



**ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ**

**អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា**

Extraordinary Chambers in the Courts of Cambodia  
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia  
Nation Religion King  
Royaume du Cambodge  
Nation Religion Roi

**អង្គជំនុំជម្រះតុលាការកំពូល**

Supreme Court Chamber  
Chambre de la Cour suprême



សំណុំរឿងលេខ: ០០២/១៩-០៩-២០០៧-អ.វ.ត.ក-អ.ជ.ស.ដ/អ.ជ.ត.ក(១៨)

Case File/Dossier N°. 002/19-09-2007-ECCC-TC/SC(18)

**Before:**  
Judge KONG Srim, President  
Judge Chandra Nihal JAYASINGHE  
Judge SOM Sereyvuth  
Judge Agnieszka KLONOWIECKA-MILART  
Judge MONG Monichariya  
Judge Florence Ndepele Mwachande MUMBA  
Judge YA Narin

**Date:** 08 May 2013  
**Language(s):** Khmer/English  
**Classification:** PUBLIC

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

**Co-Prosecutors**  
CHEA Leang  
Andrew CAYLEY

**Co-Lawyers for NUON Chea**  
SON Arun  
Victor KOPPE

**Accused**  
KHIEU Samphan  
NUON Chea

**Co-Lawyers for KHIEU Samphan**  
KONG Sam Onn  
Anta GUISSÉ  
Arthur VERCKEN  
Jacques VERGÈS

**Civil Party Lead Co-Lawyers**  
PICH Ang  
Elisabeth SIMONNEAU-FORT

1. **THE SUPREME COURT CHAMBER** of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” and “ECCC”, respectively) is seized of the “Co-Prosecutors’ Request for an Urgent Order to the Trial Chamber to Issue a Reasoned Decision on the Severance of Case 002” filed on 23 April 2013 (“Request”).<sup>1</sup>
2. On 8 February 2013, the Supreme Court Chamber issued its “Decision on the Co-Prosecutors’ Immediate Appeal of the Trial Chamber’s Decision Concerning the Scope of Case 002/01”<sup>2</sup> (“Appeal Decision”), declaring that the cumulative effect of a number of errors committed by the Trial Chamber regarding the severance of Case 002 occasioned the invalidity thereof.<sup>3</sup> The Supreme Court Chamber specified that the Appeal Decision is without prejudice to the Trial Chamber’s reassessment of severing Case 002, but that “it must first invite the parties’ submissions on the terms thereof, and only after *all* parties’ respective interests are balanced against *all* relevant factors may a severance of Case 002 be soundly undertaken”.<sup>4</sup>
3. The Trial Chamber thereafter immediately issued a memorandum scheduling a hearing to take place on 14 and 15 February 2013, and listing nine detailed and specific issues related to the severance of Case 002 for the parties to address.<sup>5</sup> The hearing was subsequently rescheduled to 18 and 20 February 2013.<sup>6</sup> On 29 March 2013, the Trial Chamber announced in court that it had decided to re-sever Case 002 into discrete trials and that the scope of the first trial (“Case 002/01”) would be confined to the charges related to forced movement of population phases 1 and 2 and executions at Tuol Po Chrey (“Oral Decision”).<sup>7</sup> The Trial Chamber also indicated that the reasons for the Oral Decision would be issued in writing as soon as possible.<sup>8</sup>
4. After waiting for the written reasons for 25 days, the Co-Prosecutors filed the present Request pursuant to Rules 104, 105, 106(2) and 107 of the Internal Rules,<sup>9</sup> arguing that the Trial Chamber’s failure to provide any reasons whatsoever to date is unreasonable and an abuse of the

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<sup>1</sup> E163/5/1/13/2.

<sup>2</sup> E163/5/1/13.

<sup>3</sup> Decision, para. 49.

<sup>4</sup> Decision, para. 50 (emphasis in original).

<sup>5</sup> Memorandum by Judge NIL Nonn, President of the Trial Chamber, entitled “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)”, E163/5/1/13/1, dated 12 February 2013 and filed on 14 February 2013.

<sup>6</sup> T. (EN), 18 February 2013, E1/171.1, pp. 6, 114.

<sup>7</sup> T. (EN), 29 March 2013, E1/176.1, p. 4.

<sup>8</sup> T. (EN), 29 March 2013, E1/176.1, pp. 2-4.

<sup>9</sup> Internal Rules of the ECCC, Revision 8, 3 August 2011 (“Internal Rules”).

Trial Chamber's discretion, occasioning serious prejudice to the parties.<sup>10</sup> In this respect, the Co-Prosecutors submit that their 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 [Rule 108(4)*bis* of the Internal Rules] for decisions on immediate appeals; and (iii) as a result, the prospects for effective implementation of any relief that may be granted on appeal."<sup>11</sup> The Co-Prosecutors accordingly request that the Supreme Court Chamber "directly address the prejudice caused"<sup>12</sup> by ordering the Trial Chamber to provide written reasons for the Oral Decision without further delay.<sup>13</sup>

5. Three days after the Co-Prosecutors filed their Request, the Trial Chamber issued its written reasons for the Oral Decision.<sup>14</sup> The Request is thereby rendered moot and accordingly dismissed without determination of its merits or admissibility. The Supreme Court Chamber nevertheless considers it necessary to indicate that it is not persuaded that, at the time of the filing of the Request, the Co-Prosecutors' appellate rights had been rendered meaningless, or nearly so, by the Trial Chamber's delay in issuing its written reasons. Even if the evidence in Case 002/01 were to conclude 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.

6. For the foregoing reasons, the Supreme Court Chamber **DISMISSES** the Request.

Phnom Penh, 8 May 2013

President of the Supreme Court Chamber



KONG Srim

<sup>10</sup> Request, paras. 1, 3, 18-31. The Co-Prosecutors also submit that the Request is admissible. *See* Request, paras. 2, 11-18.

<sup>11</sup> Request, para. 3. *See also* Request, paras. 23-30.

<sup>12</sup> Request, para. 31.

<sup>13</sup> Request, paras. 1, 32.

<sup>14</sup> Decision on Severance of Case 002 following Supreme Court Chamber Decision of 8 February 2013, E284, 26 April 2013.