



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

ព្រះរាជាណាចក្រកម្ពុជា  
ជាតិ សាសនា ព្រះមហាក្សត្រ

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

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 Jean-Marc LAVERGNE  
Judge YA Sokhan  
Judge Claudia FENZ  
Judge YOU Ottara

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**DECISION ON DEFENCE RULE 87(4) REQUESTS FOR ADMISSION OF 23 DOCUMENTS  
RELEVANT TO THE TESTIMONY OF 2-TCE-88**

**Co-Prosecutors**  
CHEA Leang  
Nicolas KOUMJIAN

**Accused**  
NUON Chea  
KHIEU Samphan

**Civil Party Lead Co-Lawyers**  
PICH Ang  
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SON Arun  
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## 1. INTRODUCTION

1. The Trial Chamber is seized of two requests filed pursuant to Internal Rule 87(4) to admit into evidence documents related to the testimony of expert Alexander HINTON (2-TCE-88). The first, filed on 3 March 2016 by the NUON Chea Defence (“NUON Chea Request”),<sup>1</sup> seeks the admission of 17 documents. The second, filed on 4 March 2016 by the KHIEU Samphan Defence (“KHIEU Samphan Request”),<sup>2</sup> seeks the admission of six documents. The Chamber heard the Parties’ oral responses to this request on 7 March 2016.<sup>3</sup>

2. The Trial Chamber ruled on these requests on 10 March 2016, admitting 18 documents and assigning them “E3” numbers.<sup>4</sup> Mr. HINTON (2-TCE-88) testified before the Trial Chamber from 14 to 17 March 2016.<sup>5</sup> The Chamber hereby provides reasons for its decision.<sup>6</sup>

## 2. SUBMISSIONS

### 2.1. NUON Chea Defence

3. The NUON Chea Defence requests that the Chamber admit the following documents:<sup>7</sup>

1. E387.1.1 – Alexander HINTON’s curriculum vitae;
2. E387.1.2 – Article titled “Anthropology, Cultural”, *Encyclopedia of Genocide and Crimes Against Humanity*;
3. E387.1.3 – Article titled “Mapping the Great Famine” by Volodymyr Dibrova, *Ukranian Weekly*, 30 June 2013;
4. E387.1.4 – List of Documentation Center of Cambodia Board of Directors and Advisors;

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<sup>1</sup> NUON Chea’s rule 87(4) request for Admission into Evidence of 17 documents relevant to Alexander Laban Hinton’s Testimony (2-TCE-88), E387 (“NUON Chea Request”), 3 March 2016.

<sup>2</sup> Demande de la Défense de M. KHIEU Samphân d’admission en preuve de documents pour son interrogatoire d’Alexander HINTON, E387/1 (“KHIEU Samphan Request”), 4 March 2016.

<sup>3</sup> T. 7 March 2016, pp. 27-36.

<sup>4</sup> Decision on NUON Chea Defence and KHIEU Samphan Defence Internal Rule 87(4) requests related to the testimony of expert Alexander HINTON, E387/2 (“First Decision on HINTON IR 87(4) Requests”), 11 March 2016.

<sup>5</sup> See Decision on Designation of 2-TCE-88, E388 (“HINTON Decision”), 4 March 2016.

<sup>6</sup> See First Decision on HINTON IR 87(4) Requests, para. 7.

<sup>7</sup> NUON Chea Request, paras 4-31. The Trial Chamber has assigned “E3” numbers to documents submitted in the NUON Chea Request which the Chamber admitted into evidence. See First Decision on HINTON IR 87(4) Requests, para. 3.

5. E387.1.5 – Rutgers University website page, “Cambodia Genocide Memory Project”;
6. E387.1.6 – Rutgers University Center for the Study of Genocide and Human Rights website page, “Director’s Welcome”;
7. E387.1.7 – Article titled “Hinton helped bring one of two major American archives of Khmer Rouge-related documents to the R-N campus in 2005”, *Have You Met Rutgers-Newark?*, Rutgers University website;
8. E387.1.8 – Rutgers University website page, Alexander HINTON profile;
9. E387.1.9 – Article titled “Begrudgement, Reconciliation, and the Khmer Rouge” by Alex Hinton, *Magazine of Documentation Center of Cambodia*, No. 20, August 2001;
10. E387.1.10 – Article titled “Why did they kill? (1)” by Alex Hinton, *Phnom Penh Post*, 7 October 2005;
11. E387.1.11 – Article titled “Opinion: Is there justice in Cambodia” by Alex Hinton, *Phnom Penh Post*, 27 June 2011;
12. E387.1.12 – Article titled “Time running out for Khmer Rouge tribunals” by Tom Fawthrop, *Al Jazeera English*, 22 April 2013;
13. E387.1.13 – Article titled “Transitional justice time: Uncle San, Aunty Yan, and outreach at the Khmer Rouge Tribunal” by Alexander Laban Hinton, *Genocide and Mass Atrocities in Asia: Legacies and Prevention*, Deborah Mayersen and Annie Pohlman, eds., 2013;
14. E387.1.14 – Article titled “Justice and Time at the Khmer Rouge Tribunal: In Memory of Vann Nath, Painter and S-21 Survivor” by Alexander Laban Hinton, *Genocide Studies and Prevention: An International Journal*, Volume 8, 2014;
15. E387.1.15 – Article titled “Problems of International Codification – Were the Atrocities in Cambodia and Kosovo Genocide?” by William Schabas, *New England Law Review*, Volume 35:2;

16. E387.1.16 – Article titled “Seeking justice in the killing fields” by Alex Hinton, *New York Times*, 31 May 2006; and

17. E387.1.17 – The New School website page, “The Limits of Memory(2)”.

4. The NUON Chea Defence submits that the 17 documents it seeks to admit relate to Mr. HINTON’s background, independence and impartiality and demonstrate that Mr. HINTON does not have sufficient expertise to testify on the treatment of the Vietnamese and Buddhists in Democratic Kampuchea.<sup>8</sup> It submits that it is “necessary to broaden the extent of the evidence presented” by Mr. HINTON since there are currently very few documents by him on the Case File.<sup>9</sup> It further submits that the documents addressed by the NUON Chea Request would be conducive to ascertaining the truth by permitting the Defence to challenge Mr. HINTON’s expertise and the substance of his book, *Why Did They Kill?*,<sup>10</sup> which has already been admitted into evidence.<sup>11</sup> The NUON Chea Defence submits that only half of the documents in its request were available before the start of the trial and that the other half could be identified only after the Chamber issued the HINTON Decision, outlining the scope of Mr. HINTON’s expertise.<sup>12</sup>

5. The NUON Chea Defence also notes that, during his testimony, Mr. HINTON should not make any statement as to whether or not genocide took place in Democratic Kampuchea since this is “exclusively within the realm of the Trial Chamber.”<sup>13</sup>

## **2.2. KHIEU Samphan Defence**

6. The KHIEU Samphan Defence submits the following six documents for admission into evidence in relation to the testimony of Mr. HINTON:<sup>14</sup>

1. E387/1.1 – Alexander HINTON’s curriculum vitae;

<sup>8</sup> NUON Chea Request, para. 1; T. 7 March 2016, pp. 33-34.

<sup>9</sup> T. 7 March 2016, pp. 32-33.

<sup>10</sup> Book by Alexander HINTON entitled “Why did they kill?”, E3/3346, 4 December 2012.

<sup>11</sup> NUON Chea Request, para. 1; Decision on Objections to Documents Proposed to be put before the Chamber in Co-Prosecutors’ Annexes A6-A11 and A14-A20 and by the Other Parties, E185/1, 4 December 2012; Annex C: Documents proposed by the Co-Prosecutors, E185/1.3, 4 December 2016, p. 123.

<sup>12</sup> T. 7 March 2016, p. 33; HINTON Decision.

<sup>13</sup> T. 7 March 2016, p. 33.

<sup>14</sup> KHIEU Samphan Request, paras 4-10. The Trial Chamber has assigned “E3” numbers to documents submitted in the KHIEU Samphan Request admitted into evidence. See First Decision on HINTON IR 87(4) Requests, para. 5. The KHIEU Samphan Defence described all six documents it requests admitted into evidence in their request but initially filed only five of these documents as attachments to the KHIEU Samphan Request. The KHIEU Samphan Defence later filed a correction to include all six documents. See Request for correction on document number E387/1.4, E387/1.5 and E387/1.6, E387/1.4/Corr-1, 7 March 2016.

2. E387/1.2 – Article titled “Begrudgement, Reconciliation, and the Khmer Rouge” by Alex Hinton, *Magazine of Documentation Center of Cambodia*, No. 20, August 2001;
  3. E387/1.3 – Article titled “Yes, indeed! Why did they kill (so many)?” by Henri Locard, *Phnom Penh Post*, 9 September 2005;
  4. E387/1.4 – Article titled “Why did they kill (?)” by Alex Hinton, *Phnom Penh Post*, 7 October 2005;
  5. E387/1.5 – Article titled “Why did they kill? Genocide definition debate continues” by Alex Hinton, *Phnom Penh Post*, 2 December 2005; and
  6. E387/1.6 – Article titled “Defining genocide” by Alex Hinton, *Phnom Penh Post*, 27 January 2006.
7. The KHIEU Samphan Defence submits that E387/1.1 would be useful in examining Mr. HINTON’s qualifications and skills,<sup>15</sup> while E387/1.2 would provide a useful basis to examine Mr. HINTON on the sources of his research.<sup>16</sup> E387/1.3, E387/1.4, E387/1.5 and E387/1.6 are editorials that were published in the *Phnom Penh Post* as part of a debate between Mr. HINTON and other individuals on Mr. HINTON’s book, *Why Did They Kill*.<sup>17</sup> Three other editorials from this debate are already on the Case File.<sup>18</sup> The KHIEU Samphan Defence submits that it filed its request as soon as possible after the Chamber announced its decision to schedule Mr. HINTON to testify.<sup>19</sup> The KHIEU Samphan Defence contends that admission of these six documents would be conducive to ascertaining the truth. It also argues that these documents relate closely to material already before the Chamber and that the interests of justice require these sources to be evaluated together.<sup>20</sup>

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<sup>15</sup> KHIEU Samphan Request, para. 4.

<sup>16</sup> KHIEU Samphan Request, para. 5.

<sup>17</sup> KHIEU Samphan Request, paras 6-8, *see also* fn. 9-10, *supra*.

<sup>18</sup> KHIEU Samphan Request, para. 9; *see also* Decision on NUON Chea’s Requests for Admission of Documents Relevant to the Testimony of 2-TCE-95, E367/7, 8 February 2016, para. 2; Attachment 9: Touch Bora, ‘Why did they kill?’, *Phnom Penh Post*, 4 November 2005, E3/9683, 8 February 2016; Attachment 10: Touch Bora, ‘Evidence of Intent Lacking’, *Phnom Penh Post*, 13 January 2006, E3/9684, 8 February 2016; Attachment 11: Touch Bora, ‘Genocide Definition’, *Phnom Penh Post*, 24 March 2006, E3/9685, 8 February 2016; Decision on NUON Chea’s Rule 87(4) Requests for Admission of 29 Documents Relevant to the Testimony of 2-TCE-95, E367/8, 6 May 2016, disposition.

<sup>19</sup> KHIEU Samphan Request, para. 11.

<sup>20</sup> KHIEU Samphan Request, para. 12.

8. The KHIEU Samphan Defence does not object to any of the documents tendered by the NUON Chea Defence.<sup>21</sup>

### **2.3. Co-Prosecutors**

9. The Co-Prosecutors object to the admission of two of the documents tendered by the NUON Chea Defence: E387.1.15 and E387.1.16.

10. The Co-Prosecutors contend that E387.1.15, a law review article discussing whether genocide took place in Cambodia as a matter of law, does not assist the Chamber in ascertaining the truth.<sup>22</sup> The Co-Prosecutors submit that the legal conclusion on whether genocide was committed in Democratic Kampuchea is solely for the Chamber to determine.<sup>23</sup> They further contend that this article does not contain a significant factual basis to support its assertions and would not contribute to the Chamber's consideration of the evidence.<sup>24</sup>

11. The Co-Prosecutors also object to the admission of E387.1.16, an editorial by Mr. HINTON on the establishment of the ECCC, published in the *New York Times* on 31 May 2006. The Co-Prosecutors submit that this editorial, in which Mr. HINTON discusses concerns about independence of the national judges of the ECCC and the potential of the ECCC to fail to meet international legal standards, is irrelevant to the issues for which Mr. HINTON is called to testify.<sup>25</sup> The Co-Prosecutors further submit that the analysis provided in this article, published before any trial proceedings began, is too remote in time to the current trial to be of any significant probative value.<sup>26</sup>

12. The Co-Prosecutors do not object to any document tendered by the KHIEU Samphan Defence.<sup>27</sup>

### **2.4. Lead Co-Lawyers for Civil Parties**

13. The Lead Co-Lawyers for Civil Parties make no objection to either request and defer to the Chamber.<sup>28</sup>

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<sup>21</sup> T. 7 March 2016, p. 35.

<sup>22</sup> T. 7 March 2016, p. 30.

<sup>23</sup> T. 7 March 2016, p. 30.

<sup>24</sup> T. 7 March 2016, p. 30.

<sup>25</sup> T. 7 March 2016, p. 31.

<sup>26</sup> T. 7 March 2016, p. 31.

<sup>27</sup> T. 7 March 2016, p. 28.

## **2.5. Replies**

14. In response to the Co-Prosecutors' opposition to admitting E387.1.15 into evidence, the NUON Chea Defence submits that E387.1.15 questions whether cultural genocide falls within the scope of the Genocide Convention, in apparent contrast to Mr. HINTON's opinions on this issue.<sup>29</sup> However, the NUON Chea Defence agrees that only the Trial Chamber can make a determination on whether genocide took place in Democratic Kampuchea between 1975 and 1979.<sup>30</sup>

15. In response to the Co-Prosecutors' objection to the admission of E387.1.16, the NUON Chea Defence states that it would not question Mr. HINTON "at length" on questions of the ECCC's jurisdiction or legitimacy.<sup>31</sup> It asserts that it seeks the admission of E387.1.16 into evidence only as background information to provide "a full and proper understanding" of Mr. HINTON's positions.<sup>32</sup>

16. The KHIEU Samphan Defence made no submissions in replies to the submissions of the Co-Prosecutors.<sup>33</sup>

## **3. APPLICABLE LAW**

17. According to Internal Rule 87(4), the Trial Chamber may admit, at any stage of the trial, any evidence that it deems conducive to ascertaining the truth, where that evidence also satisfies the *prima facie* standards of relevance, reliability and authenticity required under Internal Rule 87(3). The Chamber determines the merit of a request to admit new evidence in accordance with the criteria in Rule 87(3). Rule 87(4) also requires that any party seeking the admission of new evidence shall do so by a reasoned submission. The requesting party must satisfy the Trial Chamber that the proposed evidence was either unavailable prior to the opening of the trial or could not have been discovered with the exercise of reasonable diligence. However, in certain cases, the Chamber has admitted evidence which does not strictly satisfy these criteria, including instances in which evidence relates closely to material already before the Chamber and where the interests of justice require the sources to be

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<sup>28</sup> T. 7 March 2016, p. 31.

<sup>29</sup> T. 7 March 2016, p. 34.

<sup>30</sup> T. 7 March 2016, p. 33.

<sup>31</sup> T. 7 March 2016, p. 34.

<sup>32</sup> T. 7 March 2016, p. 34.

<sup>33</sup> T. 7 March 2016, p. 35.

evaluated together, and where the proposed documents are exculpatory and should be evaluated to avoid a miscarriage of justice.<sup>34</sup>

#### 4. FINDINGS

18. The Chamber reminds the parties that they should adhere to the established practice of submitting documents to be used during the testimony of a given witness, Civil Party or expert at least two weeks before their appearance before the Chamber.<sup>35</sup> In this instance, the Defence teams had ample notice of Mr. HINTON's appearance but filed their respective requests less than two weeks before Mr. HINTON's appearance.<sup>36</sup> In the future, the Chamber will not look favourably on late-filed requests, particularly requests to admit material which has long been publicly available.<sup>37</sup>

19. The Trial Chamber notes that each of the documents submitted by both Defence teams has apparently been available for several years. Several documents were available before the beginning of Case 002 in June 2011.<sup>38</sup> Other documents not available before the beginning of Case 002 were available before the initial hearing for Case 002/02 on 30 July 2014.<sup>39</sup> For example, Mr. HINTON's curriculum vitae, E387.1.1 and E387/1.1, was last updated in 2013.<sup>40</sup> The remaining documents, while not specifically dated, appear to have been available

<sup>34</sup> Decision on NUON Chea's Rule 87(4) Requests for Admission of 29 Documents Relevant to the Testimony of 2-TCE-95, E367/8, 6 May 2016, para. 11; *see also* Response to the Internal Rule 87(4) Requests of the Co-Prosecutors, NUON Chea, and KHIEU Samphan (E236/4/1, E265, E271, E276, E276/1), E276/2, 10 April 2013, para. 2.

<sup>35</sup> Decision on Nuon Chea Rule 87(4) Request to Admit Documents in respect of Civil Party OUM Suphany, E337/3, 9 April 2015, para. 3; Decision on NUON Chea's Rule 87(4) Requests for Admission of 29 Documents Relevant to the Testimony of 2-TCE-95, E367/8, 5 May 2016, para. 12.

<sup>36</sup> On 24 December 2015, the Trial Chamber notified the parties that it was considering calling Mr. HINTON as an expert on the treatment of targeted groups. *See* E-mail by the Senior Legal Officer of the Trial Chamber to all parties, 24 December 2015. The attachment to this e-mail, "20151223 Combined Remaining Witnesses Civil Parties & Expert Order Treatment of Targeted Groups.pdf" notes that 2-TCE-88 was "still under consideration". On 12 February 2016, the Trial Chamber informed the parties that Mr. HINTON would be called to testify between 14 and 17 March 2016. *See* E-mail by the Senior Legal Officer of the Trial Chamber to all parties, 12 February 2016. Despite this information before Mr. HINTON's appearance, the NUON Chea Defence and the KHIEU Samphan Defence filed their requests on 3 and 4 March 2016, respectively.

<sup>37</sup> Notice on Choeng Ek Bone Study and Warning regarding Belated Internal Rule 87(4) Requests, E404, 3 May 2016, para. 6.

<sup>38</sup> E387.1.9, E387.1.10, E387.1.15, E387.1.16, E387.1.17, E387/1.2, E387/1.3, E387/1.4, E387/1.5, E387/1.6.

<sup>39</sup> E387.1.1, E387.1.3, E387.1.6, E387.1.8, E387.1.11, E387.1.12, E387.1.13, E387/1.1. E387.1.14 was published sometime in 2014 but the exact date of publication is not evident on the face of the document.

<sup>40</sup> *See* E387.1.14.



well before the Defence filed its requests.<sup>41</sup> Neither Defence team submits that these undated documents were not previously available.

20. The documents submitted in the NUON Chea Request and the KHIEU Samphan Request should have been discovered sooner with the exercise of reasonable diligence. Accordingly, the Chamber finds that neither request is timely. The Trial Chamber will assess, however, whether it is nonetheless in the interests of justice to admit these documents.

#### **4.1. NUON Chea Request**

21. The documents tendered in the NUON Chea Request can be grouped into three categories: documents related to Mr. HINTON's background and qualifications, articles and editorials, and documents describing Mr. HINTON's professional activities.

##### **4.1.1. Documents related to Mr. HINTON's background and qualifications**

22. Documents E387.1.1, E387.1.6 and E387.1.8 all discuss Mr. HINTON's background as an anthropologist and academic specializing in the study of genocide. The NUON Chea Defence argues that E387.1.1, Mr. HINTON's curriculum vitae, shows that Mr. HINTON's expertise does not include treatment of Vietnamese and Buddhists in Democratic Kampuchea and is therefore important to establishing the scope of Mr. HINTON's expertise.<sup>42</sup> The Chamber finds that E387.1.1 is relevant to Mr. HINTON's qualifications as an expert. Similarly, the Trial Chamber finds that E387.1.6 and E387.1.8, pages from the Rutgers University website, provide information supplemental to Mr. HINTON's curriculum vitae and relevant to a discussion on his expertise.

23. Turning to the NUON Chea Defence's stated intention to challenge the extent of Mr. HINTON's knowledge of the treatment of Buddhists and the Vietnamese in Democratic Kampuchea, the Chamber recalls that it previously ruled that Mr. HINTON's specialisation in sociocultural anthropology, genocide and political violence in Cambodia and his numerous writings on the various motivations for individual participation in mass killings in Cambodia

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<sup>41</sup> The Chamber notes that E387.1.2 comes from *Encyclopedia of Genocide and Crimes against Humanity*, first published in 2005. E387.1.4 and E387.1.5 respectively come from the DC-Cam and Rutgers University websites but do not describe any recent events. E387.1.7 mainly discusses Mr. HINTON's work in 2005 and notes his activities up to 2013.

<sup>42</sup> NUON Chea Request, para. 4.

qualified him as an expert.<sup>43</sup> The NUON Chea Defence asserts that E387.1.1, E387.1.6 and E387.1.8 show that Mr. HINTON is not an expert on the treatment of Democratic Kampuchea's minority groups<sup>44</sup> and that he is too emotionally involved with the subject matter to testify neutrally, or objectively.<sup>45</sup>

24. The Trial Chamber recalls that experts are obliged to testify with the utmost neutrality and objectivity.<sup>46</sup> The Trial Chamber has previously noted that challenges to an expert's bias or lack of independence are relevant to the weight the Chamber will accord the expert's evidence.<sup>47</sup> Documents E387.1.1, E387.1.6 and E387.1.8 provide a basis for the NUON Chea Defence to examine Mr. HINTON on his alleged bias and thereby provide the Chamber with additional information with which to decide the weight to be accorded to Mr. HINTON's testimony. More in-depth questioning of Mr. HINTON's qualifications would therefore be conducive to ascertaining the truth. Pursuant to Internal Rule 87(4), the Chamber will therefore admit them into evidence in the interests of justice.

#### 4.1.2. Articles and editorials

25. The Chamber finds documents E387.1.2, E387.1.9, E387.1.10, E387.1.11, E387.1.13 and E387.1.14 to be *prima facie* relevant and reliable since Mr. HINTON is the identified author of each of these articles. These include an encyclopaedia entry on cultural anthropology, Mr. HINTON's views on genocide, killings and persecution during the Democratic Kampuchea era and a profile of the ECCC's work on public outreach. Likewise, the Chamber finds E387.1.3 and E387.1.12 to be *prima facie* relevant and reliable because they both contain direct quotes attributed to Mr. HINTON. In E387.1.3, Mr. HINTON comments on the difficulties inherent in genocide studies and how genocide studies are complicated by "purely political considerations".<sup>48</sup> In E387.1.12, a news article, Mr. HINTON opines that the evidence gathered by the ECCC "will inform research for years to come".<sup>49</sup> These articles and editorials are relevant to Mr. HINTON's "knowledge and expertise" and to

<sup>43</sup> HINTON Decision, paras 13-14.

<sup>44</sup> NUON Chea Request, para. 4.

<sup>45</sup> NUON Chea Request, paras 10, 12.

<sup>46</sup> Decision on Assignment of Experts, E215 ("Decision on Assignment of Experts"), 5 July 2012, para 15.

<sup>47</sup> HINTON Decision, para. 12, citing Decision on Designation of 2-TCE-95, E367, 21 September 2015, para. 9; Decision on Designation of TCE-33, E283, 26 April 2013, para. 13; Decision on Assignment of Experts, para. 15.

<sup>48</sup> E387.1.3, p. 2.

<sup>49</sup> Attachment 12: Tom Fawthrop, 'Time running out for Khmer Rouge tribunals', Al-Jazeera English, 22 Apr 2013, E387.1.12, 3 March 2016, p. 6.

his professional opinions and methods, subjects on which to question Mr. HINTON.<sup>50</sup> In addition to this, the Chamber has verified the source of each of these proposed documents online and finds them to be authentic. They therefore satisfy Internal Rule 87(3)'s requirements.

26. Furthermore, because these documents include Mr. HINTON's prior statements on his field of expertise, the study of genocide and the ongoing work of the ECCC, this evidence closely relates to the substantive testimony he is expected to give and would provide an additional basis for the NUON Chea Defence to probe or challenge Mr. HINTON's expertise. Admission of these documents would further contribute to ascertaining the truth. The Chamber therefore admits them into evidence pursuant to Internal Rule 87(4).

27. The Chamber denies the NUON Chea Request to admit two documents in this category, E387.1.15 and E387.1.16. The NUON Chea Defence submits that the analysis presented in E387.1.15, a law review article, concludes that genocide was not committed in Democratic Kampuchea according to the legal definition of genocide provided by the Convention on the Prevention and Punishment of Genocide.<sup>51</sup> However, Mr. HINTON has been called to testify based on his expertise as an anthropologist and not as a legal scholar.<sup>52</sup> The legal analyses contained in E387.1.15 do not provide a relevant basis for the questioning of the expert since these conclusions of law will ultimately be for the Trial Chamber to decide and are not within the scope of Mr. HINTON's expertise.

28. The NUON Chea Defence submits that E387.1.16 would be relevant to a discussion of NUON Chea's fair trial rights.<sup>53</sup> In relation to this document, it further submits that Mr. HINTON could provide valuable information "describing the shortcomings of transitional justice's search for the truth generally" in support of the NUON Chea Defence's challenge to "the legitimacy and bias of the ECCC."<sup>54</sup> Again, however, Mr. HINTON will appear before the Chamber as an expert anthropologist, not to discuss the legitimacy of the ECCC or any other opinion of law, topics beyond the scope of his expertise.

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<sup>50</sup> HINTON Decision, para. 14.

<sup>51</sup> NUON Chea Request, para. 26.

<sup>52</sup> HINTON Decision, paras 13-14.

<sup>53</sup> NUON Chea Request, para. 29.

<sup>54</sup> NUON Chea Request, para. 29

#### 4.1.3. Documents related to Mr. HINTON's professional activities

29. Documents E387.1.4, E387.1.5, E387.1.6, E387.1.7 and E387.1.17 all relate to Mr. HINTON's professional activities as an anthropologist, including his work with the Documentation Center of Cambodia and the Rutgers University Center for the Study of Genocide and Human Rights. The Chamber considers these documents, which exemplify some of the work Mr. HINTON has undertaken as an expert in his field, to be relevant. The Chamber has verified each of these documents online and therefore finds them to be *prima facie* reliable and authentic. Furthermore, pursuant to Internal Rule 87(4), these documents are conducive to ascertaining the truth since they closely relate to the documents admitted above on Mr. HINTON's qualifications and expertise on which the parties intend to base some of their questions to Mr. HINTON. As a result, the Chamber will admit them into evidence.

#### 4.2. KHIEU Samphan Request

30. The Chamber first notes that the KHIEU Samphan Request seeks the admission of three documents, E387/1.1, E387/1.2 and E387/1.4, which the NUON Chea Defence have also proposed as E387.1.1, E387.1.9 and E387.1.10.

31. The KHIEU Samphan Defence also seeks the admission of documents E387/1.3, E387/1.5 and E387/1.6, three editorials published in the *Phnom Penh Post* between September 2005 and January 2006, two of which were authored by Mr. HINTON (E387/1.5 and E387/1.6). All three documents are part of a string of editorials on Mr. HINTON's analyses and conclusions on killings during the Democratic Kampuchea period, directly relevant to his expertise. Although E387/1.3 was authored by Henri LOCARD, E387.1.10, admitted above, is partially a response to the arguments presented by Mr. LOCARD in E387/1.3. The Chamber finds that all editorials in these series are pertinent to Mr. HINTON's expected testimony and are relevant and *prima facie* reliable and authentic. Additionally, noting that other editorials in this series have already been admitted into evidence, these editorials relate closely to material already before the Chamber.<sup>55</sup> The Chamber therefore admits them into evidence.

#### **FOR THE FOREGOING REASONS, THE TRIAL CHAMBER**

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<sup>55</sup> See E3/9683, E3/9684, E3/9685; KHIEU Samphan Request, para. 9.

**GRANTS** the NUON Chea Request in part;

**ADMITS** the following documents in the NUON Chea Request and **ASSIGNS** the E3 numbers indicated in brackets:

- E387.1.1 (E3/9702);
- E387.1.2 (E3/9704);
- E387.1.3 (E3/9703);
- E387.1.4 (E3/9705);
- E387.1.5 (E3/9706);
- E387.1.6 (E3/9707);
- E387.1.7 (E3/9708);
- E387.1.8 (E3/9709);
- E387.1.9 (E3/9710);
- E387.1.10 (E3/9711);
- E387.1.11 (E3/9712);
- E387.1.12 (E3/9713);
- E387.1.13 (E3/9714);
- E387.1.14 (E3/9715);
- E387.1.17 (E3/9716);

**REJECTS** the following documents in the NUON Chea Request:

- E387.1.15;
- E387.1.16;

**GRANTS** the KHIEU Samphan Request in part;

**ADMITS** the following documents in the KHIEU Samphan Request and **ASSIGNS** the E3 numbers indicated in brackets:

- E387/1.3 (E3/9717);
- E387/1.5 (E3/9718);
- E387/1.6 (E3/9719); and

**NOTES** that documents E387/1.1, E387/1.2, E387/1.4 are identical to documents E387.1.1 (E3/9702), E387.1.9 (E3/9710) and E387.1.10 (E3/9711).

**Phnom Penh, 2 June 2016**

**President of the Trial Chamber**

