge issued the Dismissal Order in Khmer only, dismissing the charges against Yim Tith on the grounds that “[t]he ECCC has no personal jurisdiction over Yim Tith”.<sup>4</sup> On the same day, the ICIJ issued an Indictment in English only, indicting Yim Tith for genocide, crimes against humanity, grave breaches of the 1949 Geneva Conventions, and violations of the 1956 Cambodian Penal Code and committing him for trial.<sup>5</sup> The Khmer translation of the Indictment and the English translation of the Dismissal Order were notified respectively on 15 August and 5 September 2019.
3. On 13 September 2019, the National Co-Prosecutor (“NCP”) filed an appeal against the Indictment<sup>6</sup> to which the ICP responded on 30 September 2019.<sup>7</sup> No reply to the ICP’s response was notified.
4. On 11 September 2019, the ICP informed the PTC that she had requested the Interpretation and Translation Unit (“ITU”) to review and file a corrected version of the English translation

---

<sup>1</sup> **D382/22** Yim Tith’s Appeal of the International Investigating Judge’s Closing Order in Case 004, 2 Dec 2019 (“Yim Tith’s appeal of the Indictment”).

<sup>2</sup> **D382** Closing Order, 28 Jun 2019 (“Indictment”).

<sup>3</sup> **D381** Order Dismissing the Case Against Yim Tith, 28 Jun 2019 (“Dismissal Order”).

<sup>4</sup> **D381** Dismissal Order, para. 686.

<sup>5</sup> **D382** Indictment, EN 01620059-71.

<sup>6</sup> **D382/4/1** National Co-Prosecutor’s Appeal Against the International Co-Investigating Judge’s Closing Order (Indictment) in Case 004, 13 Sep 2019. The appeal was filed in Khmer and the English translation was notified on 20 Sep 2019.

<sup>7</sup> **D382/16** International Co-Prosecutor’s Response to the National Co-Prosecutor’s Appeal of the Case 004 Indictment (D382), 30 Sep 2019. The response was filed in English and the Khmer translation was filed on 11 Oct 2019.

of the Dismissal Order.<sup>8</sup> The same day, Yim Tith requested the PTC to order ITU to produce an amended translation.<sup>9</sup> On 26 September 2019, the PTC suspended the time limit to file appeals against the Dismissal Order and Indictment until a corrected English translation of the Dismissal Order was notified to all Parties.<sup>10</sup> The Parties were notified of the revised translation on 16 October 2019.

5. On 31 October 2019, upon consideration of submissions from the Parties,<sup>11</sup> the PTC (i) gave permission for all Parties to file their appeals of the closing orders in one language, (ii) extended page and time limits for the appeals to 100 pages and 45 days from the notification of a corrected Dismissal Order translation, (iii) ordered that appeals against each closing order be filed in separate documents, where applicable, and (iv) instructed the ITU to ensure that requested translations are issued within 30 days from the filing of the appeals.<sup>12</sup>
6. On 1 December 2019, Civil Party Co-Lawyers filed an appeal against the Dismissal Order in both English and Khmer.<sup>13</sup> On 2 December 2019, the ICP filed an appeal against the Dismissal Order in English only.<sup>14</sup> On the same day, Yim Tith filed two appeals, one against the Indictment and one against the Indictment and Dismissal Order jointly, both in English only.<sup>15</sup> As of the date of this filing, the translation of the appeals from the ICP and Yim Tith have not been notified, but are expected no later than 2 January 2020.<sup>16</sup>

<sup>8</sup> **D381/6 & D382/6** Office of the Co-Prosecutor's Email Concerning Correction of Case 004 Dismissal Order (D381) Translation, 11 Sep 2019.

<sup>9</sup> **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, 11 Sep 2019.

<sup>10</sup> **D381/12 & D382/13** 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 Sep 2019, Disposition.

<sup>11</sup> **D381/8 & D382/10** Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders, 17 Sep 2019; **D381/13 & D382/16** 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 Sep 2019; **D381/15 & D382/18** 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 Oct 2019.

<sup>12</sup> **D381/16** Decision on Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders in Case 004, 30 Oct 2019, Disposition.

<sup>13</sup> **D381/20** Civil Party Co-Lawyers' Appeal Against the National Co-Investigating Judge's Closing Order in Case 004, 1 Dec 2019.

<sup>14</sup> **D381/19** International Co-Prosecutor's Appeal of the Order Dismissing the Case Against Yim Tith (D381), 2 Dec 2019 ("ICP's appeal of the Dismissal Order").

<sup>15</sup> **D381/18 & D382/21** Yim Tith's Appeal of the Issuance of Two Closing Orders in Case 004, 2 Dec 2019 (The ICP does not request any extension of page and time limit for her response to this appeal); **D382/22** Yim Tith's appeal of the Indictment, 2 Dec 2019.

<sup>16</sup> 31 days from 2 December 2019 since 1 January 2020 is an ECCC holiday, see Practice Direction on Filing Documents Before the ECCC (Rev. 8), amended on 7 Mar 2012 ("Practice Direction"), art. 8.5.

### III. APPLICABLE LAW

7. Article 5.2 of the Practice Direction on *Filing of Documents before the ECCC* (“Practice Direction”) requires that any document filed to the PTC shall not exceed 30 pages in English. Article 5.4 permits the PTC to extend the page limit “in exceptional circumstances” at the request of a participant.
8. Articles 8.3 and 8.5 of the Practice Direction require that responses be filed within 10 calendar days of the date that the appeal was notified in Khmer and one other language. As for replies, Articles 8.4 and 8.5 state that replies shall be filed within five calendar days of notification in Khmer and one other language of the response to which the participant is replying. Internal Rule 39(4)(a) allows the Chamber to extend time limits at the request of a concerned party.<sup>17</sup>
9. Article 7.1 of the Practice Direction requires documents to be filed in Khmer and one other language. Article 7.2 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.

### IV. SUBMISSIONS

10. The ICP seeks extensions of the applicable time and page limits for her response to Yim Tith’s appeal of the Indictment and an extension of time for her reply to any response to her appeal of the Dismissal Order. This request is justified by several factors that together constitute exceptional circumstances. Yim Tith’s appeal of the Indictment is 100 pages and covers novel legal and factual issues that will be decisive as to the future of this complex investigation including a wide range of procedural claims relating to the investigation as well as substantive arguments regarding the Indictment. This alone would require additional time and pages to adequately respond. However, Yim Tith’s appeal is, in reality, much longer as (a) it incorporates arguments made in the Defence Combined Response to the National and International Co-Prosecutors’ Final Submissions to which the ICP has not had the opportunity to reply before;<sup>18</sup> and (b) it includes a 442-page annex of substantive

---

<sup>17</sup> Extraordinary Chambers in the Courts of Cambodia, Internal Rules (Rev. 9), as revised on 16 January 2015 (“Internal Rules” or “Rules”), Rule 39(4)(a). *See also* Practice Direction on Filing Documents Before the ECCC (Rev. 8), amended on 7 March 2012 (“Practice Direction”), art. 8.1, 8.5.

<sup>18</sup> **D378/5** Defence Combined Response to the National and International Co-Prosecutors’ Final Submissions (“Defence Combined Response”), 26 Nov 2018. For example, in **D382/22** Yim Tith’s appeal of the Indictment, under Ground 1, para. 20 (fn. 28) refers to paras 240 to 429 of the Defence Combined Response; under Sub-Ground 1.1, para. 21 (fn. 31) refers to paras 240 to 258 of the Defence Combined Response; under Sub-Ground 1.2, para. 26 (fn. 44) refers to paras 259 to 429 of the Defence Combined Response and para. 38 (fn. 76) refers

analyses of witness statements.<sup>19</sup> These two elements greatly increase the analyses required for the ICP's response, and necessarily require additional time and pages to properly address.

11. The ICP submits that, due to these exceptional circumstances, an extension of the 10-day and 30-page limits is necessary for her to file a complete and meaningful response that would assist the PTC. She estimates that 30 extra days (i.e. 40 days in total) after the Khmer translation of Yim Tith's appeal has been notified and 50 extra pages (i.e. 80 pages in total) will be sufficient to do so in English, with a translation in Khmer to follow at the earliest opportunity. For her reply to any response, the ICP does not know exactly the complexity or length of the response to which she will be replying. However, the ICP estimates *a priori* that she will need an extra 20 days (i.e. 25 days in total) after translations are notified to submit a meaningful reply in English to Yim Tith's anticipated response to her appeal, with a translation in Khmer to follow at the first opportunity. No additional pages are requested for the reply.
12. The ICP further requests that the PTC synchronise the timelines for Parties' responses and replies to the ICP's appeal of the Dismissal Order and Yim Tith's appeal of the Indictment in order to ensure equality of arms between the Parties, avoid the Parties having to work on responses and replies simultaneously, and simplify the scheduling of briefing in this case.

## V. RELIEF SOUGHT

13. Based on the foregoing reasons, the ICP requests that the PTC:
  - a. Grant her a total of 50 extra pages (80 total) in which to respond to Yim Tith's appeal of the Indictment;
  - b. Extend the deadline for her response to Yim Tith's appeal of the Indictment by 30 days (to 40 days in total);

---

to paras 352 to 429 of the same document; under Sub-Ground 5.3, para. 223 (fn. 659) refers to paras 1077 to 1122 of the Defence Combined Response while para. 227 (fn. 673) refers to paras 1264 to 1273 of the Defence Combined Response. This totals to 88 pages in the Defence Combined Response that Yim Tith cross-referenced to in his appeal. For the record, the procedural history included in the Defence Combined Response (at paras 14 to 105) is further incorporated by reference in Yim Tith's Appeal of the Indictment (D382/22), at para. 2 (fn. 1).

<sup>19</sup> **D382/22.2** Yim Tith's appeal of the Indictment - Annex A: Witnesses Who Had Never Heard of Yim Tith, 2 Dec 2019.

- c. Extend the deadline for her reply to any responses of her appeal of the Dismissal Order by 20 days (to 25 days in total);
- d. Synchronise the timelines for Parties' appeal responses and replies; and
- e. Allow her to file her response and reply in English first, with a Khmer translation to follow at the earliest opportunity.

Respectfully submitted,

Date	Name	Place	Signature
16 December 2019	Brenda J. HOLLIS International Co-Prosecutor	Phnom Penh	