



**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): 05-Nov-2015, 15:44  
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:**

**5 November 2015**

**Language(s):**

**Khmer/English**

**Classification:**

**PUBLIC**

**ORDER SETTING THE FINAL TIMETABLE FOR THE APPEAL HEARING AND  
INFORMING THE PARTIES OF ISSUES TO BE ADDRESSED**

**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;<sup>1</sup>

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

**RECALLING** that, on 9 October 2015, the Supreme Court Chamber issued the Order Scheduling the Appeal Hearing,<sup>3</sup> *inter alia*, ordering that an appeal hearing in Case File No. 002/19-09-2007-ECCC/SC take place from Monday, 16 November 2015 to Wednesday, 18 November 2015, with Thursday, 19 November 2015 serving as a reserve day, attaching a tentative timetable for the hearing, and inviting the parties’ observations on that timetable;

**NOTING** the “Co-Prosecutors’ Observations on the Timetable for the Case 002/01 Appeal Hearing”,<sup>4</sup> in which the Co-Prosecutors request that the Supreme Court Chamber increase the time available to the Co-Prosecutors to make submissions on the Accused’s individual criminal responsibility from 35 to 80 minutes, and on the crimes for which the Accused were convicted from 25 to 60 minutes, arguing, *inter alia*, that the grounds of appeal relating to the individual criminal responsibility of the Accused and the crimes for which they were convicted raise a large number of complex factual and legal issues, that there is only limited overlap between the grounds of appeal of NUON Chea on the one hand and of KHIEU Samphân on the other, and that giving the Co-Prosecutors significantly less time than the

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

<sup>2</sup> 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.

<sup>3</sup> F30.

<sup>4</sup> 21 October 2015, F30/1 (“Co-Prosecutors’ Observations”).

Accused to make their oral submissions may affect the fairness of proceedings and create a misleading public view of the evidence and issues arising in the case;<sup>5</sup>

**NOTING** the “*Observations de la Défense de M. KHIEU Samphân sur le calendrier des audiences en appel*”,<sup>6</sup> in which KHIEU Samphân requests that the Supreme Court Chamber increase the time available to him to make submissions on his individual criminal responsibility from 50 to 65 minutes, based on the argument that about 71% of his written submissions on appeal were devoted to this issue and that he will also have to address in the time allotted to him the question of the potential legal re-characterisation of the facts;<sup>7</sup>

**NOTING** KHIEU Samphân’s reply to the Co-Prosecutors’ Observations,<sup>8</sup> in which, recalling the fundamental difference between the respective positions of appellants and respondents in appellate proceedings, he endorses the allocation of time set out by this Chamber in the tentative timetable, thus opposing the Co-Prosecutors’ request for additional time,<sup>9</sup> and requests that, should the Co-Prosecutors be accorded extra time, a proportional increase should also be effectuated in respect of the time allocated to the two Defence teams;<sup>10</sup>

**CONSIDERING** that the purpose of the appeal hearing is not to rehearse arguments previously made by the parties in their written submissions, but primarily to present the parties with an opportunity to reply to the responses of the other parties and to answer questions of the Supreme Court Chamber, and that, accordingly, there is no reason to give the Co-Prosecutors the same amount of time to make their submissions as NUON Chea and KHIEU Samphân;

**CONSIDERING** that, nevertheless, the Co-Prosecutors’ argument as to the lack of overlap between the respective submissions of NUON Chea and KHIEU Samphân – unlike that relying on the public nature of appeal hearings and the public perception thereof – justifies a limited increase of the time allotted to the Co-Prosecutors to make their submissions on the

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<sup>5</sup> Co-Prosecutors’ Observations, paras 2-14.

<sup>6</sup> 21 October 2015, F30/2 (“KHIEU Samphân’s Observations”).

<sup>7</sup> KHIEU Samphân’s Observations, paras 4-7.

<sup>8</sup> *Réponse de la Défense de M. KHIEU Samphân aux observations des co-Procureurs sur le calendrier des audiences en appel*, 28 October 2015, F30/3 (“KHIEU Samphân’s Reply”).

<sup>9</sup> KHIEU Samphân’s Reply, para. 4.

<sup>10</sup> KHIEU Samphân’s Reply, paras 5-6.

grounds of appeal related to the individual criminal responsibility of the Accused as well as to the crimes for which they were convicted, as set out in the attached timetable;

**CONSIDERING** that KHIEU Samphân’s arguments in support of an increase of time for his submissions on his individual criminal responsibility have already been taken fully into account in the allotment of time in the tentative timetable and that, as to his argument that an increase of the time allocated to the Co-Prosecutors requires a commensurate increase of the time allocated to the Defence teams, the Supreme Court Chamber reiterates that requests for extension must demonstrate the existence a “concrete legal interest” warranting the extension sought and cannot merely rely on other parties’ requests for extension and related outcome;<sup>11</sup> and that, accordingly, there is no need to amend the timetable in this regard;

**CONSIDERING** that, in any event, should it appear in the course of the hearing that a party requires additional time for its pleadings, the Supreme Court Chamber has discretion to give the parties an opportunity to do so during the time reserved for questions by the Chamber;

**CONSIDERING** that it is in the interest of an efficient conduct of the appeal hearing to inform the parties of issues in relation to which the Supreme Court Chamber invites the parties to make submissions during the relevant sessions and in the time allotted to them;

**EMPHASISING** that the Supreme Court Chamber may pose additional questions to the parties in the course of the hearing;

**CONSIDERING** that for logistical reasons it is preferable that the appeal hearing be moved by one day, but that it is no longer necessary to make provision for a reserve day;

**CONSIDERING** that it is in the interest of the proper preparation of the appeal hearing that the parties be required to file, before the commencement of the hearing, a list of the authorities upon which they intend to rely at the appeal hearing as well as, as specified below, the authorities themselves;

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<sup>11</sup> See Decision on the Co-Prosecutors’ Request for Page Extension for Their Prospective Response to NUON Chea’s Sixth Request for Additional Evidence, 5 October 2015, F2/8/2/1, p. 3 and references cited therein.

**HEREBY:**

**ORDERS** that the appeal hearing in Case File No. 002/19-09-2007-ECCC/SC, pursuant to Internal Rule 109, be held on Tuesday, 17 November 2015 at 09:00 a.m. in the main courtroom of the ECCC, and continue on Wednesday, 18 November 2015 and Thursday, 19 November 2015;

**GRANTS** in part the Co-Prosecutors' request for additional time to make their submissions at the appeal hearing;

**REJECTS** KHIEU Samphân's request for additional time to make his submissions at the appeal hearing;

**ATTACHES** the timetable for the hearing;<sup>12</sup>

**INVITES** the parties to address in their submissions and during the time allotted to them in the respective sessions of the appeal hearing the following issues:

1. *In the session on the grounds of appeal related to the crimes for which the Accused were convicted:*
  - Whether, under customary international law as it stood in 1975, the definition of crimes against humanity required a nexus with a crime against peace or a war crime (as opposed to, potentially, a nexus to an armed conflict);
  - Whether, to the extent that, according to the Trial Chamber, crimes were committed specifically against Khmer Republic soldiers *hors de combat*, these crimes were nevertheless committed as part of an attack directed against a civilian population;
  - Whether a conviction for extermination (encompassing murder) requires the Trial Chamber to be satisfied beyond reasonable doubt of each individual unlawful killing, or as a potential alternative, be satisfied beyond reasonable doubt of the occurrence of unlawful killings based on the totality of the evidence;

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<sup>12</sup> Annex A – Final Timetable for the Hearing, 5 November 2015, F30/4.1.

2. *In the session on the grounds of appeal related to the individual criminal responsibility of the Accused:*
- Whether, under customary international law as it stood in 1975, criminal responsibility based on joint criminal enterprise in its basic form (assuming that it existed at that time) would have necessarily required that the perpetrator sought that the crimes in question be committed in the implementation of the common purpose (in the sense that the commission of the crimes was the objective of the common purpose), or whether it also covered situations in which the perpetrator knew that, in the ordinary course of events, the crimes in question (a) will be or (b) could be committed in the implementation of the common purpose;
3. *In the session on the Co-Prosecutors' appeal:*
- Whether criminal responsibility based on joint criminal enterprise in the form argued for by the Co-Prosecutors would include only crimes that the perpetrator actually foresaw, or also those that were merely foreseeable;

**ORDERS** the parties to file, no later than on Friday, 13 November 2015, a list of the authorities upon which they intend to rely at the appeal hearing and, in compliance with Article 6 of the Practice Direction on Filing,<sup>13</sup> the authorities themselves.

**Phnom Penh, 05 November 2015**

**President of the Supreme Court Chamber**



**KONG Srim**

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<sup>13</sup> Filing of Documents Before the ECCC, 7 March 2012, ECCC/01/2007/Rev. 8 (“Practice Direction on Filing”).