

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)

COMPLETION PLAN

REVISION 4

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Summary

The Completion Plan for the Extraordinary Chambers in the Courts of Cambodia (“Extraordinary Chambers”) was 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 fourth quarterly update of the Completion Plan covering the quarter ending 31 March 2015.

Over the last quarter, the Extraordinary Chambers reached one more milestone, namely, the commencement of the evidentiary hearings in case 002/02 on 8 January 2015. Substantive progress was made in case 003 with the charging of Meas Muth *in absentia* and in case 004 with the charging Im Chaem *in absentia* and the charging of Ao An in person.

The narrative part of the Completion Plan is updated to reflect the status of the judicial proceedings as of 31 March 2015. The timelines for cases 003 and 004 have been revised based on the development in the judicial proceedings. A number of external and internal factors, as detailed in this plan, have necessitated an extension of the timelines for these cases.

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 In a report submitted to the General Assembly of the United Nations in March 2003, the Secretary-General initially indicated that the lifespan of the Extraordinary Chambers would be three years to complete all trials and appeals “once the Prosecutors’ Office had commenced operations”.² The timelines have since been revised, and the Secretary-General formally advised the General Assembly in October 2013 that the Extraordinary Chambers’ indicative court schedule “projects judicial activity until 2018, and possibly beyond”.³
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.⁴ 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 fourth quarterly revision of the Completion Plan, and it incorporates necessary adjustments based on the developments in the ongoing judicial proceedings between 1 January and 31 March 2015.
3. The document focuses in particular on the recent developments in the three cases currently before the Extraordinary Chambers, and provides information on the status of the cases as well as what steps will have to be completed before the judicial proceedings in respect of the cases currently before the Extraordinary Chambers can come to a definitive legal conclusion.
4. The Extraordinary Chambers fully concluded the judicial proceedings in case 001 against Kaing Guek Eav alias Duch when the Supreme Court Chamber issued its appeal judgment on 3 February 2012. Kaing Guek Eav was sentenced to life imprisonment, and was subsequently transferred to Kandal Provincial Prison on 6 June 2013 to serve the remainder of his sentence.
5. The Trial Chamber is presently seized with case 002: the joint trial of Khieu Samphan and Nuon Chea. A third accused, Ieng Sary, passed away on 14 March 2013, and proceedings against him were terminated the same day. A fourth accused, Ieng Thirith, has been found unfit to stand trial due to a condition of progressive dementia, and the proceedings against her have been suspended by way of a formal stay of proceedings. She remains under a regime of judicial supervision. She is not authorized to leave Cambodia without the approval of the Trial Chamber, she cannot change address without giving advance notice and her legal guardian must submit a monthly report documenting compliance with the terms of the judicial supervision. Ieng Thirith is also required to undergo biannual medical examination to assess if there has been any change in her cognitive abilities, possibly impacting her fitness to stand trial.

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 Report of the Secretary-General on Khmer Rouge trials, A/57/769, para. 56.

³ Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia, A/68/532, para. 38.

⁴ 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.

6. The charges in case 002 have been, to date, severed into two trials. The Trial Chamber rendered judgement in the first trial, styled by the Extraordinary Chambers as case 002/01, on 7 August 2014. Khieu Samphan and Nuon Chea were both found guilty of crimes against humanity committed between 17 April 1975 and December 1977 and sentenced to life imprisonment. Both Nuon Chea and Khieu Samphan have filed appeals against the trial judgement in case 002/01. In addition, the Co-Prosecutors have 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.
7. 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. The Trial Chamber has directed that the trial topics commence with the charges related to the Tram Kok Cooperatives, including treatment of Buddhists, and the related Kraing Ta Chan Security Centre, following which the trial will address charges related to three specific worksites. Thereafter, the trial will consider treatment of targeted groups (Cham and Vietnamese), further security centres and internal purges, the regulation of marriage, the nature of the armed conflict and the role of the accused. The substantive hearings in this trial commenced on 17 October 2014 with opening statements, followed by a three-month boycott of proceedings by the Defence teams. The Chamber has since taken steps to discourage a repeat of that situation, including by appointing Standby Counsel to take over representation in the event that present counsel refuses to participate in future, by verifying that Defence teams have adequate resources and by referring the conduct of a Defence team for possible disciplinary proceedings.
8. Evidentiary hearings in case 002/02 commenced on 8 January 2015. By 31 March 2015, the Trial Chamber had heard 19 witnesses and civil parties, and one expert on the first trial topic. In addition to several further witnesses on this topic, the Chamber has scheduled hearings on Civil Party suffering related to the Tram Kok Cooperatives and Kraing Ta Chan Security Centre and a key document presentation hearing. It has selected the witnesses and Civil Parties for the 1st January Dam worksite, the hearing of which is projected to begin in May 2015. The Chamber is also reviewing the list of individuals to be heard in connection with the next trial topics and is assessing the admissibility of the documents proposed by the parties as relevant to the proceedings.
9. Cases 003 and 004 are currently in the phase of judicial investigation. The international Co-Investigating Judge is actively investigating these cases, involving allegations against three charged persons and two suspects. Significant progress was achieved in both cases during the first quarter of 2015. On 3 March 2015, the international co-investigating judge issued *in absentia* charges against Meas Muth in case 003 and Im Chaem in case 004. On 27 March 2015, a second suspect in case 004, Ao An was also charged by the international Co-Investigating Judge and appeared in person for the initial appearance. The identities of two remaining suspects are confidential.
10. In view of the current state of the proceedings, it is expected that a notice of conclusion of the investigations in case 003 could be issued by the fourth quarter of 2015 and a decision, in the form of a closing order, on whether any suspect(s) will be indicted and sent for trial could be issued by third quarter of 2016.
11. Given the disparity in the status of the investigation against the three case 004 defendants, the international Co-Investigating Judge is considering two options: a) case 004 could be severed, in which case two notices of conclusion of investigation could be issued by the fourth quarter of 2015, and a third by the first quarter of 2016; b) alternatively, case 004 could remain intact, in which case the investigation could conclude by the first quarter of 2016. If case 004 is severed into separate proceedings, it is estimated that the closing orders could be issued by the first quarter, third quarter, and fourth quarter of 2016, respectively. If case 004 is not severed, it is estimated that a decision, in the form of a closing order, on whether any defendant(s) will be indicted and sent for trial, could be issued by fourth quarter of 2016.

12. The Co-Prosecutors have stated publicly that there will be no further cases after cases 003 and 004.⁵ The existing caseload thus represents the totality of the caseload to be addressed by the Extraordinary Chambers.
13. In view of progress over the last quarter, this Completion Plan of the Extraordinary Chambers identifies 14 remaining milestones for the three cases with which the Chambers are seized. The remaining milestones in case 002⁶ and associated indicative forecasts are:
- (i) deadline for the filing of responses to case 002/01 appeals (by second quarter of 2015)
 - (ii) holding of appeal hearings in case 002/01 (by third quarter of 2015)
 - (iii) delivery of an appeal judgment in case 002/01 (by first quarter of 2016);
 - (iv) conclusion of substantive hearings in case 002/02 (by third quarter of 2016);
 - (v) closing statements in case 002/02 (by fourth quarter of 2016);
 - (vi) delivery of a trial judgment in case 002/02 (by third quarter of 2017);
 - (vii) deadline for filing any appeals against the trial judgment in case 002/02 (by fourth quarter of 2017); and
 - (viii) delivery of an appeal judgment in case 002/02, if any (by second quarter of 2019).
14. In cases 003 and 004, 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.⁷ The milestones for the remainder of the judicial investigation phase are:
- (ix) notification of conclusion of judicial investigations in case 003 (by fourth quarter of 2015);
 - (x) notification of conclusion of judicial investigations in case 004 (by fourth quarter of 2015 and/or first quarter of 2016, depending on any severance);
 - (xi) issuance of closing order in case 003, with a decision either to send the case for trial or to end the proceedings (by third quarter of 2016);
 - (xii) issuance of closing order(s) in case 004, with a decision either to send the case(s) for trial or to end the proceedings (dependent on whether or not the case will be severed, by first, third or fourth quarter of 2016);
 - (xiii) 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 first quarter of 2017 for case 003) ; and
 - (xiv) disposal by the Pre-Trial Chamber of any appeals against the closing order(s) in case 004, either sending the case for trial or ending the judicial proceedings in the case (by second quarter of 2017).

⁵ 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 (www.eccc.gov.kh/sites/default/files/media/ECCC%20OCP%205%20June%202012%20En.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 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.

⁷ As noted in paragraph 36 below, given the current state of proceedings it is premature at this point to forecast specific time points in respect of eventual trial milestones. In the event that cases 003 and 004 proceeded to trial, the substantive milestones would be those set out in paragraph 12, (v) through (x), above, in respect of case 002/02.

II. MEASURES THAT MAY ASSIST EXPEDITIOUS COMPLETION

15. 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 a subvention up to US\$15.5 million for the international component of the Extraordinary Chambers was an important measure that stabilized the funding situation for 2014 and enabled concentrated focus on progressing the court's judicial mandate.⁸ Near the conclusion of the current reporting period, on 27 March 2015 the General Assembly in its resolution 69/274 authorized the Secretary-General to enter into commitments up to US \$12.1 million to supplement the voluntary financial resources of the international component of the Extraordinary Chambers for 2015, which would provide comparable stability over the coming year with the continuous voluntary contributions and supports from donor countries.. Recognising a phase of peak workload in the Extraordinary Chambers' work and attendant resource implications, the Group of Interested States also approved a revised budget for 2015, encompassing new resources in a variety of key areas. A very positive aspect has also been increased contributions from the Royal Government of Cambodia, covering the national salaries for the first six months of 2015. It remains important that additional funds are raised to stabilize the Extraordinary Chambers for the full year of 2015.
16. 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.
17. The projections for completion of the trial of case 002/02, the appeal of case 002/01 trial judgement and the completion of investigations in cases 003 and 004, presume that all activities are being carried out simultaneously. The defence teams for Nuon Chea and Khieu Samphan, as well as the Civil Party Lead Co-Lawyers will be engaged in both the appeal of case 002/01 and the trial of case 002/02, in parallel. The Co-Prosecutors will be simultaneously engaged in both of these cases, and the investigations and preparation of closing submissions in cases 003 and 004. The Office of the Co-Prosecutors has requested additional resources in the revised 2015 budget to ensure the Office's ability to discharge its duties in the concurrent proceedings in cases 002/01, 002/02, 003 and 004.
18. On 16 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 is currently assessing whether the new rules can be applied to narrow the scope of investigations in cases 003 and 004.
19. 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 investigative capacity was further increased when three new international investigators on secondment joined the Office of the Co-Investigating Judges during the first quarter of 2015. 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.

⁸ General Assembly resolution 68/247B.

III. JUDICIAL INVESTIGATIONS COMPLETION PLAN

20. The timeline for the end of investigation is 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 conduct the investigation, the number of motions filed by the parties, the length of time required by the Pre-Trial Chamber to issue decisions on interlocutory appeals from the parties and related considerations. With these variables in mind, predictions on future timelines are based on past experience, both within the Extraordinary Chambers and in similar judicial bodies.
21. The Internal Rules prescribe a series of procedural steps that are followed by the Co-Investigating Judges in order to fully complete an investigative process. The Co-Investigating Judges shall investigate the facts set out in an introductory submission or a supplementary submission filed by the Co-Prosecutors. In the conduct of such judicial investigations, the Co-Investigating Judges may take any investigative action conducive to ascertaining the truth. In all cases, they shall conduct their investigation impartially. Parties may request the Co-Investigating Judges to carry out specific investigative actions. A refusal to accommodate such a request can be appealed to the Pre-Trial Chamber. The persons recently charged, as parties to the proceedings, have now been given access to the case files through their lawyers. This will allow them to participate in the investigation by making investigative requests, as well as to challenge orders and decisions made by the Co-Investigating Judges. The defence teams of the three persons charged during the first quarter of 2015 will be given a reasonable amount of time to review the case files, consistent with due process requirements, and to make requests for investigative action.
22. When the Co-Investigating Judges consider that an investigation has been concluded, they shall notify all the parties. The parties have 15 days to request further investigative actions, unless they waive such period. If the Co-Investigating Judges decide to reject such requests, they shall issue a reasoned order. All the parties may, within 30 days from notice of such order, file appeals to the Pre-Trial Chamber. Once this period has expired, been waived, or the abovementioned appeals heard, the Co-Investigating Judges shall immediately forward the case file to the Co-Prosecutors for their final submission. The Co-Prosecutors shall issue a written, reasoned final submission and return the case file to the Co-Investigating Judges, within 45 days if a charged person is detained, and within 3 months in other cases. Only after all the above mentioned steps have been concluded, the Co-Investigating Judges will issue a Closing Order, either indicting a charged person, sending him or her for trial, or dismissing the case. 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 where also the Co-Prosecutors have appealed against such dismissal. 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.
23. Judicial investigations in cases 003 and 004 were initiated following an introductory submission filed by the international Co-Prosecutor in September 2009. The Co-Investigating Judges have, in accordance with the Internal Rules of the Extraordinary Chambers, recorded disagreements between the national and international Co-Investigating Judges regarding the investigation of these cases. The two Co-Investigating Judges are therefore pursuing separate approaches in these cases. The international Co-Investigating Judge is actively investigating the commission of alleged crimes at more than 10 different crime scenarios in case 003, and alleged crimes at 55 different crime scenarios in case 004. Since the current Judge assumed his duties in October 2012, an excess of 105 field missions have been conducted and 563 witness interviews have been completed.
24. A number of factors have necessitated a revision of the time lines for cases 003 and 004. At the outset it is important to recall that the number of crime sites and scenarios under investigation in cases 003 and 004 is more than double of what was investigated in case 002, while less than half the

number of investigators and legal officers have been available to work on cases 003 and 004. Furthermore, the scope of the investigations has been expanded by two supplementary submissions filed by the Office of the Co-Prosecutors in 2014.

25. The unexpected departure of key staff members within the Office of the Co-Investigating Judges has negatively affected the progress of the cases. One example is illustrative: the departure of an entire investigative sub-team consisting of one analyst, one investigator and one legal officer, delayed the investigation related to one suspect and associated crime sites by at least 5 months. In addition to the lengthy period of time needed to identify and recruit replacements, it takes a minimum of 2-3 months for new staff members to familiarize themselves sufficiently with the cases before they become fully functional.
26. Also affecting the pace of investigations has been the lack of timely translation of documents, as well as postponement of witness interviews due to diminishing interpretation and other support resources following the commencement of trial proceedings in case 002/02 (see statistics below in paragraph 28). At one point in 2014, a total of 8,705 pages of witness interview statements remained untranslated, thus delaying the ability to analyse and process the evidence. This backlog was addressed through the hiring of a consultant and increased prioritization of these translation requests by the Interpretation and Translation Unit. Additional resources have also been allocated to the Interpretation and Translation Unit in the revised budget for 2015 to meet the demand for timely translation and interpretation services.⁹
27. External factors have also contributed to delays in the judicial investigations. Suspects' failure to respond to summonses and the fact that arrest warrants were not executed caused a delay of up to 6.5 months in granting one Suspect access to the case file. Such access is contingent on a person being charged with crimes falling within the jurisdiction of the ECCC. Case file access was only given to two Suspects in March 2015 after they were charged *in absentia*. Once suspects have been charged, the rules relating to Charged Persons apply. These rules establish time periods for various stages of the judicial investigative process and grant appeal rights to the parties. Accordingly, the rules applicable as a result of a change of status from that of Suspects to Charged Persons have altered the previous time line projections.
28. Many witnesses are of advanced age, and a number of witness interviews have had to be cancelled because witnesses were deceased or were in poor health. When the number of witness interviews cancelled due to death or illness is combined with those cancelled as a result of a lack of resources required to support interviews, the cancellation rate is 38 per cent.¹⁰
29. Another factor that prevents progress in the investigations has been the continued lack of cooperation of certain States to provide access to archives and archival materials despite the fact that these requests have been pending since 2013. Requests for those materials are still being made.
30. The best time projections that can be given at this point in time is that:
 - (i) investigations into case 003 will conclude by the fourth quarter of 2015;
 - (ii) investigations into case 004, depending on whether or not the case will be severed, will conclude by fourth quarter of 2015 and/or the first quarter of 2016 ;

⁹ Currently 11 pages of witness interview statements are pending translation, and a total of 522 pages have been translated but are awaiting revision. The Interpretation and Translation Unit now has the capacity to dispose of incoming requests for translation of witness interview statements in a timely manner. Translation of other documents is organized based on weekly prioritization from the Office of the Co-Investigating Judges.

¹⁰ Out of 55 witness interviews planned within the premises of the Extraordinary Chambers in the period 1 January to 31 March 2015, 5 interviews (9 per cent) were cancelled or postponed because the witness was ill, 6 interviews (11 per cent) were cancelled because the witness was deceased, 5 interviews were cancelled or postponed because of lack of interpreters or other logistical support (9 per cent) and 5 interviews (9 per cent) were cancelled for miscellaneous reasons.

- (iii) the closing order in case 003 will be issued by the third quarter of 2016;
- (iv) the closing order(s) in case 004, depending on whether or not the case will be severed, will be issued by the first, third or fourth quarter of 2016; and
- (v) any appeals against the closing orders will be decided by the Pre-Trial Chamber by the first quarter of 2017 for case 003 and second quarter of 2017 for case 004.

31. These time projections are contingent on a number of factors such as: no departure of key staff, timely recruitment of new 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 in serving summonses and executing any arrest warrants.

IV. TRIALS COMPLETION PLAN

32. 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 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. With these variables in mind, predictions on future timelines are based on past experience, both within the Extraordinary Chambers and in similar judicial bodies.

33. 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 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 hear 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

34. On 4 April 2014, the Trial Chamber issued a severance decision, defining the scope of case 002/02, the second trial against Khieu Samphan and Nuon Chea. The Trial Chamber decided that the following alleged crime sites and factual allegations will form the basis for case 002/02: genocide against the Cham and the Vietnamese (excluding crimes against humanity committed by the Revolutionary Army of Kampuchea on Vietnamese territory); forced marriages and rape (nationwide); internal purges; S-21 Security Centre; Kraing Ta Chan Security Centre, Au Kanseng Security Centre and Phnom Kraol Security Centre; 1st January Dam Worksite; Kampong Chhnang Airport Construction site, Trapeang Thma Dam Worksite; Tram Kok Cooperatives; treatment of Buddhists (limited to Tram Kok Cooperatives); and targeting of former Khmer Republic Officials (implementation limited to Tram Kok Cooperatives, 1st January Dam Worksite, S-21 Security Centre and Kraing Ta Chan Security Centre).¹¹ On 29 July 2014, the Supreme Court Chamber upheld the Trial Chamber's new

¹¹ Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014.

severance decision.

35. The Trial Chamber held a further Initial Hearing in case 002/02 on 30 July 2014. At the hearing, the Trial Chamber heard the parties' submissions on the sequencing of the trial proceedings further to its severance decision on the scope of case 002/02 and the parties' proposals for witnesses, Civil Parties and experts to be heard at trial. The Chamber also provided an opportunity for the Civil Parties to present a further specification of Civil Party reparation awards.
36. On 17 October 2014, the Trial Chamber heard an opening statement by the national and international Co-Prosecutors. Khieu Samphan and Nuon Chea then took the floor to indicate their unwillingness to participate in the case 002/02 proceedings until the resolution of specific issues, and their instructions to counsel to follow suit. Nuon Chea resumed his participation in case 002/02 on 17 November, whereas the defence of Khieu Samphan continued to boycott the proceedings, forcing the Trial Chamber to postpone the evidentiary proceedings until January 2015.
37. Evidentiary proceedings commenced on 8 January 2015, with the Trial Chamber initially sitting for 3 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, accelerating the pace of trial. The Chamber has heard 20 witnesses, Civil Parties and experts on the first trial topic, with several more scheduled to testify. It has also informed the parties of 8 witnesses and civil parties to be heard on the 1st January Dam worksite.
38. 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. A total of 272 testimonies have been proposed by the parties. The current projection as to the case 002/02 timeline is therefore based on the assumption that the second trial will be equally complex and time consuming as the trial in case 002/01, but may vary considerably once this factor is fully determined. Upon resumption of evidentiary hearings in January, there has been no further indication of a renewed boycott. However, it may be necessary for the Chamber to adjust its projected milestones to reflect the loss of three months as a result of the boycott that has already taken place.
39. In terms of factors potentially relevant to the projected length of trial which may arise in the future, 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, would have a direct impact. Appeal proceedings against the judgement in case 002/01, such as hearings or additional briefing, would also have a further impact on the parties' availabilities to attend any concurrently-scheduled substantive hearings in case 002/02. Any such adjustment would also need to take into account issues related to ongoing disclosure from Cases 003 and 004. In the past quarter, the disclosure of several hundred relevant statements from the Case 003 and 004 investigations to the parties in case 002 to date has required the Chamber to adjourn two weeks of hearings. This disclosure is further expected to lead to requests from parties to hear further witnesses. Additional disclosures of statements are forthcoming and depending on their size could necessitate further adjournments.
40. As the trial is at an early stage, the Trial Chamber is not well placed to determine the length of any necessary extension to proceedings as a result of the boycott, disclosure of documents and other issues. It should be in a better position to do by the end of this year.

B. Remaining charges/factual allegations in case 002

41. 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.¹² 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 is under consideration.

C. Case 003 and case 004

42. 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**

43. In order to provide estimates of the length of appeal proceedings, the following three 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. The appeal hearing can be ordered once all filings by the parties have been submitted and reviewed by the Supreme Court Chamber. The third phase follows the hearing and consists of the deliberations, preparation and issuance of an appeals judgment.

A. Case 002/01

44. Upon a request from these defence teams, the Supreme Court Chamber extended the deadline for filing notices of appeal against the case 002/01 trial judgment by an additional 21 days up to 29 September 2014.¹⁷ The defence teams of Nuon Chea and Khieu Samphan filed their notices of appeals in time, and advanced 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.¹³ In addition, the Co-Prosecutors 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.¹⁴

¹² Decision on Khieu Samphan's Immediate Appeal Against the Trial Chamber's Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1/13, 29 July 2014.

¹⁷ Decision on Defence Motion for Extension of Time and Page Limits on Notices of Appeal and Appeal Briefs, F3/3, 29 August 2014.

¹³ Notice of Appeal against the Judgment in Case 002/01, E313/1/1, 29 September 2014; *Déclaration d'appel de la Défense de M. KHIEU Samphân contre le jugement rendu dans le procès 002/01*, E313/2/1, 29 September 2014.

¹⁴ Co-Prosecutors' Notice of Appeal of a Decision in Case 002/01, E313/3/1, 29 September 2014.

45. Pursuant to requests from the defence teams and the Co-Prosecutors, on 31 October 2014, the Supreme Court Chamber allowed the defence teams to file their respective appeal briefs no later than 29 December 2014, *i.e.* 90 days after their notices of appeal, in English or French, and the Co-Prosecutors to file a consolidated response of no more than 280 pages, to be submitted within 30 days of the filing of the Khmer versions of the defence's appeal briefs, whichever is notified last.¹⁵ The Supreme Court Chamber granted no extension to the Co-Prosecutors to file their appeal brief,¹⁶ which was duly filed, on 28 November 2014.¹⁷ Upon request, the Supreme Court Chamber granted an additional 60 pages to the defence for Nuon Chea for their appeal brief (the defence for Khieu Samphân made no such request), and an extension of time to both defence teams to file their responses to the Co-Prosecutors' appeal 30 days after the filing of their appeal briefs, *i.e.* no later than 28 January 2015.¹⁸ The Supreme Court Chamber also granted the Co-Prosecutors' request to file their response to the appeal briefs of Nuon Chea and Khieu Samphan in English only.¹⁹
46. The last translation into Khmer of the defence appeal briefs having been notified on 25 March 2015, the deadline for the Co-Prosecutors response to the appeal briefs will be by 24 April 2015. The deadline for the response from the Civil Party Lead Co-Lawyers will expire on 27 May 2015. It is expected that several sessions of appeal hearings may be required by the Supreme Court Chamber given the complexity and scope of the appeal, and appeal hearings are projected to commence in the third quarter of 2015, once all filings have been completed and all translations received.
47. It is difficult to make accurate projections as to the expected duration of appellate proceedings before the appeals are fully briefed, which is expected in the second quarter of 2015. The current projections are therefore based on a working assumption that all grounds of appeal set out in the appeal briefs filed, including appeals from trial decisions which could not be raised as interlocutory appeals during the trial proceedings themselves, as well as any alleged fair trial rights violations, are maintained. The projections are also based on the three separate motions for additional evidence on appeal that have been filed by the defence for Nuon Chea since the delivery of the case 002/01 trial judgment.²⁰ However the full impact of these motions cannot be assessed in the absence of complete parameters of the appeal submissions.
48. Another factor significantly affecting the course of appeal proceedings has proved to lie in the availability of translation, in particular from English to Khmer. To date, the pace of translation resulted in a postponement of the commencement of the appellate hearing from the second quarter to the third quarter of 2015.²¹
49. Taking into account these factors and the experiences of other internationalized and international courts and tribunals with cases of comparable size and complexity, the best

¹⁵ Decision on Motions for Extensions of Time and Page Limits for Appeal Briefs and Responses, F9, 31 October 2014 ("Decision on Appeal Extensions"), para. 23.

¹⁶ Decision on Appeal Extensions, para. 14.

¹⁷ Co-Prosecutors' Appeal against the Judgment of the Trial Chamber in Case 002/01, F11, 28 November 2014.

¹⁸ Decision on Defence Motions for Extension of Pages to Appeal and Time to Respond, F13/2, 11 December 2014.

¹⁹ ¹⁹ Decision on Co-Prosecutors' request to file their response in one language only with Khmer translation to follow, F21/1, 11 February 2015.

²⁰ Request to Obtain and Consider Additional Evidence in Connection with the Appeal against the Trial Judgment in Case 002/01, F2, 1 September 2014; Second Request to Consider Additional Evidence in Connection with the Appeal against the Trial Judgment in Case 002/01, F2/1, 3 September 2014; Third Request to Consider and Obtain Additional Evidence in Connection with the Appeal against the Trial Judgment in Case 002/01, F2/4, 25 November 2014 (strictly confidential).

²¹ The Khmer translations of the appeal briefs were expected to be notified by the end of February 2015, but the last Khmer translation of the appeal brief was notified on 25 March 2015.

estimate that can therefore be presently provided is that the appeal process may be concluded by first quarter of 2016. More specifically, the next months will involve the review of all filings followed by the preparation and holding of appeal hearings. The Supreme Court Chamber will thereafter complete its deliberations and prepare and issue its appeal judgment in case 002/01.

B. Case 002/02

50. 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.
51. Furthermore, possible immediate appeals against decisions of the Trial Chamber in case 002/02 must be decided within a statutory 3-month deadline. Extrapolating from experience in case 002/01, where on average one immediate appeal per month was filed, numerous immediate appeals are expected to arise from the trial proceedings in case 002/02 as well. This may stretch resources of the Supreme Court Chamber and affect the timeline for delivery of the appeal judgment in case 02/01.

VI. CONCLUSION

52. For 2015, appellate proceedings in case 002/01 and trial proceedings in case 002/02 will continue concurrently throughout the year. For case 002/01, it is expected that two milestones will be reached; namely (i) the filing of responses to the appeal briefs; and (ii) the conclusion of appeal hearings. It is expected that one milestone will be reached in respect of cases 003 and 004, namely notification of conclusion of the judicial investigation in case 003. Furthermore, should case 004 be severed, it is expected that notification of conclusion of investigation in two of the three severed cases may also be issued by the end of 2015.
53. For 2016, it is expected that that three milestones will be reached in cases 002/01 and 002/02: (i) the delivery of an appeal judgment in case 002/01; (ii) the conclusion of substantive/evidentiary hearings in case 002/02; and (iii) delivery of closing statements in case 002/02. For cases 003 and 004, it is expected that three milestones will be reached: (i) issuance of 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) notification of conclusion of the judicial investigation in case 004; and (iii) issuance of closing order(s) in case 004 with a decision of the Co-Investigating Judges either to send the case(s) for trial or to terminate the proceedings.
54. For 2017, it is expected that two milestones will be reached in case 002/02, namely; (i) the delivery of a trial judgment in case 002/02; and (iii) the deadline for filing appeals against the trial judgment in case 002/02. In cases 003 and 004, it is expected that two further milestones will be reached: (i) disposal of any appeals against the closing order in case 003; and (ii) disposal of any appeals against the closing order(s) in case 004, with a decision of the Pre-Trial Chamber either to send these cases for trial or to terminate the proceedings. In the event that either or both cases are sent for trial, in whole or in part, projections of trial timelines in these cases can then be assessed.

55. During 2018 the Supreme Court Chamber will, in case of appeal against the trial judgment in case 002/02, be fully occupied with appeal hearings and deliberations.
56. For 2019, it is expected that one milestone will be reached, namely delivery of an appeal judgment in case 002/02.
57. These various projected milestones are reflected in a chart attached to this plan.

Chart of projected timelines, including milestones

