

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

**FILING DETAILS**

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**CO-PROSECUTORS' REQUEST FOR CLARIFICATION OF THE SUPREME  
COURTS CHAMBER'S POWER TO RE-OPEN EVIDENTIARY PROCEEDINGS AT  
ANY POINT PRIOR TO THE TRIAL CHAMBER'S JUDGMENT IN CASE 002/01**

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## I. INTRODUCTION

1. Pursuant to Rules 104 and 105 of the Internal Rules (“Rules”),<sup>1</sup> the Co-Prosecutors submit this request (“Request”) that the Supreme Court Chamber (“Chamber”) clarify that it has the power to order the Trial Chamber to re-open evidentiary hearings after their close at any point up until the Trial Chamber’s final judgment in Case 002/01 is delivered.

## II. PROCEDURAL HISTORY

2. On 26 April 2013 the Trial Chamber released its decision on severance of Case 002<sup>2</sup> (“Second Severance Decision”) following this Chamber’s annulment<sup>3</sup> of the Trial Chamber’s previous severance decision.<sup>4</sup>
3. On 8 May 2013 the Chamber issued a decision entitled “Decision on Co-Prosecutors’ Request for Urgent Order to Trial Chamber to Issue Reasoned Decision on Severance of Case 002” (“Appeal Reasoning Decision”). In that decision this Chamber noted that even were the evidentiary phase in Case 002/01 to close “before the time limit were to expire for the issuance of a decision on an eventual immediate appeal, any possible prejudice which may arise out of any possible errors *remain susceptible to appellate scrutiny and intervention*, as necessary or appropriate to the circumstances.”(emphasis added)<sup>5</sup>
4. On 10 and 27 May 2013 the Co-Prosecutors<sup>6</sup> and the Nuon Chea Defence<sup>7</sup> respectively appealed the Trial Chamber’s Second Severance Decision. Both parties have requested an expansion of Case 002/01. Should any remedy be granted to expand Case 002/01, additional evidentiary proceedings will be necessary.

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

<sup>2</sup> **E284** Decision on Severance of Case 002 Following Supreme Court Chamber Decision of 8 February 2013, 26 April 2013.

<sup>3</sup> **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.

<sup>4</sup> **E124** Severance order pursuant to Rule 89*ter*, 22 September 2011.

<sup>5</sup> **E163/5/1/13/3** Decision on Co-Prosecutors’ Request for Urgent Order to Trial Chamber to Issue Reasoned Decision on Severance of Case 002, 8 May 2013, para. 5.

<sup>6</sup> **E284/2/1** Co-Prosecutors’ Immediate Appeal of Second Decision on Severance of Case 002, 10 May 2013.



<sup>7</sup> **E284/4/1** Immediate Appeal Against Trial Chamber’s Second Decision on Severance and Response to Co-Prosecutors’ Second Severance Appeal, 27 May 2013.

5. On 31 May 2013, the Trial Chamber issued a memorandum delineating the “remaining hearings prior to the close of evidentiary proceedings in Case 002/01”.<sup>8</sup> The Trial Chamber stated in the memorandum that “[i]n order to safeguard the timely conclusion of the Case 002/01 verdict and in accordance with Internal Rule 104(4), the Chamber will not defer the close of evidentiary proceedings in Case 002/01 pending resolution of the Co-Prosecutors’ appeal of the second severance decision (E284), unless this is so ordered by the Supreme Court Chamber.”<sup>9</sup>

### III. RELIEF SOUGHT

6. For legal certainty the Co-Prosecutors request the Supreme Court Chamber to confirm that, should the evidentiary hearings finish prior to the issuance of its Decision(s) on the Co-Prosecutors’ and Nuon Chea’s Appeals of the Trial Chamber’s Second Severance Decision, this Chamber has the power to order the Trial Chamber to re-open the evidentiary hearings if this Chamber decides to expand the scope of the trial in Case 002/01. Further, it is requested that the Supreme Court Chamber confirms that such a re-opening of the evidentiary hearings could be ordered at any time prior to the Trial Chamber’s final judgment in Case 002/01.

Respectfully submitted,

Date	Name	Place	Signature
6 June 2013	CHEA Leang Co-Prosecutor	Phnom Penh	
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<sup>8</sup> **E288** Trial Chamber Memorandum: Announcement of remaining hearings prior to the close of evidentiary proceedings in Case 002/01 and scheduling of final Trial Management Meeting for 13 June 2013, 21 May 2013.

<sup>9</sup> **E288** Trial Chamber Memorandum: Announcement of remaining hearings prior to the close of evidentiary proceedings in Case 002/01 and scheduling of final Trial Management Meeting for 13 June 2013, 21 May 2013, para. 10.