E96/7

ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

អង្គជំនុំជម្រះសាលាដំបូង
Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ

Case File/Dossier No. 002/19-09-2007/ECCC/TC

Before: **Judge NIL Nonn, President**
Judge Silvia CARTWRIGHT
Judge YA Sokhan
Judge Jean-Marc LAVERGNE
Judge YOU Ottara

Date: **20 June 2012**

Original language(s): **Khmer/English/French**

Classification: **PUBLIC**

DECISION ON CO-PROSECUTORS' RULE 92 SUBMISSION REGARDING THE ADMISSION OF WITNESS STATEMENTS AND OTHER DOCUMENTS BEFORE THE TRIAL CHAMBER

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Accused
NUON Chea
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KHIEU Samphan

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1. INTRODUCTION

1. The Trial Chamber is seised of a Rule 92 Submission filed by the Co-Prosecutors on 15 June 2011, which contends that no absolute right exists to summon all witnesses whose statements are being proposed into evidence, and requests the Chamber to admit certain statements without witnesses being heard at trial. The Co-Prosecutors request the Trial Chamber to take guidance from rules established at the international level, which permit a Chamber under certain circumstances to admit the written statements of witnesses into evidence without requiring these witnesses to appear for cross-examination.[1]

2. In relation to witnesses or Civil Parties to be heard at trial, the Chamber has previously indicated that all their prior statements may be put before the Chamber, and that the parties have the opportunity to confront these individuals regarding alleged relevant discrepancies between their oral evidence and prior statements once they give evidence at trial.[2]

3. The present decision is instead concerned with the statements of individuals who are not called to give evidence at trial but whose evidence has been proposed by a party to be put before the Chamber in the form of a written statement or transcript, including for example the 4129 complaints and 3866 Civil Party applications contained in the document lists of the Co-Prosecutors and Lead Co-Lawyers, numerous statements taken by entities external to the ECCC and 69 trial transcripts from Case 001 that are also proposed to be put before the Chamber by one or more parties.[3]

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[1] "Co-Prosecutors' Rule 92 Submission regarding the Admission of Written Statements before the Trial Chamber", 15 June 2011, E96 ("Co-Prosecutors' Request"), paras 2, 31, 35 and 41.

[2] Decision on NUON Chea's Request for a Rule 35 Investigation Regarding Inconsistencies in the Audio and Written Records of OCIJ Witness Interviews, 13 March 2012, E142/3 ("Audio Recordings Decision"), para. 13.

[3] "Co-Prosecutors' Rule 80(3) Trial Document List", 19 April 2011, E9/31, paras 19, 21; *see also* "Annex 11 - CF1 Trial Transcripts ", E9/31.11, (listing trial transcripts from Case 001 containing the testimony of Duch and other witnesses and Civil Parties relating to S-21 and DK regime); "Annex 13 – Complaints", E9/31.13 (listing 414 complaints); Civil Party Lead Co-Lawyers List of Documents and Exhibits (Annex 7 and 8)", 19 April 2011, E9/32, para. 13 (listing 3981 Civil Party applications, including those whose rejection by the Co-Investigating Judges was appealed to the Pre-Trial Chamber, in addition to 4129 complaints); "Annex 7 a (i): Document and Exhibit Lists – Request for Specific Documents in Case File by the Co-Lawyers for Civil Parties", E9/32.2; "Civil Party Lead Co-Lawyers revised list of documents and exhibits relevant the first four Trial segments", 22 July 2011, E109/2, para. 12 and "Attachment 2: Annex 7a (iii) Civil Party Applications", E109/2.2 (indicating that the definitive number of Civil Party applications accepted by either the Co-Investigating Judges or the Pre-Trial Chamber is 3866). The Co-Prosecutors and Lead Co-Lawyers' lists also contain several hundred statements of individuals taken by entities such as the Documentation Centre of Cambodia (DC-Cam). In relation to statements taken instead by the Office of the Co-Investigating Judges (OCIJ) during the judicial investigation, *see* Decision on Objections to Documents Proposed to be put before the Chamber on the Co-Prosecutors' Annexes A1-A5 and to Documents cited in Paragraphs of the Closing Order

2. PROCEDURAL HISTORY

4. On 28 January 2011, the Co-Prosecutors filed their Rule 80 Expert, witness and Civil Party lists, indicating that they had excluded a number of individuals from these lists on the basis that they would be permitted to introduce into evidence their written statements and related documents pursuant to Internal Rule 87. They reserved the right to call additional individuals should the Chamber's exclusion of these statements or documents jeopardize their ability to meet its burden of proof on any particular issue.[4]

5. All Accused responded that the Defence have the right to confront all witnesses against them whom they had no opportunity to examine during the judicial investigation should their statements subsequently be introduced as evidence.[5] They refer to a memorandum sent to all Defence teams by the Office of the Co-Investigating Judges in January 2008 indicating that there was no absolute right to confrontation at the investigation stage and that "for that reason, Rule [84(1)] recognises the right of the accused person to examine, at the trial stage, any witness against him with whom he was not confronted during the judicial investigation".[6]

6. On 19 April 2011, the Co-Prosecutors indicated that they intended to put a number of documents before the Chamber pursuant to Internal Rule 87, including 1415 witness statements (consisting of 882 written records of interviews conducted by the Office of the Co-Investigating Judges, and other statements and annexes collected by other entities unconnected to the judicial investigation), 414 complaints, as well as 69 trial transcripts from Case 001.[7] On the same date, the Lead Co-Lawyers indicated that they intended to put before the Chamber 4129 complaints, all Civil Party applications of the 3981 Civil Party applicants

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Relevant to the First Two Trial Segments of Case 002/01, 9 April 2012, E185 ("Framework Document Decision"), para. 20.

[4] "Co-Prosecutors' Rule 80 Expert, Witness and Civil Party Lists, Including Confidential Annexes 1, 2, 3, 3A, 4 and 5", 28 January 2011, E9/4 ("Co-Prosecutors' Witness List"), para. 10.

[5] "IENG Sary's Response to the Co-Prosecutors' Motion Which Accompanied Their Rule 80 Expert, Witness and Civil Party Lists", 8 February 2011, E9/4/1, para. 2; NUON Chea's "List of Proposed Witnesses, Experts and Civil Parties", 15 February 2011, E9/4/4, para. 8; KHIEU Samphan's "Proposed List of Witnesses and Experts", 21 February 2011, E9/4/6, para. 11; "IENG Thirith Indication of Intention to Object to Witnesses and Experts on the Co-Prosecutors', Civil Parties' and NUON Chea's Witness Lists", 28 February 2011, E9/4/11, paras 4, 6, 26; *see also* "IENG Thirith Motion to Submit its List of Documents", 19 April 2011, E9/27, para. 6.

[6] "Response to your letter dated 20 December 2007 concerning the conduct of the judicial investigation", 10 January 2008, A110/I, p. 2.

[7] "Co-Prosecutors Rule 80(3) Trial Document List", 19 April 2011, E9/31, paras 1, 19-21; "Annex 12 – Witness Statements", E9/31.12 (the number of OCIJ Written Records provided by the Co-Prosecutors differs as it also includes other documents such as annexes to Written Records); "Annex 13 – Complaints", E9/31.13; "Annex 11 – CF1 Trial Transcripts", E9/31.11.

in Case 002 (*i.e.* not merely those of the 3866 Civil Parties ultimately admitted in Case 002), and a number of witness statements.[8]

7. The Co-Prosecutors filed their present request on 15 June 2011.[9] All Defence teams oppose this request.[10]

3. SUBMISSIONS

8. Despite the wording of the English language version of Internal Rule 84(1), the Co-Prosecutors submit that the right of the Accused to summon all witnesses against him is not absolute. When interpreted in light of international norms, the words "against him or her" in the English and Khmer versions of Rule 84(1) grant an accused the right to examine witnesses testifying to his or her acts and conduct, or other pivotal aspects of the case.[11] In common with the practice of other tribunals trying cases of mass crimes, the Trial Chamber may exercise a flexible approach to the admission of evidence in order to ensure the expeditiousness of proceedings. Subject to the Chamber's overriding duty to ensure a fair trial, the Trial Chamber therefore has the discretion to admit certain categories of statements without summoning their authors to testify at trial.[12]

9. The Co-Prosecutors submit that the ICTY jurisprudence reflect rules established at the international level permitting a Chamber to admit written testimony concerning crime base

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[8] "Civil Party Lead Co-Lawyers' Lists of Documents and Exhibit (Annex 7 and 8)", 19 April 2011, E9/32, para. 13; "Annex 7 a (i): Document and Exhibit Lists – Request for Specific Documents in Case File by the Co-Lawyers for Civil Parties", E9/32.2.

[9] "Co-Prosecutors' Rule 92 Submission regarding the Admission of Written Statements before the Trial Chamber", 15 June 2011, E96 ("Co-Prosecutors' Request").

[10] "Response to OCP Submission Regarding the Admission of Written Witness Statements", E96/1, 21 July 2011 ("NUON Chea Response"); "IENG Thirith Defence Response to 'Co-Prosecutors' Rule 92 Submission Regarding the Admission of Written Witness Statements Before the Trial Chamber", E96/2, 22 July 2011 ("IENG Thirith Response"); "IENG Sary's Response to the Co-Prosecutors' Rule 92 Submission Regarding the Admission of Written Witness Statements Before the Trial Chamber and Request for a Public Hearing", E96/3, 22 July 2011 ("IENG Sary Response") and "Observations in Response to Co-Prosecutors' Request regarding the Admission of Written Witness Statements", E96/4, 22 July 2011 ("KHIEU Samphan Response"); *see also* KHIEU Samphan's "Objections to the Admissibility of other Parties' Document Lists for the First Session of the First Trial (28 November – 16 December 2011)", E131/6, 14 November 2011, paras 22-23; "IENG Sary's Objections to the Admissibility of Certain Categories of Documents", E114, 6 September 2011, para. 20 and "Co-Prosecutors' Response to IENG Sary Objections to the Admissibility of Certain Categories of Documents", E114/1, 16 September 2011, paras 50-51.

[11] "Co-Prosecutors' Reply to the Responses regarding the Admission of Written Witness Statements before the Trial Chamber", 10 August 2011, E96/6 ("Co-Prosecutors' Reply"), para. 7.

[12] Co-Prosecutors' Request, paras 14 and 40; *see also* "Civil Party Lead Co-Lawyers Response in Support of the Co-Prosecutors' Rule 92 Submission regarding the Admission of Written Statements before the Trial Chamber", 22 July 2011, E96/5 ("Civil Parties' Response"), paras 7, 10-11, 16-17, 21; Co-Prosecutors' Reply, paras 5-6; *see also* Internal Rule 87(1) (stating as a general principle that all evidence is admissible).

evidence, but not that which goes to proof of any act or conduct of the accused (unless a witness is deceased, cannot be traced or is otherwise unable to testify).[13] In its assessment, the Chamber should therefore consider the extent to which the evidence goes to proof of the acts and conduct of the accused, the extent to which it is cumulative and merely corroborates oral evidence, the reliability and probative value of the statements, the availability of witnesses to appear before the ECCC and the impact of hearing, instead, the authors of each statement on the overall length of the trial.[14] The jurisprudence of the European Court of Human Rights also allows statements obtained during the judicial investigation to be admitted into evidence where the Accused has had an adequate and proper opportunity to challenge the evidence against him, and where the written statement is not the sole basis for a conviction.[15]

10. The Co-Prosecutors contend that many of the statements on their Rule 80 witness and document summaries should be admitted as they do not relate to the acts and conduct of the Accused or their immediate subordinates, but instead to crime base evidence of a cumulative nature, the impact of crimes on victims, and other matters such as policies, communication structures and the existence of a common criminal plan. These statements should therefore be admitted without summoning their authors to testify in order to facilitate a trial that is both fair and able to conclude within a reasonable time.[16]

11. The Co-Prosecutors further submit that the Chamber should seek guidance from the rules established at the international level and tailor them to the procedures applicable before the ECCC. As the Office of the Co-Investigating Judges' written records of interviews were given under oath, recorded by Court officials, signed by the witnesses and accompanied by audio recordings, they already possess all necessary indicia of reliability and have probative value. The same considerations apply to Case 001 transcripts or earlier statements which were

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[13] Co-Prosecutors' Request, paras 12-23 (analyzing the practice of the International Tribunal for the Former Yugoslavia ("ICTY") of admitting witness statements and transcripts from other trials); *see also* Civil Parties' Response, paras 20-21 (noting substantially similar procedural rules and jurisprudence of the International Criminal Tribunal for Rwanda ("ICTR"), the Special Court for Sierra Leone ("SCSL") and the Special Tribunal for Lebanon) and 22-27 (noting that the Rome Statute, as interpreted by the International Criminal Court, gives the Trial Chamber the discretion to admit evidence without requiring witnesses to appear, on the basis of its relevance and probative value, with the latter being weighed against its prejudicial effect).

[14] Co-Prosecutors' Request, paras 25, 33.

[15] Co-Prosecutors' Request, paras 7, 9-10; *see also* Co-Prosecutors' Reply, paras 32-33.

[16] Co-Prosecutors' Request, paras 2(d) and 36 (further suggesting that the Chamber assess statements in phases as the proceedings progress, and rule upon the need for witnesses to be called prior to each phase of the trial).

read to witnesses during the judicial investigation, and which the witnesses confirmed on oath as being true.[17]

12. In relation to other categories of statements or documents collected prior to the judicial investigation, the Co-Prosecutors submit that procedures employed before other international tribunals provide alternative means of establishing their reliability (such as through certification by the author of a statement that its contents are true and correct, as provided by sub-rule 92*bis*(B) of the ICTY Rules of Procedure and Evidence ("RPE")). The Chamber could in the exercise its discretion adopt a similar approach by seeking clarification from researchers as to the circumstances in which statements were taken, or to request the filing of additional proof of reliability, such as contemporaneous notes or audio recordings. Finally, the Co-Prosecutors propose the admission of statements of witnesses who are deceased or cannot be located with reasonable diligence, as provided in Rule 92*quater* of the ICTY RPE.[18]

13. In support of the Co-Prosecutors' Request, the Civil Parties add that the right to confront witnesses contained in Article 297 of the Cambodian Code of Criminal Procedure is qualified by Article 318 of this Code.[19] This article gives the presiding judge the discretion not to hear any evidence deemed to unnecessarily delay the trial without being conducive to ascertaining the truth, and therefore allows the Chamber to exclude confrontation of some witnesses.[20] The Defence's blanket request to confront all witnesses having made statements unreasonably jeopardizes the right to an expeditious trial and the efficiency of proceedings.[21] It is instead necessary to ensure that written documentation gathered through a long investigation is not unnecessarily duplicated through a needless and absolute right of confrontation.[22]

14. The Defence teams submit that Article 297 of the Cambodian Code of Criminal Procedure and Internal Rule 84(1) grant an absolute right to examine in court all adverse witnesses who have not been previously confronted by the Accused.[23] The omission of express provisions for the admission of witness statements does not amount to a shortcoming in the Internal Rules. As the latter are neither unclear nor inconsistent with international

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17 Co-Prosecutors' Request, para. 38.
18 Co-Prosecutors' Request, paras 39-40; *see also* Civil Parties' Response, para. 32; Co-Prosecutors' Reply, para. 39.
19 Civil Parties' Response, paras 7, 15.
20 Civil Parties' Response, paras 13-15; *see also* Co-Prosecutors' Reply, para. 13.
21 Civil Parties' Response, paras 28-30; *see also* Co-Prosecutors' Reply, paras 9, 11-12, 14, 18-19.
22 Civil Parties' Response, para. 36.
23 NUON Chea Response, paras 3-5; IENG Thirith Response, paras 4-6; IENG Sary Response, paras 6, 10; KHIEU Samphan Response, paras 3-6.

standards, reference to procedural rules established at the international level is therefore unnecessary.[24] An accused's right to examine witnesses against him is also a fundamental fair trial right guaranteed by the International Covenant on Civil and Political Rights ("ICCPR"). The European Court jurisprudence cited by the Co-Prosecutors either supports the view that limitations upon the right to call witnesses at trial breach fair trial rights, or does not apply.[25]

15. Should the Trial Chamber not recognize an absolute right to examine witnesses, it must nonetheless consider the admissibility and weight to be afforded to witness statements on a case-by-case basis.[26] At a minimum, the admission of witness statements in the absence of the testimony of their authors should be an exceptional measure and subject to stringent conditions.[27] The Office of the Co-Investigating Judges' written records cannot be equated with witness statements and admitted into evidence, as the Defence could not examine witnesses when their statements were made, and as these records are also alleged to have improperly excluded exculpatory evidence and to lack impartiality or accuracy.[28] For the same reasons, statements taken by the Documentation Center of Cambodia ("DC-Cam") are also unreliable and should not be admitted into evidence without a right of confrontation.[29]

16. In response, and although acknowledging inaccuracies in some written records of interview, the Co-Prosecutors emphasise that this does not automatically lead to the requirement that every witness testify at trial.[30]

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[24] IENG Sary Response, paras 12-14; NUON Chea Response, paras 3-4, 6; IENG Thirith Response, paras 40-41.
[25] IENG Sary Response, paras 4, 16; NUON Chea Response, para. 7; IENG Thirith Response, paras 5, 23-37.
[26] IENG Sary Response, paras 22-27; NUON Chea Response, para. 11; KHIEU Samphan Response, paras 30-31.
[27] KHIEU Samphan Response, para. 30 ; NUON Chea Response, paras 9-11 (a witness should only be deemed unavailable if he or she is deceased, physically or mentally incapable of testifying, or protected by a recognised legal privilege, but not if he or she simply refuses to appear); IENG Sary Response, para. 19 (statements admitted by the ICTY and SCSL usually relate to crime base evidence, while statements going to proof of an act or conduct of the accused must be excluded).
[28] IENG Sary Response, paras 22-27; IENG Thirith Response, paras 13-17; NUON Chea Response, para. 12.
[29] IENG Sary Response, paras 22-24; NUON Chea Response, para. 12; IENG Thirith Response, para. 47; *see also* "IENG Sary's Motion against the Use of All Material Collected by the Documentation Centre of Cambodia", 24 February 2011, E59. Two of the Defence teams further request an oral hearing on these issues; a request the Chamber considers moot in view of the Chamber having since heard the DC-Cam Director and Deputy Director in relation to the archival and document collection practices of DC-Cam (T., 23-25 January 2012 (VANTHAN Dara Peou) and 6 February 2012 (CHHANG Youk), in addition to the substantial number of hearings on other documentary issues held before the Chamber to date (*see e.g.* E170).
[30] Co-Prosecutors' Reply, paras 35-38, 40.

4. FINDINGS

4.1. Legal framework

17. The Internal Rules do not contain provisions identical to ICTY provisions such as Rules 92*bis* and 92*quater*. The Trial Chamber nonetheless has a broad discretion pursuant to Internal Rule 87 to consider admissible all evidence the parties intend to put before it when relevant and probative, subject to the requirements of a fair and expeditious trial. Internal Rule 87(1) states that "[u]nless provided otherwise ... all evidence is admissible." This general principle is qualified by sub-rule 87(3), according to which "[t]he Chamber may reject a request for evidence where it finds that it is: a) irrelevant or repetitious; b) impossible to obtain within a reasonable time; c) unsuitable to prove the facts it purports to prove; d) not allowed under the law; or e) intended to prolong proceedings or is frivolous." All proposed evidence deemed to satisfy these criteria is considered to be admissible and can be put before the Chamber in accordance with the ECCC's legal framework.[31] The Chamber will therefore rely on the Internal Rule 87(3) admissibility criteria to decide if, and under which conditions, written statements (including annexes) or transcripts proposed to be put before the Chamber without in-court examination are "allowed under the law" (Internal Rule 87(3)(d)). Where this evidence is found to be admissible, the Chamber will also use these criteria to assess its probative value.

18. The ECCC Agreement enshrines the right of the Defence "to examine or have examined the witnesses against him or her",[32] whereas the ECCC Law guarantees the right of the accused to "examine evidence against them".[33] Although a number of inconsistencies exist between the three language versions of Internal Rule 84(1), only the English text describes the right of the accused to summon witnesses as absolute.[34] While Article 297 of the Cambodian

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[31] "Decision Concerning New Documents and Other Related Issues", E190, 30 April 2012 ("New Documents Decision"), para. 18 (clarifying that evidence is put before the Chamber and afforded an E3 classification once objections, if any, made to this evidence pursuant to the Internal Rule 87(3) criteria are rejected by the Chamber).

[32] "Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodia Law of Crimes Committed During the Period of Democratic Kampuchea", signed 6June 2003 and entered into force on 29 April 2005 ("Agreement"), Article 13(1).

[33] "Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea", 10 August 2001 with inclusion of amendments as promulgated on 27 October 2004 (NS/RKM/1004/006) ("ECCC Law"), Article 35 new (e).

[34] The English version of Internal Rule 84(1) provides that "[t]he Accused shall have the absolute right to summon witnesses against him or her whom the Accused had no opportunity to examine during the pre-trial stage." The Khmer version of this rule provides that "[t]he Accused shall have the right to summon witnesses against him or her whom the Accused had no opportunity to examine during the pre-trial stage", whereas the

Code of Criminal Procedure provides that "[i]nculpatory witnesses who have never been confronted by the accused shall be summonsed to testify at the trial", Article 318 of the same code enables the presiding judge to "exclude from the hearing everything he deems to unnecessarily delay the trial hearing without being conducive to ascertaining the truth." Cambodian law consequently recognizes the discretion of a presiding judge to decline to hear witnesses whose evidence is considered to be irrelevant, repetitive of other evidence before the Chamber or otherwise likely to unnecessarily prolong trial proceedings. As the parties in Case 002 have requested to hear a cumulative total of 1058 witnesses, Civil Parties and experts, it follows that limitation of the right to hear all proposed witnesses, Civil Parties and experts is necessary in order to safeguard the right of the accused to an expeditious trial.

19. Nor does Article 14(3)(e) of the ICCPR (incorporated by reference in Articles 12 and 33 new of the ECCC Agreement and ECCC Law) provide an unlimited right to obtain the attendance at trial of any witness requested by the defence, requiring only that an accused be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.[35] The legal framework and jurisprudence of the *ad hoc* tribunals and other internationalized tribunals also demonstrate that the right to call witnesses at trial is not absolute, and the admission of evidence in the form of written statements has been accepted before these tribunals as a means of conducting trials of mass crimes with reasonable efficiency, subject to certain safeguards to ensure the fairness of trial proceedings.[36]

French version of the rule provides that "[t]he Accused shall have the right to require the attendance at trial of any witness in respect of whom the Accused has not had the opportunity of a confrontation at the pre-trial stage/during the judicial investigation".

[35] Article 14(3)(e) of the International Covenant on Civil and Political Rights of 16 December 1966, 999 U.N.T.S. 171, ratified by Cambodia on 26 May 1992 ("ICCPR") enshrines the right of an Accused "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him"; *see further* UN Human Rights Committee General Comment No. 32 (90) on Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007, UN Doc. No. CCPR/C/GC/32, para. 39; *Lassâad Aouf v. Belgium*, Comm. No. 1010/2001, Views, Human Rights Committee, 17 March 2006, para. 9.3 and (in relation to the substantially similar protection in Article 6(3)(d) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ("ECHR")), ETS 5/213 UNTS 222, 4 November 1950, *Delta v. France*, Judgement, ECHR (no. 11444/85), 19 December 1990, para. 36; *Unterpertinger v. Austria*, ECHR (no. 9120/80), 24 November 1986, para. 31 and *A.S. v. Finland*, Judgement, ECHR (no. 40156/07), 28 September 2010, para. 53.

[36] Rule *92bis*(A) of the ICTY RPE provides that "[a] Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement in lieu of oral testimony which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment"; *see also Prosecutor v. Martić*, Decision on Appeal against the Trial Chamber's Decision on the Evidence of Witness Milan Babić, ICTY Appeals Chamber (IT-95-11-AR73.2), 14 September 2006, paras 12-14 and 18-19 and *Prosecutor v. Milosević*, Decision on Prosecution's Request to Have Written Statements Admitted Under Rule 92*bis*, ICTY Trial Chamber (IT-02-54-T), 21 March 2002, Declaration of Judge O-Gon Kwon, paragraph 3 (noting that a more flexible approach to the admission of witness statements enhances a Trial Chamber's ability to manage trials of a vast scale more efficiently, that it is common practice to admit written witness statements in civil law legal

4.2. Criteria for admission and assessment of the probative value of evidence proposed to be put before the Chamber in the form of written statements or transcripts

20. The legal framework and jurisprudence of the *ad hoc* tribunals and other internationalized tribunals have weighed numerous factors when deciding whether to admit evidence in the form of written statements or transcripts without requiring their authors to be present in court for examination. In the context of trials of mass crimes, the Trial Chamber considers these rules and jurisprudence to strike an appropriate balance between the Accused's fair trial rights and the efficiency of the proceedings, notably in relation to the expeditiousness of the trial.[37]

4.2.1. Evidence in the form of written statements or transcripts which go to proof of acts and conduct of the accused as charged in the indictment

21. Where written statements or transcripts go to proof of the acts and conduct of the accused as charged in the indictment, rules established at the international level show that reliance on them is generally precluded unless the Defence has been afforded an opportunity of confrontation.[38] The *ad hoc* tribunals' legal framework and jurisprudence has tended to exclude statements that go to proof of the acts and conduct of the Accused (but not those which concern matters other than those relating to the Accused's personal involvement, such as general policies, communication structures and the existence of a common criminal plan),[39] on grounds that a conviction based solely or to a significant extent on statements which the

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systems, and that professional judges have the ability to determine the appropriate weight to be given to this evidence). Article 67(1)(e) of the Rome Statute also does not qualify the right to hear witnesses as absolute ("In the determination of any charge, the accused shall be entitled [...] to the following minimum guarantees, in full equality: (e) To examine, or have examined, the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her.")

37 *See* Article 12(1) of the Agreement and Article 33 new (1) of the ECCC Law.

38 *See e.g.* ICTY and SCSL Rules 92*bis*, *ter* and *quater* and ICTR Rules 92*bis*(A)-(E).

39 *Prosecutor v. Haradinaj et al.*, Decision on Prosecution's Motion for Admission of Transcripts of Evidence in Lieu of Viva Voce Testimony Pursuant to 92*bis*, ICTY Trial Chamber II (IT-04-84*bis*-PT), 22 July 2011 ("*Haradinaj* Decision"), para. 20 (indicating that "acts and conduct of the accused" is to be understood as a plain expression that should be given its ordinary meaning, namely, deeds and behavior of the accused, including in appropriate cases omissions. Conduct also necessarily includes the relevant state of mind of the accused, as well as participation by an accused in a joint criminal enterprise); *see further Prosecutor v. Milošević*, Decision on Prosecution's Request to Have Written Statements Admitted Under Rule 92*bis*, ICTY Trial Chamber (IT-02-54-T), 21 March 2002, para. 22 (excluding from this notion acts and conduct of alleged co-perpetrators, subordinates, and others); *Prosecutor v. Galić*, Decision on Interlocutory Appeal Concerning Rule 92*bis*(C), ICTY Appeals Chamber (IT-98-29-AR73.2), 7 June 2002, paras 10, 13, 16; *Prosecutor v. Karadžić*, Decision on Prosecution's Third Motion for Admission of Statements and Transcripts of Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92*bis* (Witnesses for Sarajevo Municipality), ICTY Trial Chamber (IT-95-5/18-PT), 15 October 2009, para. 5.

Defence has not been given an adequate and proper opportunity to challenge may violate the Accused's fair trial rights.[40]

22. Within the ECCC legal framework, the Chamber considers that written statements or transcripts proposed to be put before the Chamber which go to proof of the acts and conduct of an accused as charged in the indictment shall, subjected to the limited exceptions identified below, be regarded as "not allowed under the law" pursuant to Internal Rule 87(3)(d) and are inadmissible for this purpose, unless the Defence has been accorded the opportunity of in-court examination of their authors.

4.2.2. Factors in favour of admitting and according probative value and thus weight to evidence in the form of a written statement or transcript

23. Where statements instead go to proof of matters other than the acts or conduct of the accused (and are deemed *prima facie* relevant, reliable and not otherwise excluded under the Internal Rule 87(3) criteria), the Chamber will find admissible the evidence of an individual in the form of a written statement or transcript without requiring their attendance at trial and may under certain conditions rely on this material.

24. In accordance with the relevant international rules and practice, factors in favour of admitting and affording some probative value and thus weight to evidence in the form of a written statement or transcript include whether this evidence:

a) is of a cumulative nature, in that other witnesses will give or have given oral testimony of similar facts;
b) relates to relevant historical, political or military background, concerns crime-base evidence or goes to proof of threshold elements of international crimes (such as the existence of an international armed conflict or the widespread or systematic nature of an attack);

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[40] *See e.g.* ICTY Rule 92*quater* (B) ("If the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence [...]") and ICTR Rule 92*bis*(D) ("[a] Chamber may admit a transcript of evidence given by a witness in proceedings before the Tribunal which goes to proof of a matter other than the acts and conduct of the accused"); *see also* ICTY Rule 92*bis* (A)(ii) (indicating that evidence in the form of a written statements alone will not be accepted where a) there is an overriding public interest in the evidence in question being presented orally; b) a party objecting can demonstrate that its nature or source renders it unreliable; or c) there are other factors which make it appropriate for the witness to attend for cross-examination) and *Prosecutor v. Popović et al.*, Decision on Prosecution's Confidential Motion for Admission of Written Evidence in Lieu of *Viva Voce* Testimony Pursuant to Rule 92*bis*, ICTY Trial Chamber II (IT-05-88-T), 12 September 2006 ("*Popović* Decision"), para. 16; *Prosecutor v. Blagojević and Jokić*, First Decision on Prosecution's Motion for Admission of Witness Statements and Prior Testimony Pursuant to Rule 92*bis*, ICTY Trial Chamber (IT-02-60-T), 12 June 2003, para. 26; *Prosecutor v. Sikirica et al.*, Decision on Prosecution's Application to Admit Transcripts under Rule 92*bis*, ICTY Trial Chamber (IT-95-8-T), 23 May 2001, para. 4.

c) consists of a general or statistical analysis of the ethnic composition of the population in the places to which the indictment relates;

d) concerns the impact of crimes upon victims; or

e) is impossible to subject to confrontation because its author has subsequently died, or can no longer with reasonable diligence be traced, or is medically unable to testify orally.[41]

25. Where evidence in the form of written statements or transcripts is allowed to be put before the Chamber without requiring the attendance of their authors at trial in accordance with these criteria, the Chamber shall in due course assess what, if any, probative value and weight may be afforded to it. The absence of oral testimony and an opportunity for confrontation is a relevant consideration in this regard and it follows that the probative value and weight to be accorded to such evidence may in many circumstances be limited.[42]

4.3. Assessment of certain categories of proposed evidence relevant to this decision

4.3.1. OCIJ statements of individuals not called to give evidence at trial

26. The Trial Chamber has previously determined that statements taken during the judicial investigation are entitled to a presumption of relevance and reliability.[43] Where deficiencies in these statements are alleged, the Chamber has indicated that this will be entertained only where the alleged defects are identified with sufficient particularity and have clear relevance to the trial.[44] A further safeguard is provided by the fact that individuals called to give evidence at trial may also be examined by the Chamber or any party on the contents of their prior statements.[45]

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[41] *See e.g.* ICTY Rules 92*bis* (A)(i)(a)-(d) and 92*quater* (A) and ICTR Rules 92*bis* (A)(i)(a)-(d), (C)-(E); *Prosecutor v. Blagojević and Jokić*, First Decision on Prosecution's Motion for Admission of Witness Statements and Prior Testimony Pursuant to Rule 92*bis*, ICTY Trial Chamber (IT-02-60-T), 12 June 2003, paras 12, 20, 28; *Prosecutor v. Naletilić*, Decision Regarding Prosecutor's Notice of Intent to Offer Transcripts Under Rule 92*bis* (D), IT-98-34-PT, 9 July 2001, paras 7-12.

[42] *See e.g. Asch v. Austria*, Judgement, ECHR (no. 12398/86), 26 April 1991, paras 27, 31 and *A.S. v. Finland*, Judgement, ECHR (no. 40156/07), 28 September 2010, para. 54 (indicating that a conviction should not be based either solely or to a decisive extent on statements which the Defence has not been able to challenge) and *Popović* Decision, para. 66 ("the Trial Chamber will bear in mind [...] the absence of the opportunity to cross-examine in the current trial when evaluating [...] evidence and deciding on the weight to be attributed to the transcripts [admitted pursuant to ICTY RPE 92*quater*] in accordance with the jurisprudence of the Tribunal").

[43] Framework Document Decision, para. 20; Audio Recordings Decision, paras 6-15; "Co-prosecutors' Rule 92 submission regarding indicia of reliability of the 978 documents listed in connection with those witnesses and experts who may be called during the first three weeks of trial", 23 December 2011, E158, paras 181-185.

[44] Audio Recordings Decision, para. 12.

[45] Audio Recordings Decision, para. 13.

27. Where the OCIJ statements of individuals not called to give evidence at trial are instead proposed to be put before the Chamber absent the testimony of their authors, the Defence shall be accorded an equivalent right to pose relevant objections, if any, to this material (Section 4.4). These statements may be entitled to little, if any, probative value or weight either because of the lack of opportunity for confrontation or because significant deficiencies in these statements or transcripts have been credibly alleged and identified.

28. In previous decisions and rulings of the Chamber, documents or other evidence cited in the footnotes to the relevant portions of the Closing Order have been accorded a presumption of relevance and reliability, on grounds that some probative weight was accorded to them by the Co-Investigating Judges.[46] The Chamber acknowledges that included in the documents accorded this presumption (and in consequence, granted an E3 classification) are a number of statements of individuals who have not been called to give evidence at trial and whose evidence may not have been subject to prior confrontation by the Defence.[47] In relation to these statements, the parties may therefore, if they so choose, utilize any forthcoming document hearing or shall otherwise be granted an opportunity to pose any relevant objections to this evidence (Section 4.4). In any case, the Chamber will assess the probative value and weight, if any, to be afforded to these statements in accordance with the above criteria (Section 4.2).

4.3.2. Statements of witnesses not called to give evidence at trial taken by entities external to the ECCC

29. Statements or other evidence collected not under judicial supervision but instead by diverse intermediary organizations or other entities external to the ECCC enjoy no such presumption of reliability.[48] This evidence may nonetheless be proposed to be put by the Chamber pursuant to Internal Rule 87(1). Although not required under the ECCC legal framework, indicia of reliability (such as those provided previously by the Co-Prosecutors in

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[46] T., 26 January 2012, pp. 85-88; *see also* Trial Chamber response to portions of E114, E114/1, E131/1/9, E131/6, E136 and E158, E162, 31 January 2012 ("Summary of Oral Decision"), para. 3 (noting that this only applies to documents cited in the Closing Order and not to other documents in the Case File) and Framework Document Decision, para. 20.

[47] These include 150 statements of witnesses who, as of 24 May 2012, have not been heard. Approximately 71 of these statements are from witnesses the Chamber plans to hear (E131.1), and whose credibility may therefore in due course be tested in court, and one by a deceased witness (Document E3/35).

[48] Framework Document Decision, paras 20 (noting that the presumption of reliability only extends to OCIJ statements as they are prepared under judicial supervision and subject to certain safeguards as to their authenticity and reliability) and 28 (according, however, a presumption of relevance and reliability, including authenticity, to contemporaneous Democratic Kampuchea-era documents collected by DC-Cam, following a review of its archival policies and practices).

relation to numerous statements) may nonetheless assist the Chamber in its assessment of whether the evidence in question satisfies the criteria contained in Internal Rule 87(3), and the probative value and weight that may be accorded to it.[49] Civil Party applications (which were often prepared by various intermediary organizations on behalf of Civil Party applicants), in the absence of information regarding the circumstances in which they were recorded, may also be proposed to be put before the Chamber but may ultimately be able to be afforded little, if any, probative weight. Civil Party applications of individuals who were not ultimately admitted as Civil Parties in Case 002/01 (paragraph 6, above) and complaints unrelated to the subject-matter of the trial in Case 002/01 may additionally fail to satisfy the criteria of relevance pursuant to Internal Rule 87(3)(a).

4.3.3. Transcripts of evidence from Case 001

30. Although agreeing with the Co-Prosecutors that trial transcripts from Case 001 contain inherent indicia of reliability, transcripts of evidence from this trial may have limited utility in Case 002, where the parties and facts at issue differ. The Chamber has already considered circumstances in which it may dispense with the attendance of a witness and instead admit evidence in the form of a transcript, where that evidence goes to proof of a matter other than the acts and conduct of the accused charged in the indictment (Section 4.2.2).[50]

31. In the interests of safeguarding the expeditiousness of proceedings, the legal framework of other internationalized tribunals have, subject to certain conditions, also permitted the use of transcripts of an individual's evidence from previous trials where the evidence of that individual in a later trial would be repetitious of their previous testimony, even if it goes to

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[49] *See* Co-Prosecutors' Rule 92 submission regarding indicia of reliability of the 978 documents listed in connection with those witnesses and experts who may be called during the first three weeks of trial, E158, 23 December 2011.

[50] *See e.g. Haradinaj* Decision, paras 19 (noting that ICTY Rule 92*bis* is intended to be used to establish so-called "crime-base" evidence and allowing transcripts or statements to be admitted in lieu of oral testimony provided that they go to proof of a matter other than the acts and conduct of the accused as charged in the indictment) and disposition (granting in part Prosecution motion and admitting some transcripts from previous trials into evidence pursuant to Rule 92*bis*, whilst requiring other witnesses to appear in court for cross-examination, and others to give evidence orally) and *Prosecutor v. Sikirica et al,* Decision on Prosecution's Application to Admit Transcripts under Rule 92*bis*, ICTY Trial Chamber (IT-95-8-T), 23 May 2001, paras 2-4 (allowing the admission of transcripts of evidence given by a witness in proceedings before another Chamber without requiring that witness to give evidence again where the evidence goes to proof of matters other than the acts and conduct of the accused, where the evidence has relevance and probative value, and where its exclusion is not required by the need to ensure a fair trial. Among the matters for consideration in deciding whether a witness should be required to appear are whether the transcript goes to proof of a critical element of the Prosecution's case against the accused and whether the cross-examination of a witness in the other proceedings dealt adequately with the issues relevant to the Defence in the current proceedings).

proof of the acts and conduct of the accused.[51] In order to safeguard the expeditiousness of trial proceedings in Case 002, parties may, in accordance with this practice, therefore propose to admit transcripts of evidence from Case 001 where a rehearing of the evidence of that individual would be likely to be repetitious of their prior evidence, where that witness is available to appear in court for cross-examination if required, and where he or she attests that the transcript in question accurately reflects what the witness would say if examined.

4.3.4. Statements of witnesses who are deceased, cannot be traced with reasonable diligence or who are otherwise unable to testify

32. Finally, the relevant rules and practice at the international level permit under certain circumstances the admission of evidence of witnesses who have died subsequent to giving their statements, or who can no longer with reasonable diligence be traced, or who "by reason of bodily or mental condition are unable to testify orally".[52] The fact that the evidence in question is relevant to the acts and conduct of the accused as charged in the indictment is not as such a bar, but has been considered as a factor that weighs against admission.[53] Admission of the written statement or transcript of deceased or unavailable witnesses has been granted where the Chamber is satisfied that the witness is genuinely unavailable and that the proposed

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[51] *See e.g.* ICTY Rule 92*ter* (A) (envisaging the admission of written statements or transcripts of evidence given by a witness in previous proceedings where the witness is present in court, available for cross-examination and questioning by the Judges and where the witness attests that the written statement or transcript accurately reflects that witnesses' declaration and what the witness would say if examined). Pursuant to ICTY Rule 92*ter* (B), such evidence may include the acts and conduct of the accused as charged in the indictment; *see e.g. Prosecutor v. Tolimir*, Decision on Prosecution's Motion for Admission of Evidence pursuant to Rule 92*quater*, ICTY Trial Chamber II, IT-05-88/2-PT, 25 November 2009, para. 30.

[52] *See* ICTY Rule 92*quater* (A) ("The evidence of a person in the form of a written statement or transcript who has subsequently died, or who can no longer with reasonable diligence be traced, or who is by reason of bodily or mental condition unable to testify orally may be admitted, whether or not the written statement is in the form prescribed by Rule 92*bis*, if the Trial Chamber: (i) is satisfied of the person's unavailability as set out above; and (ii) finds from the circumstances in which the statement was made and recorded that it is reliable"); *see also* ICTR Rule 92*bis*(C), where the Chamber may admit the statement of a person who has subsequently died, or who with reasonable diligence cannot be traced, where the circumstances in which the statement was made and recorded provide satisfactory indicia of its reliability (*see e.g. Prosecutor v. Bagosora et al.*, Decision on Admission of Statements of Deceased Witnesses, ICTR Trial Chamber I (ICTR-98-41-T), 19 January 2005, paras 15, 19, 21; *Prosecutor v. Bagosora et al.*, Decision on Admission of Statement of Kabiligi Witness under Rule 89(C), ICTR Trial Chamber I (ICTR-98-41-T), 14 February 2007, paras 6-8)).

[53] *See* ICTY Rule 92*quater* (B) ("If the evidence goes to proof of acts and conduct of an accused as charged in the indictment, this may be a factor against the admission of such evidence, or that part of it") and *Tolimir* Decision, para. 30 ("This provision [Rule 92*quater*(B)] is inflected with concern for ensuring a fair trial and the reliability of the evidence. This provision counsels cautious scrutiny with respect to evidence going to proof of acts and conduct of the accused but also contemplates the admission of statements by deceased persons containing such evidence").

evidence is reliable,[54] and where it considers that the probative value of this evidence is not substantially outweighed by the need to ensure a fair trial.[55]

33. Where the interests of justice so require, the ICTY RPE also permits the admission of statements of an individual, even where going to the acts and conduct of the accused, where his or her failure to attend court or give evidence stems from threats, intimidation or other forms of improper interference.[56]

4.4. Procedural modalities for proposing statements and transcripts to be put before the Chamber in accordance with this decision

34. Certain categories of material mentioned in the Co-Prosecutors' Request, as well as that proposed by the Lead Co-Lawyers, includes large numbers of statements and other evidence (such as Civil Party applications and complaints), often absent any particularization of the purpose for which admission of this material is sought. In the interests of effective trial management, the Chamber requires the parties to identify the purpose for proposing such evidence in order to enable assessment of its admissibility and if found admissible, its

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[54] *See Popović* Decision, para. 31 and *Prosecutor v. Tolimir*, Decision on Prosecution's Motion for Admission of Evidence pursuant to Rule 92*quater*, ICTY Trial Chamber II (IT-05-88/2-PT), 25 November 2009 ("*Tolimir* Decision"), para. 29 (identifying the following factors as relevant to this assessment of the reliability of evidence proposed pursuant to Rule 92*quater* (i) the circumstances in which the statement was made and recorded, including whether the statement was given under oath, whether the statement was signed by the witness with an accompanying acknowledgment that the statement is true to the best of his or her recollection, (iii) whether the statement was taken with the assistance of a duly qualified interpreter; (ii) whether the statement has been subject to cross-examination, and whether the statement relates to events about which there is other evidence and (iv) other factors, such as the absence of manifest or obvious inconsistencies in the statements); *see further Popović* Decision, para. 30 and *Tolimir* Decision, paras 27-28 (referring also to the need to satisfy the general admissibility requirements in Rule 89 concerning relevance, probative value and conformity with the requirements of a fair trial).

[55] *Prosecutor v. Karadžić*, Decision on Prosecutor's Motion for Admission of the Evidence of KDZ172 (Milan Babić) Pursuant to Rule 92*quater*, ICTY Trial Chamber (IT-95-5/18-T), 13 April 2010, para. 33 and *Prosecutor v. Karadžić*, Decision on Prosecution's Motion for Admission of the Evidence of Milenko Lazić pursuant to Rule 92*quater* and for Leave to Add Exhibits to Rule 65 *ter* Exhibit List, ICTY Trial Chamber, IT-95-5/18-T, 9 January 2012, paras 20-23 (rejecting statements of deceased witnesses going to the acts and conduct of the accused as such statements were not subject to cross-examination and as "the need to ensure a fair trial outweigh[ed] the probative value of this particular evidence").

[56] *See* ICTY Rule 92*quinquies* (A) ("A Trial Chamber may admit the evidence of a person in the form of a written statement or a transcript of evidence given by the person in proceedings before the Tribunal, where the Trial Chamber is satisfied that: (i) the person has failed to attend as a witness or, having attended, has not given evidence at all or in a material respect; (ii) the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, injury, bribery, or coercion; (iii) where [...] reasonable efforts have been made [...] to secure the attendance of the person as a witness or, if in attendance, to secure from the witness all material facts known to the witness; and (iv) the interests of justice are best served by doing so. Factors relevant to determining the interests of justice under this sub-rule are: (a) the reliability of the statement or transcript, having regard to the circumstances in which it was made and recorded; (b) the apparent role of a party or someone acting on behalf of a party to the proceedings in the improper interference; and (c) whether the statement or transcript goes to proof of the acts and conduct of the accused as charged in the indictment.

probative value in accordance with the above criteria (Sections 4.2 and 4.3). While the Chamber has indicated that much of this material is likely to be afforded only very limited probative weight, the trial management impact of these requests (in view of the need for the translation of large quantities of this material, as well as the potential for substantial in-court time to be allocated to the hearing of objections to it) is nonetheless substantial, particularly should the parties maintain blanket requests to place voluminous quantities of written statements or other evidence before the Chamber.[57]

35. In view of these considerations, parties seeking to propose evidence evaluated by this decision are directed:

a) To review all documents contained on their relevant lists for compatibility with the admissibility criteria set out in Sections 4.2 and 4.3 of this decision;

b) To particularize the evidentiary purpose for which each document or each category of evidence is sought to be put before the Chamber, particularly where specific reasons are alleged which justify the admission of statements which go to proof of acts or conduct of the accused without in-court examination of their authors;

c) Where this evidence is voluminous or essentially repetitive, to consider proposing to be put before the Chamber a representative sample of each type of evidence (as opposed to all documents or statements in each category); and

d) To provide the above specifications by 27 July 2012, so as to permit the Chamber to schedule hearings, if required, or otherwise allow the filing of objections pursuant to Internal Rule 87(3), where required, without delay.

36. Once evidence sought to be put before the Chamber in consequence of this decision is identified by the parties in accordance with the above directions, the Chamber will in due course schedule a hearing or otherwise provide an opportunity to put any relevant objections to the proposed evidence pursuant to Internal Rule 87(3).[58]

FOR THE FOREGOING REASONS, THE TRIAL CHAMBER:

FINDS that evidence in the form of written statements or transcripts may be put before the Chamber where it satisfies the criteria contained in Sections 4.2 and 4.3 of this decision;

DIRECTS the Co-Prosecutors and other parties proposing to put evidence before the Chamber on this basis to identify this proposed evidence with sufficient particularity in accordance with the modalities outlined in Section 4.4 of this decision;

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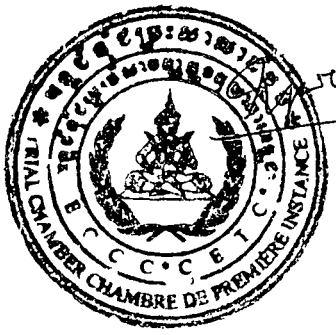
[57] For instance, and as of June 2012, approximately 935 of the Civil Party applications proposed by the Lead Co-Lawyers (comprising approximately 9000 pages) were yet to be translated. As of the same date, approximately 2000 of the complaints proposed by the Co-Prosecutors were also as yet untranslated.

[58] *See e.g.* E172/5 (deferring discussion of documents contained in Prosecution Annexes A12 and A13 (witness statements and complaints), as well as the vast majority of documentary evidence proposed by the Civil Party Lead Co-Lawyers, pending issuance of this decision).

INFORMS the parties that opportunity to put objections to this proposed evidence, in terms of the criteria identified in Sections 4.2 and 4.3 and that contained in Internal Rule 87(3), shall be provided by the Chamber in due course; and

DECLARES that the criteria outlined in Section 4.2 and 4.3 of this decision shall further be considered by the Chamber when assessing the probative value and thus weight to be accorded to evidence put before the Chamber in consequence of this decision.

Phnom Penh, 20 June 2012
President of the Trial Chamber



Nil Nonn