

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

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**RESPONSE TO CO-PROSECUTORS' REQUEST FOR
RECONSIDERATION OF THE SEVERANCE ORDER**

Filed by

Nuon Chea Defence Team:
SON Arun
Michiel PESTMAN
Victor KOPPE
Andrew IANUZZI
Jasper PAUW
PRUM Phalla
Zara LOCKSHIN

Distribution

Co-Accused

Co-Prosecutors:
CHEA Leang
Andrew CAYLEY

Co-Lawyers for Civil Parties:
PICH Ang
Elisabeth SIMONNEAU-FORT

RESPONSE

1. Counsel for the Accused Nuon Chea (the ‘Defence’) hereby submits this response to the ‘Co-Prosecutors’ Request for Reconsideration of Severance Order Pursuant to Internal Rule 89*ter*’ (the ‘Request’).¹
2. The Defence supports the Request to the extent that it sets out the law on the ‘Authority to Reconsider’.² The Trial Chamber, like all courts of law, ‘has the inherent power to reconsider any of its orders’,³ decisions, judgments, or other directives—either *sua sponte* or upon application by a party. On this point of law, the view of the Office of the Co-Prosecutors (the ‘OCP’) is the correct one.
3. As to the remaining substance of the Request and the particular relief sought therein, the Defence urges the Trial Chamber to stand by the current terms of its severance order⁴—without a doubt, the most sensible decision to emerge from the ECCC and one that should have been taken by the OCIJ in 2007 when confronted with the Co-Prosecutors’ unmanageable Introductory Submission. Given the late hour, all parties would do well to recall that the ECCC should be engaged in the business of trying cases rather than attempting to write history. In this regard, the Defence suggests that the OCP seriously reconsider its call for reconsideration.⁵
4. In any event, whatever its decision on the Request, the Defence can only hope the Trial Chamber will make it reasonably soon. At some point (presumably), the Accused needs to know the precise size and scope of the case against him. Sadly, after four long years, this somehow remains beyond the extraordinary capabilities of the Tribunal.
5. In light of Nuon Chea’s right to an expeditious trial, the Defence objects to an oral hearing on this issue⁶ and eagerly (not to say wearily) looks forward to reading something resembling a final indictment in the not too distant future.

¹ Document No **E-124/2**, ‘Co-Prosecutors’ Request for Reconsideration of Severance Order Pursuant to Internal Rule 89*ter*’ 3 October 2011, ERN 00744254–00744269.

² Request, paras 7–15.

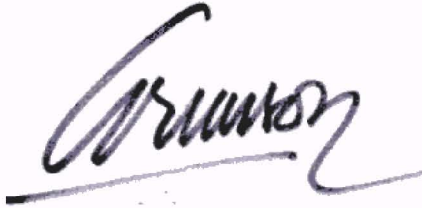
³ Request, para 2.

⁴ Document No **E-124**, ‘Severance Order Pursuant to Internal Rule 89*ter*’, 22 September 2011, ERN 00743502–00743502.

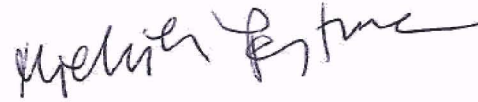
⁵ *N.B.* Like the Trial Chamber, the Co-Prosecutors have the inherent power to reconsider their decisions.

⁶ See Request, paras 1, 45(2); Document No **E-124/3**, ‘Ieng Sary’s Conditional Support to the Co-Prosecutors’s Notice of Request for Reconsideration of Severance Order Pursuant to Internal Rule 89*ter*’, 3 October 2011, ERN 00744288–00744289, page 1.

CO-LAWYERS FOR NUON CHEA

A handwritten signature in black ink, appearing to read 'Arun' with a stylized flourish at the end.

SON Arun

A handwritten signature in black ink, appearing to read 'Michiel PESTMAN & Victor KOPPE'.

Michiel PESTMAN & Victor KOPPE