



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

សំណុំរឿងលេខ: ០០១/១៨ កក្កដា ២០០៧-អ.វ.ត.ក/អ.ជ.ត.ក
Case File/Dossier N°. 001/18-07-2007-ECCC/SC

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Before: Judge KONG Srim, President
Judge Motoo NOGUCHI
Judge SOM Sereyvuth
Judge Agnieszka KLONOWIECKA-MILART
Judge SIN Rith
Judge Chandra Nihal JAYASINGHE
Judge YA Narin

Date: 4 March 2011

Classification: PUBLIC

ORDER SCHEDULING APPEAL HEARING

Lawyers for the Accused

KAR Savuth
KANG Ritheary

Accused

KAING Guek Eav alias 'DUCH'

Co-Prosecutors

CHEA Leang
Andrew CAYLEY

Lawyers for Civil Parties Group 1

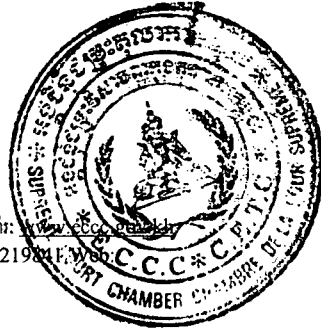
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Karim KHAN
Alain WERNER
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KONG Pisey
HONG Kimsuon
YUNG Phanit
Silke STUDZINSKY

Lawyers for Civil Parties Group 3

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MOCH Sovannary
Martine JACQUIN
Annie DELAHAIE
Philippe CANONNE
Elizabeth RABESANDRATANA
Fabienne TRUSSES-NAPROUS
Christine MARTINEAU



THE SUPREME COURT CHAMBER of the Extraordinary Chambers in the Courts of Cambodia (“ECCC”):

NOTING the Judgement of the Trial Chamber in Case 001 against KAING Guek Eav *alias* Duch (“Trial Judgement”) issued on 26 July 2010;¹

BEING SEISED of appeals against the Trial Judgement by the Co-Prosecutors, Accused, and Civil Parties Groups 1, 2, and 3 (collectively “Appellants”);²

RECALLING that, pursuant to Internal Rule 108(3) (Rev. 6), the Greffiers of the Chamber notified the Appellants on 22 December 2010 that the Chamber will hold an Appeal Hearing from Monday, 28 March 2011 to Thursday, 31 March 2011 and that “A schedule of hearings, including precise dates and times, will be communicated to you in due course”;

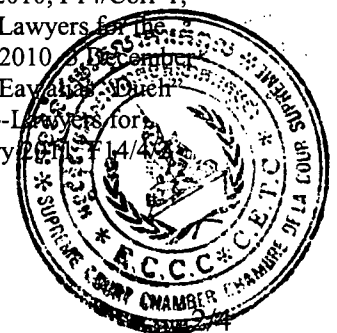
CONSIDERING that the identification of issues below can in no way be interpreted as an expression of the Chamber’s opinion on the admissibility or merits of the appeals;

HEREBY:

ORDERS that a public Appeal Hearing in Case File No. 001/18-07-2007-ECCC/SC concerning the appeals against the Trial Judgement will begin on Monday, 28 March 2011 at 09:00 hours (local time) in the main courtroom of the ECCC and end at approximately 16:30 hours;

¹ E188 (as corrected).

² Group 1-Civil Parties’ Co-Lawyers’ Immediate Appeal of Civil Party Status Determinations from the Final Judgement, 16 September 2010, F8; Group 1-Civil Parties’ Co-Lawyers’ Notice of Intent Supplemental Filing, 28 October 2010, F12; Appeal of the Co-Lawyers for the Group 3 Civil Parties against the Judgement of 26 July 2010, 6 October 2010, F9; Co-Prosecutors’ Appeal against the Judgement of the Trial Chamber in the Case of KAING Guek Eav *alias* Duch, 18 October 2010, F10 (“Co-Prosecutors’ Appeal Brief”); Notice of Appeal of Co-Lawyers for Civil Parties (Group 2) and Grounds of Appeal against Judgment, 6 September 2010, E188/12; Appeal against Rejection of Civil Party Applicants in the Judgment Co-Lawyers for Civil Parties – Group 2, 22 October 2010, F11; Appeal against Judgment on Reparations by Co-Lawyers for Civil Parties – Group 2, 2 November 2010, F13; Appeal Brief by the Co-Lawyers for KAING Guek Eav *alias* ‘Duch’ against the Trial Chamber Judgement of 26 July 2010, 18 November 2010, F14 (“Accused’s Appeal Brief”); Request for Correction to Accused’s Appeal Brief, 9 December 2010, F14/Corr-1; Request for Correction to Accused’s Appeal Brief, 3 February 2011, F14/Corr-2; Response of the Lawyers for the Group 3 Civil Parties to the Appeal of the Co-Lawyers for Duch against the Judgement of 26 July 2010, 2 December 2010, F14/2; Co-Prosecutors’ Response to the Appeal Brief by the Co-Lawyers for KAING Guek Eav *alias* ‘Duch’ against the Trial Chamber Judgement of 26 July 2010, 20 December 2010, F14/4; Reply by the Co-Lawyers for KAING Guek Eav *alias* “Duch” to the Co-Prosecutors’ Response of 20 December 2010, 14 January 2011, F14/4/2 (“Accused’s Reply”).



ORDERS that the Appeal Hearing will continue on Tuesday, 29 March 2011 and Wednesday, 30 March 2011 beginning at 09:00 hours and ending at approximately 16:30 hours on each of those days, and that if extra time is needed the Appeal Hearing will continue on Thursday, 31 March 2011 beginning at 09:00 hours and ending no later than 16:30 hours;

INVITES the Appellants, without prejudice to any matter the Chamber may wish to raise at the Appeal Hearing, to make or further develop oral submissions at the Appeal Hearing on the following issues:

1. Personal jurisdiction

- a. Co-Lawyers for the Accused, Co-Prosecutors, and Lawyers for Civil Parties Group 3 are invited to explore whether the language, “senior leaders of Democratic Kampuchea and those who were most responsible” in the ECCC Agreement and the ECCC Law constitutes a jurisdictional requirement that is subject to judicial review, or is a guide to the discretion of the Co-Prosecutors and Co-Investigating Judges that is not subject to judicial review.

2. Principle of legality

- a. Co-Lawyers for the Accused are invited to further explain the references to the principle of legality (*nullum crimen sine lege*) in the Accused’s Appeal Brief (e.g., paragraphs 14, 61-62, 67, 95, 100) and the Accused’s Reply (e.g., paragraph 12).

3. Crimes against humanity

- a. Co-Lawyers for the Accused are invited to respond to the submissions from paragraphs 132 to 209 in the Co-Prosecutors’ Appeal Brief.
- b. Co-Prosecutors are invited to explain the international legal basis for cumulative convictions in this case and the effect, if any, of such cumulative convictions on the sentence.
- c. The Co-Lawyers for the Accused and the Co-Prosecutors are invited to explore whether rape was an autonomous crime against humanity under international law during the temporal jurisdiction of the ECCC.
- d. The Co-Lawyers for the Accused and the Co-Prosecutors are invited to explore whether, during the temporal jurisdiction of the ECCC, international law required a nexus between the underlying acts of genocide against humanity and an armed conflict.



4. Sentencing

- a. The Co-Lawyers for the Accused and the Co-Prosecutors are invited to further explore whether and to what extent the 2009 Criminal Code of Cambodia, including Article 668 thereof, applies to the determination of the appeals against the sentence.

5. Civil Parties

- a. The groups of Civil Parties requesting the submission of additional evidence are invited to explain why the additional evidence was not available at trial.
- b. Civil Parties Group 1 is invited to confirm that the only “form of reparation” it is requesting from the Supreme Court Chamber is the “recognition of the nine civil party applications.”³

ATTACHES the timetable for the Appeal Hearing as Annex 1 to this Order;

NOTES that under Internal Rule 109(6) parties may not raise any matters of fact or law during the Appeal Hearing that were not previously set out in their submission on appeal, except as pre-authorized by the Chamber;

REMINDS the Appellants not to simply recount in oral argument what has been set out in their written submissions, but to elaborate on points most relevant to their respective appeals;

AND RECALLING the limited seating in the main courtroom for individual civil parties and their lawyers, **ORDERS** the Lawyers for Civil Parties Groups 1, 2, and 3 to inform the Greffiers of the Chamber in writing by Friday, 11 March 2011 whether, how many, and which individual civil party appellants wish to sit in the main courtroom during the Appeal Hearing.

Phnom Penh, 4 March 2011

President of the Supreme Court Chamber



Kong Srim

³ Group 1-Civil Parties' Co-Lawyers' Notice of Intent Supplemental Filing, 28 October 2010, F12, para. 5.

Annex 1 to Order Scheduling Appeal Hearing: Timetable (revised on 25 March 2011)Day 1: Monday, 28 March, 2011

09:00 – 09:10	Introduction by President (10 minutes)
09:10 – 09:15	Identification of additional evidence (5 minutes)
	Thematic Session 1 (Personal jurisdiction)
09:15 – 09:25	Co-Rapporteurs' report on personal jurisdiction (10 minutes)
09:25 – 09:30	Personal statement by Accused (optional, 5 minutes)
09:30 – 10:30	Submissions by Defence (60 minutes)
10:30 – 11:00	<i>Pause (30 minutes)</i>
11:00 – 11:50	Continued Submissions by Defence (50 minutes)
11:50 – 12:00	Questions by Judges and Answers by Defence (optional, 10 minutes)
12:00 – 13:30	<i>Lunch Break (90 minutes)</i>
13:30 – 13:45	Questions by Judges and Answers by Defence (optional, 15 minutes)
13:45 – 14:45	Response by Co-Prosecutors (60 minutes)
14:45 – 15:15	Questions by Judges and Answers by Co-Prosecutors (optional, 30 minutes)
15:15 – 15:45	<i>Pause (30 minutes)</i>
15:45 – 16:25	Response by Civil Parties Group 3 (40 minutes)
16:25 – 16:55	Reply by Defence (optional, 30 minutes)

Day 2: Tuesday, 29 March, 2011

	Thematic Session 2 (Crimes against humanity)
09:00 – 09:10	Co-Rapporteurs' report on crimes against humanity (10 minutes)

09:10 – 09:55	Submissions by Co-Prosecutors (45 minutes)
09:55 – 10:25	Response by Defence (optional, 30 minutes)
10:25 – 10:35	Reply by Co-Prosecutors (optional, 10 minutes)
10:35 – 11:05	<i>Pause (30 minutes)</i>
11:05 – 11:25	Questions by Judges and Answers by Co-Prosecutors and/or Defence (20 minutes)

Thematic Session 3 (Sentencing)

11:25 – 11:35	Co-Rapporteurs' report on sentencing (10 minutes)
11:35 – 12:00	Submissions by Co-Prosecutors (25 minutes)
12:00 – 13:30	<i>Lunch Break (90 minutes)</i>
13:30 – 14:05	Continued Submissions by Co-Prosecutors (35 minutes)
14:05 – 14:35	Questions by Judges and Answers by Co-Prosecutors (optional, 30 minutes)
14:35 – 15:00	Submissions by Defence (25 minutes)
15:00 – 15:30	<i>Pause (30 minutes)</i>
15:30 – 16:05	Continued Submissions by Defence (35 minutes)
16:05 – 16:35	Questions by Judges and Answers by Defence (optional, 30 minutes)
16:35 – 16:45	Reply by Co-Prosecutors (optional, 10 minutes)
16:45 – 16:55	Reply by Defence (optional, 10 minutes)

Day 3: Wednesday, 30 March, 2011

Thematic Session 4 (Civil Parties' appeals)

09:00 – 09:10	Co-Rapporteurs' report on Civil Parties' appeals (10 minutes)
09:10 – 09:50	Submissions by Civil Parties Group 1 (40 minutes)
09:50 – 10:10	Questions by Judges and Answers by Civil Parties Group 1 (optional, 20 minutes)
10:10 – 10:40	<i>Pause (30 minutes)</i>

10:40 – 11:35	Submissions by Civil Parties Group 2 (55 minutes)
11:35 – 11:55	Questions by Judges and Answers by Civil Parties Group 2 (optional, 20 minutes)
11:55 – 13:30	<i>Lunch Break (95 minutes)</i>
13:30 – 14:25	Submissions by Civil Parties Group 3 (55 minutes)
14:25 – 14:45	Questions by Judges and Answers by Civil Parties Group 3 (optional, 20 minutes)
14:45 – 15:15	Response by Defence (optional, 30 minutes)
15:15 – 15:45	<i>Pause (30 minutes)</i>
15:45 – 16:15	Reply by Civil Parties Groups 1, 2, 3 (optional, total 30 minutes)
16:15 – 16:35	Final rebuttal presentation by Defence (optional, 20 minutes)
16:35 – 16:50	Final personal statement by Accused (optional, 15 minutes)
16:50 – 17:00	Closing Remarks by President and Adjournment (10 minutes)

Day 4: Thursday, 31 March, 2011

09:00 – 16:30 Reserve time