

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 1 OF THE POPULATION MOVEMENT**

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I. INTRODUCTION

1. On 15 June 2011, the Co-Prosecutors filed their Rule 92 Submission Regarding the Admission of Written Witness Statements before the Trial Chamber (Request).¹ In their Request, the Co-Prosecutors requested the Trial Chamber to declare that written statements of witnesses that do not relate to the acts and conduct of the accused persons (or to pivotal issues in the case) may be admitted without the presence of the witness at trial for cross-examination. The Trial Chamber's decision on the Request is still pending.
2. The purpose of the present submission is to identify particular written statements relating to the phases 1 and 2 of the forced movement of the population which, in the Co-Prosecutors' submission, it would be appropriate for the Trial Chamber to admit into evidence. In doing so, the Co-Prosecutors aim to assist the Trial Chamber in reaching a determination on the earlier Request and in preparing for later phases of the proceedings.
3. This motion is accompanied by five annexes. **Annexes I and II** contain extracts of the Office of the Co-Investigating Judges ("OCIJ") written records of interviews with witnesses ("witness statements") which relate, directly or indirectly, to phase 1 of the population movement as charged in the Closing Order. The extracts contain valuable corroborative evidence relevant to establishing crimes against humanity with which the Accused are charged in the first trial of Case 002, namely the crimes against humanity of murder, extermination, political persecution, and other inhumane acts through attacks on human dignity, and of other inhumane acts through forced transfer.² In particular, the extracts demonstrate the large scale, coerced and non-temporary nature of phase 1 of the population movement; the inhumane conditions to which evacuees were subject during the transfer and upon arrival; discrimination against and killing of "new people" and former Lon Nol soldiers and officials during the movement and upon arrival. In addition, the extracts provide evidence of evacuations of other towns and villages across Cambodia prior to or contemporaneously with the evacuation of Phnom Penh. This assists in demonstrating that there was no legitimate justification for the evacuation of Phnom Penh and that, in fact, the evacuations of urban centres were an inherent part of the policies of the joint criminal enterprise which CPK leaders designed and implemented.

¹ E96 Co-Prosecutors' Rule 92 submission regarding the admission of written witness statements before the Trial Chamber, 15 June 2011 (Request).

² 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.

4. **Annex III** provides an overview, in table form, of the witness extracts contained in **Annexes I** and **II**. The table includes the locations to or from which persons were transferred according to the witness statements, the corresponding number of statements identifying a transfer to or from that location, and the details of those statements. **Annex IV** contains a list of all the included witness statements in alphabetical order by witness name. **Annex V** includes two maps identifying the locations to or from which persons were transferred according to the witness statements.
5. The Co-Prosecutors request that, to the extent that it has not already been done, all of the witness statements identified in the **Annexes I** and **II** to this motion be admitted into evidence and assigned an E3 number. The Co-Prosecutors further request that the extracts of witness statements included in **Annexes I** and **II** be relied upon by the Trial Chamber, 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. Finally, the Co-Prosecutors note that they will shortly submit a second motion annexing extracts of witness statements relating to phase 2 of the population movement as charged in the Closing Order.

II. OVERVIEW OF WITNESS EXTRACTS IN ANNEXES I AND II

6. The extracts included in **Annexes I** and **II** are taken from written records of witness interviews conducted by OCIJ during the course of the judicial investigation. As noted in the Co-Prosecutors' earlier Request, these statements have clear probative value and strong indicia of reliability in that they were given under oath, recorded by Court officials, signed and / or thumb-printed by the witnesses, accompanied by audio recordings, and affixed with the official OCIJ seal.³
7. **Annexes I** and **II** do not include extracts of other statements from witnesses prepared by third parties (such as DC-Cam or SOAS), from civil party applications, or from complaints submitted to the ECCC. It is important to note, however, that these other statements, which are all on the case file, provide a rich source of additional testimonial evidence relating to the movements of the population. The Co-Prosecutors anticipate that they will submit extracts from these other statements at a later stage of proceedings for the Trial Chamber's consideration.
8. **Annexes I** and **II** do not include extracts of statements from witnesses who have already provided oral testimony, or who have been identified by the Trial Chamber as

³ E96 Request, supra note 1 at para. 38.

potential witnesses for the early trial segments.⁴ In this regard, the Co-Prosecutors note the Trial Chamber's previous ruling that, when a witness testifies, all of the witness's prior testimonies are tendered into evidence.⁵ It is further noted that many of the statements included in **Annexes I** and **II** were provided by witnesses who were proposed by the Co-Prosecutors to be called at trial.⁶ The Co-Prosecutors reserve their right to make submissions as to these witnesses when the Trial Chamber is determining the witness list for the later stages of the trial.

9. In respect of each extract, **Annexes I** and **II** identify the biographical details of the witness (including name, witness pseudonym if any, sex, date of birth or age, and position at the relevant time); the case file number, and E3 number where available, of the witness statement from which the extract is taken; details of the movement including dates and starting and ending location where known; and finally the ERNs of the relevant extract(s) in Khmer, English and French. With respect to the starting and ending locations, some witnesses describe travelling through, or staying temporarily in, a number of different locations. In such cases, the annex identifies only the final destination of the movement or locations where evacuees spent considerable time. In addition, where the witness provided only the name of the village, sub-district or district to or from which the witness was transferred, independent resources were used to identify the exact location of that village, sub-district or district.
10. Some of the witness statements from which the extracts in **Annexes I** and **II** are taken contain evidence relating to the acts and conduct of one or more of the accused. It is stressed, however, that this evidence does not relate in any way to the accused persons' knowledge of, or participation in, the movement of the population. Furthermore, in keeping the Co-Prosecutors previously stated position⁷, the Co-Prosecutors do not seek to rely on written statements providing key evidence of the acts and participation of the accused in the crimes charged in the first trial of Case 002, if those witnesses are available to testify at trial.

⁴ 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.

⁵ **E1/57.1** Transcript, 2 April 2012 at p. 89 ln. 24 – p. 90 ln. 10.

⁶ 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 59 such witnesses: TCCP-1, TCW-43, TCW-63, TCCP-6, TCW-91, TCW-114, TCCP-25, TCW-155, TCW-160, TCW-162, TCCP-36, TCW-239, TCCP-40, TCW-252, TCW-253, TCW-257, TCW-263, TCCP-45, TCW-298, TCW-302, TCW-322, TCCP-53, TCW-324, TCW-347, TCW-356, TCW-362, TCW-373, TCCP-64, TCW-380, TCW-386, TCW-412, TCW-422, TCW-426, TCCP-88, TCW-452, TCW-486, TCW-505, TCW-506, TCW-507, TCW-546, TCW-597, TCW-614, TCCP-138, TCW-644, TCW-651, TCW-666, TCW-677, TCW-689, TCW-690, TCW-699, TCW-709, TCW-718, TCW-732, TCW-743, TCW-750, TCW-751, TCW-752, TCW-760, TCW-764, TCCP-169, TCW-789

⁷ **E96** Request, supra note 1 at para. 36.

A. Extracts included in Annex I

11. **Annex I** contains extracts of statements from 114 witnesses. Eight of these witnesses provided two statements each meaning that in total there are extracts of 122 statements included in **Annex I**. However, as the two statements from each of these witnesses refer to the same incident, they have been counted for present purposes as a single statement. Fourteen of the included witness statements have already been put before the Trial Chamber and assigned an E3 number.⁸ The statements contained in **Annex I** relate directly to phase 1 of the population movement, as described in paragraphs 221 to 260 of the Closing Order. The witnesses include evacuees from Phnom Penh; people present in rural locations who witnessed the arrival of evacuees from Phnom Penh; and Khmer Rouge combatants who witnessed or participated in the evacuation.
12. Eighty-two of the statements identify the location to which people were evacuated. These locations are set out in the table below together with the corresponding number of statements which identify a transfer of people to or from that location. Details of the relevant statements, including the document number and witness name, are set out in **Annex III** to this motion. The information in the table below is also depicted on the first map in **Annex V**. The remaining 27 statements in **Annex I** refer to the evacuation of Phnom Penh in general terms without specifying the location to which the evacuees were sent. Details of these statements, including the document number and witness name, are set out in **Annex III**.

Province (to)	No of Extracts
Battambang	6
Kampong Cham	5
Kampong Chhnang (majority to Sameakki Meanchey district)	13
Kampong Speu	1
Kampong Thom	3
Kampot	4
Kandal	18
Koh Kong	1
Prey Veng	8
Pursat	5
Svay Rieng	4
Takeo (majority to Tram Kak district)	12
Oddor Mean Chey	1
East Zone (precise location unspecified)	1

⁸ E3/69 (D91/12); E3/414 (D233/3); E3/416 (D233/6); E3/436 (D278/4); E3/419 (D234/19); E3/509 (D166/73); E3/369 (D125/31); E3/470 (D94/2); E3/376 (D166/72); E3/427 (D234/7); E3/471 (D94/3); E3/468 (D94/15); E3/546 (D91/7); E3/464 (D92/8). One of these statements, E3/69 (D91/12), was admitted on 5 December 2011. See **E1/16.2** List of documents attached to the written record of proceedings of 5 December 2011, 23 December 2011. The remaining 13 statements were admitted on 9 April 2012. See **E185.1** Annex A to Decision on objections to documents proposed to be put before the Chamber, 9 April 2012.

13. It is noted that 12 of the statements included in **Annex I** refer to evacuations of other towns and villages in addition to Phnom Penh, including Battambang; Kampong Chhnang; Pailin; Oudong; Pursat and various places in Kampong Cham.⁹ The relevant extracts from these statements have not been reproduced in **Annex II** however the incidents referred to in these statements have been included in the statistics relating to other evacuations that are referenced later in this motion.
14. The numbers of witness statements included in **Annex I** and represented on the map in **Annex V** do not, of course, reflect the actual number of people who were forcibly transferred during phase 1 of the population movement. Rather they represent a select sample of individual accounts describing the circumstances of the evacuation and destinations of evacuees. Whilst the witness statements do not refer to precise numbers of people moved, when looked at together they create an overall impression a large scale movement involving the entire civilian population (including soldiers *hors de combat*) of Phnom Penh. The expert demographer's report commissioned by the OCIJ during the course of the judicial investigation estimated this population to most likely comprise between 1.5 and 2.6 million people.¹⁰
15. The evidence contained in the witness extracts is relevant to the charges of crimes against humanity against the accused in the first trial of Case 002 with respect to phase 1 of the movement of the population. These charges comprise the crimes against humanity of murder, extermination, political persecution, other inhumane acts through attacks on human dignity, and other inhumane acts through forced transfer.¹¹ For example, the witness extracts provide consistent 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 – 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;

⁹ D125/171; D125/55; D125/28; D125/92; D232/44; D125/57; D125/177; D125/91; D166/42; D369/9; D166/79; D232/12.

¹⁰ **D140/1/1** Demographic Expertise Report, Dr. Ewa Tabeau and They Kheam, at p. 19.

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.

- (d) discrimination against “17 April people” upon arrival at new destinations – relevant to establishing the 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;
 - (e) the non-temporary nature of the evacuation, with evacuees forced to remain at new locations and to engage in forced labour projects – relevant to establishing the absence of any grounds for the population movement permitted by international law; and
 - (f) the targeting and killing of “new people” and former Lon Nol soldiers and officials during the movement and upon arrival at new destinations – relevant to establishing the chapeau element of “discriminatory grounds” and other elements of the crimes against humanity of murder and of persecution on political grounds.
16. With respect to the targeting and killing of “new people” and former civilian and military personnel of the Khmer Republic, it is noted that some of the witness extracts include evidence of executions that took place within District 12 and Tuol Po Chrey. Although the accused do not presently face charges in respect of these crimes sites,¹² this evidence is nonetheless included as it is of key relevance to the matters in dispute in Case 002. The evidence assists in demonstrating that the forced movement took place as part of attack based on “discriminatory grounds”, a chapeau element of all the crimes against humanity charges. It corroborates witness accounts of other murders and incidents of persecution of “new people” and former civilian and military personnel of the Khmer Republic that took place during the population movement and for which the accused do face charges in the present trial.¹³ It is relevant to the absence of any grounds for the population movement permitted by international law. Finally, it is relevant to establishing the existence of the common purpose to defend the CPK against internal and external enemies, by whatever means necessary, including the targeting and killing of specific groups such as former Lon Nol soldiers and officials and their families.

¹² **E124** Severance order pursuant to Internal Rule 89ter, 22 September 2011; **E124/7** Decision on Co-Prosecutors’ request for reconsideration of the terms of the severance order, 18 October 2011; **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, at pp.3-4.

¹³ See **D427** Closing Order, at para. 1377 alleging that “people were executed by CPK armed forces shortly before, during or upon arrival from phases 1 and 3 of the population movements” and para.1418 alleging that “during populations movements, real or perceived enemies of the CPK were subjected to harsher treatment and living conditions than the rest of the population.”

B. Statements included in Annex II

17. **Annex II** contains extracts of witness statements referring to evacuations that occurred in the liberated zones prior to April 1975 and in towns and villages other than Phnom Penh on or around 17 April 1975. The extracts are drawn from 64 statements from 63 witnesses. Three of the witness statements included in **Annex II** have already been put before the Chamber and assigned an E3 number.¹⁴ Some of the 64 witness statements included in **Annex II** refer to separate incidents of forced transfers, namely evacuations occurring at different times or in different places. Further, as mentioned above, 12 of the statements included in **Annex I** refer to the evacuations of other towns and villages in addition to the evacuation of Phnom Penh. Taken together, the statements in **Annexes I and II** refer to 84 separate incidents of evacuations of other towns and villages occurring prior to or contemporaneously with the evacuation of Phnom Penh.
18. Of the 84 incidents described in the witness statements, eight refer to evacuations occurring in the liberated zones prior 17 April 1975. The remainder refer to evacuations that took place on or around 17 April 1975 in other parts of Cambodia. Of these, 63 identify the particular towns and villages that were evacuated. The provinces in which these towns and villages are located, together with the corresponding number of extracts which identify a transfer of people from a town or village within that province, are set out in the table below. Full details of the relevant extracts, including the document number and witness name, are set out in **Annex III** to this motion. The information in the table below is also depicted on the second map in **Annex V**. The remaining 13 extracts refer to evacuations occurring on or around 17 April 1975 in general terms without specifying the town or village from which people were evacuated.

Province (from or within)	No of Extracts
Battambang province	10
Kampong Cham	3
Kampong Chhnang	11
Kampong Speu	2
Kampong Thom	1
Kampot	4
Kandal	2
Pailin	3
Prey Veng	2
Pursat	7
Siem Reap	4

¹⁴ E3/521 (D25/10); E3/403 (D232/27); E3/428 (D234/9). All three of these statements were admitted on 9 April 2012. See **E185.1** Annex A to Decision on objections to documents proposed to be put before the Chamber, 9 April 2012. E3/69 was admitted on 5 December 2011.

Sihanoukville	9
Svay Rieng	4
Takeo province	1


19. Again it is stressed that the numbers of witness statements included in **Annex II** and represented on the map in **Annex V** do not reflect the actual number of people who were forcibly transferred prior to, or contemporaneously with, the evacuation of Phnom Penh. Rather they represent a select sample of individual accounts describing evacuations that took place at other times and in other parts of the country under the control of the Khmer Rouge.
20. Although the accused are not charged in relation to the forced movement of the population from other towns and villages that occurred prior to or contemporaneously with the movement from Phnom Penh, the witness extracts included in **Annex II** are relevant to the charges against the accused in relation to the evacuation of Phnom Penh. In particular, they provide important corroborative evidence relating to the purpose, planning and implementation of evacuations. Evidence of evacuations occurring prior to April 1975 in the liberated zones and of the widespread, simultaneous evacuation of people from urban centres all over the country is relevant to demonstrate the crimes against humanity chapeau elements of a “widespread or systematic attack directed against any civilian population” on “discriminatory grounds”. It also demonstrates the absence of any grounds for the forced movement permitted by international law for the forced movement, and supports the Co-Prosecutors’ argument that the evacuations of urban centres were an inherent part of the policies of the joint criminal enterprise which CPK leaders designed and implemented. The coordinated nature and the common *modus operandi* of the evacuations demonstrates that the forced movement from Phnom Penh took place in accordance with a common criminal plan decided on by the senior leadership of the CPK. As with **Annex I**, some of the extracts contained in **Annex II** provide evidence of killings at District 12 and Tuol Po Chrey. For the reasons outlined above in relation to similar evidence contained in the extracts in **Annex I**, it is submitted that this evidence is relevant to the charges against the accused in this trial.

III. RELIEF SOUGHT

21. In light of the foregoing, the Co-Prosecutors request that the Trial Chamber:
- (a) admit the witness statements identified in **Annexes I** and **II** into evidence and assign them an E3 number, to the extent this has not already been done; and

- (b) rely upon the extracts included in **Annexes I** and **II**, 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
15 June 2012	YET Chakriya Deputy Co-Prosecutor	Phnom Penh	
	William Smith Deputy Co-Prosecutor		