

BEFORE THE TRIAL CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA



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**CO-PROSECUTORS' REQUEST TO ADMIT WITNESS STATEMENTS RELEVANT
TO PHASE 2 OF THE POPULATION MOVEMENT AND OTHER EVIDENTIARY
ISSUES with CONFIDENTIAL ANNEXES I, II, III and PUBLIC ANNEX IV**

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I. INTRODUCTION

1. On 15 June 2012 the Co-Prosecutors filed their request to admit witness statements relevant to phase 1 of the population movement (“First Phase Motion”).¹ In the First Phase Motion the Co-Prosecutors noted that they would shortly be filing a similar motion related to phase 2 of the population movement.²
2. On 20 June 2012, the Trial Chamber (“Chamber”) issued its *Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and Other Documents before the Trial Chamber* (“Decision”).³ The Decision allowed the parties to submit to the Chamber written statements and transcripts of individuals who are not currently scheduled to appear as witnesses, and outlined the factors to be considered by the Chamber in determining the admissibility and probative value of documents tendered to prove matters other than the acts and conduct of the Accused.⁴
3. As foreshadowed in the First Phase Motion, and in partial response to the Decision, the Co-Prosecutors now submit the present motion and accompanying four annexes concerning witness statements relevant to phase 2 of the population movement and other evidentiary issues. Additionally, although the First Phase Motion was submitted prior to the Decision, the Co-Prosecutors request that the Chamber consider the First Phase Motion and accompanying annexes, which, in conjunction with the instant motion, comply with the criteria and procedural modalities of the Decision, as part of their response thereto.
4. The written statements annexed to the First Phase Motion and to the instant motion “go to proof of matters other than the acts or conduct of the accused (and are ... *prima facie* relevant, reliable and not otherwise excluded under Internal Rule 87(3) criteria)”⁵. As a result they are “admissible ... without requiring [the authors’] attendance at trial and [the Chamber] may under certain conditions rely on this material.”⁶ As further explained below and in the First Phase Motion, the reasons these statements are highly probative include that they are “of a cumulative nature”, are corroborative, “relate[] to relevant historical, political and military background, concern[] crime-base evidence[,] ... go to proof of

¹ E208 Co-Prosecutors’ request to admit witness statements relevant to phase 1 of the population movement, 15 June 2012.

² E208 *ibid*, para. 5.

³ E96/7 Decision on Co-Prosecutors’ Rule 92 Submission Regarding the Admission of Witness Statements and other Documents before the Trial Chamber, 20 June 2012.

⁴ E96/7 *ibid*, paras. 23-25.

⁵ E96/7 *ibid*, para. 23. Furthermore, to the extent that any information contained in the statements is interpreted by the Chamber to relate to the acts or conduct of the Accused, the Co-Prosecutors disavow the intention to utilize the statements for that purpose at present.

⁶ E96/7 *ibid*, para. 23.

threshold elements of international crimes[, and] concern[] the impact of crimes upon victims.”⁷

5. Furthermore, all of the documents in annexes to the First Phase Motion and the instant motion are statements taken by the Office of the Co-Investigating Judges (“OCIJ”). “Statements taken during the judicial investigation are entitled to a presumption of relevance and reliability.”⁸ In light of this presumption, and in accordance with the factors identified by the Chamber, the Co-Prosecutors submit that statements identified in this Motion and the First Phase Motion are admissible and highly probative. Additionally, all of the OCIJ statements have already been translated, minimizing any concerns regarding resource allocation in this regard.
6. As with the First Phase Motion, the Co-Prosecutors request that the witness statements identified in the accompanying annexes be admitted into evidence and assigned an E3 number (to the extent this has not already been done). The Co-Prosecutors further request that the Trial Chamber rely on this evidence, in conjunction with oral testimony heard at trial, in evaluating the charges against the accused persons in the first trial of Case 002.
7. The Co-Prosecutors are in the process of identifying further materials responsive to the Chamber’s Decision. In accordance with the Chamber’s directions, the Co-Prosecutors anticipate providing the Chamber with the identification of additional corroborative case file material on or before 27 July 2012.⁹

II. OVERVIEW OF ACCOMPANYING ANNEXES

A. Annex I

8. **Annex I** to the present motion contains extracts of written records of interviews conducted by the Office of Co-Investigating Judges (“OCIJ”) with witnesses (“witness statements”). The extracts relate directly to phase 2 of the population movement as charged in the Closing Order¹⁰. The extracts contain valuable corroborative evidence relevant to establishing the charges of crimes against humanity against the accused persons in the first trial of Case 002, namely the crimes against humanity of extermination, political persecution, and other inhumane acts through attacks on human dignity, forced transfer and enforced disappearances.¹¹
9. **Annex I** contains extracts from 58 witness statements provided by 51 witnesses, with seven witnesses having provided two statements each. The two statements provided by

⁷ E96/7 *ibid*, para. 24.

⁸ E96/7 *ibid*, para. 26.

⁹ E96/7 *ibid*, para. 35(d).

¹⁰ See D427 Closing Order, at para. 262.

¹¹ See E124/7.1 Annex to Decision on Co-Prosecutors’ request for reconsideration of the terms of the severance order, 18 October 2011, at p.2 point 4.

each of these seven witnesses refer to the same incident of forced transfer and, accordingly, are treated as a single statement for the purposes of statistics in this motion. Three of the witness statements in **Annex I** have already been put before the Trial Chamber and assigned an E3 number.¹²

10. The extracts in **Annex I** are presented in the same format and follow the same approach for inclusion as the extracts in **Annex I** of the First Phase Motion, as described in paragraphs 5-9 of that motion. Notably, **Annex I** does not include extracts from witness statements prepared by third parties, from witnesses who have already provided oral testimony, or from witnesses who have been identified by the Trial Chamber as potential witnesses for the early segments of trial.¹³ Additionally, as with the First Phase Motion, the statements of witnesses who were proposed by the Co-Prosecutors to be called at trial but who have not yet been selected by the Trial Chamber for the early segments of trial¹⁴ have been included in Annex I, subject to the Co-Prosecutors' rights to make submissions as to the calling of these witnesses at a later stage of the trial.
11. Finally it is noted that there is a degree of overlap in the witness statements included in **Annex I** to the present motion and in **Annexes I** and **II** to the First Phase Motion because these statements contain evidence relating to both phases of population movement. Specifically, 27 of the extracts in **Annex I** to the present motion are taken from witness statements from which different extracts were included in **Annexes I** or **II** to the First Phase Motion.¹⁵

B. Annexes II - IV

12. **Annex II** provides an overview, in table form, of the witness extracts contained in **Annex I**. The table sets out the locations to and from where the evacuees were moved. It also

¹² D233/3 (E3/414); D278/4 (E3/436); D234/19 (E3/419). See **E185.1** Annex A to Decision on objections to documents proposed to be put before the Chamber, 9 April 2012.

¹³ As set out in **E131/1.1** Confidential Annex A: Partial list of witnesses, experts and civil parties for first trial in Case 002, 25 October 2011 and **E172** Memorandum of the Trial Chamber entitled "Next group of witnesses, civil parties and experts to be heard in Case 002/01", 21 February 2012.

¹⁴ See **E9/4** Co-Prosecutors' rule 80 expert, witness and Civil Party lists, including confidential annexes 1, 2, 3, 3a, 4, and 5, 28 January 2011. There are 19 such witnesses - TCCP-1, TCW-63, TCCP-36, TCCP-37, TCW-253, TCW-269, TCW-280, TCW-285, TCCP-45, TCCP-64, TCW-426, TCCP-98, TCW-546, TCW-585, TCCP-138, TCW-661, TCW-674, TCW-718, TCCP-169.

¹⁵ Eighteen of the extracts in Annex I to the present motion are taken from witness statements that were also included in Annex I to the First Phase Motion: D199/15 (civil party TCCP-1); D166/35 (no pseudonym); D125/169 (no pseudonym); D278/4 [E3/436] (civil party TCCP-36); D234/19 [E3/419] (witness TCW-253); D246/10 (no pseudonym); D296/8 (no pseudonym); D246/3 (civil party TCCP-64); D232/88 (witness TCW-426); D296/10 (civil party TCCP-108); D40/6 (no pseudonym); D125/57 (witness TCW-546); D278/2 (civil party TCCP-138); D369/31 (no pseudonym); D246/16 (no pseudonym); D166/9 (witness TCW-718); D246/4 (civil party TCCP-169); D296/2 (civil party TCCP-172). Nine of the extracts in Annex I to the present motion are taken from witness statements + were also included in Annex II to the First Phase Motion: D125/47 (witness TCW-63); D217/2 (civil party TCCP-45); D246/6 (no pseudonym); D166/181 (no pseudonym); D246/11 (civil party TCCP-67); D166/50 (no pseudonym); D217/3 (no pseudonym); D166/16 (no pseudonym); D125/51 (no pseudonym).

indicates the number of movements identified by each of the witnesses. **Annex III** contains a list of all the included witness statements in alphabetical order by witness name and indicates the relevant movements referred to in their statements.

13. **Annex IV** is a map that shows 58 different movements identified by 40 witnesses. The remaining witnesses do not specify the exact location where the evacuees were sent or removed from or identified multiple movements, which cannot be mapped. Both of these groups could not be included on the map. As shown in the map and detailed in the Closing Order, the main population movement was to the area that CPK designated as the Northwest Zone (Battambang, Pursat and Banteay Meanchey provinces) or the Central (Old North) Zone (Kampong Thom and parts of Kampong Cham). Simultaneously, there were minor movements from or within the East Zone (Prey Veng and Svay Rieng), to Kratie (Sector 505), within the Central (Old North) Zone or within Battambang Province.¹⁶ As with the First Phase Motion, the witness statements identified in **Annexes I – III** and represented on the map do not correspond to the actual number of movements or the exact number of people moved.¹⁷ Rather they represent a sample of individual accounts describing the circumstances and destinations of the evacuations.

III. RELEVANCE OF EVIDENCE CONTAINED IN ANNEX I

14. The witness statements included in **Annex I** relate directly to phase 2 of the population movement, as described in paragraphs 262 to 282 of the Closing Order. The witnesses include both evacuees and ordinary people who witnessed others either being evacuated from or relocated to their village. It also includes former Khmer Rouge who had specific positions or were simply combatants.
15. The witness statements provide evidence of forced movements occurring over a period of more than 2 years, with the largest movements taking place from the central and southwest parts of the country to the Northwest and Central (Old North) Zones. In addition, there are 14 statements providing evidence of a significant movement of Cham people from or within the Kampong Cham province occurring in late 1975.¹⁸ These statements corroborate other evidence that has been admitted at trial¹⁹ and suggests the existence of a CPK policy to conduct a large scale relocation of Cham people in order to disperse them throughout Khmer villages with only a minority of Cham people allowed in each village.

¹⁶ See **D427** Closing Order, at paras. 262-263.

¹⁷ As stated in the Closing Order, the OCII has acknowledged the difficulty in estimating the exact number of people evacuated during that period. See **D427** Closing Order, at para. 264.

¹⁸ See **D166/29**; **D125/97.1**; **D125/73** and **D125/73.1**; **D125/78.1**; **D166/161**; **D125/100** and **D125/100.1**; **D125/102**; **D232/88**; **D125/75**; **D125/104**; **D125/99**; **D125/105**; **D125/81**; **D125/101** and **D125/101.1**.

¹⁹ See **IS 21.3 [E3/154]** DK Telegram 15 from Chhon to Brother Pol, 30 November 1975 and **IS 4.25 [E3/1593]** Ben Kiernan, *The Pol Pot Regime*, at ERN 00104322-28.

16. Together the witness statements in **Annex I** provide valuable evidence of the charges of crimes against humanity relating to phase 2 of the population movement, namely the crimes against humanity of murder, extermination, political persecution and other inhumane acts through attacks on human dignity, through forced transfer, and through enforced disappearances.²⁰ In particular, the witness statements provide evidence of:
- (a) the large scale nature of the movement – relevant to establishing the chapeau elements of a widespread or systematic attack directed against any civilian population;
 - (b) the forced or coerced nature of the movement, including the use of force, threats and duress – relevant to establishing an element of the crime against humanity of other inhumane acts through forced transfer;
 - (c) the inhumane conditions during the forced movement and upon arrival, including the lack of food, accommodation, transport, and medical treatment – relevant to establishing elements of the crimes against humanity of extermination and of other inhumane acts through attacks on human dignity;
 - (d) the targeting of people who refused to leave and sending them for re-education where people never returned – relevant to establishing elements of the crimes against humanity of other inhumane acts through enforced disappearances;
 - (e) the non-temporary nature of the evacuation where evacuees were forced to remain at new locations and to engage in labour projects – relevant to establishing the absence of any grounds for the population movement permitted by international law;
 - (f) the planned and well-organized nature of the movements – relevant to establishing the absence of any grounds for the population movement permitted by international law and the corroborative evidence relating to the purpose. For example:
 - with respect to the evacuations to the Northwest Zone, there is consistent evidence that local CPK cadres were in charge of implementing the evacuation from its inception and to its completion by using lists of names, organizing transportation and supervising movement at all stages;
 - with respect to evacuations occurring after the Cham rebellion, witnesses provide evidence of Cham people being separated from the main group prior to the evacuation, when departing, during the journey, or upon arrival.
 - (g) the segregation of victims based on personal characteristics, including membership in targeted groups such as the “new people”, people connected to the Lon Nol regime, Cham, Chinese and Kampuchea Krom minorities – relevant to establishing the

²⁰ See **E124/7.1 Annex** to Decision on Co-Prosecutors’ request for reconsideration of the terms of the severance order, 18 October 2011, at p.2 point 4.

chapeau element of “discriminatory grounds” and other elements of the crimes against humanity of political persecution and of other inhumane acts through attacks on human dignity.

17. Further, as with the witness statements sought to be admitted in the First Phase Motion, in addition to providing evidence of the forced transfer of the population during the DK period, these statements provide evidence of other issues relevant to the first trial such as the historical, political or military background, proof of other crimes, the widespread or systematic nature of the attack against the civilian population, and the impact of these crimes upon victims, amongst other matters. These further issues to which the witness statements sought to be admitted in this Motion and the First Phase Motion are related are specifically identified for each witness statement in Annex 12 of the Co-Prosecutors’ Rule 80(3) Trial Document List²¹ and the related Co-Prosecutors’ Rule 80 Witness, Civil Party, and Expert Summaries.²²
18. For the foregoing reasons, the witness statements are admissible in accordance with the factors identified by the Chamber and are highly probative of, *inter alia*, matters relating to phase 2 of the population movement and other evidentiary issues identified above.

IV. RELIEF SOUGHT

19. In light of the foregoing, the Co-Prosecutors request that the Trial Chamber:
- admit the witness statements identified in **Annex I** into evidence and assign them an E3 number, to the extent that this has not already been done; and
 - rely upon the witness statements identified in **Annex I**, as cumulative evidence in corroboration of oral testimony heard at trial, in determining the charges against the accused persons in the first trial of Case 002.

Respectfully submitted

Date	Name	Place	Signature
5 July 2012	CHEA Leang Co-Prosecutor	Phnom Penh	
	William SMITH Deputy Co-Prosecutor		

²¹ E9/31 Co-Prosecutors’ Rule 80 (3) Trial Document List, 19 April 2011, and related annexes.

²² E9/13.1 Annex to Co-Prosecutors’ Rule 80 Witness, Civil Party and Expert Summaries, 23 February 2011.