

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)

COMPLETION PLAN

REVISION 9

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Summary	2
I. INTRODUCTION	3
II. MEASURES THAT MAY ASSIST EXPEDITIOUS COMPLETION	5
III. JUDICIAL INVESTIGATIONS COMPLETION PLAN	6
IV. TRIALS COMPLETION PLAN	9
A. Case 002/02	10
B. Remaining charges/factual allegations in case 002	11
C. Case 003 and case 004	11
V. APPEALS COMPLETION PLAN	11
A. Case 002/01	11
B. Case 002/02	13
C. Case 003 and case 004	13
VI. CONCLUSION	13

Annex - Chart of projected timelines for the completion plan including milestones

Note to the reader:

The ECCC Completion Plan is being revised on a quarterly basis for planning purposes. It contains the best possible estimates for projection of timelines in the remaining cases before the ECCC at the time of revision. A number of factors, including developments in the judicial proceedings may impact these projections. As such the timelines do not reflect statutory requirements on when the different milestones will be reached.

Summary

The Completion Plan for the Extraordinary Chambers in the Courts of Cambodia (“Extraordinary Chambers”) was initially developed in March 2014 through consultation by the Office of Administration with the judges of the Chambers, the co-investigating judges and the co-prosecutors for their respective responsibilities. This is the ninth quarterly update of the Completion Plan covering the quarter ending 30 June 2016.

During the second quarter, the Supreme Court Chamber continued deliberations and drafting of the appeal judgement in case 002/01 which is projected to be pronounced in the third quarter of 2016.

In the trial proceedings in case 002/02, the evidentiary hearings have progressed with the fourth trial topic, namely security centres and internal purges, encompassing charges of crimes against humanity and war crimes. No changes to the trial timeline are foreseen in this update of the Completion Plan.

Developments in cases 003, 004 and 004/01 have necessitated extensions of the projected timelines in respect of the charged persons Meas Muth, Ao An, Yim Tith and Im Chaem. This is further elaborated in Chapter III below.

The narrative part of the Completion Plan is updated to reflect the status of the judicial proceedings as of 30 June 2016.

I. INTRODUCTION

1. The Extraordinary Chambers in the Courts of Cambodia (“Extraordinary Chambers”) began its operations in February 2006, and became fully operational after the adoption of its Internal Rules in June 2007. The mandate of the Extraordinary Chambers is to prosecute “senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979”.¹
2. This Completion Plan is elaborated by the Extraordinary Chambers in the context of the General Assembly’s Resolution A/RES/68/247B, which *inter alia* mandates the Extraordinary Chamber’s preparation of a completion strategy with a clear road-map.² The document has been developed by the Extraordinary Chambers through consultation by the Office of Administration with the judges of the Pre-Trial Chamber, the Trial Chamber and the Supreme Court Chamber, with the co-investigating judges, and with the co-prosecutors for their respective responsibilities. The Extraordinary Chambers anticipate updating this Completion Plan on a quarterly basis in the future. The current document is the ninth quarterly revision of the Completion Plan, and it incorporates necessary adjustments based on the developments in the ongoing judicial proceedings between 1 April and 30 June 2016.
3. The document focuses in particular on the recent developments in the three remaining cases before the Extraordinary Chambers and provides information on the status of those cases as well as what steps will have to be completed before the judicial proceedings in respect of the cases reach legal finality. The co-prosecutors have stated publicly that there will be no further cases after cases 003 and 004.³ The existing caseload thus represents the totality of the caseload to be addressed by the Extraordinary Chambers.
4. The charges in case 002 have been, to date, severed into two trials. The Trial Chamber rendered judgment in the first trial, styled by the Extraordinary Chambers as case 002/01, on 7 August 2014, against Nuon Chea and Khieu Samphan. Two further accused in the case, Ieng Sary and Ieng Thirith passed away on 14 March 2013 and 22 August 2015 respectively, and proceedings against them were therefore terminated. The Trial Chamber found Khieu Samphan and Nuon Chea guilty of crimes against humanity committed between 17 April 1975 and December 1977 and sentenced them each to life imprisonment. Both Nuon Chea and Khieu Samphan filed appeals against the trial judgment in case 002/01. In addition, the co-prosecutors filed an appeal limited to seeking declaratory relief on the application of the most extended form of joint criminal enterprise known as JCE III as a mode of liability before the Extraordinary Chambers.
5. The appeal proceedings in case 002/01 are ongoing. The Supreme Court Chamber held its first appeal hearings on 2, 3 and 6 July 2015, a further appeal hearing on 17 November 2015, and final appeal hearings between 16 and 18 February 2016.

¹ Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodia Law of Crimes Committed during the Period of Democratic Kampuchea.

² In the same resolution, the General Assembly has requested “a comprehensive examination of the future financing of the Extraordinary Chambers for 2015 and beyond.” See Resolution A/RES/68/247B adopted by the General Assembly on 9 April 2014: “Special subjects relating to the programme budget for the biennium 2014–2015” B, I, para. 8.

³ Statement of Acting International Co-Prosecutor - Filing of Two New Introductory Submissions, 8 September 2009 ([www.eccc.gov.kh/sites/default/files/media/ECCC_Act_Int_Co_Prosecutor_8_Sep_2009_\(Eng\).pdf](http://www.eccc.gov.kh/sites/default/files/media/ECCC_Act_Int_Co_Prosecutor_8_Sep_2009_(Eng).pdf)); Public statement by the co-prosecutors regarding investigation in Case 003, 5 June 2012 (http://www.eccc.gov.kh/sites/default/files/media/ECCC_OCP_5_June_2012_En.pdf); and Statement by the International Co-Prosecutor regarding ECCC caseload, 26 November 2014 (<http://www.eccc.gov.kh/en/articles/statement-international-co-prosecutor-regarding-eccc-caseload>).

6. The second, current trial in this case, styled as case 002/02, focuses on a representative selection of the remaining charges against the two remaining accused. These include charges of genocide, crimes against humanity and war crimes on topics including treatment of the Cham, the Vietnamese, and Buddhists, forced marriages, security centres, and worksites and cooperatives. Evidentiary hearings commenced on 8 January 2015, and, by 30 June 2016, the Trial Chamber had heard a total of 86 witnesses, 41 civil parties and 3 experts. A number of civil parties were heard in relation to security centres and internal purges.
7. Cases 003 and 004 remain currently in the phase of judicial investigation. The international co-investigating judge is actively investigating these cases, involving allegations against four charged persons. The case against Im Chaem was severed into case 004/01 on 5 February 2016.
8. In view of progress over the last quarter, this Completion Plan of the Extraordinary Chambers identifies 12 remaining milestones for the three cases with which the Chambers are seized. The remaining milestones in case 002⁴ and associated indicative forecasts are:
 - (i) delivery of an appeal judgment in case 002/01 (by third quarter of 2016);
 - (ii) conclusion of substantive hearings in case 002/02 (by fourth quarter of 2016);
 - (iii) closing statements in case 002/02 (by first quarter of 2017);
 - (iv) delivery of a trial judgment in case 002/02 (by fourth quarter of 2017);
 - (v) deadline for filing any appeals against the trial judgment in case 002/02 (by first quarter of 2018); and
 - (vi) delivery of an appeal judgment in case 002/02, if any (by third quarter of 2019).
9. In cases 003, 004 and 004/01 distinct milestones have been identified for the remainder of the judicial investigation phase, and in case of indictments, additional milestones will be identified for the trial and appellate phases.⁵ The milestones for the remainder of the judicial investigation phase are:
 - (vii) notification of conclusion of judicial investigations in case 003 (by fourth quarter of 2016);
 - (viii) notification of conclusion of remaining judicial investigations in case 004 (by fourth quarter of 2016 and first quarter of 2017);
 - (ix) issuance of closing order in case 003, with a decision either to send the case for trial or to end the proceedings (by second quarter of 2017);
 - (x) issuance of closing orders in case 004 and 004/01 with a decision either to send the cases for trial or to end the proceedings (by first quarter of 2017 for case 004/01, and by second and third quarter of 2017 for case 004);
 - (xi) disposal by the Pre-Trial Chamber of any appeals against the closing order in case 003, either sending the case for trial or ending the judicial proceedings in the case (by fourth quarter of 2017); and
 - (xii) disposal by the Pre-Trial Chamber of any appeals against the closing orders in case 004 and case 004/01, either sending the case for trial or ending the judicial proceedings in the case (by third quarter of 2017 for case 004/01, by fourth quarter of 2017 for case 004 in respect of Ao An, and by first quarter of 2018 for case 004 in respect of Yim Tith).

⁴ In the event that case 002 is further severed as a consequence of the Trial Chamber's decision on the scope of case 002/02 in April 2014, it may be that a case 002/03 will be required.

⁵ As noted in paragraph 46 below, given the current state of proceedings it is premature at this point to forecast specific time points in respect of eventual trial milestones.

II. MEASURES THAT MAY ASSIST EXPEDITIOUS COMPLETION

10. The effective functioning of the Extraordinary Chambers has in the past been hampered by significant and persistent financial insecurity, which resulted in two staff walkouts during 2013 as well as unwarranted staff turnover. The General Assembly's approval of subventions for the calendar years 2014 and 2015 for the international component of the Extraordinary Chambers were essential measures that stabilized the funding situation and enabled concentrated focus on progressing the court's judicial mandate. Nevertheless, on the national side, cash-flow difficulties led to repeated delays in payment of national staff salaries in the course of the second half of 2015, with attendant impact on staff focus and morale.
11. Following early commitment of support from the Royal Government of Cambodia, on 23 December 2015 the General Assembly, in its resolution 70/248, authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed \$12.1 million to supplement the voluntary financial resources of the ECCC's international component for the period from 1 January to 31 December 2016. This timely action greatly facilitated the ECCC's uninterrupted operations during the first quarter of 2016, opening space for continued solicitation of voluntary contributions. In addition, the Royal Government's commitment of direct contributions to again cover, as in 2015, the first six months of national staff costs as well as operational costs arising in 2016 is a key complementary measure facilitating the ongoing operation of the ECCC's national component. In combination, these measures have ensured that the ongoing phase of peak workload in the Extraordinary Chambers' work continues to receive sustained attention into 2016. The projections of the timelines below are made on the basis that all Chambers and offices are sufficiently staffed, and that the judicial proceedings will not be further disrupted as a result of financial insecurity. Should financial insecurity emerge, there may be need to revise the timelines accordingly.
12. The projections for completion of the trial of case 002/02, the appeal of the case 002/01 trial judgement and the completion of investigations in cases 003 and 004, presume that all activities will continue to be carried out simultaneously. The co-prosecutors will be simultaneously engaged in the trial and appellate proceedings in case 002/02, and the investigations and preparation of closing submissions in cases 003 and 004.
13. In January 2015, the Plenary of the Extraordinary Chambers adopted amendments to the court's Internal Rules that permit a reduction of the scope of judicial investigation, so long as the reduced scope of the investigation is representative of the charges and alleged criminal responsibility of the suspect. Similarly, the Trial Chamber may reduce the scope of the trial by excluding certain facts set out in the indictment, as long as the remaining facts subject to trial are representative of the scope of the indictment. These rule amendments, if utilized, may expedite the conclusion of the judicial proceedings. The international co-investigating judge continues to assess whether the new rules can be applied to narrow the scope of investigations in cases 003 and 004.
14. With the aim of augmenting the investigative capacity of the Office of the Co-Investigating Judges, nine international legal officers have been accredited by the Ministry of Justice to conduct investigative interviews, a task normally falling to the investigators. This enhanced capacity to conduct such interviews will accelerate the pace of the investigations. The international co-investigating judge has in addition taken initiatives to augment his human resources with qualified personnel under non-reimbursable loan arrangements and additional interns to enhance judicial production. The international co-investigating judge continues to reach out to Member States and professional organizations with the aim of recruiting additional investigators as gratis personnel.
15. The Office of Administration has retained the services of a number of freelance linguistic staff to support the judicial offices and Chambers, to ensure timely translation services.

III. JUDICIAL INVESTIGATIONS COMPLETION PLAN

16. Judicial investigations in cases 003 and 004 were initiated following an introductory submission filed by the international co-prosecutor in September 2009; the international co-prosecutor has subsequently made several supplementary submissions. The national and international co-investigating judges have recorded a number of disagreements regarding the investigation of these cases and are pursuing separate approaches. Despite different views on certain legal and factual issues, the professional cooperation between both judges continues to be excellent. The international co-investigating judge is actively investigating the commission of alleged crimes in case 003 and in case 004; both judges work together on case 004/01.
17. Since the beginning of the investigations in cases 003 and 004, a total of 235 field missions have been carried out and 1,270 witness statements taken. During the first six months of 2016 a total of 34 field missions were carried out and 161 witness statements were taken.
18. The Office of the Co-Investigating judges is pro-actively pursuing innovative and pragmatic avenues within the procedural framework of the Extraordinary Chambers Law and Internal Rules in order to explore the potential for further consolidating and focussing the investigation even before the formal procedural trigger point of Rule 66bis⁶, which is only at the end of the investigation and hence too late for ensuring an early streamlining of the investigation.
19. Despite the fact that the co-investigating judges are not bound to disclose their legal views hypothetically in advance of the actual need to decide a question of law, the international co-investigating judge from time to time issues detailed reasoned notifications on his views regarding the applicable law with the aim of settling certain major and contentious legal issues before closing order stage. This includes matters such as the requirement of a nexus with an armed conflict for crimes against humanity, on which the Pre-Trial Chamber and Trial Chamber so far have had conflicting views and on which guidance from the Supreme Court Chamber is still outstanding, and the forced pregnancy/impregnation motions mentioned in paragraph 35 below.
20. The timelines for the on-going investigations are influenced by various factors such as: the nature and complexity of the case, the number of witnesses to be interviewed, the number of field missions required, the availability of qualified staff and the ability to retain experienced staff, the logistical and practical impediments to conducting the investigation. In this context it is crucial to point out that investigations cannot be carried out consistently and regularly at all times across the year as in other environments: There are a large number of Cambodian national holidays during which national support staff are unavailable to assist in the interviews, and witnesses may be unavailable as well. Furthermore, during the rice planting and harvesting seasons, potential witnesses are rarely available to be interviewed. A number of the remote locations without proper roads are virtually inaccessible for missions during parts of the rainy season. Some witnesses live abroad which adds more complexity to the process of the investigation. The Office of the Co-Investigating Judges' time projections are contingent on a number of factors such as, among others, no departure of key staff, sufficient funds for the recruitment of new and qualified staff to fill vacant posts, timely translation of documents, sufficient interpretation and transcription capacity made available to support field missions and witness interviews, timely resolution of any appeals filed with the Pre-Trial Chamber and full support from the judicial police for any investigative action requiring an enforcement element.
21. The numbers of motions filed by the parties as well as the time needed by the Pre-Trial Chamber to issue decisions on interlocutory appeals also have an impact on timelines. The motion activity will intensify in each case as the closure of the investigation approaches, not least because of the effect of

⁶ Rule 66bis, allows the co-investigating judges to exclude certain facts from the investigation as long as the remaining facts are sufficiently representative of the scope of the Introductory or Supplementary Submissions. The rule is yet to be invoked for the first time.

the closing order as healing all procedural defects in the investigation under Internal Rule 76(7). Depending on the size and complexity of the motions, it may take two to three months from the filing of the motion to a first draft decision. Any time needed for an appeal before the Pre-Trial Chamber must be added; the average currently stands at six months. With these variables in mind, predictions on future timelines are based on past experience within the Extraordinary Chambers and cannot be considered as more than an approximation. It is also crucial to understand that quite a number of the above-mentioned factors are entirely beyond the control, and thus the planning schedule, of the co-investigating judges. Adjustments of the timelines should therefore be anticipated.

22. The staffing of the Office of the Co-Investigating Judges has been supplemented with secondments from Member States, notably Canada, and a large number of interns. The current staffing level makes the Office vulnerable in the event of staff turnover, and it also affects its ability to absorb additional workload originating from judicial filings from parties and/or decisions on appeals by the Pre-Trial Chamber. A number of experienced staff members resigned during the first half of 2016, and it will take time to recruit and train replacements and/or to restructure the workload. This turnover has had an adverse impact on the ongoing work.
23. The Internal Rules prescribe a series of procedural steps to be followed by the co-investigating judges in order to fully complete an investigative process. The co-investigating judges investigate the facts set out in an introductory submission or a supplementary submission filed by the co-prosecutors. Parties may request the co-investigating judges to carry out specific investigative actions and these may necessitate a substantial investigative effort, depending on the case. Any refusal to accommodate a request for investigations can be appealed to the Pre-Trial Chamber, and based on past experience it may take the Chamber up to six months or more to decide such motions. Depending on the subject matter of the appeal and its outcome, the decision may have a significant impact on ongoing investigations and add significantly to the time needed to complete them. The same applies to annulment requests to the Pre-Trial Chamber regarding alleged unlawful investigative acts, since the co-investigating judges do not have the power to annul their own investigative acts, even if they find that they are defective.
24. When the co-investigating judges consider that an investigation has been concluded, they notify all the parties who have 15 days to request further investigative actions, unless they waive such period. All references to conclusion of investigations in this Completion Plan refer to the expiry of the 15-day period provided for in Internal Rule 66(1) following the notice of closure. There is no reliable way to exactly predict the time it may take to respond to any investigative requests filed during that period.
25. If the co-investigating judges decide to reject any requests made for further investigative action, they must issue a reasoned order. All parties may, within 30 days from notice of such an order, file appeals to the Pre-Trial Chamber. Depending on the number of appeals and the time required for the Pre-Trial Chamber to decide on such appeals, this part of the process may necessitate further revisions of the projected timelines. It is not possible to project the exact time taken up by any appeals lodged against denials of such requests, but based on past experience; it could take up to six months or more in each case.
26. Only once the 30-days period has expired, been waived, or the abovementioned appeals heard, may the co-investigating judges forward the case file to the co-prosecutors for their final submission within 45 days if a charged person is detained, and within three months in other cases. None of the charged persons are currently in detention. The Defence must then be given an adequate time to respond. Only after all the above-mentioned steps have been concluded can the co-investigating judges issue a closing order, either indicting a charged person and sending him or her for trial, or dismissing the case.
27. The co-prosecutors can file an appeal against the closing order to the Pre-Trial Chamber, whereas civil parties can file an appeal only if the closing order contains dismissal of charges and only in cases when the co-prosecutors have appealed the dismissal as well. The Pre-Trial Chamber has in addition granted the charged person a right to challenge the jurisdictional elements of a closing order through

an appeal. Appeals against the closing order must be filed within 30 days after the notification of the order. The Pre-Trial Chamber may amend or confirm the closing order.

28. The calculation of the timelines has had to be significantly revised due to two factors, firstly amended projections in respect of several procedural steps, and secondly, logistical matters such as drafting time (including translation), in respect of which the necessary time has become clearer only recently for reasons including heightened procedural activity of the parties. It is the second issue that mainly drives the extensions identified in this report.
29. The timely translation issue will have a particular impact during the closing order drafting phase, when not only the text of the orders will have to be translated, but the Khmer versions will have to undergo a separate footnote reference checking exercise, because the format of the Khmer and the other material is not identical, e.g. as far as page numbers are concerned etc.
30. The Office of the Co-Investigating Judges' intention is to streamline the drafting of closing orders as much as possible, wherever that is possible and justifiable by the substance of the decision. The timelines for drafting the closing orders in cases 001 and 002 ranged from around three months in case 001 – which concerned a rather closely circumscribed scenario – to about eight months in case 002 – a category which is approximately mirrored by the current case of Yim Tith in complexity.
31. In addition, it should be remembered that the Office, with a relatively low staff contingent, is engaged on four fronts, one of which – case 004/01 – is less active in that respect but still represents a significant workload until the issuance of the closing order.
32. These combined factors exert a knock-on effect in each case leading to an average period of six months between closure of investigations and issuance of a closing order as explained below.
33. Following the additional charging in December 2015, judicial investigations in case 003 against Meas Muth continue to move forward, however not as fast as hoped due to a number of factors such as new unexplored leads and interviews with crucial witnesses having fallen through. There is also a high motion activity in the case. The notice of closure of investigations may be achieved by the end of the fourth quarter of 2016. The closing order will accordingly not be issued before the end of the second quarter of 2017, and later if there are substantial investigative requests.
34. In case 004, Yim Tith is now fully participating in the proceedings after his defence counsel were granted access to the case file in December 2015. The Defence team is increasingly making progress in its review of the case file and had to adjust its staffing structure already. Heightened motions activity, especially in the form of annulment motions and investigative requests is thus expected and is likely to begin in earnest in the fourth quarter of 2016. An investigative request by the civil party lawyers and a separate one by the international co-prosecutor on forced pregnancy and forced impregnation were denied by decision of 13 June 2016 partly because of questions around the principle of legality (*nullum crimen*), but partly also because both were filed too late and no good cause had been shown by either party why the matter had not been raised years ago when the issue had already been apparent, thus causing prejudice to the Defence, delaying the investigations and impacting on the allocation of the Office of the Co-Investigating Judges' finite resources. Should this decision be appealed and subsequently reversed by the Pre-Trial Chamber, it is more than likely that the timeline in this case must be further revised. Combined with the logistical concerns mentioned above, the date for the notice of closure has been revised to the first quarter of 2017, with a closing order projected for delivery by the end of the third quarter of 2017, with a possibly even later date if there is substantial motions activity after the closure notice.
35. On 5 February 2016, the co-investigating judges ordered Im Chaem's case to be severed from case 004. A new case with the case file no. 004/01 was created and is now proceeding separately from case file 004. The next procedural step towards the closing order is sending the case file 004/01 to the Office of the Co-Prosecutors for final submissions and then for the defence to respond. However, as opposed to the last completion report when a delay of up to three months was indicated because of an

annulment motion, there may now be a further delay of three months or more, because Im Chaem's international co-lawyer passed away unexpectedly on 18 April 2016; a new co-lawyer was sworn in on 29 June 2016. The impact of this sudden change in counsel on the development of the case remains to be seen. The fluid situation in case 004/01 does not allow for a precise prediction of the time for a closing order but it may now be as late as the first quarter of 2017. The timeline for case 004/01 has thus been revised to the first quarter of 2017.

36. It continues to be the preferred avenue of the co-investigating judges in case 004 to sever next the proceedings against Ao An as the investigation nears completion. However, with the new charges announced in March 2016, the Defence is under an additional staffing resource burden. One particular and very sensitive investigative request has also impacted the time projections in this case. It is still awaiting resolution and has the potential to lead to a substantial amount of new evidence being found that may in turn necessitate further investigative action. On 20 June 2016, the Defence indicated to the international co-investigating judge⁷ that they will file at least three additional evidence-related motions (two major and one minor), one of them a major annulment motion, the other a comprehensive investigative request. Based on the experience with similar motions in the past, this will add significant time to the process through the amount of time needed to review the motions in the office of the international co-investigating judge. If only one of the motions reaches the Pre-Trial Chamber, either directly or by way of appeal, this may necessitate further extension of the projected timeline of up to six months, substantially more if both motions were to go to the Pre-Trial Chamber. The timeline has for now been revised with the notice of closure scheduled for the end of 2016 and the closing order to be issued by the end of the second quarter of 2017, and later if there is substantial motions activity after the closure notice. The best overall revised projections that can be given at this point are:

- investigations in case 003 against Meas Muth will conclude at the end of the fourth quarter of 2016;
- the closing order in case 003 will be issued by the end of the second quarter of 2017;
- the closing order in case 004/01 against Im Chaem will be issued within the first quarter of 2017;
- investigations in case 004, will conclude at the end of the fourth quarter of 2016 in respect of Ao An and this will be accompanied by a severance order;
- the closing order in case 004 in respect of Ao An will be issued by the end of the second quarter of 2017;
- investigations in case 004 in respect of Yim Tith will conclude in the first quarter of 2017;
- the closing order in case 004 in respect of Yim Tith will be issued by the end of the third quarter of 2017;

IV. TRIALS COMPLETION PLAN

37. The timeline for the completion of trials is influenced by various factors such as the nature and complexity of the case, the health of the aging accused, the number of witnesses, civil parties and experts called, their availability and the length of their testimonies, the logistical and practical impediments to the conduct of proceedings, the number of motions filed by the parties and other administrative considerations, including accuracy of interpretation and timely translation of documents. With these variables in mind, predictions on future timelines are based on past experience, both within the Extraordinary Chambers and in similar judicial bodies.

38. One or more trial management meetings are usually held before the commencement of a trial. The trial hearings commence with an initial hearing. At this hearing, the Trial Chamber considers the lists of potential witnesses and experts submitted by the parties and preliminary objections raised by the parties, and the civil parties give an initial specification on the reparation awards they are seeking. The

⁷ The Defense has agreed that this information may be made public in this context.

substantive hearing commences with opening statements from the co-prosecutors and the accused, before the Trial Chamber starts the questioning of the accused, civil parties and witnesses and hears evidence presentation. The onus is on the co-prosecutors to prove the guilt of the accused. In order to convict the accused, the Chamber must be convinced of the guilt of the accused beyond reasonable doubt. After examining all the evidence, the Chamber hears closing statements from the parties before it retires to deliberate on a judgment. If the accused is convicted, the Trial Chamber also decides on the appropriate sentence in this judgment. It is on the basis of the above procedural steps that the different milestones for each of the trials have been identified.

A. Case 002/02

39. Evidentiary proceedings commenced on 8 January 2015, with the Trial Chamber initially sitting for three days per week. Medical assessments of the Accused in January 2015 indicated that a four-day per week schedule was appropriate with a slightly shorter morning session. The Chamber therefore returned to a 4 days per week schedule in February 2015, accelerating the pace of trial. As of 30 June 2016, the Chamber had heard a total of 86 witnesses, 41 civil parties and 3 experts on the Tram Kok Cooperatives (including Kraing Ta Chan Security Centre and the treatment of Buddhists), 1st January Dam Worksite, the Kampong Chhnang Airport Construction site, Trapeang Thma Dam worksite, the treatment of the Cham and the Vietnamese, the Au Kanseng, Phnom Kraol and S-21 security centres, as well as internal purges. The Chamber is expected to commence hearing of evidence related to the regulation of marriage during the third quarter of 2016. This will then be followed by hearings related to the two remaining trial segments: the nature of the armed conflict; and the roles of the accused.
40. It will be possible to fully project the number of hearing days required to complete the trial in case 002/02 only when the overall number of witnesses, civil parties and experts to be called to testify is fixed by the Trial Chamber. The parties initially proposed a total of 265 testimonies. An additional 81 testimonies of new witnesses, civil parties and an expert have been proposed since the beginning of the trial. The current projection as to the case 002/02 timeline is therefore based on the assumption that the second trial will be as complex and time consuming as the trial in case 002/01, but may vary considerably once this factor is fully determined.
41. During the second quarter of 2016, hearings were adjourned for two weeks to permit the parties to review documents underlying a newly disclosed S-21 prisoner list compiled by the Office of the Co-Investigating Judges. The prisoner list was subsequently admitted in case 002/02, together with approximately 870 additional documents underlying this list. While the Trial Chamber remains on track to meet current milestone projections in case 002/02, it notes that it will be necessary to review the situation again by the end of October 2016 on the basis of the trial's status as it then may stand. It is clear that before that time, a number of factors are likely to impact further on the schedule. For example, the parties will likely continue to request the admission of additional evidence or the calling of additional witnesses, notably on the basis that such evidence is exculpatory to the accused. Requests to hear additional witnesses and civil parties currently pending before the Chamber will necessarily extend hearings, if granted in whole or in part. The Supreme Court Chamber's appeals judgement in case 002/01 could have a significant impact on the law and facts applicable to case 002/02, which could give rise to further requests for adjournment by the parties in order to consider these implications.
42. Further disclosure from cases 003 and 004 may also be anticipated and could necessitate further adjournments. In this regard, the Co-Prosecutor has indicated that a majority of the relevant statements from cases 003 and 004 currently in his possession have already been disclosed in case 002/02 and therefore future delays resulting from additional disclosures are not likely to be as significant as those in 2015. The Trial Chamber has also taken steps to further limit this disclosure process by declaring that the co-prosecutors have a continuing obligation to disclose to the Defence exculpatory evidence comprised of any material that in the actual knowledge of the co-prosecutors may suggest the innocence or mitigate the guilt of the Accused or affect the credibility of the inculpatory evidence and ordering, *inter alia*, the co-prosecutors to seek the admission, by 30 January 2016, of any case 003 and

004 materials disclosed at that date in case 002/02 and upon which they intended to rely. On 28 June 2016, the Trial Chamber further directed the parties that any more requests for the admission of new evidence in case 002/02 shall be filed on or before 1 September 2016.

43. Other factors potentially relevant to the projected length of trial that may arise in the future include a change in the health conditions of the accused creating the need to reduce the number of hearing days per week, and/or the length of each hearing day, as well as the availability of witnesses and civil parties. The Trial Chamber is monitoring the health conditions of the accused on an ongoing basis. The Trial Chamber has recently appointed medical experts to perform another physical and psychiatric evaluation of the accused and assess their fitness to continue to participate in the trial proceeding. This fitness examination is currently scheduled to take place at the end of July 2016.
44. The Trial Chamber has further expressed to the Office of Administration concerns with respect to interpretation and translation and the potential for delay that could result if these concerns are not addressed. The Office of Administration has taken steps to address this issue and continues to oversee the issue on an on-going basis.

B. Remaining charges/factual allegations in case 002

45. In a decision on 29 July 2014, the Supreme Court Chamber declared the stay of the proceedings in relation to the charges remaining outside the scope of cases 002/01 and 002/02 pending appropriate disposal by the Trial Chamber. The Supreme Court Chamber reiterated that the Trial Chamber has a duty to adjudicate or dispose of the remaining charges in case 002 in accordance with the legal framework, and urged it to do so. To date, the Chamber has not been seized with any request in this regard. The matter remains under consideration.

C. Case 003 and case 004

46. Until decisions are made on whether case 003 and/or case 004 are sent for trial, it is not possible to make a projection on the required time to complete these trial(s). An assessment of the time required would depend on the number of defendants, as well as the number and legal and factual complexity of the charges and crime sites included in the indictment.

V. APPEALS COMPLETION PLAN

47. In order to provide estimates of the length of appeal proceedings, the following three principal phases of an appeal have to be distinguished. The first phase is the time needed for the filing of all required submissions by the parties. In accordance with the Internal Rules, a party must file a notice of appeal within 30 days after the pronouncement of the Trial Chamber judgment. Where a party appeals, other parties have an additional 15 days to file their own notice(s) of appeal. The Internal Rules prescribe that each party must file its appeal brief within 60 days of their respective notice of appeal. Parties have 10 days to file their own response(s) to other parties' appeal brief(s), however the Chamber has in the past granted modest additional time for submission of such responses. During this time, the Supreme Court Chamber will research the relevant legal and factual issues in preparation for the hearing of the appeal(s), which marks the second phase. Subject to certain conditions, parties also have the right to request the hearing of additional evidence on appeal, which may require the Supreme Court Chamber to schedule evidentiary hearings. The appeal hearing, where the parties make their substantive submissions orally before the Chamber, can be ordered once all filings by the parties have been submitted and reviewed by the Supreme Court Chamber and any requests for additional evidence have been determined. The third phase follows the hearing and consists of the deliberations, preparation and issuance of an appeals judgment.

A. Case 002/01

48. The defence teams of Nuon Chea and Khieu Samphan filed their notices of appeals on 29 September 2014 and their appeal briefs on 29 December 2014, advancing 223 and 148 grounds of appeal

respectively, covering almost the entirety of the findings of the case 002/01 trial judgment), as well as several Trial Chamber decisions which were not open to interlocutory appeal until the delivery of the judgment on the merits. In addition, the co-prosecutors on 29 September 2014 filed a notice of appeal, limited to seeking declaratory relief from the Supreme Court Chamber regarding the applicability of the most extended form of joint criminal enterprise known as “JCE III” before the Extraordinary Chambers. The co-prosecutors filed the corresponding appeal brief on 28 November 2014.

49. The Khmer translations of responses from the co-prosecutors and civil party lead co-lawyers to the defense appeal briefs were finalized in August and July 2015, respectively. The hearings on the substance of the appeal could not be scheduled until all briefs and responses were available in both Khmer and English or French. As such, another factor significantly affecting the course of appeal proceedings has proved to lie in the availability of the translation of appellate submissions, in particular from English to Khmer.
50. In addition to the substantive filings on appeal, the fact that the defence for Nuon Chea has extensively exercised procedural rights available to him and filed six separate motions for additional evidence on appeal since the delivery of the case 002/01 trial judgment has also impacted the timelines for the appeal. These motions, the last of which was filed on 11 September 2015, largely resulted from ongoing evidentiary disclosures that have been made in cases 003 and 004 and from the ongoing hearing of evidence in case 002/02 before the Trial Chamber. As a result of the requests for additional evidence the Supreme Court Chamber decided *inter alia* to launch a limited additional investigation, as well to call three witnesses on appeal. The hearings in relation to these three witnesses were held from 2 to 6 July 2015. The additional investigation was concluded on 21 October 2015, when the Supreme Court Chamber issued a decision disposing of all pending requests for additional evidence.
51. An unexpected predicament occurred at the appellate hearing, which the Supreme Court Chamber had scheduled for 17 to 19 November 2015, but found itself no choice but to adjourn on the first day. The reason was a lack of proper legal representation for the Accused Nuon Chea, as the lawyers appointed for Nuon Chea, claiming compliance with the instruction of the Accused to boycott the hearing, failed to fully attend the session. The Supreme Court Chamber resolved to appoint a standby counsel for Nuon Chea, so as to ensure that proceedings may continue unobstructed irrespective of any future conduct of the current lawyers of Nuon Chea. Following the appointment of a standby counsel on 16 December 2015, and taking into account the need to afford him an adequate time to prepare, the Supreme Court Chamber held the appeal hearing on 16-18 February 2016, whereupon it commenced its deliberations and drafting of the judgment.
52. Particular note must be taken of the Supreme Court Chamber’s unique circumstance of having to address with several decisions, mainly procedural, taken during trial proceedings that can only be appealed after the issuance of the trial judgment. This is unlike the situation at the International Criminal Court (ICC) or at the *ad hoc* tribunals, where the possibility exists to seek interlocutory appeal of such decisions, that is, while the trial is underway, so as to deal with contentious issues as they manifest. According to the ECCC Internal Rule 104(4), however, appellate jurisdiction during trial proceedings is very limited. Consequently, following an analysis of the appeal briefs in Case 002, it has become evident that the Supreme Court Chamber now has to devote an estimated 50% of its time to scrutinize issues that, at the ICC or *ad hoc* tribunals, could have been resolved earlier.

53. Taking into account these factors and the experiences of other internationalized and international courts and tribunals with cases of comparable size and complexity, the Supreme Court Chamber anticipates judgment delivery to take place in the third quarter of 2016. The next months will involve finalization of deliberations and drafting. The date of the pronouncement of the judgment will be announced several weeks in advance.

B. Case 002/02

54. For case 002/02, based on the Trial Chamber's current projection that the second trial will likely be equally complex and time consuming as the first trial, the Supreme Court Chamber similarly projects at this time that the appeal(s) against the eventual judgment of the Trial Chamber in case 002/02 will be as complex and time-consuming as the appeal in case 002/01 and factors such as requests for extensions of time to file submissions or motions proposing additional evidence, may have a prolonging effect on the duration of the appeal proceedings. Any such dimensions will need to be factored into planning after appeals have been filed.

55. Furthermore, until the first-instance judgment in case 002/02 is rendered, there is a possibility of immediate appeals against decisions of the Trial Chamber in that case, which must be decided within the statutory 3-months deadline (this deadline may be extended to 4 months in exceptional circumstances).

C. Case 003 and case 004

56. Should case 003 and/or 004 proceed to trial, immediate appeals as well as appeals against eventual judgments of the Trial Chamber are likely to arise. Nevertheless, given that it is currently not known which cases, if any, will proceed to trial and on which charges, it is currently not possible to provide any estimate for time required to dispose of any appeal arising therefrom. It must be noted, however, that immediate appeals could arise from cases 003 and 004 as soon as any of them reaches the trial level.

VI. CONCLUSION

57. For 2016, it is expected that that two milestones will be reached in cases 002/01 and 002/02: (i) the delivery of an appeal judgment in case 002/01; and (ii) the conclusion of evidentiary hearings in case 002/02. For cases 003 and 004, it is expected that two milestones will be reached: (i) notification of conclusion of the judicial investigation in case 003; and (ii) notification of conclusion of the judicial investigation in case 004 with respect to Ao An.

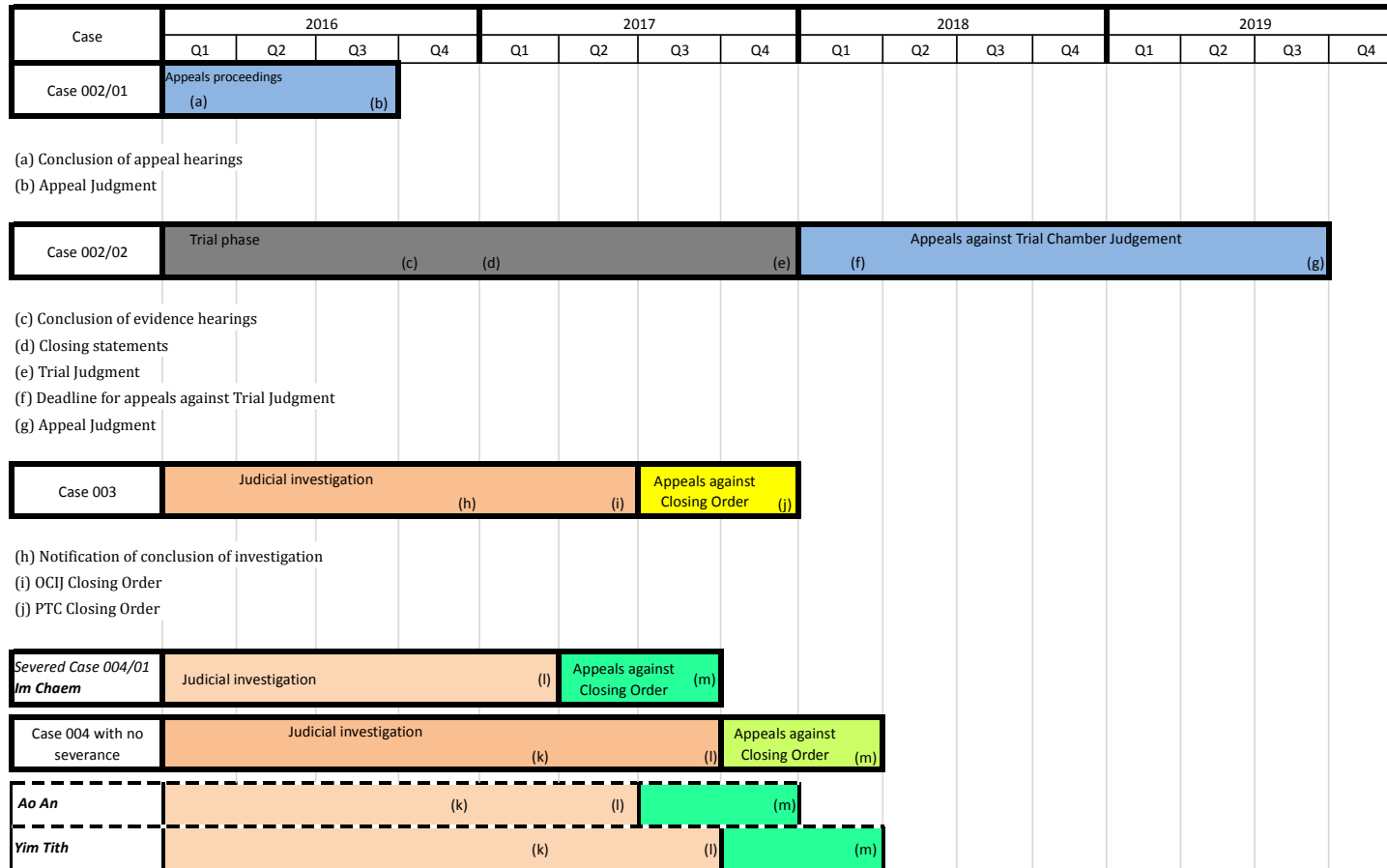
58. For 2017, it is expected that two milestones will be reached in case 002/02, namely; (i) conclusion of closing statements; and (ii) the delivery of a trial judgment. In cases 003 and 004, it is expected that four further milestones will be reached: (i) issuance of a closing order in case 003 with a decision of the co-investigating judges either to send the case for trial or to terminate the proceedings; (ii) disposal of any appeals against the closing order in case 003; (iii) issuance of the closing order in case 004/01 against Im Chaem and issuance of closing orders in case 004 against Ao An and Yim Tith respectively, with a decision of the co-investigating judges either to send the cases for trial or to terminate the proceedings; and (iv) disposal of any appeals against the closing order in case 004/01 against Im Chaem and case 004 in respect of Ao An, with a decision of the Pre-Trial Chamber either to send these cases for trial or to terminate the proceedings. In the event that any of these cases are sent for trial, in whole or in part, projections of trial timelines in these cases can then be assessed.

59. During 2018, it is expected that one milestone will be reached in case 002/02; the deadline for any

appeals against the trial judgment. The Supreme Court Chamber will, in case of any appeal against the trial judgment in case 002/02, be fully occupied with appeal hearings and deliberations. In respect of case 004, one further milestone is expected: (i) disposal of any appeals against the closing order in case 004 in respect of Yim Tith, with a decision of the Pre-Trial Chamber either to send the case for trial or to terminate the proceedings. In the event that the case is sent for trial, in whole or in part, projections of trial timelines in this case can then be assessed.

60. For 2019, it is expected that one milestone will be reached, namely delivery of an appeal judgment in case 002/02.
61. These various projected milestones are reflected in a chart attached to this plan.

Chart of projected timelines, including milestones



(k) Notification of conclusion of investigation. The timing will depend on whether or not the case will be severed.

(l) OCIJ Closing Order. The timing will depend on whether or not the case will be severed.

(m) PTC Closing Order