

**BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**CO-PROSECUTORS' REQUEST FOR AN URGENT ORDER TO THE TRIAL
CHAMBER TO ISSUE A REASONED DECISION ON THE SEVERANCE OF
CASE 002**

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I. INTRODUCTION

1. Pursuant to Rules 104, 105, 106(2) and 107 of the Internal Rules (“Rules”),¹ the Co-Prosecutors submit this request (“Request”) that the Supreme Court Chamber (“Chamber”)² order the Trial Chamber, as a matter of extreme urgency, to provide written reasons for its brief oral decision on the severance of Case 002 (“Impugned Decision”).³ In summary, the Co-Prosecutors base this request on two grounds.
2. First, the Request is admissible in the exercise of the Chamber’s inherent jurisdiction, particularly over the interpretation of its previous decision annulling the severance of Case 002 (“Severance Appeal Decision”)⁴ and the need to ensure the good administration of justice, or alternatively it is admissible on the basis of Internal Rule 104(4)(a) (**Section III**);
3. Second, the Trial Chamber’s failure to provide any reasons whatsoever for the Impugned Decision, over a period of 21 days, is unreasonable in the circumstances and occasions serious prejudice to the Co-Prosecutors and other parties (**Section IV**). All parties are thereby denied the ability to assess in a timely manner their respective legal positions on the severance of Case 002 at this late stage in the proceedings. As such, the Co-Prosecutors’ and other parties’ appellate rights are currently rendered meaningless, or will become so rapidly, in light of: (i) the relatively short time in which this trial as severed is predicted to be completed; (ii) the three-month timeframe mandated by the Internal Rule 108 (4*bis*) for decisions on immediate appeals; and (iii) as a result, the prospects for effective implementation of any relief that may be granted on appeal.

II. PROCEDURAL HISTORY

4. On 8 February 2013, the Chamber rendered the Severance Appeal Decision. The Chamber found the appeal admissible on grounds that the Trial Chamber’s Severance Order was in effect a termination of proceedings under Internal Rules 104(4)(a). The Chamber required the Trial Chamber, should it consider re-severing Case 002, to provide “for a tangible plan for the adjudication of the entirety of the charges in the

¹ Extraordinary Chambers of the Courts of Cambodia, Internal Rules (Rev. 8), as revised on 3 August 2011 (“Rules”).

² **E163/5** Notification of Decision on Co-Prosecutors’ Request to Include Additional Crime Sites within the Scope of Trial; in Case 002/01 (E163) and deadline for submission of applicable law portion of Closing Briefs, 8 October 2012 (“Impugned Decision”).

³ **E1/176.1** Transcript, 29 March 2013, p. 2, ln. 21 to p. 4, ln. 17.

⁴ **E163/5/1/13** Decision on the Co-Prosecutors’ Immediate Appeal of the Trial Chamber’s Decision Concerning the Scope of Case 002/01, 8 February 2013 (“Severance Appeal Decision”).

Indictment”.⁵ It held that if “faced with the deteriorating health of the Co-Accused [...] justice be better served by concluding [Case 002] with a judgment [...] of at least one smaller trial on some portion of the Indictment”, that the Trial Chamber “state this clearly and give due consideration to reasonable representativeness of the Indictment within the smaller trial(s).”⁶

5. On 12 February 2013, the Trial Chamber issued a memorandum setting out its views on the effect of the Severance Appeal Decision: “The immediate consequence of the SCC Decision is that Case 002 is no longer confined in scope and the Trial Chamber cannot proceed to a verdict in Case 002 until all factual allegations and charges contained in the Case 002 Closing Order are adjudicated.”⁷ The Trial Chamber further stated that it “will render a fully-reasoned decision regarding the scope of Case 002/01 as soon as possible after [scheduled oral hearings], taking into account both the submissions of the parties and the principles enshrined in the SCC Decision.”⁸
6. On 14-15 February 2013 the Trial Chamber convened oral hearings on the issue of severance, inviting the parties’ submissions on the terms of any future severance order, on the basis of a specific set of questions.⁹
7. On 29 March 2013, the President of the Trial Chamber announced in court that “For the reasons that will be outlined in its written decision, the Trial Chamber decides to sever Case 002, pursuant to Internal Rule 89ter, by confining the scope of Case 002/01 to the charges related to forced movement of population phases 1 and 2 and executions at Tuol Po Chrey.”¹⁰ The Trial Chamber also indicated that the reasons for that decision would follow in writing “as soon as possible.”¹¹ On the same day, the Co-Prosecutors communicated to the Senior Legal Officer requesting an indication as to when the Trial Chamber would issue written reasons on the severance of Case 002.¹² On behalf of the Trial Chamber, the Senior Legal Officer replied that reasons would be provided “as soon as possible”, observing that editorial and translation processes and the potential

⁵ E163/5/1/13 *Ibid.* at para. 50.

⁶ E163/5/1/13 *Ibid.*

⁷ E163/5/1/13/1 Trial Chamber Memorandum: Directions to the parties in consequence of the Supreme Court Chamber’s Decision on Co-Prosecutors’ Immediate Appeal of the Trial Chamber’s Decision concerning the Scope of Case 002/01 (E163/5/1/13), 12 February 2013 at para. 2.

⁸ E163/5/1/13/1 *Ibid.* at para. 5.

⁹ E163/5/1/13/1 *Ibid.*

¹⁰ E1/176.1 Transcript, *supra* note 3 at p. 4, ln. 13-ln. 17.

¹¹ E1/176.1 *Ibid.* at p. 2, ln. 21 to p. 4, ln. 17.

¹² Email from the Deputy Co-Prosecutor to the Parties, 29 March 2013.

- unavailability of national staff made it difficult to estimate when the reasoned decision would become available.¹³
8. On 5 April 2013, the Co-Prosecutors filed a request seeking confirmation on the availability of the written reasons for the revised severance order by 12 April 2013, or – in anticipation of the unavailability of translation resources over the Khmer New Year period – that the parties be provided with written reasons in one working language by that date.¹⁴ The Trial Chamber did not respond to this request.
 9. On 7 April 2013, in advance of the start of witness testimony in Case 002/01, the Co-Prosecutors requested the Trial Chamber to confirm that the Closing Order paragraphs relevant to Case 002/01 as a result of the Decision were the same as the initial severance order.¹⁵ The Senior Legal Officer replied on 8 April 2013, confirming that the scope of severance was indeed as previously identified.¹⁶
 10. On 18 April 2013, the Deputy Co-Prosecutor once again requested an update as to when a reasoned decision would be placed on the Case File.¹⁷ The Senior Legal Officer replied on 19 April 2013, indicating that an update “cannot” be provided, “other than to say that it won’t be too much longer.”¹⁸

III. JURISDICTION AND ADMISSIBILITY

A. THE REQUEST IS ADMISSIBLE IN THE EXERCISE OF INHERENT JURISDICTION

11. As an appellate judicial body, this Chamber has inherent jurisdiction over a broad range of matters related to the determination of an immediate appeal. The Internal Rules expressly confer powers to convene oral hearings,¹⁹ to admit additional evidence²⁰ and to change the legal characterisation of a crime charged.²¹
12. Domestic systems, principally those in the common law tradition, recognise even broader inherent jurisdiction of appellate courts, including the power to reopen already

¹³ Email from the Senior Legal Office to the Parties, 29 March 2013.

¹⁴ E264/4 Co-Prosecutor’s Request to Confirm Availability of Written Reasons for Revised Severance Order, 5 April 2013.

¹⁵ Email from the Deputy Co-Prosecutor to the Parties, 7 April 2013.

¹⁶ Email from the Senior Legal Officer to the Parties, 8 April 2013.

¹⁷ Email from the Deputy Co-Prosecutor to the Parties, 18 April 2013.

¹⁸ Email from the Senior Legal Office to the Parties, 19 April 2013.

¹⁹ Internal Rule 109.

²⁰ Internal Rule 108(7).

²¹ Internal Rule 110(1): “In *all* cases...”; implying, when read with Internal Rule 110(1), that this power extends both to “issues raised in the notice [of appeal] or in the immediate appeal”.

completed appeals. Courts of Appeal in England and Wales,²² New Zealand²³ and Hong Kong SAR²⁴ have either confirmed or approved of the view that appellate courts have implicit powers to do what was necessary to achieve the two principal objectives of correcting wrong decisions and ensuring public confidence in the administration of justice, including take the exceptional course of reopening proceedings already determined, where it is “clearly established that a significant injustice has probably occurred and that there is no alternative effective remedy.”²⁵ Legislation regulating the functioning of courts of appeal in Canada²⁶ and Kenya,²⁷ among many others, recognise in broad terms that such courts have jurisdiction over all matters necessary or incidental to the hearing and determination of an appeal.

13. At the international level, the ICTY Appeals Chamber has held that such inherent jurisdiction includes, but is not limited to, the power to determine the scope of a Chamber’s own jurisdiction (“*compétence de la compétence*”).²⁸ The International Court of Justice,²⁹ the Iran-US Claims Tribunal,³⁰ the former United Nations Administrative Tribunal,³¹ the European Court of Human Rights;³² the Inter-American Court of Human Rights³³ and the African Court on Human and Peoples’ Rights³⁴ also enjoy either inherent or treaty-based jurisdiction to interpret their own decisions. It is on this same legal basis that Cambodia recently appeared before the International Court of Justice in the matter of the *Temple of Preah Vihear*.³⁵

²² *Taylor & Anor v. Lawrence & Anor* [2003] QB 528, Supreme Court (Court of Appeal (Civil Division)), 4 February 2002.

²³ *R v. Smith* [2003] 3 NZLR 617 (Court of Appeal), 19 December 2002.

²⁴ *Hong Kong SAR v. Tin’s Label Factory Ltd* [2009] Part 9, Case 8 (Court of Final Appeal), 5 December 2008 at paras. 53-56.

²⁵ *Taylor v. Lawrence*, supra note 22 at para. 55.

²⁶ *Court of Appeal Act, Statutes of Saskatchewan* [2000], Ch. C-42.1 (Canada).

²⁷ *Appellate Jurisdiction Act* [2009] Ch. 9, s. 3(2) (Kenya).

²⁸ *Prosecutor v. Duško Tadić*, Case No. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 at paras. 17-18.

²⁹ Statute of the International Court of Justice, 24 October 1945, art. 60; Rules of the International Court of Justice, 1 July 1978, art. 98.

³⁰ See e.g. *Ford Aerospace and Communications Corporation Case* (1986), 12 Iran-US CTR 305.

³¹ See e.g. *Crawford et al.* (1955) UNAT 61, *Judgment*, at p. 355; Khalil (2000) UNAT 973, *Judgment*, at p. 3.

³² See e.g. *Ringeisen v. Austria* (Interpretation), Application No. 2614/65, *Judgment*, 23 June 1973 (ECtHR) at para. 13.

³³ American Convention on Human Rights, 22 November 1969, art. 67; Rules of Procedure of the Inter-American Commission on Human Rights (Modified on 2 September 2011), Article 59; see e.g. *Girls Yean and Bosico v. Dominican Republic*, IACHR, *Judgment*, 23 November 2006.

³⁴ Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of an African Court on Human and Peoples’ Rights, art. 28(4)

³⁵ See *Request for interpretation of the Judgment of 15 June 1962 in the case concerning the Temple of Preah Vihear (Cambodia v. Thailand)* (Cambodia v. Thailand), *Application of the Kingdom of Cambodia*,

14. In the early case of *Ringeisen* (1973), the European Court of Human Rights confirmed that recourse to interpretation is an exercise of inherent jurisdiction wholly distinct from recourse to appeal:

*A request for interpretation does not in any way constitute such an appeal for it is addressed to the Court itself. In considering the request, the Court is exercising inherent jurisdiction: it goes no further than to clarify the meaning and scope which it intended to give to a previous decision which issued from its own deliberations, specifying if need be what it thereby decided with binding force. Such competence is therefore in no way irreconcilable with Article 52 (art. 52) or, moreover, with Article 54 (art. 54) which makes the Committee of Ministers responsible for supervising the execution of the Court's judgments.*³⁶

15. Thus, the Chamber may properly consider the admissibility of the Request on the same legal basis as its disposition of the Severance Appeal Decision, rather than as a new, self-standing appeal. The Request is concerned with the means and timeframes for the implementation of the Severance Appeal Decision, and the provision of adequate reasons for the Impugned Decision, both matters addressed directly by this Chamber in the Severance Appeal Decision.³⁷
16. For these reasons, the Co-Prosecutors respectfully submit that the instant Request is admissible before the Chamber on the basis of the Chamber's inherent jurisdiction, as an apex, appellate court, over the interpretation of its decisions, particularly the Severance Appeal Decision of 8 February 2013.

B. IN THE ALTERNATIVE, THE REQUEST IS ADMISSIBLE UNDER INTERNAL RULE 104(4)(A)

17. As this Chamber has previously held, it has jurisdiction to decide immediate appeals of "a discernible error in the exercise of the Trial Chamber's discretion which resulted in prejudice to the appellant."³⁸ The Co-Prosecutors' immediate appeal of the Trial Chamber's severance decision was held admissible under Rule 104(4)(a), because that Rule "ensures that an avenue of appeal exists where the proceedings are terminated without arriving at a judgment and therefore without an opportunity to appeal against it" and "the severance of Case 002 into discrete trials creates the inevitable situation

28 April 2011 at para. 1; ICJ Press Release No. 2012/36, "The Court to hold public hearings from Monday 15 to Friday 19 April 2013", 29 November 2012.

³⁶ *Ringeisen v. Austria*, *supra* note 32 at para. 13.

³⁷ E163/5/1/13 Severance Appeal Decision, *supra* note 4 at paras. 41, 50.

³⁸ E163/5/1/13 *Ibid.* at para. 13.

that proceedings in relation to charges falling outside the scope of Case 002/01 are, in effect, stayed.”³⁹

18. This Chamber has recalled that “any decision of the Trial Chamber – whether substantive or procedural—which falls within the scope of one or more of the four categories under Rule 104(4) of the Internal Rules, is subject to immediate appeal, and may be overturned where it contains, *inter alia*, a discernible error in the exercise of the Trial Chamber’s discretion resulting in prejudice to the appellant.”⁴⁰ As set out below, the Trial Chamber’s exercise of its discretion to issue a decision on severance orally without reasoning and then to delay issuing a written decision for an unreasonable period under the circumstances, particularly given the “importance of the overall issues at play”⁴¹, is just such an exercise of discretion resulting in serious prejudice to the Co-Prosecutors.

IV. MERITS

A. THE LEGAL REQUIREMENT OF WRITTEN REASONS DOES NOT WARRANT EXCEPTIONALLY LENGTHY OR COMPLEX REASONS

(I) RELEVANT LAW

19. The applicable law on reasoned judicial decisions clearly establishes that judicial bodies have a duty to provide decisions whose *form* reflects an authoritative judicial act and whose *content* provides adequate reasons. As this Chamber observed in disposing of a recent Defence appeal:

*[...] as held by the Trial Chamber on a different occasion, all judicial decisions - whether oral or written - must comply with a court's obligation to provide adequate reasons as a corollary of the accused's fundamental fair trial rights. Indeed, the right to receive a reasoned decision forms part of the right to be heard.*⁴²

The Severance Appeal Decision reiterates and amplifies these findings.⁴³

20. Similarly, the statutes governing the ICC, the ICTY and the ICTR require reasoned opinions for judicial decisions.⁴⁴ The ICTY Appeals Chamber has held that a reasoned

³⁹ E163/5/1/13 *Ibid.* at para. 22.

⁴⁰ E163/5/1/13 *Ibid.* at para. 39.

⁴¹ E163/5/1/13 *Ibid.* at para. 36.

⁴² E176/2/1/4 Decision on Nuon Chea’s Appeal Against the Trial Chamber’s Decision on Rule 35 Applications for Summary Action, 14 September 2012 at para. 25 (internal citations omitted).

⁴³ E163/5/1/13 Severance Appeal Decision, *supra* note 4 at paras. 30, 36, 41, 44.

⁴⁴ See Statute of the International Criminal Tribunal for the Former Yugoslavia, 25 May 1993, S.C. Res. 827, art. 23; Statute of the International Tribunal for Rwanda, S.C. Res. 955, 8 November 1994, art. 22; Rome Statute of the International Criminal Court, 17 July 1998, art. 74.

decision helps to secure fundamental human rights principles governing a defendant's right to a fair trial and the right to an appeal.⁴⁵ A trial chamber therefore "has a general obligation to set out a reasoned opinion"⁴⁶ that provides sufficient reasoning for their assessment and "adequately balanc[es] all the relevant factors."⁴⁷ The "extent of the [Chamber's] reasoning will depend on the circumstances of the case."⁴⁸ However, at a minimum, a trial chamber must "provide reasons in support of its findings on the substantive consideration relevant for its decision."⁴⁹

(II) ARGUMENT

21. As noted above, the Trial Chamber, through its Senior Legal Officer, would appear to consider that the Severance Appeal Decision mandates a "lengthy" decision,⁵⁰ and that this is a relevant in the circumstances to justify the delay occasioned. There is nothing in the Severance Appeal Decision that mandates a lengthy decision. By way of example, the severance decision in the *Mladić* case is 15 pages in length, and was issued on 13 October 2011 pursuant to a request from the Prosecutor on 16 August 2011.⁵¹ As the example of *Mladić* demonstrates, severance decisions on complex indictments before international criminal tribunals can be brief, well-reasoned, and issued in a manner that does not extend the severance proceedings beyond two calendar months. The severance transaction in Case 002 began on 22 September 2011 and remains unsettled after a lapse of one year and seven months to date.

B. THE FAILURE TO PROVIDE WRITTEN REASONS OCCASIONS SERIOUS PREJUDICE IN THE CIRCUMSTANCES

(I) RELEVANT FACTS

⁴⁵ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, 23 March 1976, art. 14. See also *Prosecutor v. Momir Nikolić*, Case No. IT-02-60/1-A, Judgment on Sentencing Appeal (ICTY Appeals Chamber), 8 March 2006 at para. 96; *Prosecutor v. Dragoljub Kunarac, et al.*, Case Nos. IT-96-23 & IT-96-23/1-A, Judgment (ICTY Appeals Chamber), 12 June 2002 at para. 41.

⁴⁶ *Prosecutor v. Momir Nikolić*, *Ibid.* at para. 96.

⁴⁷ *Prosecutor v. Dragoljub Kunarac, et al.*, Case Nos. IT-96-23 & IT-96-23/1-A, Judgment (ICTY Appeals Chamber), 12 June 2002 at para. 324.

⁴⁸ *Prosecutor v. Thomas Lubanga Dyilo*, Case No. ICC-01/04-01/06 (OA 5), Judgment on the Appeal of Mr. Thomas Lubanga Dyilo Against the Decision of Pre-Trial Chamber I Entitled "First Decision on the Prosecution Requests and Amended Requests for Redactions under Rule 81" (ICC Appeals Chamber), 14 December 2006 at para. 20.

⁴⁹ *Prosecutor v. Édouard Karemera*, Case No. ICTR-98-44-AR73.1, Decision on Mathieu Ndirumpatse's Appeal from the Trial Chamber Decision of 17 September 2008 (ICTR Appeals Chamber), 30 January 2009 at para. 19.

⁵⁰ See para. 24, above.

⁵¹ *Prosecutor v. Ratko Mladić*, Decision on consolidated prosecution motion to sever the indictment, to conduct separate trials, and to amend the indictment, Case No. IT-09-92-PT (ICTY Trial Chamber), 13 October 2011.

22. It has been over two and a half months since this Chamber handed down its Severance Appeal Decision on 8 February 2013. It has been over 21 days since the Trial Chamber announced its oral decision on severance on 29 March 2013. The trial for Case 002/01 has resumed, but only in respect of the factual allegations set out in the Decision. Given that the scope of severance is identical to that from September 2011, the Trial Chamber's own statements indicate that the trial in Case 002/01 is now coming to a rapid close. In a memorandum dated 14 February 2013, the Trial Chamber states,

*"At the time of the [Severance Appeal Decision], the Trial Chamber was nearing the conclusion of Case 002/01. It estimates that relatively few additional courtroom days in the presence of all three Accused were required (emphasis added) in order to conclude the hearing of evidence in that first trial."*⁵²

(II) RELEVANT LAW

23. The failure to provide written reasons in a timely manner has serious consequences for the effective exercise of the Co-Prosecutors' appeal rights under Internal Rule 104. In 2011, having been seised of Case 002, the Trial Chamber itself ruled on the applicable law on delays in the provision of written reasons, finding that a delay of one month in the provision of written reasons by the Pre-Trial Chamber constituted a "procedural defect which initially impacted on the Accused's fundamental fair trial guarantees of legal certainty and clarity"⁵³ by limiting the opportunity to prepare submissions on the continuation of provisional detention.⁵⁴
24. In *Hadjianastassiou* (1992),⁵⁵ the European Court on Human Rights considered the potential violation of fair trial arising from a failure to provide any written reasons until 49 days after an oral judgment, effectively denying the applicant the ability to formulate a cassation appeal on points of law. The Court confirmed that: "national courts must [...] indicate with sufficient clarity the grounds on which they based their decision. It is this, inter alia, which makes it possible for the accused to exercise usefully the rights of appeal available to him."⁵⁶

⁵² E163/5/1/13/1 Trial Chamber Memorandum, *supra* note 7 at para. 3(iii).

⁵³ E50 Decision on the urgent applications for immediate release of Nuon Chea, Khieu Samphan and Ieng Thirith, 16 February 2011 at para. 29

⁵⁴ E50 *Ibid.* at paras. 25-27.

⁵⁵ *Hadjianastassiou v Greece*, Application No. 12945/87, *Judgment*, 16 December 1992 (ECtHR) at para. 33.

⁵⁶ *Ibid.*

25. The failure to provide written reasons in a timely manner also undermines public confidence in the administration of justice. For instance, in *Hong Kong SAR v. Tin's Label Factory Ltd*,⁵⁷ the Hong Kong Court of Final Appeal:

*reiterated and strongly emphasised that judges at all levels have a duty to deliver judgments within a reasonable time after the conclusion of the hearing. Where an oral decision has been given of the result, with reasons to follow later, it is incumbent upon the judge to deliver the reasons within a reasonable time. This is not only important not only for the parties, but it is essential to the maintenance of public confidence in the administration of justice.*⁵⁸

26. Similarly, the commentary to Rule 2.12(B) of the American Bar Association's Model Code of Judicial Conduct provides: "Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly."⁵⁹

(III) ARGUMENT

27. The Trial Chamber stated in its Decision that only charges related to the "forced movement of population phases 1 and 2 and executions at Tuol Po Chrey"⁶⁰ would proceed. The implication of the Decision is that proceedings on some charges in relation to Case 002 will be effectively terminated.. Therefore Rule 104(4)(a) will allow for immediate appeal of this severance decision as well. The Co-Prosecutors were awaiting the written decision before considering whether any additional appeal was necessary, but as that time has lengthened, and the trial progresses so has the prejudice to the interests of the Co-Prosecutors in legal certainty and a reasoned decision. Furthermore, the Trial Chamber appears to be keeping the date when a final written decision on severance might be issued "uncertain and open to change"⁶¹ and thus this appeal is timely under Rule 107(1).
28. In effect, with its oral decision the Trial Chamber has severed Case 002 without providing any reasons whatsoever. Now, as before, "the Trial Chamber has not provided any clear or specific information as to the number, scope, or duration of trials

⁵⁷ *Hong Kong SAR v. Tin's Label Factory Ltd*, *supra* note 24 at para. 12.

⁵⁸ *Ibid.*

⁵⁹ American Bar Association Model Code of Judicial Conduct (2011), Rule 2.12 (United States of America).

⁶⁰ **E1/176.1** Transcript, *supra* note 3 at p. 4 ln. 13-17.

⁶¹ **E163/5/1/13** Severance Appeal Decision, *supra* note 4 at para. 17.

envisaged after Case 002/01.”⁶² Although trial proceedings have now resumed⁶³ on the basis of the Trial Chamber’s Decision⁶⁴ based on “undisclosed criteria”,⁶⁵ the Trial Chamber has not provided a “tangible plan or any information regarding subsequent cases to be tried in the course of Case 002”⁶⁶, nor has it stated clearly whether “reasonable representativeness” is the goal of its oral decision.⁶⁷ This situation remains true despite the Trial Chamber’s own statement that written reasoning will be provided “as soon as possible”,⁶⁸ and assertions of behalf of the Trial Chamber that a reasoned decision will follow “as soon as possible [because] as mandated by the SCC, it is lengthy” (29 March 2013);⁶⁹ and “it won’t be too much longer” (19 April 2013).⁷⁰

29. With each passing day, the Co-Prosecutors and other parties continue to be deprived of an opportunity to assess their legal position in respect of the Decision; to assess the prospects of success of any potential appeal; and to definitively settle the scope of their closing trial submissions.
30. Most significantly, given the very short time frame that the Trial Chamber had indicated in which this trial will be completed and the three month time limit with which the Chamber has to deliver its decision, any appeal filed by the parties if successful has less opportunity to be implemented. If the reasons for the second severance order decision were filed today, and a party appealed - and on the assumption the Chamber took three months to deliver its appeal decision the trial would be effectively over. Implementing this decision if it differed from the Trial Chamber’s view would become significantly more difficult and therefore less likely.

C. AN URGENT ORDER IS THE MOST APPROPRIATE REMEDY IN THE CIRCUMSTANCES

31. In the circumstances, the requested remedy of an urgent order to the Trial Chamber to provide written reasons without delay is the most direct and minimally-intrusive means available to directly address the prejudice caused to the Co-Prosecutors. As time is

⁶² E163/5/1/13 *Ibid.* at para. 23.

⁶³ E1/176.1 Transcript, *supra* note 3 at p. 1, ln. 18-21.

⁶⁴ E1/176.1 *Ibid.* at p. 4 ln. 13-17.

⁶⁵ E163/5/1/13 Severance Appeal Decision, *supra* note 4 at para. 45.

⁶⁶ E163/5/1/13 *Ibid.* at para. 24.

⁶⁷ E163/5/1/13 *Ibid.* at para. 50.

⁶⁸ E1/176.1 Transcript, 29 March 2013 at p. 1, lns. 23-24; see also E163/5/1/13 Severance Appeal Decision, *supra* note 4 at para. 46.

⁶⁹ Email from the Senior Legal Officer to the Parties, 29 March 2013.

⁷⁰ Email from the Senior Legal Officer to the Parties, 19 April 2013.

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short, the Co-Prosecutors further request that the Trial Chamber be ordered to provide written reasons in one working language of the ECCC, pending availability of translations. This is an exceptional practice justified in the circumstances of extreme urgency occasioned by the delay in the provision of written reasons. The Trial Chamber has however, in the past, issued its decisions in one working language as “advance courtesy copies” pending the filing of translations in two working languages at a later date.⁷¹

V. RELIEF SOUGHT

32. For these reasons, the Co-Prosecutors request that the Supreme Court Chamber **admit and consider** the instant Request as a matter of extreme urgency; and **order** the Trial Chamber to provide written reasons for the Decision without further delay, if necessary, in one working language of the ECCC, pending availability of translations.

Respectfully submitted,

Date	Name	Place	Signature
23 April 2013	CHEA Leang Co-Prosecutor	Phnom Penh	
	Andrew CAYLEY Co-Prosecutor		

⁷¹ See e.g. Email from the Senior Legal Officer to the Parties, 17 February 2012 (circulating **E172**, subsequently notified on 21 February 2012); Email from the Senior Legal Officer to the Parties, 30 July 2012 (circulating **E216/3**, subsequently notified on 31 July 2012); Email from the Senior Legal Officer to the Parties, 24 September 2012 (circulating **E233**, subsequently notified on 25 September 2012).