

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

**FILING DETAIL**

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**SUPPLEMENTARY ANNEXES IN CONNECTION WITH OBJECTIONS TO  
STATEMENTS AND TRANSCRIPTS**

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The Co-Lawyers for Nuon Chea (the 'Defence') hereby submit the instant supplementary submissions and three attached annexes in connection with its Objections to Requests to Admit Written Statements and Transcripts ('Objections')<sup>1</sup>:

1. On 26 April 2013, the Defence filed its Objections in accordance with the Chamber's prior instructions. As the Defence indicated therein, the volume of material tendered into evidence by the Co-Prosecutors and civil parties made a full individualized assessment of that material, to which the Defence is entitled, in practice impossible. The Defence instead conducted a partial and strategic review of selected statements.
2. On 9 April 2013, the Co-Prosecutors filed revised lists of statements and complaints which they sought to admit into evidence.<sup>2</sup> The effort to transpose the objections previously formulated to those new lists entailed unexpected complications and hindered the effort to file full objections by 26 April 2013.<sup>3</sup> The annexes attached hereto provide specificity with regard to the categorical objections advanced in the Objections. These submissions explain the scope of the Defence's review and the content of the annexes.

#### Scope of Review

3. The Defence individually reviewed (i) all of the statements on the Co-Prosecutors' Phase I Request<sup>4</sup> and Phase II Request<sup>5</sup>; and (ii) all of the statements referred to on annexes 3, 4, 5, 6, 7, and 9 (limited to population movement policy) to the Co-Prosecutors' Further Request<sup>6</sup> which were *not* marked 'a&c' to designate acts and conduct of the Accused. The Defence additionally reviewed numerous statements on those same annexes which *were* marked 'a&c'. For reasons stated in the Objections, any statement beyond the scope of this review is inadmissible as either outside the scope of Case 002/01 or because it contains unredacted evidence of the acts and conduct of the accused.<sup>7</sup>

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<sup>1</sup> Document No. **E-223/2/8**, 'Objections to Requests to Admit Written Statements and Transcripts', 26 April 2013, ERN 00902855-00902872 ('Objections').

<sup>2</sup> Document No. **E-278**, 'Co-Prosecutors' Submission of Revised Annexes 12 and 13 of Their Rule 80(3) Trial Document List (Witness Statements and Complaints)', 9 April 2013, ERN 00897846-00897861 ('OCP Final Request'). *See also*, Document No. **E-278.3**, 'Revised Annex 12 – Witness Statements', 9 April 2013, ERN 00897898-00898008; Document No. **E-278.4**, 'Revised Annex 13 -- Complaints', 9 April 2013 ERN 00898009-00898030 (together, 'Revised Annexes').

<sup>3</sup> The Defence discovered at a late hour that the Revised Annexes appear to include statements not included on prior lists and was reluctant to file these annexes without a fuller understanding of what they include. *See paras 7-9, infra*.

<sup>4</sup> Document No. **E-208**, 'Co-Prosecutors' Request to Admit Witness Statements Relevant to Phase 1 of the Population Movement', 15 June 2012, ERN 00816842-00816851

<sup>5</sup> Document No. **E-208/2**, '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'

<sup>6</sup> Document No. **E-96/8**, 'Co-Prosecutors' Further Request to Put Before the Chamber Written Statements and Transcripts with Confidential Annexes 1 to 16', 27 July 2012, ERN 00828859-00828873.

<sup>7</sup> The Defence notes that certain statements listed on Annex 12 to the Co-Prosecutors' Further Request concern the alleged JCE policy of the targeting of Khmer Republic officials and are therefore within the

4. For lack of resources, the Defence did not review the statements filed by the civil parties on 4 March 2013.<sup>8</sup> The Objections are nevertheless equally applicable to those statements. The Defence furthermore notes that the civil parties did not redact evidence of acts and conduct of the accused, a requirement at the *ad hoc* tribunals according to the Co-Prosecutors.<sup>9</sup>

#### Explanation of the Attached Annexes

5. Annexes 1 and 2 are replicas of the revised Annexes 12 and 13 filed by the Co-Prosecutors in connection with their Final Request.<sup>10</sup> Annex 3 is a simplified version of Annex 11 (Case 001 Transcripts) filed by the Co-Prosecutors in April 2011. Objections are appended in a column at the end and are almost all specific examples of the four categories described in the Objections. They are indicated by the following annotations:
- a. ‘Scope’: outside the scope of Case 002/01.<sup>11</sup>
  - b. ‘A&C’: includes evidence of acts and conduct of the accused. Information in parentheses provides details, for instance when the statement refers to Nuon Chea directly or to the acts and conduct of a group to which he allegedly belonged.<sup>12</sup>
  - c. ‘Proximity’: includes evidence of conduct proximate to the Accused. Abridged details are specified in parentheses.<sup>13</sup>
  - d. ‘Structure’: includes evidence of administrative, communication or military structure. Abridged details are specified in parentheses.<sup>14</sup>
  - e. Other objections applicable to individual statements.
6. The Defence emphasizes that the objections listed in the attached annexes concern only those statements it specifically reviewed. *Failure to specify an objection does not reflect acquiescence to admission.* Any objection listed on the attached annex is furthermore in

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scope of the present trial. As the Defence has noted in respect of certain individual statements, any evidence of such a policy is not cumulative and also constitutes a live issue between the parties, and is therefore inadmissible. See Document No. E-96/8/1, ‘Preliminary Response to Co-Prosecutors’ Further Request to Put Before the Chamber Written Statements and Transcripts’, 8 November 2012 (‘Preliminary Response’), paras 12-13.

<sup>8</sup> Document No. E-223/2/7, ‘Lead Co-Lawyers’ Response to Trial Chamber Directives on the Tendering into Evidence of Civil Party Written Statements & Other Documents (with Confidential & Strictly Confidential Annexes)’, 4 March 2013, ERN 0892286-0892299.

<sup>9</sup> OCP Final Request, para. 32.

<sup>10</sup> The three columns designating ERN numbers are removed to preserve space.

<sup>11</sup> Objections, paras 20-33.

<sup>12</sup> Preliminary Response, paras 26-27.

<sup>13</sup> Objections, para. 44; Preliminary Response, paras 12-23, 28-36.

<sup>14</sup> Preliminary Response, paras 32-35.

the alternative to any objection on the basis of the source of the document, such as Case 001 Transcripts and any statements not taken by the OCIJ or civil parties.

#### Modifications since the Filing of the Further Request

7. The Defence notes that numerous statements on the Co-Prosecutors' Revised Annexes did not appear in any of the Phase I Request, Phase II Request or Further Request.<sup>15</sup> Some of those concern statements of witnesses scheduled to testify at the time the Further Request was filed, in respect of which the Co-Prosecutors reserved their rights.<sup>16</sup>
8. The Defence requests that the Chamber instruct the Co-Prosecutors to identify all statements included on the Revised Annexes not previously tendered for admission in either the Phase I Request, Phase II Request or Further Request, and to identify which of those are statements of witnesses which had been scheduled to testify as of July 2012. The Defence should be granted an opportunity to object to the latter set of statements. All others should be excluded.
9. The Defence also notes that certain statements from the Further Request which appear on the Revised Annexes purport to relate to questions of administrative, communication or military structure, but were not listed in any of Annexes 4 through 7 to the Further Request.<sup>17</sup> The Defence relied on the Co-Prosecutors' annexes as a comprehensive summary of statements relevant to those issues.<sup>18</sup> In any such case, the Chamber should not consider that the statement is relevant to questions of structure for the purpose of any objections on the basis of scope.

#### Relief Sought

10. The Defence respectfully requests that the Chamber:
  - a. Admit the attached annexes;
  - b. Consider them in conjunction with the Objections and the Preliminary Response;
  - c. Afford to the Defence a further opportunity to object to any statement or complaint which was listed on the Revised Annexes but not the annexes filed in connection with the Phase I Request, Phase II Request or Further Request.

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<sup>15</sup> See e.g., Revised Annex 12, Nos. 339, 433, 591.

<sup>16</sup> Further Request, para. 6.

<sup>17</sup> See e.g., Revised Annex 12, No. 363.

<sup>18</sup> Further Request, para. 8.

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