

**BEFORE THE SUPREME COURT CHAMBER  
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

**FILING DETAILS**

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**CO-PROSECUTORS' OBSERVATIONS ON THE TIMETABLE FOR THE APPEAL  
HEARING IN CASE 002/02**

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## I. INTRODUCTION

1. On 26 February 2021, the Supreme Court Chamber (“SCC”) issued a tentative timetable<sup>1</sup> to hear the Case 002/02 Parties’ submissions on Appellant’s and Co-Prosecutors’ appeals<sup>2</sup> of the Trial Judgment.<sup>3</sup> The timetable identifies the topics to be addressed and the time allocated to each Party for each topic. The SCC invited all Parties to file their observations on the timetable.
2. The Co-Prosecutors’ observations relate only to the proposed timetable for Appellant’s appeal and are based on their best estimates of the time they anticipate needing for each topic before receiving the Chamber’s specific questions. In particular, they request clarification of one topic – the Trial Chamber’s jurisdiction – and seek additional time to make their oral submissions relating to two other segments: the crimes of which Appellant was convicted and Appellant’s individual criminal responsibility. The Co-Prosecutors submit that the additional time is warranted for the reasons provided below.

## II. OBSERVATIONS

### *Trial Chamber’s Jurisdiction*

3. The Co-Prosecutors’ allotted time of 55 minutes is sufficient for the topic of the Trial Chamber’s jurisdiction; however, the Co-Prosecutors request clarification as to what sub-topics are to be included in this section. The Co-Prosecutors recommend that this segment include the sub-topics of *saisine*<sup>4</sup> (approximately 25 minutes) and subject matter jurisdiction (approximately 30 minutes in total), consisting of the principle of legality<sup>5</sup> (approximately 3 minutes) and the law relating to the crimes against humanity of murder with *dolus eventualis*<sup>6</sup> (approximately 6 minutes), persecution<sup>7</sup> (approximately 8 minutes), and other inhumane acts<sup>8</sup> (approximately 13 minutes). If any of these sub-topics are not included in the jurisdiction segment, the Co-Prosecutors request that their

<sup>1</sup> **F60** Invitation for Parties to File Observations on Timetable for Appeal Hearing in Case 002/02, 26 Feb. 2021 (“Invitation to File Observations on Tentative Timetable”), EN 01664409; **F60.1** Annex – Timetable for the Hearing, 26 Feb. 2021 (“Tentative Timetable”).

<sup>2</sup> **F54** Khieu Samphan’s Appeal Brief (Case 002/02), 27 Feb. 2020 (“Khieu Samphan’s Appeal Brief”); **F54.1.1** Annex A – Summary of Grounds for Khieu Samphan’s Appeal (002/02); **F50** Co-Prosecutors’ Appeal Against the Case 002/02 Trial Judgment, 20 Aug. 2019.

<sup>3</sup> **E465** Case 002/02 Judgement, 16 Nov. 2018.

<sup>4</sup> *I.e.*, Appeal Grounds (“AGs”) 2-3, 38-84, 123-124, 134, 180, totalling 53 AGs, as identified in **F54/1** Co-Prosecutors’ Response to Khieu Samphan’s Appeal of the Case 002/02 Trial Judgment, 12 Oct. 2020 (“Co-Prosecutors’ Response to Appeal”).

<sup>5</sup> *I.e.*, AG 85, as identified in **F54/1** Co-Prosecutors’ Response to Appeal.

<sup>6</sup> *I.e.*, AGs 6, 86-93, totalling 9 AGs, as identified in **F54/1** Co-Prosecutors’ Response to Appeal.

<sup>7</sup> *I.e.*, AGs 68, 72, 75-77, 94-96, 107-109, 114, 122, 124-126, 129, 134, 141, 143-144, 146-149, totalling 25 AGs, as identified in **F54/1** Co-Prosecutors’ Response to Appeal.

<sup>8</sup> *I.e.*, AGs 97-98, 160, 171-172, totalling 5 AGs, as identified in **F54/1** Co-Prosecutors’ Response to Appeal.

abovementioned time for that sub-topic be allocated to them in the Crimes segment. This extra time would be in addition to the 20 minutes requested in paragraph 4 for the Crimes segment.

*Crimes of Which Appellant Was Convicted*

4. The Co-Prosecutors request that the time for their submissions on the crimes of which Appellant was convicted be increased by 20 minutes, from 40 to 60 minutes. The additional time is requested because this segment concerns 82 Appeal Grounds (“AGs”)<sup>9</sup> that fall within eight broad areas: (i) to (iv) the targeting of four specific groups, namely Buddhists, former Khmer Republic Officials, Cham, and Vietnamese; (v) forced marriage; (vi) rape within the context of forced marriage; (vii) cooperatives and work sites; and (viii) security centres. Additionally, for areas (i) to (vi), 61 AGs include Appellant’s substantive challenges to the existence and implementation of the Communist Party of Kampuchea’s nationwide policies to target four specific groups and to regulate marriage as part of a joint criminal enterprise (“JCE”),<sup>10</sup> which the Co-Prosecutors will need to address in their oral submissions.
5. As discussed in paragraph 3 above, should the Jurisdiction topic **not** include any of the sub-topics recommended by the Co-Prosecutors for that segment, the Co-Prosecutors request that the extra time as identified for each sub-topic be added to the Crimes segment, in addition to the 20 minutes already being requested for this topic in paragraph 4.

*Appellant’s Individual Criminal Responsibility*

6. The Co-Prosecutors request that the time for their submissions regarding Appellant’s individual criminal responsibility be increased by 20 minutes, from 60 to 80 minutes. The additional time is requested because this topic concerns 70 AGs<sup>11</sup> that span over one third of Appellant’s appeal brief.<sup>12</sup> In addition to the 10 AGs concerning Appellant’s roles and functions,<sup>13</sup> 54 AGs directly relate to the very broad issue of JCE, specifically

<sup>9</sup> See F54/1 Co-Prosecutors’ Response to Appeal, section VII.

<sup>10</sup> See F54/1 Co-Prosecutors’ Response to Appeal, section VII, which addresses 45 AGs regarding the treatment of targeted groups and 16 AGs regarding the regulation of marriage.

<sup>11</sup> See F54/1 Co-Prosecutors’ Response to Appeal, section VIII.

<sup>12</sup> See F54 Khieu Samphan’s Appeal Brief, parts IV-V (paras 1399-2143), which is 253 pages of the 752-page brief in English.

<sup>13</sup> See F54/1 Co-Prosecutors’ Response to Appeal, section VIII(B).



the common purpose, Appellant's significant contribution, and his intent.<sup>14</sup> The segment also includes 6 AGs on aiding and abetting,<sup>15</sup> the first time this Chamber will be called upon to consider this mode of liability.


### III. REQUESTED RELIEF

7. For the foregoing reasons, the Co-Prosecutors request that the SCC:

- (1) clarify which sub-topics or AGs are encompassed in the Jurisdiction segment;
- (2) increase the time allotted to the Co-Prosecutors for the Crimes segment by 20 minutes, from 40 to 60 minutes. In addition, if any of the Co-Prosecutors' requested sub-topics or AGs in paragraph 3 (above) are excluded from the Jurisdiction segment, add the time requested for those sub-topics or AGs on top of the 60 minutes requested for the Crimes segment; and
- (3) increase the time available for the Co-Prosecutors to make submissions on Appellant's individual criminal responsibility by 20 minutes, from 60 to 80 minutes.

Respectfully submitted,

Date	Name	Place	Signature
12 March 2021	CHEA Leang National Co-Prosecutor	Phnom Penh	
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<sup>14</sup> See **F54/1** Co-Prosecutors' Response to Appeal, section VIII(C), which addresses 11 AGs regarding common purpose, 12 AGs regarding significant contribution, and 31 AGs regarding intent, totalling 54 AGs.

<sup>15</sup> See **F54/1** Co-Prosecutors' Response to Appeal, section VIII(D).