



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា

Extraordinary Chambers in the Courts of Cambodia

Chambres Extraordinaires au sein des Tribunaux Cambodgiens

Kingdom of Cambodia

Nation Religion King

Royaume du Cambodge

Nation Religion Roi

អង្គជំនុំជម្រះតុលាការកំពូល

Supreme Court Chamber

Chambre de la Cour suprême

ឯកសារដើម
ORIGINAL/ORIGINAL
ថ្ងៃ ខែ ឆ្នាំ (Date): 09-Oct-2015, 13:24
CMS/CFO: Sann Rada

សំណុំរឿងលេខ: ០០២/១៩-កញ្ញា-២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក

Case File/Dossier N°. 002/19-09-2007-ECCC/SC

Before:

- Judge KONG Srim, President**
- Judge Chandra Nihal JAYASINGHE**
- Judge SOM Sereyvuth**
- Judge Agnieszka KLONOWIECKA-MILART**
- Judge MONG Monichariya**
- Judge Florence Ndepele MWACHANDE-MUMBA**
- Judge YA Narin**

Date: 9 October 2015
Language(s): Khmer/English
Classification: PUBLIC

ORDER SCHEDULING THE APPEAL HEARING

Co-Prosecutors

CHEA Leang
Nicholas KOUMJIAN

Co-Lawyers for NUON Chea

SON Arun
Victor KOPPE

Accused

KHIEU Samphân
NUON Chea

Co-Lawyers for KHIEU Samphân

KONG Sam Onn
Anta GUISSÉ
Arthur VERCKEN

Civil Party Lead Co-Lawyers

PICH Ang
Marie GUIRAUD

THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea between 17 April 1975 and 6 January 1979 (“Supreme Court Chamber” and “ECCC”, respectively);

NOTING the judgment of the Trial Chamber in Case 002/01 against NUON Chea and KHIEU Samphân (“Trial Judgment”) issued on 7 August 2014;¹

BEING SEIZED of appeals against the Trial Judgment lodged by the Co-Prosecutors, NUON Chea, and KHIEU Samphân;²

RECALLING that, on 23 September 2015, the Greffiers of the Supreme Court Chamber sent a courtesy e-mail to the parties, informing them that the Chamber was planning to hold appeal hearings between 10 and 20 November 2015;³

RECALLING that, pursuant to Internal Rule 108(3),⁴ the Greffiers of the Supreme Court Chamber notified all parties on 6 October 2015 that the Chamber would hold appeal hearings from Monday, 16 November 2015 to Wednesday, 18 November 2015, with possible evidentiary hearings to precede, and that a scheduling order specifying the particulars would be issued shortly thereafter;⁵

NOTING that the Co-Investigating Judges charged NUON Chea and KHIEU Samphân with several crimes against humanity in relation to phases one and two of the population movement and the events at Tuol Po Chrey based on the modes of liability of planning, ordering, instigating, and aiding and abetting as well as superior responsibility, but only in

¹ Case 002/01 Judgement, 7 August 2014, E313.

² Co-Prosecutors’ Appeal Against the Judgment of the Trial Chamber in Case 002/01, 28 November 2014, F11; NUON Chea’s Appeal Against the Judgment in Case 002/01, 29 December 2014, F16; [*Corrigé 1*] *Mémoire d’appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, 29 December 2014, F17 (corrected version filed on 31 December 2014). *See also* Co-Prosecutors’ Notice of Appeal of a Decision in Case 002/01, 29 September 2014, E313/3/1; Notice of Appeal Against the Judgment in Case 002/01, 29 September 2014, E313/1/1; *Déclaration d’appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, 29 September 2014, E313/2/1.

³ Electronic mail sent from Senior Legal Officer and Greffier of the Supreme Court Chamber, entitled “Re: Indication of tentative appeal hearing schedule”, on 23 September 2015 at 12:43PM, on file with the Supreme Court Chamber.

⁴ Internal Rules of the ECCC, Revision 9, 16 January 2015 (“Internal Rules”).

⁵ Notification of Appeal Hearing Dates in Case 002/01 Pursuant to Internal Rule 108(3), 6 October 2015, F29.

relation to some of those crimes also based on the mode of liability referred to as “joint criminal enterprise” (“JCE”);

NOTING that the Trial Chamber found NUON Chea and KHIEU Samphân to be criminally responsible for the crimes against humanity of extermination (encompassing, in relation to phase one of the population movement, murder), of persecution on political grounds, and of other inhumane acts (comprising forced transfer, attacks against human dignity and, in relation to phase two of the population movement, enforced disappearances) in relation to the two phases of the population movement, and for the crimes against humanity of extermination (encompassing murder) and of persecution on political grounds in relation to the events at Tuol Po Chrey based on the modes of liability of planning, ordering (in respect of NUON Chea only), instigating and aiding and abetting, as well as superior responsibility (in respect of NUON Chea only);⁶

NOTING that, in keeping with the charges as set out in the Closing Order,⁷ the Trial Chamber entered convictions based on JCE only in respect of the crimes against humanity of persecution on political grounds and of other inhumane acts (comprising forced transfer and attacks against human dignity) in relation to phases one and two of the population movement, and of extermination (encompassing murder) in relation to the events at Tuol Po Chrey; and that the Trial Chamber, in relation to those crimes, decided not to enter convictions based on liability for planning, ordering, instigating or aiding and abetting, finding that the “Accused’s participation in the JCE encompasses all the conduct forming the basis of the Chamber’s findings on these other forms of responsibility” and that it also declined to enter a conviction based on superior responsibility in respect of NUON Chea “[h]aving found that the Accused was directly responsible for these crimes through his participation in the JCE”;⁸

CONSIDERING that neither the Closing Order nor the Trial Judgment contains any explanation as to why the modes of liability were charged in this particular way – in particular, why liability based on JCE does not extend to all the crimes for which NUON Chea and KHIEU Samphân were charged and convicted in Case 002/01;

⁶ Trial Judgment, paras 940-942 (regarding NUON Chea) and 1053-1054 (regarding KHIEU Samphân).

⁷ Trial Judgment, paras 780, 812.

⁸ Trial Judgment, paras 940, 941 (regarding NUON Chea) and 1053 (regarding KHIEU Samphân).

RECALLING Internal Rule 110(2), which permits the Supreme Court Chamber to “change the legal characterisation of the crime adopted by the Trial Chamber”, provided that it does not “introduce new constitutive elements that were not submitted to the Trial Chamber”,⁹

CONSIDERING that it is appropriate to give the parties advance notice of potential changes to the “legal characterisation of the crime”¹⁰ and to afford them with an opportunity to make submissions thereupon;¹¹

HEREBY:

ORDERS that an appeal hearing in Case File No. 002/19-09-2007-ECCC/SC, pursuant to Internal Rule 109, be held, scheduled for Monday, 16 November 2015 at 09:00 a.m. in the main courtroom of the ECCC, and scheduled to continue on Tuesday, 17 November 2015 and Wednesday, 18 November 2015 – with Thursday, 19 November 2015, serving as a reserve day;

ATTACHES the tentative timetable for the hearing;¹²

INVITES the parties to file their observations, if any, on the timetable by Wednesday, 21 October 2015;

INFORMS the parties that it will identify, in a decision to be issued in due course, specific questions on which their oral submissions will be expected to focus;

REQUESTS the Civil Party Lead Co-Lawyers to inform the Greffiers of the Supreme Court Chamber via e-mail no later than Tuesday, 10 November 2015 whether and, if so, which individual Civil Parties wish to sit in the main courtroom during the hearing;

⁹ See also Article 401 of the Code of Criminal Procedure of the Kingdom of Cambodia (which refers to the Court of Appeal’s power to “alter the legal qualification of the *facts*” (emphasis added)).

¹⁰ Internal Rule 110(2).

¹¹ See *Pélissier and Sassi v. France*, ECtHR, “Grand Chamber Judgement”, App. No. 2544/94, 25 March 1999, para. 51; *Dallos v. Hungary*, ECtHR, “Chamber Judgment”, App. No. 29082/95, 1 March 2001, para. 47; *Drassich v. Italy*, ECtHR, “Arrêt”, App. No. 25575/04, 11 December 2007, paras 34, 36.

¹² Annex A – Timetable for the Hearing, 9 October 2015, F30.1.

NOTIFIES the parties that, should the convictions be confirmed, it may consider to “change the legal characterisation of the crime”¹³ in respect of NUON Chea’s and KHIEU Samphân’s criminal responsibility to such mode of liability as it deems appropriate, potentially including JCE liability for all crimes for which their conviction may be confirmed;

EMPHASISES that this notice is without prejudice to either the Supreme Court Chamber’s decision as to whether to actually proceed with the change to the “legal characterisation of the crime”¹⁴ or its determination concerning the merits of NUON Chea’s and KHIEU Samphân’s relevant grounds of appeal;

REQUESTS the parties to make, no later than Friday, 6 November 2015, in Khmer, and English or French, with no exception being envisaged by this Chamber in respect of the requirement of a bilingual filing, any written submissions they may have regarding this potential change to the “legal characterisation of the crime”¹⁵;

ADVISES the parties that, if they wish to respond to other parties’ arguments concerning the potential change to the “legal characterisation of the crime”¹⁶, they may do so orally during the hearing – not exceeding the allotted time – under the thematic sessions “Crimes for which NUON Chea and KHIEU Samphân were convicted” or “Individual criminal responsibility”, as appropriate.

Phnom Penh, 9 October 2015

President of the Supreme Court Chamber



KONG Srim

¹³ Internal Rule 110(2).

¹⁴ Internal Rule 110(2).

¹⁵ Internal Rule 110(2).

¹⁶ Internal Rule 110(2).