

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

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**LEAD CO-LAWYERS NOTICE OF REQUEST FOR RECONSIDERATION OF THE
TERMS OF "SEVERANCE ORDER PURSUANT TO INTERNAL RULE 89ter"**

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Before:

The Trial Chamber

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NOTICE

1. The Lead Co-Lawyers and the Civil Party Lawyers hereby inform the Trial Chamber that a Request for Reconsideration of the terms of the “Severance Order pursuant to Internal Rule 89*ter*” will be submitted as soon as a consensus¹ has been reached among the Civil Party Lawyers and on this crucial issue. The Lead Co-Lawyers will request the Trial Chamber to exercise its discretion to reconsider its order on the grounds described in summary from 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 have a verdict, a sentence and a decision on reparations or an acquittal. The first trial would be limited to;
 - a) The four segments already specified by the Trial Chamber,
 - b) The movements of population said as forced transfers 1 and 2,
 - 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. The Order excludes all co-operatives, worksites, security centers, execution sites, forced transfer 3, crime of genocide, crimes against humanity of persecution on religious grounds, forced marriages and graves breaches of the Geneva Conventions of 1949.
4. On 3 October 2011, Ieng Sary’s defence filed a “Conditional Support to the Co-Prosecutors”²
5. The Lead Co-Lawyers and the Civil Party Lawyers are fully aware of the interest of justice and the necessity to manage the allocation of time and resources at trial. They are

¹ Rule 12 *ter* 3 of the Internal Rules

² E 124/3

also fully aware of the great impact of such a decision for the Civil Parties, in term of participation, first , and in term of reparations, regarding rule 23 quinquies1) a).

They have to measure the interest of civil parties in the consolidate group. The severance has an impact on the consolidated group and consequently, on the reparations. The question is to be sure that the collective interest is respected, provided that this collective interest is made of individual ones. The Lead Co-Lawyers and the Civil Party Lawyers are defining their position and will notify a submission.

6. They already summarize the forthcoming request:

a) The Lead Co-Lawyers and the Civil Party Lawyers fully support the Co-Prosecutors in their request to allow an oral hearing to consider this crucial issue.

b) The Lead Co-Lawyers and the Civil Party Lawyers fundamentally disagree with the expressed view of the Chamber in paragraph 8 of the Severance Order which indicates that *“limiting the scope of facts to be tried during the first trial accordingly has no impact on the nature of Civil Party participation at trial, and their formulation of reparations claims made on their behalf by the Lead Co-Lawyers should take account of Internal Rule 23quinquies (l)(a).4 »*


c) The Lead Co-Lawyers and the Civil Party Lawyers are aware that this first trial could be the only one, nevertheless, it is absolutely necessary that the Trial Chamber gives a precise agenda of the next trials it intends to hold in order for the parties to fully appreciate the current severance,

d) The Lead Co-Lawyers and the Civil Party Lawyers consider that it is not appropriate and funded to limit the legal characterizations; only a trial can justify such a limitation; in any case, if there is a severance, it should be only factual,

e) The Lead Co-Lawyers and the Civil Party Lawyers insist on the necessity to hear all civil parties summoned and examined in the first trial on all the facts and all the harm they suffered in order to have a more complete view of the crimes that are included in the Closing Order.

This notice is being filed after a first consultation with the Civil Party Lawyers and will be followed by the request as soon as possible.

Respectfully submitted,

Date	Name	Location	Signatures
October 6th, 2011	PICH Ang National Lead Co-Lawyer	Phnom Penh	
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