



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

Supreme Court Chamber  
Chambre de la Cour suprême

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

**Before:**

**Judge KONG Srim, President**  
**Judge Chandra Nihal JAYASINGHE**  
**Judge SOM Sereyvuth**  
**Judge Florence Ndepele Mwachande MUMBA**  
**Judge MONG Monichariya**  
**Judge Maureen Harding CLARK**  
**Judge YA Narin**

**Date:** 16 June 2021  
**Language(s):** Khmer/English  
**Classification:** PUBLIC



**SCHEDULING ORDER FOR THE APPEAL HEARING IN CASE 002/02**

**Co-Prosecutors**

CHEA Leang  
Brenda HOLLIS

**Accused**

KHIEU Samphân

**Civil Party Lead Co-Lawyers**

PICH Ang  
Megan HIRST

**Co-Lawyers for KHIEU Samphân**

KONG Sam Onn  
Anta GUISSÉ

**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 (“Chamber”);

**NOTING** that on 16 November 2018 the Trial Chamber pronounced its verdict and sentence in Case 002/02 by providing an oral summary of its findings and the disposition of the judgment and subsequently notified the written judgment to the parties on 28 March 2019 in Khmer, French, and English (“Trial Judgment”);<sup>1</sup>

**BEING SEISED** of appeals against the Trial Judgment lodged by the Co-Prosecutors<sup>2</sup> and KHIEU Samphân;<sup>3</sup> and the parties’ respective responses thereto;<sup>4</sup>

**RECALLING** that on 26 February 2021 the Chamber issued its Order appointing Co-Rapporteurs for the appeal hearing, wherein it appointed two co-rapporteurs for each category of issues arising from the appeals;<sup>5</sup>

**RECALLING** that on that same day the Chamber issued an Invitation for Parties to File Observations on Timetable for Appeal Hearing in Case 002/02, wherein it attached a tentative timetable on which it invited the parties to file their observations;<sup>6</sup>

**RECALLING** that on 12 March 2021 KHIEU Samphân,<sup>7</sup> the Co-Prosecutors,<sup>8</sup> and the Civil Party Lead Co-Lawyers (“Lead Co-Lawyers”),<sup>9</sup> (collectively, the “Parties”) submitted their observations on the tentative timetable for the appeal hearing;

**RECALLING** that on 18 March 2021 the Lead Co-Lawyers filed their Response to KHIEU Samphân’s Observations on the Proposed Appeal Hearing Timetable;<sup>10</sup>

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<sup>1</sup> Pronouncement of Judgment in Case 002/02, T. 16 November 2018, E1/529.1; Case 002/02 Trial Judgment, 16 November 2018, E465.

<sup>2</sup> Co-Prosecutors’ Appeal Against the Case 002/02 Trial Judgment, 20 August 2019, F50.

<sup>3</sup> KHIEU Samphân Appeal Brief (Case 002/02), 27 February 2020, F54.

<sup>4</sup> KHIEU Samphân Response to the Co-Prosecutors’ Appeal in Case 002/02, 23 September 2019, F50/1; Co-Prosecutors’ Response to KHIEU Samphân’s Appeal Brief, 12 October 2020, F54/1; Civil Party Lead Co-Lawyers’ Response to KHIEU Samphân’s Appeal Brief, 4 January 2021, F54/2.

<sup>5</sup> Order appointing Co-Rapporteurs, 26 February 2021, F59.

<sup>6</sup> Invitation for Parties to File Observations on Timetable for Appeal Hearing in Case 002/02, 26 February 2021, F60.

<sup>7</sup> Defence’s Submissions Regarding the Timetable for the Hearing (Case 002/02), 12 March 2021, F60/1 (“KHIEU Samphân’s Observations”).

<sup>8</sup> Co-Prosecutors’ Observations on the Timetable for the Appeal Hearing in Case 002/02, 12 March 2021, F60/2 (“Co-Prosecutors’ Observations”).

<sup>9</sup> Civil Party Lead Co-Lawyers’ Observations on the Proposed Timetable for the Case 002/02 appeal hearing, 12 March 2021, F60/3 (“Lead Co-Lawyers’ Observations”).

<sup>10</sup> Civil Party Lead Co-Lawyers’ Response to KHIEU Samphân’s Observations on the Proposed Appeal Hearing Timetable, 18 March 2021, F60/1/1 (“Lead Co-Lawyers’ Response to KHIEU Samphân’s Observations”).

**RECALLING** that on 11 June 2021 the Chamber ordered that the appeal hearing shall be held on 16 through 27 August 2021 and will take place under hybrid modalities due to the Covid-19 pandemic;<sup>11</sup>

**NOTING** KHIEU Samphân's Observations, in which he submits that the proposed time allocation is imbalanced and disproportionate in light of the purpose of the appeal hearing, the different standing of the Parties and the limited role that the Lead Co-Lawyers should be granted;<sup>12</sup>

**NOTING** further KHIEU Samphân's requests on (i) the structure of the appeal hearing, including by dedicating a session to his main appeal ground relating to the nullity of the Trial Judgment at the start of the appeal hearing;<sup>13</sup> (ii) the time allocated to the Parties;<sup>14</sup> (iii) the order of intervention of the Parties;<sup>15</sup> and (iv) the standing of the Lead Co-Lawyers on specific sessions;<sup>16</sup>

**NOTING** the Co-Prosecutors' Observations seeking clarification on the sub-topics contained in certain sessions and additional time on other sessions;<sup>17</sup>

**NOTING** the Lead Co-Lawyers' requests (i) for additional time on specific sessions as well as for a proportional increase to any additional time granted to KHIEU Samphân on sessions for which they were also allocated time;<sup>18</sup> and (ii) to reject KHIEU Samphân's arguments concerning Civil Party standing and his request to include a separate session for his main ground of appeal;<sup>19</sup>

**RECALLING** that the purpose of the appeal hearing is not to repeat 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 the Chamber's questions, if any;<sup>20</sup>

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<sup>11</sup> Decision on the Civil Party Lead Co-Lawyers' Request for Postponement of the Appeal Hearing and Instructions with Regard to New Dates and Modalities for the Appeal Hearing, 10 June 2021, F65 (providing a more detailed procedural history as to the Appeal hearing dates).

<sup>12</sup> KHIEU Samphân's Observations, paras 4, 8-31.

<sup>13</sup> KHIEU Samphân's Observations, paras 32-33.

<sup>14</sup> KHIEU Samphân's Observations, paras 34-37 (procedural fairness), 41-44 (crimes), 45-47 (individual criminal responsibility), 50-51 (sentence), 54-55 (closing session).

<sup>15</sup> KHIEU Samphân's Observations, paras 52-53.

<sup>16</sup> KHIEU Samphân's Observations, paras 38-40 (jurisdiction), 48-49 (sentence).

<sup>17</sup> Co-Prosecutors' Observations, paras 2-4, 6-7.

<sup>18</sup> Lead Co-Lawyers' Observations, paras 3, 5. See also Lead Co-Lawyers' Response to KHIEU Samphân's Observations, para. 11.

<sup>19</sup> Lead Co-Lawyers' Response to KHIEU Samphân's Observations, paras 3-8, 10, 12.

<sup>20</sup> See Order Setting the Final Timetable for the Appeal Hearing and Informing the Parties of Issues to Be Addressed, 5 November 2015, F30/4, p. 3.

**CONSIDERING** that in the allotment of time in the tentative timetable, the Chamber already accounted for the complexity and the number of the appeal grounds raised by the Parties as well as the Parties' specific roles, including the consideration that the Lead Co-Lawyers' interventions should be confined to issues directly affecting Civil Party interests and to not repeat arguments covered by the Co-Prosecutors;<sup>21</sup>

**CONSIDERING** that requests for time extension must demonstrate the existence of a "concrete legal interest" warranting the extension sought and cannot merely rely on other Parties' requests for extension and related outcome;<sup>22</sup>

**CONSIDERING** that some of the Parties' observations, including in relation to additional time and order of intervention, justify revisions to the tentative timetable;

**CONSIDERING** that should any party require additional time for its pleadings, the Chamber has discretion to grant this during the time reserved for its questions and/or during the reserve days;

**CONSIDERING** that arguments relating to Civil Party standing exceed both the scope of the Invitation to the Parties to file Observations on the Tentative Timetable and the subject matter of this Scheduling Order;

**CONSIDERING** that the identification of issues in the timetable attached to this Scheduling Order and in the Co-Rapporteurs' Report can in no way be interpreted as an expression of the Chamber's opinion on the admissibility or merits of the appeals;

**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 on which they intend to rely at the appeal hearing, as well as the authorities themselves;

### **HEREBY:**

**ORDERS** that the appeal hearing in Case File No. 002/19-09-2007-ECCC/SC, pursuant to Internal Rule 109, be held, scheduled for Monday, 16 August 2021 at 09:00 am and scheduled to continue at 09:00 am on Tuesday, 17 August 2021, Wednesday, 18 August 2021, and Thursday, 19 August 2021, respectively – with

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<sup>21</sup> Decision on Civil Party Lead Co-Lawyers' Requests Relating to the Appeals in Case 002/01, 26 December 2014, F10/2, para. 17.

<sup>22</sup> Order Setting the Final Timetable for the Appeal Hearing and Informing the Parties of Issues to Be Addressed, 5 November 2015, F30/4, pp. 3-4.

Friday, 20 August 2021 and the following week from 23 to 27 August 2021, serving as reserve days;

**GRANTS** in part the Parties' requests for additional time to make their submissions at the appeal hearing as reflected in the attached timetable;

**REJECTS** the remainder of the Parties' requests for additional time;

**CLARIFIES** that the sessions on:

- (i) 'fairness of the proceedings' is to start with KHIEU Samphân's main ground of appeal in relation to the validity of the Trial Judgment and includes the general considerations on the principle of legality;
- (ii) 'jurisdiction' includes the sub-topics of *saisine*/scope of the judicial investigation, sufficiency of charges in the Closing Order, subject-matter jurisdiction, and facts excluded through severance;
- (iii) 'crimes' includes the sub-topics of the law (definition and elements) relating to the crimes of which KHIEU Samphân was convicted of as well as the related legality issues; and
- (iv) 'closing session' includes both the brief rebuttal presentation from the Defence as well as the opportunity for KHIEU Samphân to address the Chamber in person as per the attached timetable;

**ORDERS** the Parties to file the list of the authorities on which they intend to rely at the appeal hearing, as well as the authorities themselves by 9 August 2021;

**INVITES** the Parties, should they wish to do so, to elaborate on their arguments relating to Civil Party standing at the appeal hearing within the time allotted in the respective sessions of the attached timetable;

**REMINDS** the Parties that, pursuant to Internal Rule 109(6), they may not raise any matters of fact or law during the appeal hearing that were not previously set out in their submission on appeal; and

**INFORMS** the Parties that:

- (i) the attached Co-Rapporteurs' Report contains requests for clarifications and questions from the Chamber and that this is without prejudice to any other question the Chamber may wish to pose – in the event that additional questions would arise from the ongoing preparation for the appeal hearing, or at the appeal hearing on the basis of the submissions by the Parties; and

- (ii) the Chamber will endeavor to show flexibility in accommodating the Parties' needs, including by considering requests to reallocate unused time for one session to another.

**Phnom Penh, 16 June 2021**

**President of the Supreme Court Chamber**



**KONG Srim**

Annexes:

- Final Timetable for the Appeal Hearing in Case 002/02<sup>23</sup>
- Co- Rapporteurs' Report pursuant to Internal Rule 108(5)<sup>24</sup>

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<sup>23</sup> Final Timetable for the appeal hearing in Case 002/02, F66.1.

<sup>24</sup> Co-Rapporteurs' Report pursuant to Internal Rule 108(5), F66.2.