



ព្រះរាជាណាចក្រកម្ពុជា
ជាតិ សាសនា ព្រះមហាក្សត្រ

អង្គជំនុំជម្រះវិសាមញ្ញក្នុងតុលាការកម្ពុជា
Extraordinary Chambers in the Courts of Cambodia
Chambres Extraordinaires au sein des Tribunaux Cambodgiens

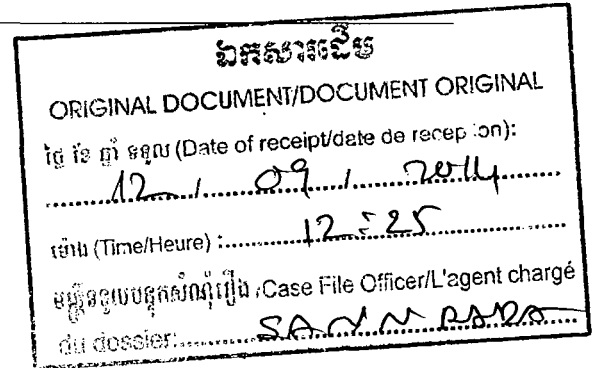
Kingdom of Cambodia
Nation Religion King
Royaume du Cambodge
Nation Religion Roi

អង្គជំនុំជម្រះសាលាដំបូង

Trial Chamber
Chambre de première instance

សំណុំរឿងលេខ: ០០២/១៩ កញ្ញា ២០០៧/អវតក/អជសដ

Case File/Dossier No. 002/19-09-2007/ECCC/TC



Before: Judge NIL Nonn, President
Judge Jean-Marc LAVERGNE
Judge YA Sokhan
Judge Claudia FENZ
Judge YOU Ottara

Date: 12 September 2014
Original language(s): Khmer/English/French
Classification: PUBLIC

DECISION ON SEQUENCING OF TRIAL PROCEEDINGS IN CASE 002/02

Co-Prosecutors
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Civil Party Lead Co-Lawyers
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1. INTRODUCTION

1. The Trial Chamber is seized of the parties' submissions on the sequencing of the topics to be heard during trial in Case 002/02, made at the Further Initial Hearing held on 30 July 2014.¹
2. On 4 April 2014, the Trial Chamber issued its "Decision on Additional Severance of Case 002 and Scope of Case 002/02" wherein it defined the scope of Case 002/02.² On 8 April 2014, the Chamber ordered the parties to file updated material, including documents and witness lists, in preparation for trial in Case 002/02.³ In complying with the Chamber's order, the Office of the Co-Prosecutors ("Co-Prosecutors") and the Civil Party Lead Co-Lawyers respectively suggested that the trial be divided by topic and proposed a sequence for the presentation of the evidence in Case 002/02.⁴ During the Further Initial Hearing held on 30 July 2014, the Chamber invited the Defence teams to comment on the proposed sequencing.⁵

2. SUBMISSIONS

3. The Co-Prosecutors suggest the following sequence of topics for Case 002/02: i) the Role of the Accused, which, it proposes, would encompass S-21, internal purges and the role of the Accused;⁶ ii) the Tram Kok Cooperatives at the same time as Kraing Ta Chan Security Centre (including the treatment of Buddhists), followed by Au Kanseng and Phnom Kraol security centres;⁷ iii) the treatment of targeted groups (including the movement of population

¹ T. 30 July 2014 (Further Initial Hearing), pp. 3-4, 40-41, 44-45, 46-47; Agenda for further Initial Hearing in Case 002/02 (30 July 2014), E311/1, 8 July 2014, p. 3; Scheduling Order for Further Initial Hearing, E311, 11 June 2014, p. 2. *See also* Co-Prosecutors' Proposed Witness, Civil Party and Expert List and Summaries for the Trial in Case File 002/02 (with 5 Confidential Annexes I, II, IIA, III, and IIIA), E305/6, 9 May 2014, paras 15-18; Civil Party Lead Co-Lawyers' Rule 80 Witness, Expert and Civil Party Lists for Case 002/02 with Confidential Annexes, E305/7, 16 May 2014, Confidential Annex IV, E305/7.1.4.

² Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014. *See also* Decision on KHIEU Samphân's Immediate Appeal against the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case of 002/02, E301/9/1/1/3, 29 July 2014.

³ Order to File Updated Material in Preparation for Trial in Case 002/02, E. 305, 8 April 2014.

⁴ Co-Prosecutors' Proposed Witness, Civil Party and Expert List and Summaries for the Trial in Case 002/02 (with 5 Confidential Annexes I, II, IIA, III and IIIA), E305/6, 9 May 2014, paras 16-18; Civil Party Lead Co-Lawyers' Rule 80 Witness, Expert and Civil Party Lists for Case 002/02 with Confidential Annexes, E305/7, filed on 16 May 2014 (dated 9 May 2014), Confidential Annex IV, E305/7.1.4.

⁵ T. 30 July 2014 (Further Initial Hearing), p. 41. *See also* Scheduling Order for Further Initial Hearing, E311, 11 June 2014, p. 2.

⁶ T. 30 July 2014 (Further Initial Hearing), p. 48; Co-Prosecutors' Proposed Witness, Civil Party and Expert List and Summaries for the Trial in Case 002/02 (with 5 Confidential Annexes I, II, IIA, III and IIIA), E305/6, 9 May 2014, paras 16-17.

⁷ T. 30 July 2014 (Further Initial Hearing), p. 49; Co-Prosecutors' Proposed Witness, Civil Party and Expert List and Summaries for the Trial in Case 002/02 (with 5 Confidential Annexes I, II, IIA, III and IIIA), E305/6, 9

in phase two limited to the treatment of the Cham, the genocide of Vietnamese and the genocide of Cham;⁸ iv) the worksites, starting with 1st January Dam, Trapeang Thma Dam, and finally Kampong Chhnang Airport;⁹ and v) the regulation of marriage (nationwide).¹⁰

4. The Civil Party Lead Co-Lawyers support the sequence proposed by the Office of the Co-Prosecutors.¹¹

5. The NUON Chea Defence submits that the existence and character of the armed conflict – as international or non-international – is an “essential contextual topic”¹² and proposes the following broad sequence of topics: i) the nature of the armed conflict with Vietnam; ii) Security Centre S-21; iii) internal purges; iv) genocide of Vietnamese; v) genocide of Cham; vi) worksites; and vii) role of Accused and joint criminal enterprise.¹³

6. The KHIEU Samphan Defence supports the NUON Chea Defence’s proposal in relation to the first and last topics.¹⁴ It further submits that for the remaining sequence the Chamber should follow the order set out in the Closing Order. It therefore proposes the following broad sequence: i) the nature of the armed conflict with Vietnam; ii) cooperatives; iii) worksites; iv) security centres; v) treatment of targeted groups; vi) regulation of marriage; and vii) the role of Accused and joint criminal enterprise.¹⁵

May 2014, paras 16, 18; Confidential Annex I: Co-Prosecutors’ Combined, Witness, Civil Party and Expert List for Case 002/02 in Recommended Order of Trial Segments and Appearance, E305/6.1, p. 1.

⁸ T. 30 July 2014 (Further Initial Hearing), p. 49; Co-Prosecutors’ Proposed Witness, Civil Party and Expert List and Summaries for the Trial in Case 002/02 (with 5 Confidential Annexes I, II, IIA, III and IIIA), E305/6, 9 May 2014, para. 16.

⁹ T. 30 July 2014 (Further Initial Hearing), p. 49; Co-Prosecutors’ Proposed Witness, Civil Party and Expert List and Summaries for the Trial in Case 002/02 (with 5 Confidential Annexes I, II, IIA, III and IIIA), E305/6, 9 May 2014, para. 16.

¹⁰ T. 30 July 2014 (Further Initial Hearing), p. 49; Co-Prosecutors’ Proposed Witness, Civil Party and Expert List and Summaries for the Trial in Case 002/02 (with 5 Confidential Annexes I, II, IIA, III and IIIA), E305/6, 9 May 2014, para. 16.

¹¹ T. 30 July 2014 (Further Initial Hearing), pp. 52-53. The Chamber notes that the Civil Party Lead Co-Lawyers initially proposed the following slightly different sequence of topics: i) Security Centre S-21; ii) Internal Purges; iii) Role of the Accused and joint criminal enterprise; iv) Tram Kok Cooperatives and Kraing Ta Chan Security Centre; v) treatment of targeted groups (including movement of population phase II in relation to the Cham); v) worksites; vi) Au Kanseng Security Centre; and vii) regulation of marriage (nationwide). *See* Civil Party Lead Co-Lawyers’ Rule 80 Witness, Expert and Civil Party Lists for Case 002/02 with Confidential Annexes, E305/7, 16 May 2014 (dated 9 May 2014); Confidential Annex IV: Proposed Order of Segments, E305/7.1.4. *See also* Civil Parties’ Submission on the Scope of Case 002/02, E301/5/3, 31 January 2014, paras 10-13.

¹² T. 30 July 2014 (Further Initial Hearing), p. 43.

¹³ T. 30 July 2014 (Further Initial Hearing), pp. 44-45.

¹⁴ T. 30 July 2014 (Further Initial Hearing), p. 46.

¹⁵ T. 30 July 2014 (Further Initial Hearing), pp. 46-47.

3. FINDINGS

7. At the outset, the Chamber emphasises that no clear lines can be drawn between the topics into which this trial will be divided. Regardless of the sequence adopted, it is highly possible that a witness called to testify on one particular topic will also give evidence in relation to one or more other topics. Any sequence adopted for the conduct of the trial should therefore be considered by the Parties as an indication or guideline of the order in which the Chamber intends to hear the evidence in this case. All parties will need to demonstrate a degree of flexibility in this regard. Further, the sequencing of topics and of witnesses is subject to modification depending on *inter alia* case management needs and/or availability of witnesses, civil parties and experts, as well as the health of the Accused.

8. The Chamber recalls that while the submissions of the parties are an important consideration in determining the sequence of topics in Case 002/02, the Chamber retains a broad discretion in matters relating to the conduct of the trial.

9. The Chamber is mindful of the fact that the burden of proving the case rests with the Co-Prosecutors. For this reason the Trial Chamber places some weight on the sequence proposed by the Co-Prosecutors. However, in line with the submissions of the Defence teams, the Chamber considers it appropriate to leave the role of the Accused and joint criminal enterprise to the end of the trial, which would allow for the most comprehensive assessment possible.¹⁶

10. Further, sequencing should ensure that a record is made of novel issues and crimes sites, such as co-operatives and worksites, which have yet to be the subject of charges in a case heard before the ECCC Chamber and that affect a very large number of Cambodians and victims.¹⁷ Accordingly, the Chamber does not find it desirable to commence Case 002/02 by hearing evidence on facts that have already been considered in Case 002/01. For this same reason the Chamber finds it undesirable to start Case 002/02 by hearing evidence on S-21, as the record on this Security Centre is already extensive – albeit incomplete and the role of the Accused in relation to S-21 remains to be determined.¹⁸

¹⁶ See T. 30 July 2014 (Further Initial Hearing), pp. 45-46.

¹⁷ See Closing Order, D427, 15 September 2010, paras 156-157, 168-177, 310-314, 334-344, 358-363, 389-398.

¹⁸ See Judgement, Case File No. 001/18-07-2007/ECCC/TC, 26 July 2010; Appeal Judgement, Case File No. 001/18-07-2007-ECCC/SC, 3 February 2012.

11. The Chamber finds that commencing the trial with the topics of co-operatives and worksites logically ensues from the movement of population examined in Case 002/01, followed by the treatment of targeted groups, security centres and internal purges, and finally the regulation of marriage nationwide. In line with the Defence teams' submissions, the Chamber will address the nature of the armed conflict separately and conclude the presentation of evidence with the role of the Accused.

12. The Chamber will issue an order on the sequence of the witnesses that will be heard in relation to each topic in due course. An order fixing the trial start date and the initial trial schedule will also be issued in the near future.

13. Finally, the Chamber also recalls that the responsibility to ensure timely availability in all ECCC official languages of documents that are to be put before the Chamber at trial rests with the tendering party, and refers the parties to the guidelines on translation of documents set out in this Chamber's memorandum of 25 October 2011.¹⁹

14. For the reasons set out above, the Chamber therefore **ORDERS** that the sequencing order for Case 002/02 shall be as follows:

A. Cooperatives:

- a) Tram Kok Cooperatives, including the Treatment of Buddhists, and the related Kraing Ta Chan Security Centre;

B. Worksites:

- a) 1st January Dam;
- b) Trapeang Thma Dam;
- c) Kampong Chhnang Airport;

C. Treatment of targeted groups:

- a) Treatment of the Cham, excluding the Kroch Chhmar Security Centre but including the movement of population phase II limited to the treatment of the Cham;
- b) Treatment of Vietnamese, excluding the crimes committed by the Revolutionary Army of Kampuchea on Vietnamese Territory;

¹⁹ Memorandum – Trial Chamber, Witness list for early trial segments, deadline for filing of admissibility challenges to documents and exhibits, and response to Motion E109/5, E131/1, 25 October 2011, p. 3.

- c) Former Khmer Republic Officials, implementation limited to Tram Kok Cooperatives, 1st January Dam Worksite, S-21 Security Centre and Kraing Ta Chan Security Centre;

D. Security Centres and Internal Purges:

- a) Au Kanseng;
- b) Phnom Kraol;
- c) S-21;

E. Regulation of marriage (nationwide);

F. Nature of the armed conflict;

G. Role of the Accused. *NA*

Phnom Penh, 12 September 2014
President of the Trial Chamber

