

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:** 17 September 2019**CLASSIFICATION****Classification of the document suggested by the filing party:****CONFIDENTIAL****Classification by OCIJ or Chamber:****សាធារណៈ/Public****Classification Status:****Review of Interim Classification:****Records Officer Name:****Signature:****YIM TITH'S REQUEST FOR EXTENSION OF PAGE AND TIME LIMITS FOR HIS APPEAL OF THE CLOSING ORDERS****Filed by:****The Co-Lawyers:**

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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 (Reserve)

All Civil Parties in Case 004

Mr YIM Tith, through his Co-Lawyers ('Defence'), respectfully submits *Yim Tith's Request for Extension of Page and Time Limits for His Appeal of the Closing Orders* pursuant to Rules 21, 39(4) and 75(3) of the ECCC Internal Rules ('Rules') and Article 5(4) of the Practice Direction on Filing Documents before the ECCC ('Practice Direction').

I. PROCEDURAL HISTORY

1. On 28 June 2019, the National Co-Investigating Judge ('NCIJ') issued his Order Dismissing the Case against Yim Tith ('the NCIJ's Closing Order') in Khmer only.¹ This document numbers 566 pages, plus annexes.
2. On the same day, the International Co-Investigating Judge ('ICIJ') issued his Closing Order ('the ICIJ's Closing Order') in English only.² The English version of the ICIJ's Closing Order numbers 487 pages, plus annexes.
3. The Defence received the Khmer translation of the ICIJ's Closing Order on 15 August 2019. This numbers 745 pages, plus annexes.
4. On 23 August 2019, the National Co-Prosecutor filed National Co-Prosecutor's Notice of Appeal against the International Co-Investigating Judge's Closing Order (Indictment).³
5. The Defence received the English translation of the NCIJ's Closing Order on 5 September 2019. This numbers 339 pages, plus annexes.
6. On 10 September 2019, the International Deputy Co-Prosecutor filed International Co-Prosecutor's Notice of Appeal against the Order Dismissing the Case against Yim Tith (D381).⁴
7. On 11 September 2019, the Defence filed 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, in which it argued that the inadequacy of the English translation of the NCIJ's Closing Order

¹ *Closing Order*, 28 June 2019, D381.

² *Closing Order*, 28 June 2019, D382.

³ *National Co-Prosecutor's Notice of Appeal against the International Co-Investigating Judge's Closing Order (Indictment)*, 23 August 2019, D382/4.

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

impeded its ability to appeal and thus warranted the suspension of the applicable appeal time limits.⁵

8. On 17 September 2019, the Defence filed Yim Tith's Notice of Appeal Against the Closing Orders.⁶

II. RELEVANT LAW

9. Article 31 of the Constitution of the Kingdom of Cambodia provides that Cambodia 'recognises and respects [...] the covenants and conventions related to human rights. The UN-RGC Agreement and the 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'). The Court's particular attention is drawn to Article 14(3)(b), which dictates that Mr YIM Tith be afforded 'adequate time and facilities to prepare his Defence.'

10. Article 35^{new} of the Law on the Establishment of the Extraordinary Chambers provides, in relevant part:

The accused shall be presumed innocent as long as the court has not given its definitive judgment. In determining charges against the accused the accused shall be equally entitled to the following minimum guarantees in accordance with Article 14 of the International Covenant on Civil and Political Rights: a. to be informed promptly and in detail in a language that they understand of the nature and cause of the charge against them; b. to have adequate time and facilities for the preparation of their defence and to communicate with counsel of their own choosing [...].

11. 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.'

12. 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
- 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.

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 September 2019, D381/5 and D382/5.

⁶ *Yim Tith's Notice of Appeal Against the Closing Orders*, 17 September 2019, D381/7 and D382/9.

13. Rule 75(3) provides, in pertinent part:

Submissions on appeal shall be filed by the appellant with the Greffier of the Chamber within 30 (thirty) days from the date that notice of the decision or order was received. Under exceptional circumstances, the time-limit may be extended.

14. 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.

III. SUBMISSIONS

15. The Defence respectfully requests that the PTC exercise its discretion under Article 5(4) of the Practice Direction to extend the page limit for Mr YIM Tith’s appeal against the Closing Orders from 30 to 150 pages in English.

16. The Defence also respectfully requests that the PTC exercise its discretion under Rules 39(4) and 75(3) to extend the time limit for the submission of Mr YIM Tith’s appeal against the Closing Orders from 30 to 45 days from the date on which the Defence received the translations of both Closing Orders.

17. The following exceptional circumstances justify the granting of these requests:

- i. The issuance of two separate and opposing Closing Orders;
- ii. The magnitude and complexity of the Closing Orders; and
- iii. The consequent extensiveness and intricacy of the necessary appeal.

a. The issuance of two separate and opposing Closing Orders

18. The issuance of two separate and opposing Closing Orders places a demand on the parties that can never have been envisaged by the drafters of the ECCC’s legal and procedural matrix. The parties have not one but two Closing Orders that require careful analysis both in and of themselves and in relation to each other. It is additionally incumbent upon the Defence to ensure that Mr YIM Tith fully understands both Closing Orders and is afforded the full and proper opportunity to provide his instructions thereon.

19. In order to appeal, the Defence will need to conduct full legal and factual analyses of both Closing Orders, which together total 826 pages in English, plus annexes. The demand made of the Defence in such circumstances is deep and relentless. It is also anticipated that the Defence will have to leap from preparing its appeal against the Closing Orders, to responding to the ICP's anticipated appeal against the NCIJ's Closing Order, to replying to the ICP's anticipated response to the Defence's appeal against the Closing Orders.
20. It is also noted that the National and International Co-Prosecutors are clashing in their respective appeals of the Closing Orders, as they have in other cases, raising the very real spectre of a complex web of appellate arguments in Case 004 and thus an additional burden on the resources of the Defence.⁷
21. Moreover, the Defence will need to address the procedural aberration of two conflicting Closing Orders, creating an additional burden not provided for by the Rules or relevant Practice Direction.
22. The Defence requires adequate time to analyse both Closing Orders concurrently in order that it might prepare Mr YIM Tith's defence. It will not be possible to perform the necessary analyses and draft the necessary grounds of appeal in just 30 days from receipt of the translations.

b. The magnitude and complexity of the Closing Orders

23. The ICIJ's Closing Order numbers 487 pages, plus annexes, in English (745 pages, plus annexes, in Khmer). The NCIJ's Closing Order numbers 339 pages, plus annexes, in English (566 pages, plus annexes, in Khmer). The findings contained therein cover the following legal and factual issues:
 - i. The ECCC's jurisdiction over Mr YIM Tith;
 - ii. The legal characterisation of crimes before the ECCC;
 - iii. The legal characterisation of modes of liability before the ECCC;
 - iv. Factual findings regarding Mr YIM Tith's alleged responsibility for crimes;
 - v. The fairness of the proceedings against Mr YIM Tith.

⁷ *National Co-Prosecutor's Notice of Appeal against the International Co-Investigating Judge's Closing Order (Indictment)*, 23 August 2019, D382/4.
International Co-Prosecutor's Notice of Appeal against the Order Dismissing the Case against Yim Tith (D381), 10 September 2019, D381/4.

24. It is immediately apparent that the Closing Orders contain multiple serious errors of law and fact, all of which the Defence must challenge on appeal. The Defence respectfully submits that the length and complexity of the Closing Orders themselves, compounded by the fact there are two and their interrelationship, warrants a significant extension of both the page and time limits set out in Article 5(4) of the Practice Direction and Rules 39(4) and 75(3).

c. The consequent extensiveness and intricacy of the necessary appeal

25. The Defence submits that it will not be possible properly to substantiate appellate arguments in respect of such legally and factually complex documents in just 30 pages. The Defence recalls Mr YIM Tith's fundamental right to adequate facilities to prepare his defence.
26. The Defence also notes that similar extensions have been granted in comparable circumstances in other cases before the ECCC.⁸ The right to equal treatment also recommends that this request be granted.
27. The Defence submits that the need to appeal two conflicting Closing Orders of such individual magnitude and complexity in one appeal warrants the extension of the page limit to 150 pages.

IV. CONCLUSION

28. In light of the scope and significance of the factual and legal issues addressed in the Closing Orders, the Defence submits that these modest page and time extensions are necessary to seek to uphold Mr YIM Tith's fundamental fair trial rights. Accordingly, the Defence respectfully invites the Pre-Trial Chamber to exercise its discretion under Article 5(4) of the Practice Direction and Rules 39(4) and 75(3) to extend the page limit for its appeal of the Closing Orders to 150 pages, and the time limit to 45 days from receipt of the translations of both Closing Orders.

⁸ Case 004/2, *Decision on Request for Extension of Time and Page Limit for Ao An's Appeal against the Closing Order (Indictment)*, 08 November 2018, D360/7.

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

1. **EXTEND** the page limit for Mr YIM Tith's appeal against the Closing Orders to 150 pages;
2. **EXTEND** the time limit for Mr YIM Tith's appeal against the Closing Orders to 45 days commencing on the date of receipt of the translations of both Closing Orders.

Respectfully submitted,


SO Mosseny


Suzana TOMANOVIĆ

Co-Lawyers for Mr YIM Tith

Signed in Phnom Penh, Kingdom of Cambodia on this 17th day of September 2019.