

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

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**NUON CHEA'S FIRST RULE 87(4) REQUEST FOR ADMISSION INTO EVIDENCE  
OF 15 DOCUMENTS RELEVANT TO YSA OSMAN'S (2-TCE-95) TESTIMONY (ON  
BACKGROUND, INDEPENDENCE AND IMPARTIALITY AND DEATH TOLLS)**

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## I. INTRODUCTION

1. Pursuant to Rule 87(4) of the ECCC Internal Rules, the Co-Lawyers for Mr Nuon Chea (the “Defence”) submit this request to have admitted into evidence 1 document related to Mr Osman’s background (“Category I”), 3 documents related to his independence and impartiality (“Category II”), as well as 11 documents related to Mr Osman’s findings, in his book *Oukoubah*, as to the number of Cham who lost their lives during the 1975-1979 period (“Category III”), in order to use them during the examination of Ysa Osman (2-TCE-95). The requested documents would permit the Defence to explore Mr Osman’s expertise, his impartiality and independence, and would therefore assist the Trial Chamber when assessing the weight to be given to Mr Osman’s evidence.

## II. APPLICABLE LAW

2. All evidence is admissible, unless otherwise provided in the Internal Rules.<sup>1</sup> The Chamber may reject a request for evidence where it finds that the evidence is irrelevant or repetitious; impossible to obtain within a reasonable time; unsuitable to prove the facts it purports to prove; not allowed under the law, or if it is intended to prolong proceedings or is frivolous.<sup>2</sup> To satisfy the requirements of Rule 87(3), the proposed evidence needs only be *prima facie* relevant and reliable.<sup>3</sup> Pursuant to Rule 87(4), at any stage during the trial a party may request the Chamber to “admit any new evidence which it deems conducive to ascertaining the truth”, subject to the general requirements of Rule 87(3).<sup>4</sup> While Rule 87(4) states that the requested evidence must not have been available before the opening of the trial, the Trial Chamber has been interpreted it as also encompassing evidence which was available before the opening of the trial but which could not have been discovered earlier with the exercise of due diligence can be admitted.<sup>5</sup>
3. In certain situations, evidence which did not “strictly speaking” satisfy this criterion has been admitted: where the evidence was closely related to material already before the

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<sup>1</sup> Rule 87(1) of the Internal Rules.

<sup>2</sup> Rule 87(3) of the Internal Rules.

<sup>3</sup> **E289/2**, ‘Decision on Civil Party Lead Co-Lawyers’ Internal Rule 87(4) Request to Put Before the Chamber New Evidence (E289) and KHIEU Samphan’s Response (E289/1)’, 14 Jun 2013, para. 26 (“Decision on Rule 87(4) Requests”).

<sup>4</sup> A year into the Case 002/02 trial, the TC held that the parties must submit Rule 87 (4) Requests for documents which were on the case file but which had not been included in the list of documents admitted by the Trial Chamber, even if those had been disclosed by the Prosecution subsequently to the initial documents filings, *see* Draft transcripts of 26 Jan 2016, p. 24.

<sup>5</sup> **E313**, ‘Case 002/01 Judgement’, 7 Aug 2014, para. 25; **E289/2**, Decision on Rule 87(4) Requests, para. 3.

Chamber and where the interests of justice required the sources to be evaluated together; where the proposed evidence is exculpatory and requires evaluation to avoid a miscarriage of justice, or where the other parties do not object to the evidence.<sup>6</sup>

### III. ARGUMENTS

#### A. Category I: Document Relevant to Mr Osman's Background

4. Document 1 is an 11 minute, 20 second video entitled "Osman's History" dated 2014, wherein Mr Osman describes his personal and professional background. The video has been uploaded in the shared materials drive and bears the ERN number: V01198245-V01198245.<sup>7</sup> Its transcription in English is attached as **Public Attachment 1**. The video was uploaded on 11 May 2014 on YouTube and linked to Mr Osman's page on the website "Cambodian Village Scholars Fund", of which he is an apparent staff member.<sup>8</sup> The video constitutes Osman's CV, wherein he discusses his personal background, education and professional experience.
5. The Trial Chamber held that the trial in Case 002/02 commenced in June 2011.<sup>9</sup> The interview was uploaded on YouTube on 11 May 2014. It was therefore not available before the opening of the trial, and as a result, fulfils Rule 87(4)'s requirements. In addition, Document 1 is closely related to material already before the Chamber, including Mr Osman's books<sup>10</sup> and the various statements of witnesses for whom parts of the interview they gave to Mr Osman in the context of his DC-Cam work form an integral part of their WRI in the present case.<sup>11</sup> The video is relevant for the assessment of the methodology used by Mr Osman when preparing the interviews and his books, and go to the probative value of such books, interviews, as well as that of Mr Osman's evidence. It is therefore conducive to the ascertainment of the truth.

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<sup>6</sup> E289/2, Decision on Rule 87(4) Requests, para. 3.

<sup>7</sup> The video is available at: <https://youtu.be/cfGvzPPPHnI>.

<sup>8</sup> See <http://cambodianscholars.org/staff/ysa-osman/>.

<sup>9</sup> E307/1, 'Decision on Parties' Joint Request for Clarification Regarding the Application of Rule 87(4) (E307) and the NUON Chea Defence Notice of Non-Filing of Updated Lists of Evidence (E305/3)', 11 Jun 2014, para. 2; E307/1/2, 'Decision on Joint Request for *de novo* Ruling on the Application of Internal Rule 87(4)', 21 Oct 2014, para. 6.

<sup>10</sup> E3/1822, Ysa Osman, *Oukoubah: Justice of the Cham Muslims under the Democratic Kampuchea Regime*, 2002 ("*Oukoubah*"); E3/2653, Ysa Osman, *The Cham Rebellion: Survivors' Stories from the Village*, 2006.

<sup>11</sup> See e.g. E3/5194, 'Interview of AHMAD Sofiyah', at ERN 00274708 (EN); see also E3/8325, 'Report of the Execution of Rogatory Letter', 21 Jul 2008.

6. Mr Osman is the main witness to testify on the allegations regarding the treatment of the Cham.<sup>12</sup> He is the sole expert dedicated to this issue who will appear before the Chamber. His books were used by the OCIJ when investigating the present case, and by the parties in Court when confronting witnesses. The video is relevant to establishing how Mr Osman acquired his knowledge and expertise regarding the treatment of Cham. Further, as Mr Osman will also testify as a fact witness, the video is relevant to the part of his evidence regarding his personal history as a “victim” of the CPK. Finally, Mr Osman refers to an alleged genocide against the Cham people. Recalling that expert witnesses must not express opinions on ultimate issues of fact (as only the Chamber is competent to make a judicial determination on this),<sup>13</sup> the video constitutes a type of “prior statement” of Mr Osman, with which the Defence would like to confront him. It will therefore also be relevant to establish any possible lack of impartiality or any bias on the part of Mr Osman.
7. The document is a video where Mr Osman can undoubtedly be identified. The Cambodia Village Scholars Fund, where Mr Osman appears to act as Program Coordinator, posted the video on its website, on a page profiling Mr Osman. The video has all indicia of authenticity and reliability required to be admitted into evidence.

## **B. Category II: Documents Relevant to Mr Osman’s Independence and Impartiality**

### ***(i) Overview of the Documents***

8. Document 2 is a UNAKRT vacancy announcement for the post of Analyst/Data Coder with the OCIJ. It contains a summary of duties including an overview of the various tasks which form part of the position. It attached as **Public Attachment 2**. Document 3 is a list of all witnesses interviewed in presence of Ysa Osman, which contains the names of 37 individuals and the dates of their respective interviews.<sup>14</sup> It was made available to the Defence on 23 June 2010 following the OCIJ’s order of 16 March 2010.<sup>15</sup> It can be found as **Confidential Attachment 3**.
9. Document 4 is a newspaper article written by Mr Osman, entitled “How many Cham killed important genocide evidence” and dated 10 March 2006. Mr Osman expresses his

<sup>12</sup> **D427**, ‘Closing Order’, 15 Sep 2010 (“Closing Order”), paras 745-790.

<sup>13</sup> **E215**, ‘Decision on Assignment of Experts’, 5 Jul 2012, para. 16 (“Experts Decision”).

<sup>14</sup> Document 3 bears the document number **D361/3.1**.

<sup>15</sup> **D361/1**, ‘Order on Jeng Thirith Defence Request for Investigation into Mr. Ysa Osman’s Role in the Investigations, Exclusion of Certain Witness Statements and Request to Re-Interview Certain Witnesses’, 16 Mar 2010.

views on the question of the “Khmer Rouge genocide against Cambodia’s religious and ethnic minorities” as well as on the debate which Kiernan, Hinton and Bora had over the population figures for the Cham. The document can be found in **Public Attachment 4**. In his article, Mr Osman uses terms such as “the very important issue of the Khmer Rouge genocide against Cambodia’s religious and ethnic minorities”, “this issue of genocide”, “genocidal crimes”. In the view of the Defence, this illustrates his personal views: there was a genocide against the Cham during Democratic Kampuchea (“DK”). Further, Mr Osman also provides a response to the various scholars who have challenged his findings as to the number of Cham who had allegedly been killed during the DK period.

*(ii) The Documents Should be Admitted Into Evidence in the Interests of Justice*

10. While the documents existed prior to the opening of the trial, the Trial Chamber’s decision to appoint Mr Osman as an expert was rendered on 18 September 2015. He was only officially allowed to testify by the United Nations on 25 January 2016.<sup>16</sup> Since the documents are specifically and directly linked to establishing Mr Osman’s lack of independence and impartiality, they could not have been discovered earlier despite the exercise of due diligence, as it was uncertain that Mr Osman would be a witness in the present case, let alone an expert. In any event, the documents are closely related to material already before the Chamber, including Mr Osman’s books<sup>17</sup> and the various statements of witnesses for whom parts of the interview they gave to Mr Osman form an integral part of their WRI in the present case.<sup>18</sup> They are also relevant to the assessment of the extent of Mr Osman’s participation in the investigations in the present case, and go to the probative value of such interviews, as well as that of Mr Osman’s evidence. The Defence submits that the interests of justice require the Trial Chamber to evaluate the documents together. Finally, their admission into evidence would assist the Trial Chamber in shedding light on Mr Osman’s impartiality and independence, as well as on the ultimate weight to be given to his evidence. It is therefore conducive to the ascertainment of the truth.

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<sup>16</sup> E367/3, Letter from the United Nations Legal Counsel to the President of the Trial Chamber entitled ‘Request for a Waiver of Immunity of Mr. YSA Osman’, 28 Jan 2016 (dated 25 Jan 2016).

<sup>17</sup> See *supra*, fn. 10.

<sup>18</sup> See *supra*, fn. 11.

**(iii) The Documents are Relevant to Case 002/02 and are Reliable**

11. All the requested documents relate to the allegations regarding the treatment of the Cham and the charge of genocide.<sup>19</sup> Further, since Mr Osman has been appointed as an expert witness by the Trial Chamber, he is bound to testify on all matters within his knowledge or expertise relevant to the treatment of the Cham with the utmost neutrality and objectivity.<sup>20</sup> As an expert witness, Mr Osman may not express opinions on ultimate issues of fact.<sup>21</sup> More particularly, Category II documents relate to Mr Osman's qualifications and his role within the OCIJ (Documents 2-3) and to his independence and impartiality (Document 4). Documents 2 and 3 show that being present during witness interviews while case 002/02 was being investigated was outside of the functions of an Analyst/Data Coder at the OCIJ. It could demonstrate that Mr Osman's expert evidence is tainted by such participation, and that he is unable to testify neutrally and objectively as a result. Document 4 demonstrates Mr Osman has already reached his conclusion as to the fundamental issues of the case –namely that there has been a genocide against the Cham people – and therefore made conclusions on ultimate issues of fact, in turn preventing him from testifying in a neutral and objective manner. It could demonstrate that Mr Osman's expert evidence is tainted and therefore, that no weight should be given to it.
12. All Category II documents bear *prima facie* indicia of reliability. Document 2 is an official UNAKRT document, obtained from its official website,<sup>22</sup> and Document 3 is an official ECCC document emanating from the OCIJ.<sup>23</sup> Document 4 was published by the *Phnom Penh Post*, a recognised and well-established newspaper. Further, during testimony, Mr Osman will be able to testify that he was indeed the author of such article.

**C. Category III: Documents Related to Mr Osman's Death Figures**

13. In his first book, Mr Osman states that more than 500,000 Cham, or 75% of the total Cham population (which he estimates at 700,000 for 1975), died during the DK

<sup>19</sup> D427, Closing Order, 15 Sep 2010, paras. 745-790.

<sup>20</sup> E215, Experts Decision, para. 15.

<sup>21</sup> E215, Experts Decision, para. 16.

<sup>22</sup> Available at: [http://www.unakrt-online.org/sites/default/files/VA\\_Analyst%20Data%20Coder%20G-7\\_0.pdf](http://www.unakrt-online.org/sites/default/files/VA_Analyst%20Data%20Coder%20G-7_0.pdf).

<sup>23</sup> The Defence reserves the right to challenge the comprehensiveness of such list, and particularly the fact that the witness interviews are dated 2007-2008.

period.<sup>24</sup> However, a large number of scholars have provided dramatically different information, both prior to and subsequent to the publication of Mr Osman's book. A scholarly debate took place between 1988 and 2006 regarding the number of deaths within the Cham population during the DK period, and Mr Osman's estimates were by far the highest. For instance, Michael Vickery provides for a count of 191,200 Cham individuals in April 1975.<sup>25</sup> Ben Kiernan – despite his view that a genocide did take place against the Cham – directly challenges Mr Osman's findings, stating that Mr Osman “more than triples the true proportion”, and instead provides a figure of 250,000 Cham in 1975, with about 90,000 dead by the end of the period.<sup>26</sup>

14. Unlike Mr Osman, who has based his “research” on the interviews he had with Cham elders, other scholars undertook technical calculations on the basis of potentially more objective evidence such as population censuses. The Defence submits that, in order for the Trial Chamber to properly assess Mr Osman's claims, and have the full picture, it is necessary for it to include other scholars' publications in its assessment.

*(i) Overview of Category III Documents*

15. **Document 5: Article entitled “Khmer Rouge Genocide Debate Moves to Trial”, by George Wright and Khuon Narim (2015):** The article discusses the (then) upcoming trial in case 002/02 and was written by George Wright and Khuon Narim. It was published by the *Cambodia Daily* on 8 September 2015 and can be found in **Public Attachment 5**. The authors sum up the above mentioned scholarly debate, and quote Mr Chandler, who testified as an expert witness in case 002/01 and on whom the Trial Chamber heavily relied in its judgement, as stating that “[i]ntent is impossible to prove in the Cambodian case.”
16. **Document 6: Article entitled “Orphans of Genocide: The Cham Muslims of Kampuchea Under Pol Pot”, by Ben Kiernan (1988):** The Defence seeks to tender an article written by Ben Kiernan in 1988 and related to the Cham population in Cambodia. It can be found in **Public Attachment 6**. The article was published in volume 20, N. 4, of the *Critical Asian Studies* issue of October-December 1998. Mr Kiernan states that about one third of the Cham people, or 90,000 individuals, died during the DK period.

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<sup>24</sup> E3/1822, *Oukoubah*, p. 2.

<sup>25</sup> Document 6, p. 4 (32).

<sup>26</sup> Document 13, p. 4 (ERN 00488406) (emphasis added).

His figures are based on a baseline of 250,000 and an end figure of 173,000.<sup>27</sup> This article forms the basis of the scholarly debate which took place between Chandler, Kiernan, Osman, Vickery, Bora, and Short regarding the number of deaths within the Cham population between 1975 and 1979 and whether or not it would qualify as genocide.

17. **Document 7: Article entitled “Comments on Cham Population Figures”, by Michael Vickery (1990):** The Defence seeks to tender an article written by Michael Vickery in 1990 and related to the Cham population prior and post DK period. The article was written in response to Mr Kiernan’s article published in 1988 (*see* Document 6). It can be found in **Public Attachment 7**. The article was published in volume 22, N. 1, of the *Critical Asian Studies* issue of January-March 1990. The document forms part of the scholarly debate as to whether a genocide took place in Cambodia in 1975-1979, which also included a debate about the underlying figures used to support or deny this claim.
18. Mr Vickery challenges the population numbers given by Mr Kiernan in his 1988 article, stating that Mr Kiernan had “tinkered with the statistics in a tendentious manner in an attempt to prove the case for genocide in Democratic Kampuchea”.<sup>28</sup> He notes that:

all Cambodian population statistics, of whatever period, include a large measure of hypothesis, assumption, extrapolation, and pure guesswork, and they may not be adequate for the type of calculations undertaken by either Kiernan or myself.<sup>29</sup>

19. This document discusses the basis of Kiernan’s findings in respect of the Cham population in Cambodia and criticises Kiernan’s methodology. In particular, Mr Vickery calculates that in April 1975, the Cham population was 191,200, and not 250 000 as Mr Osman had asserted. He concludes that “a rough figure of 168,000 plus is the *absolute minimum* that can be postulated for 1979 survivors. Any lower figure requires an impossibly high growth rate to reach the PRK count in 1982”.<sup>30</sup> He concludes that “what *cannot* be accepted, on the basis of any real figures, is that “over one-third of the Cham, about 90,000 people [250,000 – 173,000 = 77,000 *plus* 10,000 born during DK] perished” (Kiernan, p. 30), for there had never been 250,000 to begin with”.<sup>31</sup>

<sup>27</sup> Document 5, p. 31, conclusion.

<sup>28</sup> Document 6, p. 3 (31).

<sup>29</sup> Document 6, p. 3 (31).

<sup>30</sup> Document 6, p. 5 (33).

<sup>31</sup> Document 6, p. 5 (33).



20. **Document 8: Article entitled “Devil’s advocate: there should be no KR trial”, by Philip Short (November 2000):** The Defence seeks to tender a newspaper article written by Philip Short in the *Phnom Penh Post* and related to the qualification of genocide in relation to the events that took place in Cambodia between 1975 and 1979. It can be found in **Public Attachment 8**. The article was published on 10 November 2000 and forms part of the scholarly debate regarding the existence of genocide in Cambodia, particularly against the Cham, and the underlying figures for this claim.
21. In his article, Mr Short takes the position that the events, which took place between 1975 and 1979 in Cambodia, including those alleged against the Cham, do not qualify as genocide. Mr Short finds that “it would be difficult, indeed, I believe, impossible to prove a systematic attempt to exterminate them”. In relation to the debate on the term “genocide”, Mr Short writes that:
- [i]t is easy to understand why the term “genocide” should be used by writers and academics, striving to find a word with which to convey the enormity of what occurred in Cambodia. Other terms seem weak and inadequate to describe death and suffering on the scale which this country saw. But words mean what they say. They cannot be twisted elastically to embrace whatever new meaning politicians wish to place on them. "Genocide" means a conscious effort to exterminate a race. There was genocide in Rwanda. There was genocide in Nazi Germany. But no one can seriously pretend that Pol Pot and his colleagues deliberately set out to exterminate the Khmer race. Brutality on a massive scale and widespread killing there certainly was; but not genocide.
22. **Document 9: Article entitled “Why did they kill?” by Touch Bora (November 2005):** The Defence tenders an article written by Touch Bora in the *Phnom Penh Post* and related to the qualification of Genocide in relation to Cambodia. It can be found in **Public Attachment 9**. The article was published on 4 November 2005. Mr Bora challenges Mr Hinton’s statement that a genocide took place in Cambodia between 1975 and 1979. The document forms part of the scholarly debate as to whether a genocide took place in Cambodia in 1975-1979, which also included a debate about the underlying figures used to support or deny this claim. In particular, Mr Bora states that “[t]here is no evidence the Khmer Rouge leadership had an intent to destroy any group based on their race, ethnicity or religion. Admittedly, some members of ethnic and religious minority groups died during DK, but dead bodies do not necessarily equate with genocide.” Regarding the Cham, Mr Bora states that: “Nothing, including their confessions, suggested they were killed because they were Cham. Like many other

prisoners, they were arrested and sent to S-21 because of being implicated in alleged anti-revolutionary activities.”<sup>32</sup>

23. Finally, he directly challenges Mr Osman’s finding that a genocide occurred against the Cham, stating that “the evidence he collected, such as the act of prohibiting Islamic practices, is not evidence of genocide.”
24. **Document 10: Article entitled “Evidence of Intent Lacking”, by Touch Bora (January 2006):** The Defence seeks to tender an article written by Touch Bora and related to the figures underlying the claims that a genocide took place in Cambodia. It can be found in **Public Attachment 10**. The article was published by the *Phnom Penh Post* on 13 January 2006, and forms part of the scholarly debate regarding the existence of genocide in Cambodia, particularly against the Cham, and the underlying figures for this claim.
25. In document 10, Mr Bora challenges sources underlying Mr Hinton’s statement that a genocide took place. In particular, he challenges Mr Osman’s figures, on which Mr Hinton relied, stating that they were not based on any reliable documentary evidence. Mr Bora also discusses Mr Kiernan (*see* Document 6) and Mr Vickery’s figures (*see* Document 7). Mr Bora concludes by stating that “The fact that the majority of the DK top leaders were from various (Sino/Viet/Cham) ethnicities supports a lack of genocidal intent towards ethnic minorities.”
26. **Document 11: Article entitled “Genocide Definition”, by Touch Bora (March 2006):** The Defence seeks to tender a further article written by Touch Bora and related to the figures underlying Mr Hinton’s claims that a genocide took place in Cambodia. It can be found in **Public Attachment 11**. The article was published by the *Phnom Penh Post* on 24 March 2006, and forms part of the scholarly debate regarding the existence of genocide in Cambodia, particularly against the Cham, and the underlying figures for this claim.
27. In Document 11, Mr Bora, puts into question the findings by Mr Kiernan, upon which Mr Hinton also relied, and dismisses the suggestion that there was a genocidal intent to destroy Chams. He notes that legal scholars generally agree that quantitative criteria alone are not the determinative factors in proving genocide. Referring to existing

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<sup>32</sup> Emphasis added.

documentation from the CPK, Mr Bora concludes that there had never been a policy to eliminate Chams or Vietnamese as a result of their ethnicity, suggesting that perhaps any arrest that was taking place was on the basis of security concerns.

28. **Document 12: Excerpts from “Genocide and Resistance in Southeast Asia, by Ben Kiernan (2007)**: The Defence seeks to tender excerpts of a book entitled “Genocide and Resistance in Southeast Asia”, written by Ben Kiernan in 2007<sup>33</sup> and related to the Cham population in Cambodia. Relevant excerpts<sup>34</sup> can be found in **Public Attachment 12**. It forms part of the scholarly debate regarding the existence of genocide in Cambodia, particularly against the Cham, and the underlying figures for this claim.
29. In the requested excerpts, Mr Kiernan challenges Mr Osman’s statement that in 1974, the Cham population comprised 10% of the total population of Cambodia, or 700,000 individuals, noting that there is no reliable evidence for such assertion, and that Mr Osman “more than triples the true proportion”. Kiernan concludes by stating that Mr Osman’s figure is “entirely based on retrospective claims advanced in 1999-2000 by interviewees asserting that in the early 1970s they had ‘seen statistics’ or ‘heard an announcement’, or on the undocumented ‘memories of Cham elders’”.<sup>35</sup> Undertaking an in depth analysis of historical reports and documents – something which Mr Osman does not appear to have done – Mr Kiernan suggests a total of 90,000 Cham deaths for causes attributable to the DK regime, or 36% of the 1975 Cham population.<sup>36</sup>
30. **Document 13: Article entitled “The Genocide that wasn’t”, by Stéphanie Giry (August 2014)**: The Defence seeks to tender an article written by Stéphanie Giry in the *New York Review of Books* and related to the qualification of genocide in relation to the events that took place in Cambodia between 1975 and 1979. It can be found in **Public Attachment 13**. The article was published on 25 August 2014 and contains an overview of the discussion regarding genocide in Cambodia during the DK period, as well as the underlying motivations behind the debate. The article forms part of the scholarly debate regarding the existence of genocide in Cambodia, particularly against the Cham, and the underlying figures for this claim.

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<sup>33</sup> Document 13 bears the document number **D269/5.1**.

<sup>34</sup> Pp. 272 (ERN 00488405) to 276 (ERN 00488409).

<sup>35</sup> Document 13, p. 6 (ERN 00488408).

<sup>36</sup> Document 13, p. 7 (ERN 00488409).

31. **Document 14: Article entitled “Cham-Khmer harmony can be an example for the world”, by Stuart Alan Becker (2011):** Defence seeks to tender an article written by Stuart Alan Becker in the *Phnom Penh Post* and related to the relationship between the Cham Muslim and the Khmer in Cambodia. It can be found in **Public Attachment 14**. The article was published on 4 November 2011, and reports Mr Osman as stating that “the Cham were killed because they were different” and that there was a “policy in 1978 to kill every Cham”. It forms part of the scholarly debate regarding the existence of genocide in Cambodia, particularly against the Cham, and the underlying figures for this claim.
32. **Document 15: Article entitled “Chams’ long wait nearly over”, by Kevin Ponniah and Koam Chanrasmey (2014):** Document 15 is an article authored by Kevin Ponniah and Koam Chanrasmey, which was published on 21 February 2014 by the *Phnom Penh Post*. It can be found in **Public Attachment 15**. Mr Ponniah and Mr Chanrasmey discuss the upcoming trial in the present case in relation to the charges of genocide against the Cham, and include a discussion of the historical debate regarding the existence of a genocide or not. As a result, the article forms part of the scholarly debate regarding the existence of genocide in Cambodia, particularly against the Cham, and the underlying figures for this claim.

**(ii) The Documents Must be Admitted Into Evidence in the Interests of Justice**

33. Documents 14 and 15, which were published between 2011 and 2015, were not available prior to the start of the trial. Although the remainder of the requested documents were published prior to the opening of the trial, the Trial Chamber’s decision to appoint Mr Osman as an expert was rendered on 18 September 2015. The documents are tendered for the specific purpose of challenging Mr Osman’s statements and alleged expertise. As a result, they could not have been tendered earlier.
34. In addition, the requested documents are closely related to material already before the Chamber, including Mr Osman’s books.<sup>37</sup> It would be in the interests of justice for the Trial Chamber to evaluate Mr Osman’s evidence and his books together with these documents in order to ascertain the truth. Finally, the requested documents are also relevant to the assessment of the expertise of Mr Osman, through challenging his findings and methodology. They therefore go to the probative value of Mr Osman’s

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<sup>37</sup> See *supra*, fn. 9.

evidence. Their admission into evidence would assist the Trial Chamber in shedding light on his expertise and possibly his impartiality and independence, and therefore on the ultimate weight to be given to his evidence and that of the witnesses for whose interviews he was present. In sum, their review by the Trial Chamber would be conducive to the ascertainment of the truth.


**(iii) The Documents are Relevant to Case 002/02 and Are Reliable**

35. The requested documents relate to the allegations regarding the treatment of the Cham and the charge of genocide.<sup>38</sup> Their content directly concerns Mr Osman's expected evidence during the segment on the treatment of Cham<sup>39</sup> and sheds different light on Mr Osman's books regarding the number of Cham who passed away during the DK period.
36. All the Category III documents have been written by experts or journalists.<sup>40</sup> They were published by renowned newspapers, journals, editors or websites. In light of the above, the Defence has demonstrated *prima facie* reliability of the documents.

**IV. RELIEF**

37. For the reasons stated above, the Defence respectfully requests the Trial Chamber to admit the 15 above mentioned documents into evidence in Case 002/02.

CO-LAWYERS FOR NUON CHEA



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<sup>38</sup> D427, Closing Order, paras. 745-790.

<sup>39</sup> E305/6.4, 'Annex III – OCP Updated Witness, Civil Party and Expert Summaries', p. 47, entry 6.

<sup>40</sup> Mr Kiernan is a professor of history and the founding director of the Genocide Studies Program at Yale University. In Case 002/01, he was scheduled to testify as an expert witness, even though he did not ultimately testify as the Trial Chamber declined hearing him as a witness, referring to him as being an "uncooperative expert". E166/1/4, 'Proposed testimony of Benedict KIERNAN before the Trial Chamber', 13 Jun 2012, p. 2; Mr Short is an author and journalist. He testified as an expert before the ECCC in Case 002/01 and was referred to in the Trial Judgment over 200 times; Mr Vickery is an historian specialised in ancient and modern Cambodia; Mr Bora is a Cambodian lawyer; Mrs Giry is a journalist and editor of the op-ed pages of the International New York Time; Mr Becker, Mr Ponniah and Mr Chanrasmey work (or worked) as journalists for the Phnom Penh Post; Mr Wright and Mr Narim work as journalists for The Cambodia Daily.