

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA

FILING DETAILS

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**CO-PROSECUTORS' NOTICE OF REQUEST FOR RECONSIDERATION OF THE
TERMS OF "SEVERANCE ORDER PURSUANT TO INTERNAL RULE 89TER"**

Filed by:

Co-Prosecutors
CHEA Leang
Andrew CAYLEY

Distributed to:

Trial Chamber
Judge NIL Nonn, President
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge YOU Ottara

Civil Party Lead Co-Lawyers
PICH Ang
Elisabeth SIMONNEAU FORT

Copied to:

Accused
NUON Chea
IENG Sary
IENG Thirith
KHIEU Samphan

Lawyers for the Defence

SON Arun
Michiel PESTMAN
Victor KOPPE
ANG Udom
Michael G. KARNAVAS
PHAT Pouy Seang
Diana ELLIS
SA Sovan
Jacques VERGES

NOTICE

1. This is a notice advising the Trial Chamber that the Co-Prosecutors will request reconsideration of the terms of the “Severance order pursuant to Internal Rule 89*ter*” (“Order”)¹ in a filing to be submitted on Monday 3 October 2011. The Co-Prosecutors will request the Trial Chamber to exercise its discretion to reconsider its Order on the grounds described in summary form below.
2. On 22 September 2011, the Trial Chamber issued the Order separating the proceedings in Case 002 into several distinct trials, each of which would, in turn, return a verdict and sentence or an acquittal.² The first trial would be limited to the following:
 - (a) the issues already specified by the Trial Chamber for the first phase of the trial, namely the structure of Democratic Kampuchea (“DK”), the roles of the Accused prior to and during the DK government and DK policies on the “issues raised in the Indictment” (“First Phase Issues”);
 - (b) the factual allegations concerning the movement of the population from Phnom Penh (phase 1) and from the Central; (old North), Southwest, West and East Zones (phase 2); and
 - (c) crimes against humanity of murder, extermination, persecution (except on religious grounds), forced transfer and enforced disappearance, insofar as these crimes pertain to phases 1 and 2 of the population movement.³
3. The Order excludes from the first trial:
 - (a) all co-operatives, worksites, security centres and execution sites;
 - (b) all facts relevant to population movement from the East Zone (phase 3); and
 - (c) the crimes of genocide, the crime against humanity of persecution on religious grounds and grave breaches of the Geneva Conventions of 1949.⁴

¹ E124 Severance order pursuant to Internal Rule 89*ter*, 22 September 2011.

² E124 at para. 6.




³ E124 a paras. 1, 5, 7.

⁴ E124 at para. 7.

4. The Co-Prosecutors fully support the need for severance in Case 002 and defer to the authority of the Trial Chamber to issue severance orders in the interests of justice and to otherwise manage the allocation of time and resources at trial. However, in the circumstances, the Co-Prosecutors will submit that a legitimate basis exists for the Trial Chamber to reconsider the terms of this Order and to allow for an oral hearing to consider an alternative formulation for the severance of Case 002. By way of summary of the forthcoming request, the Co-Prosecutors:
 - (a) are concerned that the current format of the first trial would not serve the interests of justice, particularly the interests of victims; would not reflect, in a representative and focused manner, the totality of the criminal conduct of the Accused; and thereby would detract from the contribution of any potential judgment to the accuracy of the historical record and to national reconciliation;
 - (b) observe that the Trial Chamber has not heard the views of the parties to the proceedings on the format of severance, despite the significant impact of this decision on lengthy and ongoing trial preparation carried out by all parties; and
 - (c) foresee formidable legal and practical challenges arising from the implementation of the Order in its current form, which may significantly delay the completion of the trials and result in repetitive litigation of issues. This would frustrate the objective of the Order to safeguard the rights of the Accused to an expeditious trial and the right of victims to meaningful and timely justice, and further impacts the legal responsibility of the Co-Prosecutors to prove the guilt of the Accused at trial.
5. To assist the Trial Chamber in determining the most effective format for severance of Case 002, the Co-Prosecutors will prepare focused recommendations for the inclusion of a small selection of representative criminal acts alleged in the Closing Order. This approach will correlate most effectively with the decision of the Trial Chamber to consider the First Phase Issues during the first trial.
6. This notice is being filed as a result of the shortness of time to prepare a full request and in the interests of providing the Trial Chamber with notice of the Co-Prosecutors' position in advance of the upcoming judicial recess. The request will be submitted on Monday 3

October 2011, as this is the first day on which the Co-Prosecutors are permitted to make submissions following the Pchum Ben period.⁵

Respectfully submitted,

Date	Name	Place	Signature
23 September 2011	Andrew CAYLEY Co-Prosecutor		
	YET Chakriya Deputy Co-Prosecutor		

⁵ E120 Memorandum from Trial Chamber entitled 'Judicial recess during Pchum Ben period', 20 September 2011.