

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

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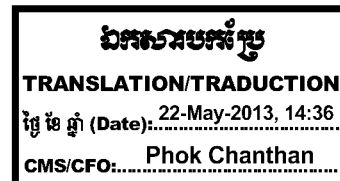
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**Mr KHIEU Samphân's Objections to Admitting Certain Written Statements Proposed by
the Co-Prosecutors and the Civil Parties in Lieu of Oral Testimony**

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MAY IT PLEASE THE TRIAL CHAMBER**I. Introduction**

1. On 15 June 2012, the Co-Prosecutors requested the Trial Chamber (the “Chamber”) to admit written witness statements relevant to Phase 1 of the population movement (“initial Request”).¹
2. The request was accompanied by five annexes, with the first two containing 177 condensed extracts of written records of the Office of the Co-Investigating Judges in relation to Phase 1 of the population movement as described in the Indictment.² The third annex features condensed statements contained in the first two annexes.³ The fourth annex contains a full list of witnesses in alphabetical order.⁴ Finally, the fifth annex comprises two maps of the evacuation venues.⁵
3. On 5 July 2012, the Co-Prosecutors filed a second Request seeking admission of witness statements relating to Phase 2 of the population movement (“second Request”).⁶ The first annex to this Request features 51 extracts of records of interviews by the Office of the Co-Investigating Judges.⁷ The second annex features summaries, in table form, of extracts of the statements contained in Annex 1. The third annex features a full list of witnesses in alphabetical order, while the fourth features a map of 58 transfers reported by 40 witnesses.
4. On 27 July 2012, the Co-Prosecutors filed a third request accompanied by 16 annexes.⁸

¹ Co-Prosecutors’ Request to Admit Witness Statements Relevant to Phase 1 of the Population Movement, **E208**, 15 June 2012.

² *Ibid.*, **E208.1** and **E208.2**.

³ *Ibid.*, **E208.3**.

⁴ *Ibid.*, **E208.4**.

⁵ *Ibid.*, **E208.5**.

⁶ 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, **E208/2**, 5 July 2012.

⁷ *Ibid.*, **E208/2.1**.

⁸ Co-Prosecutors’ Further Request to Put Before the Chamber Written Statements and Transcripts of Confidential Annexes 1 to 16, **E96/8**, 27 July 2012.

5. Annexes 1 and 2 feature a list of written statements (including complaints), as well as trial transcripts from Case 001. Annexes 3 to 16 feature witness statements from Case 001 divided into sub-issues. Annexes 3 to 16 relate to the written statements contained in Annexes 1 and 2. The issues are as follows: historical background of Democratic Kampuchea [Annex 3]; administrative structures at the national level [Annex 4]; administrative structures of DK at the local level [Annex 5]; communication structures of DK [Annex 6]; military structure of DK [Annex 7]; armed conflict in which DK was engaged [Annex 8]; JCE policy of the creation of worksites and cooperatives [Annex 9]; JCE policy of the creation of worksites and cooperatives [Annex 10]; JCE policy of the creation of security centres and execution sites [Annex 11]; JCE policy to target certain groups of individuals [Annex 12]; JCE policy relating to the treatment of Buddhists [Annex 13]; JCE policy relating to the treatment of Cham [Annex 14]; and JCE policy relating to the treatment of Vietnamese [Annex 15]; JCE policy relating to the regulation of marriage [Annex 16].
6. On 29 August 2012, Mr KHIEU Samphân's Defence raised objections to admitting too many written statements.⁹ In particular, Mr KHIEU Samphân pointed out that many of the statements in the third request relate to issues beyond the scope of Case 002/01.¹⁰ In fact, many an annex submitted by the Co-Prosecutors relates to issues that are outside the scope of Case 002/01. It is noteworthy that while Annexes 3 to 9,¹¹ which relate to the subject of the current trial, are about 406 testimonies, Annexes 10 to 16 are about 1387 testimonies. Accordingly, Mr KHIEU Samphân's Co-Lawyers request the Chamber to order the Office of the Co-Prosecutors to revise the lists of witness statements it proposes to put before the Chamber in lieu of written statements in Case 002/01. Moreover, the Defence reported

⁹ Submission in Support of Mr IENG Sary's Request E221 and Request for the Trial Chamber to Order the Co-Prosecutors to Revise the List of Written Statements They Are to Put Before the Chamber in Lieu of Oral Testimony, **E223**, 29 August 2012.

¹⁰ *Ibid.*, para. 20.

¹¹ Annexes 3 to 9 to the new request (**E96/8**) cover the following issues: Annex 3 (Historical background corroborative evidence), Annex 4 (Administrative structures (centre) corroborative evidence), Annex 5 (Administrative structures (national) corroborative evidence), Annex 6 (Communications structure corroborative evidence), Annex 7 (Military structure corroborative evidence), Annex 8 (Armed conflict corroborative evidence), annex 9 (Movement of the population policy & widespread or systematic attack against the civilian population corroborative evidence).

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irregularities which occurred during the questioning of witnesses by the Office of the Co-Investigating Judges.

7. The Chamber responded by memorandum dated 19 October 2012 in which it: 1) advised the Co-Prosecutors that only those statements which could be made available in all ECCC official languages by Friday 29 February 2013 could be proposed to be put before the Chamber as evidence,¹² and 2) notified the Parties that they were to indicate by 4 March 2013 which civil party applications are part of the representative sample of Civil Party applications they propose to put before the Chamber.¹³
8. On 7 December 2012, the Chamber further “*ruled that it might consider specific and reasoned challenges to the testimony of witnesses at trial, where relevant inconsistencies between their written record and audio recording of interview during the investigation phase are alleged*”.¹⁴ Wholesale admission of thousands of witness statements whose authors might not testify in court means that the defence lawyers cannot possibly verify those witness statements, let alone raise objections that may assist in proving the defence case.
9. After the annulment of the first Severance Order by the Supreme Court Chamber (“Supreme Chamber”) and before the issuance of the new Severance Order by the Chamber, the Co-Prosecutors requested the Senior Legal Officer for more time to revise their list of written statements. They indicated that revision of their written statements would only be finalised once the Chamber had issued a new severance order.¹⁵ The Chamber denied their request and maintained its earlier deadline.¹⁶

¹² Forthcoming document hearings and response to Lead Co-Lawyers’ memorandum concerning the Trial Chamber’s request to identify Civil Party applications for use at trial (E208/4) and KHIEU Samphan Defence request to revise corroborative evidence lists (E223), Memorandum, **E223/2**, 19 October 2012, para. 9.

¹³ *Ibid.*, para. 13.

¹⁴ Decision on Defence Requests Concerning Irregularities Alleged to Have Occured During the Judicial Investigation (E221, E224, E224/2, E234, E234/2, E241 and E241/1), **E251**, 7 December 2012, para. 26.

¹⁵ Email from Mr William SMITH to Ms Susan LAMB, 24 January 2013 10.05 a.m.: “Re: Proposed Procedure for Defence Objections to the Admission of Written Statements”.

¹⁶ Email from Ms Susan LAMB to Mr William SMITH, 15 February 2013, 10.04 a.m.: “Re: OCP Written Statements Proposed for Admission”.

10. On 28 February 2013, the Co-Prosecutors filed a request in which they informed the Chamber that 5% of documents tendered for translation had not yet been translated, adding that translation of those outstanding documents would be completed by June 2013.¹⁷ However, they did not provide the Chamber or the parties with the revised list of witness statements. Mr KHIEU Samphân's Defence team was therefore obliged to raise its objections based on the Co-Prosecutors' unrevised lists.
11. On 4 March 2013, the Civil Party Lead Co-Lawyers filed a 187-page final list of statements of witnesses who had not testified in court.¹⁸
12. It was not until 10 April that the Chamber and the parties to the proceedings were provided with the Co-Prosecutors' revised lists. Considering the parties' translation obligations, the Co-Prosecutors' failure to meet the Chamber's deadline for revision of their lists of written witness statements simply meant that Mr KHIEU Samphân could not raise his challenges on the basis of the Co-Prosecutors' revised lists. As a consequence, the present objections have been raised on the basis of the Co-Prosecutors' initial lists owing to the Co-Prosecutors' failure to exercise due diligence.
13. The purpose of this motion is to raise – in accordance to the Chamber's directives – specific and reasoned challenges to admitting a large number of written statements proposed by the Co-Prosecutors and the Civil Parties in the aforementioned requests. This motion should be read in conjunction with the earlier motions filed by Mr KHIEU Samphân's Defence team concerning the law on the admission of written statements in lieu of oral testimony.¹⁹
14. Mr KHIEU Samphân's Co-Lawyers are of the opinion that all the annexes relating to written statements should to be found irrelevant to the issues under review in Case 002/01 whose scope was confirmed in an oral decision of the Chamber, which was read out on 28 March

¹⁷ Co-Prosecutors' Request to Establish a Procedure Regarding Admission of Documents not Translated in all ECCC Languages, **E223/2/6**, 28 February 2013.

¹⁸ Confidential Annex 1, Written Statements of Civil Parties who have not given oral evidence, **E223/2/7.2**, 4 March 2013.

¹⁹ *Conclusions relatives au droit applicable au versement aux débats de déclarations écrites en lieu et place de témoignages oraux déposées en application de la Règle 92 du Règlement Intérieur*, **E277**, 9 April 2013.

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2013. Moreover, some extracts of the statements relate to issues that cannot be corroborative of written statements if their authors have not testified in court.

15. The sub-sections below set out the principles underpinning the objections to each of the annexes. Those annexes are attached to the present motion, along with comments about each extract.

1. Co-Prosecutors' requests to put before the Chamber written statements in lieu of oral testimony

A. First two Co-Prosecutors' requests: written statements relating to Phases 1 and 2 of the population movement

16. The first two annexes to the Co-Prosecutors' first Request contain extracts of witness statements which are relevant to the subject of Case 002/01. However, some of those statements relate to issues regarding which their authors ought to be cross-examined.

17. In his submissions regarding the law relating the admission of written statements, Mr KHIEU Samphân emphasized that the statements relating to the acts and conduct of the Accused persons may be put before the Chamber where the Defence has been afforded the opportunity to question their authors. Failing that, such statements must be declared inadmissible.²⁰

18. For its detailed objections, Mr KHIEU Samphân's Defence team adverts to the filings where it recalled that the acts and conduct of the accused persons are to be understood in a broader sense, especially in a trial where the accused's superior-subordinate responsibility and his participation in a joint criminal enterprise are alleged²¹ and are key components of the prosecution case.

19. Accordingly, where it has not been afforded the opportunity to question their authors, Mr KHIEU Samphân's Defence objects to admitting any statements relating to the acts and conduct of the accused persons in relation to Democratic Kampuchea's decision-making

²⁰ *Ibid.*, paras. 18-26.

²¹ *Idem.*

structures and its local administrative structures if such statements are tendered with a view to establishing the existence of a hierarchical link to the “Centre” organs.²²

20. Mr KHIEU Samphân’s Co-Lawyers further submitted in the aforementioned motion that the Co-Prosecutors and the Civil Parties could not prove their case in reliance upon written statements relating to issues in dispute between the parties at trial if such issues have not been examined in an adversarial hearing.²³
21. Yet, many of the statements proposed are tendered with a view to demonstrating that the chapeau elements of the alleged crimes are established. This includes statements are offered with a view to establishing the intent to target “17 April people” and “former Khmer Republic officials”. Mr KHIEU Samphân refutes any such discriminatory intent. He also recalls that this matter is in dispute between the parties and is yet to be subject to adversarial debate. As a consequence, pursuant to the applicable law, the Defence objects to admitting such statements without the viva voce testimony of their authors.

B. Co-Prosecutors’ third Request: confidential Annexes 1 to 16

C. Historical background of Democratic Kampuchea [Annex 3]

22. While the extracts of witness statement are relevant, some of them relate to the acts and conduct of the accused persons.
23. As the defence teams have stated, it lies with the Co-Prosecutors, and not with the Chamber, to identify the admissible segments of such statements. Given that the Co-Prosecutors have failed to perform this task, Mr KHIEU Samphân’s Defence objects to admitting any statements relating to the acts and conduct of the accused persons.

D. Annexes relating to the administrative and military structures of Democratic Kampuchea [Annexes 4, 5, 6 and 7]

24. The statements relating to the administrative and communication structures are aimed at

²² *Idem.*

²³ *Ibid.*, paras. 27-37.

corroborating the evidence on the modes of participation relied upon by the Co-Prosecutors to establish the responsibility of the accused persons.

25. The Prosecution draws an entirely artificial distinction between, on the one hand, statements relating to the acts and conduct of the accused persons, and, on the other hand, statements relating to the administrative, military and communication structures. The Chamber's acceptance of this distinction would infringe the fundamental right of the Defence to question witnesses on key elements of the prosecution case.
26. Accordingly, Mr KHIEU Samphân objects to admitting in lieu of oral testimony the entirety of the statements contained in Annexes 4, 5, 6 and 7 of the Co-Prosecutors' third Request.

E. Annex relating to the armed conflict in which DK was engaged [Annex 8]

27. In this annex, may be relevant only those statements which relate to a conflict that was contemporaneous with the alleged crimes (i.e. the period from 17 April 1975 to 1976) and are linked to the crimes alleged in the first trial. However, witness oral testimony is necessary regarding an issue in dispute between the parties. An armed conflict with Vietnam subsequent to the above dates does not fall within the scope of the trial as set out by the Chamber in "List of paragraphs and portions of the Closing Order relevant to Case 002/001".²⁴ The submissions below regarding the relevance of Annexes 10 to 16 also apply to Annex 8, as well as Annexes E208.1, E208.2 and E208/2.1, which are attached to the Co-Prosecutors' first two requests.

F. "Policies": JCE policy of movement of the population [Annex 9]; JCE policy of creation of worksites and cooperatives [Annex 10]; JCE policy of creation of security centres and execution sites [Annex 11]; JCE policy to target specific groups of individuals [Annex 12]; JCE policy relating to the treatment of Buddhists [Annex 13]; JCE policy relation to the treatment of Cham [Annex 14]; JCE policy relating

²⁴ Annex: List of paragraphs and portions of the Closing Order relevant to Case 002/001, amended further to the Trial Chamber's Decision on IENG Thirith's Fitness to Stand Trial (E138) and the Trial Chamber's Decision on Co-Prosecutors' Request to Include Additional Crime Sites within the Scope of Trial in Case 002/01 (E263), E124/7.3, 18 October 2011.

to the treatment of Vietnamese [Annex 15]; JCE policy relating to the regulation of marriage, [Annex 16]

a. Procedural background to the “five policies”

28. In its initial Severance Order, the Chamber restricted the scope of the trial to the Phases 1 and 2 of the population movement, specifying that “[n]o co-operatives, worksites, security centres, execution sites or facts relevant to the third phase of population movements will be examined during the first trial. Further, all allegations of, inter alia, genocide, persecution on religious grounds as a crime against humanity and Grave Breaches of the Geneva Conventions of 1949 have also been deferred to later phases of the proceedings in Case 002”.²⁵ In the annex to its decision, the Chamber added that examination of the policies implemented was to be “limited to population movement phases one and two.”²⁶
29. Acceding to the Co-Prosecutors’ Request, the Chamber extended the scope of the first trial to include Tuol Po Chrey. In this connection, the Chamber stated: “[k]illings at Toul Po Chrey which immediately followed the fall of Phnom Penh appear to be a logical extension of the existing allegations in Case 002/01”.²⁷ In an annex to its decision, the Chamber identified the paragraphs of the Closing Order “relevant to Case 002/01”. As to “JCE policies”, the Chamber clearly stated that the relevant paragraphs are limited to the “population movement” (***all limited to*** population movement phases 1 and 2) (paras. 160-165) and to “treatment of targeted groups (***all limited*** to the targeting of former officials of the Khmer Republic at Tuol Po Chrey)”.²⁸ Within the modes of responsibility, the Chamber included responsibility arising from joint criminal enterprise in the scope of Case 002/01 “[re-TRANSLATION] ***excluding*** Grave Breaches of the Geneva Conventions and [sub-sections on] “the establishment and operation of cooperatives and worksites, the reeducation of ‘bad elements’ and killing of ‘enemies’, both inside and outside the Party ranks and the regulation of

²⁵ Severance Order Pursuant to Internal Rule 89 *ter*, E124, 22 September 2011, para. 7.

²⁶ *Ibid.*, E124/7.3, p. 1.

²⁷ Memorandum: Notification of Decision on Co-Prosecutors’ Request to Include Additional Crime Sites within the scope of the Trial in Case 002/01 (E163) and deadline for submission of applicable law portion of Closing Briefs, E163/5, 8 October 2012, para. 3.

²⁸ *Ibid.*, E124/7.3, p. 1.

marriage and considered only military personnel and official of the Khmer Republic under the sub-heading “the targeting of specific groups, in particular the Cham, Vietnamese, Buddhists and former official of the Khmer Republic, including both civil servants and former military personnel and their families”).²⁹ Yet the written statements relate specifically to issues that the Co-Prosecutors are proposing to put before the Chamber (Annexes 10 to 16 in E96/8).

30. Following the aforementioned decision, the Co-Prosecutors requested the Chamber to clarify the scope of Case 002/01 and to confirm whether “*(i) the five policies constituting the joint criminal enterprise alleged in the Indictment and the Accuseds’ role and participation in them are all material facts requiring to be proved in the first trial; and (ii) that these issues require examination, proof to the requisite level and therefore questioning and the admission of documentary evidence*”.³⁰

31. The Chamber responded as follows: “[TRANSLATION] *examination of the evidence in the first trial will relate to the policies on forced movement of population (phases 1 and 2). Nonetheless, in the course of the proceedings in this trial, it will be possible to examine the other policies laid out in the Closing Order, but only with a view to understanding how they were gradually introduced* [END TRANSLATION]. *What is therefore envisaged is presentation in general terms of the five policies, although the material issue for examination in the first trial is limited to the forced movement of population (phases 1 and 2). It follows that there will no examination of the implementation of policies other than those pertaining to the forced movement of population (phases 1 and 2)*”³¹

32. On 29 March 2013, the Chamber affirmed its decision to limit the scope of the trial to population movement (phases 1 and 2) and the alleged execution site at Tuol Po Chrey.³²

²⁹ *Ibid.*, E124/7.3, p. 3.

³⁰ Co-Prosecutors’ Request for Clarification of the Scope of the First Trial, E124/9, 4 November 2011, para. 8.

³¹ Memorandum: Response to issues raised by parties in advance of trial and scheduling of informal meeting with Senior Legal Officer on 18 November 2011, E141, 17 November 2011, p. 3.

³² Transcript of Trial Proceedings, 29 March 2013, E1/176.1.

33. In light of the scope of the trial as laid out by the Chamber, the written statements proposed by the Co-Prosecutors ought to be scrutinized for relevance.

b. Relevance of the written statements relating to this policy

34. The Chamber has recalled that it has limited the scope of the trial to the policy relating to forced movement of population. Yet, the Co-Prosecutors are now attempting to go beyond the case before the Chamber as set out in its Severance Order. The Co-Prosecutors do recognize, nonetheless, that the written statements they are seeking to have admitted “*concern crimes sites that are not themselves included in Case 002/01.*”³³ This fact alone should be sufficient ground for finding the written statements inadmissible.

35. Indeed, pursuant to Internal Rule 98, “the judgement shall be limited to the facts set out in the Indictment”. By excluding from Case 002/01 the paragraphs of the Closing Order which relate to policies other than population movement, the Chamber *de facto* decided that it lacks jurisdiction to hear such matters. The Chamber cannot therefore rely on facts other than the segments of the Closing Order it identified in its Severance Order would infringing the accused persons’ right to a fair trial. The same remark also applies to the annex relating to the armed conflict. As a consequence, the written statements in Annexes 8, and 10 to 16 are irrelevant (with the exception of the statements contained in Annex 12, which are tendered as proof of the measures specifically targeting former Khmer Republic officials).

36. In actual fact, the Co-Prosecutors are making a futile attempt to extend the scope of the trial by asserting that the written statements in Annexes 3 to 16 are nonetheless “*relevant as they assist in establishing the existence of JCE policies*”.³⁴

37. The Defence had sensed that the Prosecution might attempt to distil evidence of Phases 1 and 2 of the population movement and the Tuol Po Chrey site into the all-encompassing and ill-defined joint criminal enterprise theory. This is why the Defence recalled that

³³ *Ibid.*, E96/8, para. 12.

³⁴ *Idem.*

“[TRANSLATION] *the Judges should (therefore) adopt a two-tier approach: first, determine if the mens rea of crime against humanity has been satisfied, and then go on to determine if the modes of responsibility can be pleaded. Analysis of the mens rea [crime against humanity] cannot be distilled into an assessment of the modes of responsibility*”.³⁵ On this issue, the Defence adverts to its submissions in *Conclusions finales sur le droit applicable*.³⁶

38. As for the *actus reus* of crime against humanity, the Co-Prosecutors assert that the written statements corroborate “*the existence of a widespread and systematic attack against the civilian population as required for charges of crimes against humanity*”.³⁷
39. The Co-Prosecutors’ Request is the first indication of their intention to plead the five policies with a view to establishing an alleged systematic and widespread attack during which the population movement (Phases 1 and 2) and the killings at Tuol Po Chrey occurred. Yet, in their Request for Reconsideration of the Severance Order, they aver that “*if the Severance Order stands, the trial will only consider criminal acts arising out of one of the five core criminal policies that formed a part of the alleged joint criminal enterprise (“JCE”) in which the Accused participated. The criminal acts arising out of the other policies of the JCE, namely (1) the establishment and operation of co-operatives and worksites; (2) the re-education of “bad elements” and killing of “enemies”, both inside and outside of Party ranks; (3) the targeting of specific groups, in particular the Cham, Vietnamese, and Buddhists; and (4) the regulation of marriage will be excluded from the trial. The central and most serious criminal acts arising out of the alleged common purpose of the Accused to “implement rapid socialist revolution in Cambodia through a “great leap forward” and defend the Party against internal and external enemies, by whatever means necessary” are therefore unlikely to be adjudicated by the ECCC.*”³⁸ The Prosecution has since reversed its position in a bid to extend the scope of Trial 002/01. That is impermissible.

³⁵ *Conclusions relatives au droit applicable*, E163/5/9, 18 January 2013, para. 21.

³⁶ *Ibid.*, E163/5/9, paras. 5-21.

³⁷ *Ibid.*, E96/8, para. 12.

³⁸ Co-Prosecutors’ Request for Reconsideration of “Severance Order Pursuant to Internal Rule 89 *ter*”, E124/2, para. 30.

40. In order for the other policies described by the Co-Prosecutors in Annexes 10 to 16 to qualify as relevant proof of the *actus reus* of the alleged crimes which are the subject of Case 002/01, the Co-Prosecutors must establish a sufficiently direct nexus between the various crimes by proving that those crimes were committed in the course of the same attack and were sufficiently linked thereto, and also that they occurred during the same period and were directed at the same civilian population. However, the Co-Prosecutors fail to demonstrate this.
41. A crime cannot be characterized as a crime against humanity in the absence of a systematic and widespread attack against a civilian population. According to the jurisprudence of the ICTY, “[i]t is established that the targeting of a select group of civilians – for example, the targeted killing of a number of political opponents – cannot satisfy the requirements for Article 5j”. In the aforementioned case, it rejected the characterisation of “crimes against humanity” and focussed only on allegations of war crimes.³⁹

G. The Civil Parties’ Request to put statements before the Chamber in lieu of oral testimony

42. The Civil Party Lead Co-Lawyers have proposed that several hundred Civil Party applications be admitted into evidence.
43. Many of the statements in question: (1) fall outside the scope of Case 002/01, (2) relate to the acts and conduct of the accused, or (3) go to proof of the constitutive elements of crime against humanity. For the reasons explained above, the Defence objects to admitting the written statements contained in all these three categories.
44. All the statements regarding which the Lawyers for Mr KHIEU Samphân are raising the present objections are identified in the corresponding annexes to this motion.
45. **FOR THESE REASONS**, Mr KHIEU Samphân’s Defence requests the Trial Chamber to:

³⁹ *Prosecutor v. Fatmir LIMAJ, Haradin BALA, Isak MUSLIU*, Judgement, IT-03-66-T, 30 November 2005, para. 187.

- **REAFFIRM** that written statements relating to the acts and conduct of the accused persons shall not be admissible in lieu of oral testimony;
- **ADJUDGE AND DECLARE** that the written statements relating to the decision-making and administrative structures of Democratic Kampuchea at the local level concern the acts and conduct of the accused, and are therefore not admissible;
- **ADJUDGE AND DECLARE** that any written statements relating to those facts that are challenged by the Defence and which have not been subject to adversarial debate are inadmissible;
- **ADJUDGE AND DECLARE** that any written witness statements relating to the historical background of Democratic Kampuchea with extracts on the acts and conduct of the Accused are inadmissible where the Co-Prosecutors have not identified the portions that they intend to use;
- **ADJUDGE AND DECLARE** that the written statements relating to the administrative and communication structures (Annexes 4 to 7) are aimed at establishing the constitutive elements of the modes of participation by which the Co-Prosecutors intend to establish the responsibility of the accused persons, and therefore that they concern the acts and conducts of the accused persons;
- **ADJUDGE AND DECLARE** that written statements listed in the Co-Prosecutors' Annexes 8, and 10 to 16 fall outside the scope of the case before the Chamber, and are therefore inadmissible;
- **ADJUDGE AND DECLARE** that the Civil Parties' written statements which are listed in the annex to this motion are inadmissible.

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|------|----------------|------------|-----------|
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