

**BEFORE THE SUPREME COURT CHAMBER
EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA**

Filing Details

Case No.: 002/19-09-2007-ECCC/SC

Party filing: Mr. KHIEU Samphân

Filed before: The Supreme Court Chamber

Original Language: French

Date of Document: 12 March 2021



Classification

Classification of the document suggested by the filing party: Public

Classification by the Chamber:

សាធារណៈ/Public

Classification Status:

Review of Interim Classification:

Records Officer Name:

Signature:

Defence's Submissions Regarding the Timetable for the Hearing (Case 002/02)

Filed by:

Lawyers for Mr. KHIEU Samphân
KONG Sam Onn
Anta GUISSÉ

Assisted by:
SENG Socheata
Marie CAPOTORTO
CHhayrath Tan
Mathilde CHIFFERT

Before:

The Supreme Court Chamber
KONG Srim
Chandra Nihal JAYASINGHE
SOM Sereyvuth
Florence Ndepele MWACHANDE-MUMBA
MONG Monichariya
Maureen HARDING CLARK
YA Narin

Co-prosecutors
CHEA Leang
Brenda J. HOLLIS

All Civil Party Lawyers

MAY IT PLEASE THE SUPREME COURT CHAMBER

1. On 26 February 2021, the Supreme Court Chamber (“the Supreme Court”) provided the parties with a tentative timetable of debates in the hearing in Case 002/02, organized in thematic sessions, and invited them to make any submissions they might have on the issue. It also informed them that a final schedule would be established shortly thereafter, with specific questions that it expects the parties to focus on at the hearing.¹
2. In the submissions, KHIEU Samphân’s Defence (“the Defence”) makes several observations on the tentative timetable, first, observations of a general nature (I) and then specific observations by topic (II), as well as requests accordingly. It states that these observations are necessarily incomplete in the absence of the Supreme Court’s specific questions that it will have to focus on at the hearing.

I. GENERAL OBSERVATIONS

3. In its tentative timetable, the Supreme Court organized the debates in three stages: KHIEU Samphân’s appeal (subdivided into several topics), the Prosecution’s appeal and finally a closing session. It divided the floor time of each party between the topics.
4. The current distribution of this speaking time reveals a profound imbalance between the parties to the detriment of Defence. Thus, whereas 3:55 hours have been set aside for the Defence to plead its case, the Prosecution, and the Lawyers for the Civil Parties (“the Civil Parties”) have 5:00 hours combined for the rebuttal. This appears disproportionate - and places the Defence at a clear disadvantage compared to its opponents. In order to properly situate the meaning of its submissions on the proposed distribution of time, the Defence considers it necessary to recall (A) the purpose of the hearing, (B) the difference in the parties’ standing in this case, and (C) the strict delimitation of the Civil Parties’ participation.

¹ Invitation for Parties to File Submissions Regarding the Timetable for the Hearing in Case 002/02, 26 February 2021, **F60**; Annex – Timetable for the Hearing, **F60.1**.

A. PURPOSE OF THE HEARING

5. After appeal findings are filed, the Internal Rules (“IRs”) provide for a hearing. Among other things, it states that:

“[t]he appellant may make a brief statement on the legal grounds of appeal. The other parties may make a brief reply. All the judges may ask any questions which they consider to be conducive to the determination of the appeal.

In all cases, the Accused speaks last. The lawyers for the Accused shall be allowed to make a brief rebuttal presentation.”²

6. In this case, as in Case 002/01,³ the Supreme Court decided that the responses to the briefs in response to the appeals would be heard at the hearing.⁴ In Case 002/01, it stated 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.”⁵

7. It added at the time that, as a result, there was “no reason to give the Co-Prosecutors the same amount of time to make their submissions as NUON Chea and KHIEU Samphân.”⁶
8. Thus, the appeal hearing must allow the appellant not only to briefly present his grounds of appeal, but also and above all to respond to the other parties in addition to answering questions from the Supreme Court. In order to do so, the appellant must logically have more time than the other parties.

B. DIFFERENCE IN THE PARTIES’ ABILITY TO ACT

9. In this case, as the Supreme Court⁷ pointed out, the Supreme Court hears two appeals, one brought by KHIEU Samphân and the other by the Prosecution. The former appealed his conviction to the

² Internal Rules 109-4 and 109-5.

³ Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses, 31 October 2014, **F9** paras. 22 and 23.

⁴ Decision on KHIEU Samphân's Request to Extend the Time and Number of Pages of his Appeal Brief, 23 August 2019, **F49**, para. 36.

⁵ Order Setting the Final Timetable for the Appeal Hearing and Informing the Parties of Issues to be Addressed, 5 November 2015, **F30/4**, para.3.

⁶ *Idem*.

⁷ Invitation for Parties to File Observations on Timetable for Appeal Hearing in Case 002/02, 26 February 2021, **F60**, p. 2.

vast majority of the many crimes for which he was being prosecuted and his life sentence. The second appealed KHIEU Samphân's acquittal for a single crime.

10. The Civil Parties, for their part, did not make use of the option offered to them to appeal the judgment, neither with respect to the decision relating to reparations, nor the question of guilt, even though this option was also made available to them as a result of the Prosecution's appeal.⁸
11. Thus, in his appeal, KHIEU Samphân acts as an appellant and must reply at the hearing to the substantial responses of the Prosecution and the Civil Parties acting as respondents. This is his first and only opportunity to do so.
12. In the Prosecution's appeal, the Prosecution acts as the appellant and must reply to the Defence's response acting as respondent at the hearing. The Civil Parties are neither appellants nor respondents.⁹ They are a party to the proceedings, acting as always in support of the Prosecution with a limited right of participation, even more so during an appeal.

C. STRICT LIMITATION OF CIVIL PARTY PARTICIPATION

1. Reason for limiting Civil Party participation

13. At the ECCC, in criminal proceedings with civil action allowing victims to take part in the proceedings to obtain reparations for damages in the event of a conviction, the Defence, which represents the accused, faces two other parties representing different interests: the public interest and the special interest of the Civil Parties.
14. First, the Defence faces the Prosecution, which initiates the public action and exercises it in the name of the public interest (which necessarily includes the general interests of the victims of the alleged crimes). It requires the application of the law before the court in the context of criminal proceedings.¹⁰

⁸ Internal Rule 105-1: "An appeal against the Trial Chamber judgment may be filed by: a) The Co-Prosecutors; and b) The Accused; and c) The civil Parties may appeal the decision on reparations. Where the Co-Prosecutors have appealed, the Civil Parties may appeal the verdict. They may not appeal the sentence."

⁹ See in particular: Decision on Civil Party Lead Co-Lawyers' Requests Relating to the Appeals in Case 002/01, 26 December 2014 **F10/2**, ("26 December Supreme Court Decision 2014, **F10/2**"), para. 23 and footnote 60.

¹⁰ Decision on Civil Party Co-Lawyers Joint Request for a Ruling on the Standing of the Civil Party Lawyers to make Submissions on Sentencing and Directions Concerning the Questioning of the Accused Experts and Witnesses Testifying on Character, 9 October 2009, **001-E72/3** ("Decision of the House of 9 October 2009, **001-E72/3**"), paras.

15. Second, the Defence faces the Civil Parties, who cannot initiate proceedings at the ECCC, but who participate in the proceedings in support of the Prosecution in order to find the accused guilty so that they may obtain reparations for their damages. They act in the context of civil action.¹¹

16. This implies that “the Civil Party action is subsidiary – not alternative - to the Co-Prosecutors”.¹² In order to ensure a balance between the rights of the parties, “it is imperative that a broad reading of victims’ prerogatives not impinge upon the fundamental rights of the Accused, impede the exercise of the function of the Prosecution, or undermine the efficient conduct of the proceedings.”¹³ In fact:

“...the Accused's right to a fair trial in criminal proceedings includes the right to face one prosecuting authority only. Accordingly, and while the Civil Parties have the right to support or assist the Prosecution, their role within the trial must not, in effect, transform them into additional prosecutors.”¹⁴

17. In dismissing the Civil Parties’ request to speak on the issue of sentencing in Case 001 (because it fell within the sole jurisdiction of the Prosecution acting in the public interest), the Trial Chamber recalled two principles:¹⁵

“First, the interests of Civil Parties are principally the pursuit of reparations. However, a prerequisite for reparations is a criminal conviction. The Civil Parties accordingly have an interest in the Trial Chamber determining the elements of the crime which, if proved, form the basis for their civil claims. For this reason, they are entitled to support the prosecution in establishing the criminality of the actions of the accused which affect them, and which create the foundation for a claim for reparation.

Second, the overall goal of Cambodian criminal procedure is to establish the truth. All Parties may assist in achieving this goal. For the Civil Parties, in light of their fundamental interest in securing reparation, establishing the truth is limited to facts or factors relevant to the determination of the guilt or innocence of the Accused. (we emphasize).¹⁶

18-22; Decision on Co-Prosecutors and Civil Party Lead Co-Lawyers' Request For Additional Time for Examination of SCW-5, 30 June 2015, **F26/2/2**, paras. 6-7.

¹¹ Decision of the Chamber of 9 October 2009, **001-E72/3** paras. 11-13, 25.

¹² Decision of the Supreme Court of 26 December 2014, **F10/2** para. 12.

¹³ *Idem*.

¹⁴ Decision of the Chamber of 9 October 2009, **001-E72/3**, para. 26.

¹⁵ Decision of the Chamber of 9 October 2009, **001-E72/3**, para. 42.

¹⁶ Decision of the Chamber of 9 October 2009, **001-E72/3**, paras.33 and 34.

18. Thus, while the Prosecution is responsible for matters relating to law enforcement in the public interest (including the general interests of victims), the Civil Parties support it on matters relating to proof of the existence of the alleged crimes relating to their particular and very specific interests in obtaining reparations.
19. They cannot go beyond this framework without infringing on the prerogatives of the Prosecution and acting as additional prosecutors and thus breaking the equality of arms. It is worth remembering that at the ECCC, the procedures are much more complex, and the number of victims is much higher than in national law.¹⁷ The procedure for appealing a sentence is much more technical, with the Supreme Court acting – as a last resort – as both appellate chamber and final instance.¹⁸ This is not a new trial and the scope of the Civil Parties' participation is even more limited,¹⁹ particularly when they are not appellants.

2. Scope of limitation on the participation of Civil Parties in an appeal against a sentence in which they are not appellants

20. In Case 002/01, in which the Civil Parties were also not appellants, the Supreme Court recalled that they were acting as a party to the proceedings “with the evident caveat – readily admitted by the Lead Co-Lawyers – that each party enjoys a distinct set of participatory rights commensurate to its unique function in the dynamics of a criminal trial.”²⁰ Recalling “the need to preserve the equality of arms and [the] wish to ensure the smooth running of the trial”, it restricted the exercise of their right to respond to the defence teams' appeal briefs:

“First, the arguments set out in the proposed response must relate to grounds directly affecting Civil Parties' rights and interests. Second, the Lead Co-Lawyer must endeavour to avoid repetitiveness and overlap with issues already covered by the Co-Prosecutors' projected response to the Defence Appeal Briefs.” (we emphasize).²¹

¹⁷ Decision of the Chamber of 9 October 2009, **001-E72/3**, para. 12.

¹⁸ Appeal Judgment 001, 3 February 2012, **001-F28**, paras. 12 and 13.

¹⁹ For example, while the Internal Rules authorize “any party” to appeal against a decision of the Trial Chamber immediately (Rule 105-2), it limits the ability of the Civil Parties to appeal against the judgment relating to the decision on reparations as well as to the issue of guilt only when the Prosecution appeals and further prohibits them from appealing the sentence (Rule 105-1-1).

²⁰ Supreme Court decision of 26 December 2014, **F10/2**, para. 15.

²¹ Decision of the Supreme Court of 26 December 2014, **F10/2**, para. 17.

21. These two restrictions are very clear and in line with the specific roles and responsibilities of the two parties opposing the Defence: the Civil Parties must answer only on matters directly related to their particular interests, i.e., questions relating to the evidence provided by the Civil Parties proving the existence of the alleged criminal acts in order to obtain reparations. They must not interfere with matters already covered by the Prosecution in its role relating to law enforcement in the public interest, already understanding the Civil Parties' general interests and having only an indirect effect on their specific interests.
22. Until recently, the Civil Parties had only once gone beyond this strictly defined framework when they responded to NUON Chea's request for additional evidence in the appeal of Case 002/01 by opposing it. The Supreme Court noted that the reference to the need to guarantee the "balance of parties", within the meaning of the Civil Parties' right to obtain a timely verdict was "too generic" to comply with the principles and restrictions set out in its jurisprudence. As a result, the Supreme Court had not taken the Civil Parties' response to the request into consideration.²²
23. Apart from this discrepancy, the Civil Parties had not exceeded this framework and had complied with the two restrictions of the Supreme Court, which they have always been careful to recall.
24. In Case 002/01, they had filed a response to the Defence teams' Appeal Briefs confined to grounds of appeal in relation to issues affecting the evidence presented by the Civil Parties.²³ They had intervened at the appeal hearing only on these issues.²⁴
25. In Case 002/02, when filing submissions on the Defence's response to the Prosecution's appeal brief, they clarified that these 1) concerned issues "that directly affect Civil Parties' rights and interests," specifically the credibility, reliability and relevance of the Civil Parties' statements

²² Appeal Judgement 002/01, 23 November 2016, **F36**, para. 81.

²³ Civil Party Lead Co-Lawyers' Response To Defence Appeals Against Trial Judgment in Case 002/01, 25 May 2015 **F17/2** (this brief has been translated into French, but for reasons unknown to Defence the translation has not been placed on file or notified). See specifically para. 3 on the reminder of the two restrictions requested from the Supreme Court, and then para. 4: "Since the OCP Response Brief comprehensively addresses certain Grounds of Appeal from both the Defence appeals, the Lead Co-Lawyers focus solely on the grounds of appeal pertaining to the core legal issues affecting civil party evidence."

²⁴ Annex A – Final Timetable for the Hearing [002/01], **F30/17.1**; Transcript of the Hearing on 16 February 2016, **F1/5.1** paras. 78 to 92, between 14.00.29 and 14.30.06. Moreover, they had not filed anything in writing on the reclassification of the legal status of the facts envisaged by the Supreme Court (Order Scheduling the Appeal Hearing, 9 October 2015 **F30**), indirectly affecting the special interests of the civil parties.

implicated by the Defence, and 2) did not cover matters already covered by the Prosecution.²⁵ They made no comment on the Defence's arguments regarding the applicable law.

26. Similarly, when the Civil Parties requested additional time and pages to respond to the Defence's appeal brief, they expressed their intention to respond, “*insofar as it directly affects the specific rights and interests of Civil Parties*”,²⁶ and pointed out that the evidence produced by them was an important part of KHIEU Samphân's appeal statement.²⁷
27. In this context, the Supreme Court granted them almost all of the measures requested, recalling its previous jurisprudence, and noting the Civil Parties' announced intention by quoting them.²⁸
28. However, from what Defence has seen at this stage, knowing that the response brief filed by the Civil Parties has unfortunately not yet been translated into French (and will not be translated before the deadline to file these submissions),²⁹ it appears that the latter have gone far beyond their original intention and the restrictions imposed. They answered many questions within the jurisdiction of the Prosecution, which had already answered them, thus acting as additional prosecutors and presenting everyone with a *fait accompli*.
29. These outbursts are reflected in the tentative timetable of the appeal hearing on which Defence will now make more specific submissions according to topic, in line with these lengthy general submissions.
30. Indeed, it is important to note that the appeal hearing is KHIEU Samphân's last chance to be heard. Not only is his appeal much broader than that of the Prosecution, but the stakes are very different.³⁰

²⁵ Civil Party Lead Co-Lawyers' Submissions Relating to KHIEU Samphân's Response to the Co-Prosecutors' Appeal Brief, 7 October 2019, **F50/1/1**, paras. 8-9.

²⁶ Requests Concerning the Civil Party Lead Co-Lawyers' Response to KHIEU Samphân's Appeal, 28 October 2019, **F52**, para. 2 (we emphasize).

²⁷ *Ibid*, para. 10.

²⁸ Decision on Requests Concerning the Civil Party Lead Co-Lawyers Response to KHIEU Samphân Appeal, 6 December 2019, **F52/1**. See specifically paras. 7, 12 and 13.

²⁹ According to the Translation Unit, the French translation is expected to be finalized by 21 March 2021.

³⁰ See in particular: Decision on Co-Prosecutors and Civil Party Lead Co-Lawyers' Request For Additional Time for Examination of SCW-5, 30 June 2015 **F26/2/2**, paras. 6-7, where the Supreme Court recalls the fundamental difference between the position of the Accused in a criminal trial, and those of the Prosecution and the Civil Parties.

While the Supreme Court, acting as a last resort, can overturn convictions and acquit him, it cannot impose a conviction and sentence as a result of the Prosecution's appeal.³¹

31. The appeal hearing is the only opportunity for the appellant Defence to reply to the responses that the Prosecution and the Civil Parties, respondents, have already presented at length in writing. Furthermore, the Defence should only have to respond to one prosecuting party, in addition to answering questions from the Supreme Court, especially since it has very limited means to do this.³²

II. SPECIFIC SUBMISSIONS BY TOPIC

A. DEFENCE APPEAL

1. Lack of specific topics on Defence's principal line of appeal

32. In its appeal, the Defence pleaded primarily for the nullity of the judgment and then, in the alternative, for the acquittal of KHIEU Samphân and finally, in the further alternative, for a reduced prison sentence.³³ However, in the tentative timetable for the appeal hearing,³⁴ there is no thematic session specifically dedicated to the main ground of appeal.
33. Given the importance to the Defence of this grounds of appeal, which differs from the others, the appeal hearing should begin with a specific session on the subject. Given that the presentation of this plea is relatively short,³⁵ that the Prosecution responded very briefly³⁶ and that the Civil Parties did not respond to it, a 20-minute allowance ("min") for the Defence and then 10 minutes for the Prosecution should suffice.

³¹ Internal Rule 110-4; Appeal Judgement 001, 3 February 2012, **001-F28**, para. 8; Appeal Judgement 002/01, 23 November 2016, **F36**, para. 94.

³² Despite repeated requests from the Defence to be granted more resources as soon as the response briefs to the Prosecution and the Civil Parties were filed in October 2020, these have only recently been. As a result, the lawyers went from working part-time to full-time on the 1 February 2021 and were able to recruit 2 new consultants on 1 March 2021.

³³ KHIEU Samphân's Notice of Appeal (002/02), 1 July 2019, **E465/4/1**, para. 35; KHIEU Samphân's Appeal Brief (002/02), 27 February 2020, **F54**, para. 2185.

³⁴ Annex – Timetable for the Hearing, **F60.1**.

³⁵ KHIEU Samphân's Appeal Brief (002/02), 27 February 2020, **F54**, paras. 30-79.

³⁶ Co-Prosecutors' Response to KHIEU Samphân's Appeal of the Case 002/02 Trial Judgment, 12 October 2020, **F54/1**, paras. 24-28.

2. “Procedural fairness” Topic

34. In the tentative timetable, for the session on “grounds of appeal relating to procedural fairness”, 45 minutes is set aside for the Defence, while the Prosecution and the Civil Parties have 35 and 25 minutes respectively, or a total of 60 minutes, to respond to the Defence.³⁷
35. In its brief, the Defence developed numerous grounds of appeal relating to the trial’s procedural fairness, including the appeal of interlocutory decisions and grounds of appeal related to the Trial Chamber’s overall approach to evidence. In Case 002/01, the Defence had 35 minutes to present its grounds of appeal relating to procedural fairness of the trial and 20 minutes to present its grounds of appeal related to the overall approach to evidence, or a total of 55 minutes.³⁸ Although the Defence was responding to two appellants, the Prosecution had a total of 55 minutes to speak about these two issues and the Civil Parties had 15 minutes to address the matter of the approach to evidence.³⁹
36. Given that the Defence’s grounds of appeal are much more extensive on these issues in Case 002/02 than they were in Case 002/01, the Defence should be able to very reasonably benefit from at least as much time, namely 55 minutes, to present its case by responding to the opposing parties.
37. Furthermore, the presentation of the Civil Parties’ response must be limited only to the questions regarding the evidence they have provided. While the rest is certainly of general interest to the Defence, it concerns them only indirectly and has already been covered by the Prosecution. Consequently, their speaking time should be limited accordingly to 15 minutes.

³⁷ Annex – Timetable for the Hearing, **F60.1**, p. 1.

³⁸ Annex A – Final Timetable for the Hearing [002/01], **F30/17.1**, p. 1.

³⁹ Annex A – Final Timetable for the Hearing [002/01], **F30/17.1**, p. 1.

3. “Jurisdiction of the Trial Chamber” Topic

38. In the tentative timetable, for the session on “grounds of appeal relating to the Trial Chamber’s jurisdiction”, 55 minutes is set aside for the Defence, while the Prosecution and the Civil Parties have 55 and 20 minutes respectively, or a total of 75 minutes, to respond to the Defence.⁴⁰
39. While these questions indirectly concern the interests of the Civil Parties, they fall within the jurisdiction of the Prosecution, which has already responded to them at length. They should therefore not be allowed to intervene at the hearing on the subject.
40. Moreover, there is no reason why the Prosecution should have as much time as the Defence.⁴¹ Insofar as this is the Defence’s only opportunity to respond to the Prosecution and answer the judges' questions, it must be given more time than the Prosecution. Accordingly, an allocation of 55 minutes for the Defence and 40 minutes for the Prosecution's response would be more reasonable.

4. “Crimes of which KHIEU Samphân was convicted” Topic

41. In the tentative timetable, for the session on “grounds of appeal relating to crimes for which KHIEU Samphân was convicted”, 45 minutes is set aside for the Defence, while the Prosecution and the Civil Parties each have 40 minutes, or a total of 80 minutes, to respond to the Defence.⁴²
42. Since KHIEU Samphân was convicted of many more crimes in Case 002/02 than in Case 002/01, the Defence is using far more resources on this issue than it did in Case 002/01. In Case 002/01, the Defence received 35 minutes at the hearing, while the Prosecution was able to respond to two appellants in 40 minutes.⁴³
43. Because this appeal is broader than in Case 002/01, and this is its only opportunity to reply to the respondents in addition to answering questions from the Supreme Court, the Defence should have at least 60 minutes to present its case.

⁴⁰ Annex – Timetable for the Hearing, F60.1, p. 1.

⁴¹ See above, para 7.

⁴² Annex – Timetable for the Hearing, F60.1, p. 2.

⁴³ Annex A – Final Timetable for the Hearing [002/01], F30/17.1, p. 2.

44. This estimate takes into account the fact that the presentation of the Civil Parties' response must be limited only to the questions concerning the evidence they have provided. While matters purely relating to applicable law are of general interest to it, they concern them only indirectly and are already covered by the Prosecution. Their speaking time should therefore be limited accordingly to 20 minutes.

5. “KHIEU Samphân’s Individual Criminal Responsibility” Topic

45. In the tentative timetable, for the session on “grounds of appeal relating to KHIEU Samphân’s individual criminal responsibility”, 60 minutes was set aside for the Defence, while the Prosecution also has 60 minutes to respond.⁴⁴

46. Once again, the Defence raises far more grounds of appeal than it did in Case 002/01. At the time, it had been granted 50 minutes at the hearing while the Prosecution had 55 minutes to respond to two appellants.⁴⁵

47. Because of the scope of its appeal on these issues and their obvious importance, and because it needs more time to respond to the Prosecution in addition to responding to the Supreme Court’s questions, it is very reasonable to allocate at least 75 minutes to the Defence to present its case.

6. “Sentence” Topic

48. In the tentative timetable, for the session on “grounds of appeal relating to the sentence”, the Defence has 30 minutes, while the Prosecution and the Civil Parties have 15 and 10 minutes, respectively, or a total of 25 minutes, to respond to the Defence.⁴⁶

49. The issue of sentencing does not directly affect the Civil Parties’ special interests and falls solely within the jurisdiction of the Prosecution, which has already responded to the Defence's grounds of appeal. The Civil Parties should therefore not be allowed to intervene at the hearing on this issue, just as they should not have presented an argument on the topic in their response brief.

⁴⁴ Annex – Timetable for the Hearing, **F60.1**, p. 2.

⁴⁵ Annex A – Final Timetable for the Hearing [002/01], **F30/17.1**, p. 2-3.

⁴⁶ Annex – Timetable for the Hearing, **F60.1**, 3.

50. Moreover, given the fact that KHIEU Samphân is primarily pleading for the judgment to be considered null and void and, in the alternative, for his acquittal, the infinitely subsidiary issue of the sentence does not require all the time allocated in the tentative timetable, especially in light of the fact that the Defence does not have many more grounds of appeal than it did in Case 002/01, in which it was granted 15 minutes and the Prosecution had 10 minutes to respond.⁴⁷
51. In this case, 15 minutes for the Defence and 10 minutes for the Prosecution's response could suffice, in particular to allow the Defence more time to focus on the other more pressing issues in its appeal, such as its main grounds of appeal related to the nullity of the judgment.

B. APPEAL OF THE PROSECUTION

52. According to the tentative timetable, the Prosecution will have 30 minutes to present its appeal, the Defence will have 20 minutes for its rebuttal, and the Civil Parties will have 20 minutes to present their submissions.⁴⁸
53. However, the Civil Parties acting “in support” of the Prosecution⁴⁹ should intervene immediately after the Prosecution, as this would allow the Defence to respond to them as well, and would respect the adversarial principle.

C. CLOSING SESSION

54. According to the tentative timetable, a closing session is scheduled with two topics: 1) “final questions by the Chamber” lasting 60 minutes, and 2) “opportunity for the accused to address the Chamber in person” lasting 30 minutes.⁵⁰
55. In accordance with Internal Rule 109-5, the Defence would like to have 20 minutes to make a brief rebuttal presentation during the session on the possibility for KHIEU Samphân to address the judges in person.⁵¹

⁴⁷ Annex A – Final Timetable for the Hearing [002/01], F30/17.1 p. 3.

⁴⁸ Annex – Timetable for the Hearing, F60.1, p. 3.

⁴⁹ See above, para.15.

⁵⁰ Annex – Timetable for the Hearing, F60.1, p. 3.

⁵¹ Quoted above in para. 5: “In all cases, the Accused speaks last. The lawyers for the Accused shall be allowed to make a brief rebuttal presentation.”

CONCLUSION

56. For the sake of clarity, Defence is providing a summary of its requests in the following tables:

Appeal of the Defence	Defence	Prosecution	Civil Parties
Nullity of judgment	20 min	10 min	-
Procedural fairness	55 min	35 min	15 min
Jurisdiction/competence	55 min	40 min	-
Crimes	60 min	40 min	20 min
Responsibility	75 min	60 min	-
Sentence	15 min	10 min	-
Total	280 min (4h 40m)	195 min (3h 15m)	35 min
	280 min (4h 40m)	230 min (3h 50m)	

	Prosecution	Civil Parties	Defence
Appeal of the Accusation	30 min	20 min	20 min
Total	50 min		20 min

Closing session	The accused and his lawyers are the last to have the floor	50 min
-----------------	--	--------

57. These most reasonable requests do not extend the total length of the appeal hearing as contemplated by the Supreme Court.⁵² They are necessary in order to allow KHIEU Samphân to present his case as a last resort while respecting the adversarial principle and equal arms without facing two prosecuting bodies.

58. In this same spirit, even though it is probably wishful thinking when faced with a *fait accompli*, the Supreme Court will not have to take into account the arguments put forward by the Civil Parties in their response brief to exceed their prerogatives and the restrictions imposed on them.⁵³

⁵² The total duration is even shortened by 5 minutes.

⁵³ According to the Defence, which at this stage cannot be precise and comprehensive without the French translation in hand, only arguments that pertain strictly to evidence submitted by the Civil Parties and presented in parts “8. Evidence and its treatment”, “9. Grounds concerning the crimes and factual findings” (thus excluding arguments about applicable law), and “10. Submissions concerning specific civil parties” and their response brief (Civil Party Lead Co-Lawyers' Response to KHIEU Samphân's Appeal of the Case 002/02 Trial Judgment, 4 January 2021, F54/2) should be taken into account.

59. **FOR THESE REASONS**, the Defence respectfully requests that the Supreme Court TAKE INTO ACCOUNT all of these submissions and GRANT all the requests made accordingly, summarized in the conclusion in paragraphs 56 to 58.

KONG Sam Onn	Phnom Penh	
Anta GUISSÉ	Paris	