

**BEFORE THE TRIAL CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

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**URGENT REQUEST ON THE SCOPE OF TRIAL ONE AND THE NEED FOR A  
REASONED DECISION FOLLOWING THE CIVIL PARTIES REQUEST FOR  
RECONSIDRATION OF THE SEVERANCE ORDER**

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**Before:**

**The Trial Chamber**

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## **I – Request for clarification on the scope of Trial One of Case 002**

1. Regarding the scope of Trial One in case 002, the Civil Parties support and adopt the arguments and requests of the Co-Prosecutors in their 4 November 2011 submission aiming at a clarification of the scope of the first Trial<sup>1</sup> and request the Chamber to respond to their specific questions, including those posed in their submission dated 2 November 2011<sup>2</sup>
2. Additionally and in relation more particularly to paragraphs 8 to 11 of the Co-prosecutor's above submission, the Civil Parties request the Chamber to clarify whether or not it will examine 1) what policies were adopted by Democratic Kampuchea, 2) how they were developed and 3) who among the Accused may have participated in their development or were aware of them (excluding the "*implementation of the policies*"<sup>3</sup>) with regard to Segment 4 (*Policies of Democratic Kampuchea on the issues raised in the Indictment*)

## **II – Request for a reasoned decision by the Chamber in response to the Civil Parties request for reconsideration of the Severance Order**

3. The Civil Parties remind the Trial Chamber that they are still expecting a decision regarding their request for reconsideration<sup>4</sup> of the Chamber's Severance Order.<sup>5</sup>
4. The Civil Parties note with concern that the Chamber's decision<sup>6</sup> on an inter-related issue in response of the Co-prosecutors' own request for reconsideration of the Severance Order was notified the same day as the Civil Party request namely on 18 October 2011 at 4:35 p.m . Even though the Chamber acknowledged that "the Lead co-lawyers provided

<sup>1</sup> E124/9 request for clarification of the scope of the first Trial, 4 November 2011

<sup>2</sup> E132/2 Civil Parties request for a Trial Management Meeting and Regular Trial Status Meeting for Case 002 and for clarification on Trial scheduling and preparation, 2 November 2011

<sup>3</sup> Trial Chamber Memorandum dated 29 June 2011. See also 20 June 2011, Civil Party Lead Co-Lawyers "Supplemental Information to Witness and Expert List in Relation to the first four Trial Topics and Request for Clarification of the 4<sup>th</sup> Heading 'Policies of the Democratic Kampuchea'" (E93/2/1)

<sup>4</sup> E124/8 Lead co-lawyers and civil party lawyers request for reconsideration of the terms of the severance order E124, 18 October 2011.

<sup>5</sup> E124 Severance Order pursuant to Internal Rule 89ter, 22 September 2011

<sup>6</sup> E124/7 Decision on Co-Prosecutor's request for reconsideration of the terms of the Trial chamber's severance order (E124/2) and related motions and annexes, 18 October 2011

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notice<sup>7</sup> to the Chamber that they would request reconsideration of this Order “as soon as a consensus has been reached among the Civil Party Lawyers,”<sup>8</sup> the Chamber did not wait to read the arguments of the Civil Parties before issuing a decision on the matter. An advance courtesy copy of the Civil Party Request had been sent by e-mail to the judges and the parties on 18 October 2011 at 2:47 p.m. Yet, the Chamber did not consider it necessary to wait for the Civil Parties’ request before dismissing the Co-prosecutors request for reconsideration of the Severance Order.

5. The Chamber is obliged to issue a reasoned decision responding to the legal arguments officially submitted by the parties. Given that the Civil Parties arguments are unique to their legal interests, position and status before the Court, the response to the Co prosecutors’ request cannot be considered an adequate response to the Civil Parties’ separate request for reconsideration.
6. In their request for reconsideration of the Severance Order, the Civil Parties highlighted the fact that the Severance Order had inevitable consequences both in terms of participation and the civil party final claim for reparation<sup>9</sup>:

“consider that the Severance Order has immediate impact on the rights of Civil Parties in the first trial as their participation is based on a demonstration that “*as a direct consequence of at least one of the crimes alleged against the Charged Person, he or she has in fact suffered physical, material or psychological injury upon which a claim of collective and moral reparation might be based*”. (...) The Case 001 Judgment, which is still pending a decision of the Supreme Court Chamber clearly stated that – to be admissible - Civil Parties need to substantiate that their sufferings were the direct results of the criminal conduct of the Accused.”<sup>10</sup>

7. One of the immediate effects of the Severance Order is to divide the collective of civil parties into sub-groups, the first of these being comprised of those Civil Parties admitted

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<sup>7</sup> E124/4 Lead Co-Lawyers Notice of Request for Reconsideration of the Terms of “Severance order pursuant to Internal Rule 89ter”, 6 October 2011

<sup>8</sup> E124/7 Decision on Co-Prosecutor’s request for reconsideration of the terms of the Trial chamber’s severance order (E124/2) and related motions and annexes, 18 October 2011, para 1

<sup>9</sup> In its memorandum regarding the *Civil Party Lead Co-Lawyers’ request to reschedule the 19 October 2011 hearing on initial specifications on the substance of reparation* (E 125/1) dated 12 October 2011 the Chamber “*acknowledge(d) the potential impact of the Severance Order (E124) on reparations.*”

<sup>10</sup> E124/8 Lead co-lawyers and civil party lawyers request for reconsideration of the terms of the severance order E124, 18 October 2011, Para 7

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on the basis of their substantiated prejudice in relation to the first two phases of forced transfer who can demonstrate the required nexus between the charges in the Modified Indictment and the prejudice they have suffered.

8. As described in Civil Parties' request for reconsideration:

*“The Severance Order has procedural and legal consequences on the single consolidated group, the first of these being the exclusion, at least temporarily and until further notice<sup>11</sup>, of civil parties who cannot demonstrate harm as a result of the commission of the crimes linked to the scope of the severed first case.*

*Out of the 3,866<sup>12</sup> Civil Parties only a small number have been admitted in relation to the first two phases of forced transfer (see Annex). The Civil Parties note that approximately 750 Civil Parties were admitted in relation to facts set forth in the Severance Order. Therefore by severing the case, only those Civil Parties in relation to the first two phases of forced transfer have legal standing as parties to the proceedings”.*

9. In the dual interests of meeting victim expectations, abiding by the legal criteria governing Civil Party participation and guaranteeing a transparent process, Civil Parties call upon the Chamber to give due consideration to the present request and to clarify the legal criteria and threshold that must be met in order for Civil Parties to participate in the first trial of Case 002.

10. The civil parties have a fundamental right to be informed of the procedural developments of the Court's proceedings. While it is understood that such an obligation falls within the direct responsibility and mandate of the individual Civil Party Lawyers in representing their clients and the Lead Co-Lawyers in representing the interest of the collective as a whole. However, in the current climate of uncertainty and in the absence of further clarification from the Chamber on the consequences of the Severance Order on civil party participation, civil lawyers are incapable of formulating clear legal recommendations for the Civil Parties.

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<sup>11</sup> E125, Initial Specification of the substance of reparations awards sought by the Civil Party Lead Co-Lawyers pursuant to Internal Rule 23quinquies(3) refers to the inclusion of other crimes and factual scenarios “to later phases of the proceedings in Case 002”

<sup>12</sup> As of the date of this filing 3865 civil parties  
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11. Consequently the Civil Parties urge the Chamber to clarify how they intend to reconcile the Severance Order with rule 23*quinqies*(1)(a) and 2(b). Sub-part 1(a) which requires that reparations requests must “acknowledge the harm suffered by Civil Parties as a result of the commission of the crimes for which an Accused is convicted; and 1(b) requires that they “provide benefits to the Civil Parties which address this harm.”
12. The Chamber should also invite Public Affairs and all ECCC organs that would potentially be in contact with civil parties – such as WESU and the VSS Outreach team - to have a common and clear message to convey to the Civil Parties on the issue of how their participation and right to reparation might be affected by the Severance Order.
13. It is of the utmost importance that the Civil Parties be spared further trauma and victimization through the thoughtful provision of accurate information and careful management of their expectations during the current and future proceedings. Doing so would not only facilitate Civil Party Lawyers and Lead Co-Lawyers efforts to provide effective representation and coordination to the Civil Parties, but it would also be in accordance with principle 10 of the Van Boven/ Bassiouni principles which require that *“victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal or administrative proceedings designed to provide*

**THE LEAD CO-LAWYERS AND CIVIL PARTY LAWYERS RESPECTFULLY REQUEST THE TRIAL CHAMBER**

To clarify the scope of Trial One of Case 002 with regard to Civil Parties’ participation and reparation rights,

To issue a reasoned decision in response to the Civil Parties request for reconsideration of the Severance Order

Respectfully submitted,

<b>Date</b>	<b>Name</b>	<b>Place</b>	<b>Signature</b>
17 November 2011	PICH Ang National Lead-Co-Lawyer	Phnom Penh	
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