

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)

COMPLETION PLAN

JULY 2014 - REVISION 1

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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 first quarterly update of the Completion Plan covering the quarter ending 30 June 2014.

Since the first version of the Completion Plan, the Extraordinary Chambers reached one milestone, namely, the issuance of a decision on the scope of trial in case 002/02. A further major milestone will be reached on 7 August 2014 with the delivery of the judgement in case 002/01. A further initial hearing in case 002/02 is scheduled for 30 July 2014.

The timelines for the issuance of a trial judgement in case 002/01, and deadline for filing appeals, if any, have been adjusted in accordance with the Trial Chamber’s scheduling order on the pronouncement of the judgement on 7 August 2014.

The Completion Plan is updated to reflect changes to the initial timelines in respect of cases 003 and 004. The timelines are revised based on the need to investigate additional allegations concerning gender based crimes identified by the international Co-Prosecutor in a supplementary submission filed with the Co-Investigating Judges in April 2014. The initial projected timelines have also been impacted due to high staff turnover within the Office of the Co-Investigating Judges.

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; the Co-Investigating Judges; and 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 first 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 2014.
3. The document focuses in particular on the recent developments in the three cases pending 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 is currently 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 also has 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 severed into two or more trials. The presentation of evidence in the first trial, styled by the Extraordinary Chambers as case 002/01, concluded on 23 July 2013, and closing statements ended on 31 October 2013. The Chamber will issue the judgment in this trial on 7 August 2014. Concurrently with the process of judgment drafting, the Trial Chamber is also engaged in preparatory proceedings in respect of commencement of the next trial of this case, styled as case 002/02, which will focus on some of the remaining charges against the two remaining accused. A further initial hearing in this second trial will be held on 30 July 2014 while, depending on the precise evolution of remaining preparatory proceedings, evidentiary hearings are expected to commence by the last quarter of 2014.
7. 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 five suspects.⁵ No suspect has been arrested or formally charged, and their identities remain confidential. On 24 April 2014, the international Co-Prosecutor filed a supplementary submission, formally requesting the Co-Investigating Judges to expand the investigations in case 004 to include allegations of sexual and gender based crimes.⁶
8. It is expected that a notice of conclusion of the investigations in case 003 could be issued by the first 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 2015.
9. Given the disparity in the status of the investigation against the three case 004 suspects, 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 first quarter of 2015, and a third by the second quarter; b) alternatively, case 004 could remain intact, in which case the investigation could conclude by the second quarter of 2015. If case 004 is severed, it is estimated that the closing orders could be issued by the second quarter, third quarter, and fourth quarter of 2015. If case 004 is not severed, it is estimated that 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 fourth quarter of 2015.
10. The previous timelines for cases 003 and 004 set forth in the approved budget for 2014-2015 for the Extraordinary Chambers have been revised due to the statutory obligation to conduct additional investigations under the recent case 004 Supplementary Submission on gender based crimes. The allegations include forced marriages, rapes and sexual violence outside the context of forced marriages, including instances where women were raped prior to being executed, and instances where women who reported rapes during the Khmer Rouge period were subsequently executed. The timelines for cases 003 and 004 have also been impacted by the unforeseen departure of a significant number of critical staff members in the Office of the Co-Investigating Judges since the last budget submission. The effect of these departures, and the time it has taken to hire qualified replacements and train them in the operation of the unique procedural environment, has delayed the progress of the investigations of cases 003 and 004.
11. The Co-Prosecutors have stated publicly that there will be no further cases after cases 003 and 004.⁷ The existing caseload thus represents the totality of the caseload to be addressed by the Extraordinary Chambers.
12. This Completion Plan of the Extraordinary Chambers identifies 17 milestones for the three

⁵ Statement of acting international Co-Prosecutor, 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)).

⁶ Statement by the international Co-Prosecutor regarding Case File 004, 24 April 2014 ([http://www.eccc.gov.kh/sites/default/files/media/ECCC%20OCP%2024%20Apr%202014%20\(En\).pdf](http://www.eccc.gov.kh/sites/default/files/media/ECCC%20OCP%2024%20Apr%202014%20(En).pdf))

⁷ 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)) and Public statement by the Co-Prosecutors regarding investigation in Case 003, 5 June 2012 (www.eccc.gov.kh/sites/default/files/media/ECCC%20OCP%2005%20June%202012%20En.pdf).

remaining cases. The remaining milestones in case 002⁸ and associated indicative forecasts are:

- (i) the delivery of a trial judgment in case 002/01 (will be delivered on 7 August 2014);
- (ii) deadline for filing appeals against the trial judgment in case 002/01 (by fourth quarter of 2014);
- (iii) the delivery of an appeal judgment in case 002/01, if any (by first quarter of 2016);
- (iv) holding a further initial hearing in case 002/02 (will be held on 30 July 2014);
- (v) commencement of substantive/evidentiary hearings in case 002/02 (by fourth quarter of 2014);
- (vi) conclusion of substantive/evidentiary hearings in case 002/02 (by third quarter of 2016);
- (vii) closing statements in case 002/02 (by fourth quarter of 2016);
- (viii) the delivery of a trial judgment in case 002/02 (by third quarter of 2017);
- (ix) deadline for filing any appeals against the trial judgment in case 002/02 (by fourth quarter of 2017); and
- (x) the delivery of an appeal judgment in case 002/02, if any (by second quarter of 2019).

13. 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.⁹ The milestones for the remainder of the judicial investigation phase are:

- (xi) the resolution of all appeals from parties before the Co-Investigating Judges in respect of investigative requests from the parties and appeals from procedural decisions;
- (xii) notification of conclusion of judicial investigations in case 003 (by first quarter of 2015);
- (xiii) notification of conclusion of judicial investigations in case 004 (by first or second quarter of 2015);
- (xiv) the resolution of any disagreements between the Co-Prosecutors and/or the Co-Investigating Judges;
- (xv) 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 2015);
- (xvi) 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 second, third or fourth quarter of 2015);
- (xvii) disposal by the Pre-Trial Chamber of any appeals against the closing orders, either sending the cases for trial or ending the judicial proceedings in the cases (by first quarter of 2016 for case 003 and by second quarter of 2016 for case 004).

II. MEASURES THAT MAY ASSIST EXPEDITIOUS COMPLETION

14. 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 recommendation of a subvention up to US\$15.5 million for the international component of the Extraordinary Chambers is an important measure that has stabilized the funding situation for 2014. Another positive development is the increased contribution from the Royal Government of Cambodia as well as its commitment to fundraising. It is imperative that additional funds are raised to stabilize the national component of the Extraordinary Chambers.

15. The projections of the timelines below are made on the basis that all Chambers and offices are

⁸ 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.

⁹ 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.

sufficiently staffed, and that the judicial proceedings will not be further disrupted as a result of financial insecurity. Should the financial insecurity persist, there will be a need to revise the timelines accordingly.

16. The projection 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 Noun 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 engaged in both of these cases, and the investigations and preparation of closing submissions in cases 003 and 004. The ability to carry out all of these activities simultaneously will depend on sufficient staffing.
17. The Co-Prosecutors have proposed a change to the Internal rules of the Extraordinary Chambers to permit the judicial investigation to proceed to completion without all crimes sites being investigated, so long as those selected for the investigation are representative of the charges and alleged criminal responsibility of the suspect. Should the Plenary of judges adopt this proposal, it is anticipated that the rule amendment may expedite the conclusion of the judicial investigations.
18. With the aim of augmenting the investigative capacity of the Office of Co-Investigating Judges, the Ministry of Justice accredited eight international *legal officers*, with a ninth to follow, to conduct investigative interviews, a task normally falling to the *investigators*. This enhanced capacity to conduct such interviews will advance this phase of the investigation. The international Co-Investigating Judge has in addition taken initiatives to augment his human resources with qualified *gratis personnel* and additional *interns* to enhance the judicial production.

III. JUDICIAL INVESTIGATIONS COMPLETION PLAN

19. 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, 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.
20. It may be useful to briefly recall the various 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.
21. 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.

22. 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 70 field missions have been conducted and more than 250 witness interviews have been completed. The best time-projection that can be given at this moment is that:
- (i) the investigations into case 003 will conclude by first quarter of 2015;
 - (ii) the investigations into case 004, depending on whether or not the case will be severed, will conclude by first or second quarter of 2015;
 - (iii) the closing order in case 003 will be issued by the third quarter of 2015;
 - (iv) the closing order(s) in case 004, depending on whether or not the case will be severed, will be issued by by second, third or fourth quarter of 2015; and
 - (v) any appeals against the closing orders will be decided by the Pre-Trial Chamber by the first quarter of 2016 for case 003 and second quarter of 2016 for case 004.

IV. TRIALS COMPLETION PLAN

23. 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 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.
24. 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 shall consider the lists of potential witnesses and experts submitted by the parties and preliminary objections raised by the parties, and the civil parties may give an initial specification on the reparation awards they are seeking. The substantive hearing will commence 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 will hear closing statements from the parties before it retires to deliberate on a judgment. If the accused is convicted, the Trial Chamber will also decide 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 002/01

25. The initial hearing in case 002 was held on 27 through 30 June 2011. In September 2011, the Trial Chamber severed the charges in case 002 into two or more trials in accordance with the Internal Rules, to be adjudicated in such order as the Trial Chamber deems appropriate. The charges in the first trial, case 002/01, focus on alleged crimes against humanity related to the forced movement of the population from Phnom Penh and regional towns, as well alleged execution of Khmer Republic

soldiers at Tuol Po Chrey execution site immediately after the Khmer Rouge takeover in April 1975. The Chamber also heard evidence related to the history of the Communist Party of Kampuchea, the organizational structure of Democratic Kampuchea and the roles of the accused in relation to the policies of the Democratic Kampuchea regime relevant to all charges in case 002.

26. The substantive trial commenced with opening statements on 21 November 2011. Some 58 witnesses, 31 civil parties and 3 experts gave testimony during the trial, and the conclusion of closing statements on 31 October 2013 marked the end of 222 days of trial proceedings. The Trial Chamber will render its judgment on the merits on 7 August 2014.

B. Case 002/02

27. In its decision on appeals against the Trial Chamber's severance decision in case 002/01, the Supreme Court Chamber ordered that evidentiary hearings in the second case 002 trial, case 002/02, should commence as soon as possible after the conclusion of closing statements in case 002/01. The Supreme Court Chamber also ruled that the scope of case 002/02 be representative of the indictment; as such, the Supreme Court Chamber directed that it should, at a minimum, include the charges related to genocide, the S-21 security center in Phnom Penh, a cooperative and a worksite.¹⁰

28. The Trial Chamber convened a trial management meeting on 11 and 12 December 2013 in preparation for this next trial. Following this meeting, the Chamber issued a detailed work-plan and invited the parties to make submissions on charges to be included in case 002/02.¹¹ An adversarial hearing was held on 11 February 2014, where the parties presented oral arguments related to their submission on scope of charges as well their position on the additional submission from one defense team (Khieu Samphan) as to the existence of a legal bar against the commencement of evidentiary hearings in case 002/02 until a final judgment has been rendered in case 002/01. The Trial Chamber issued a decision on the latter ahead of schedule in March 2014, dismissing the defense submission.

29. On 4 April 2014, the Trial Chamber issued a new severance decision, defining the scope of case 002/02. 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).¹² The severance decision is currently pending on appeal before the Supreme Court Chamber.

30. The Trial Chamber has scheduled a further Initial Hearing in case 002/02 for 30-31 July 2014. At the hearing, the Trial Chamber will address the sequencing of the trial proceedings further to its severance decision on the scope of case 002/02 and will review the lists of potential witnesses, Civil Parties and experts submitted by the parties. The Chamber will also address the further specification of Civil Party reparation awards, the status of preliminary objections and any legal issues relevant to case 002/02.

31. It will be possible to project the number of hearing days required to complete the trial in case 002/02

¹⁰ Decision on Immediate Appeals against Trial Chamber's Second Decision on Severance of Case 002 (www.eccc.gov.kh/sites/default/files/documents/courtdoc/2013-07-23%2016:57/E284_4_7_EN.PDF).

¹¹ Trial Chamber work plan for Case 002/02 (www.eccc.gov.kh/sites/default/files/documents/courtdoc/2014-01-02%2010:19/E301_5_EN.PDF).

¹² Decision on Additional Severance of Case 002 and Scope of Case 002/02 (TC), E301/9/1, 4 April 2014. paras 36-38.

only when (i) the severance decision is final further to a decision on the appeal currently before the Supreme Court Chamber; and (ii) the number of witnesses, civil parties and experts to be called to testify is fixed by the Trial Chamber. 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 first trial, but may vary considerably once these two factors are determined. The Trial Chamber has additionally already decided that “the evidence already put before the Chamber in case 002/01 shall serve as a foundation for case 002/02”, without having to go through once more the formal procedure of being admitted during the forthcoming trial.¹³ This decision may have a positive impact on the time required to complete the trial.

32. The projected length of the trial will also be affected by any determination by the Trial Chamber as to the need to reduce the number of hearing days per week, and the length of the hearing days, due to the health condition of the accused. Both defense teams have filed formal submissions to this effect, which led to the Trial Chamber ordering medical experts to examine the fitness of the accused during the last week of March 2014. While the accused were subsequently found fit to stand trial, any future assessment of their health condition might require an adjustment of the hearing schedule. Any appeal proceedings against the judgement in case 002/01 might also have an impact on the parties’ availability to attend the substantive hearing in case 002/02.
33. Following the issuance of the judgment in case 002/01, some parties have indicated that they might request the disqualification of the judges of the Trial Chamber in case 002/02, due to an alleged appearance of bias due to the same judges sitting in both phases of case 002. Any such request might, in turn, require the appointment of additional Judges, to be drawn from the other Judges of the Extraordinary Chambers, for the constitution of a special chamber charged with disposing of requests for disqualification. The determination of any request for disqualification might also have an impact on the schedule for the evidentiary hearings in case 002/02.
34. Taking these factors into account, the Trial Chamber is accordingly working towards commencing the substantive hearing by the last quarter of 2014.

C. Remaining charges/factual allegations in case 002

35. Further to the decision on the scope of case 002/02 becoming final, the parties will be given an opportunity to make submissions to the Trial Chamber on the fate of any facts and/or charges, that have not been included in case 002/01 and case 002/02. The legal framework governing the proceedings before the Extraordinary Chambers contains no explicit provision to drop charges or facts included in an indictment. Nevertheless, the Supreme Court Chamber has noted that withdrawal of charges may be authorized under international jurisprudence “as long as the matter is approached transparently, in consideration of the interests of justice and fair trial rights involved, with the agreement of both the Co-Prosecutors and the Trial Chamber”.¹⁴ The Trial Chamber would need to assess the precise scope of such powers, as applicable to the present case.

D. Case 003 and case 004

36. Until a decision is made on whether case 003 and/or case 004 is 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.

¹³ Trial Chamber memorandum entitled “Clarification regarding the use of evidence and the procedure for recall of witnesses, civil parties and experts from Case 002/01 in Case 002/02” (www.eccc.gov.kh/sites/default/files/documents/courtdoc/2014-02-07%2016:14/E302_5_EN.PDF).

¹⁴ Decision on Immediate Appeals Against Trial Chamber’s Second Decision on Severance of Case 002, E284/4/8, 25 November 2013, para 62 (www.eccc.gov.kh/sites/default/files/documents/courtdoc/2014-01-03%2012:17/E284_4_8_EN-2.PDF).

V. APPEALS COMPLETION PLAN

37. 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. Each party must file its appeal brief within 60 days of their respective notice of appeal. Parties will 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. The third phase follows the hearing and consists of the deliberations, preparation and issuance of an appeals judgment.
38. It is not possible to make accurate predictions in the absence of a trial judgment, and accordingly, any indication as to whether some or all of parties intend to appeal, and if so, to what extent. The current projection is therefore based on a hypothetical case scenario, where all findings in the case 002/01 trial judgment are appealed by one or more of the parties, including appeals from trial decisions which could not be raised during the trial proceedings, as well as any alleged fair trial rights violations. Taking into account the various deadlines set out in the Internal Rules of the Extraordinary Chamber and the corresponding jurisprudence for cases of comparable size and complexity, the best estimate that can be presently provided in the event that the trial judgment in case 002/01 is appealed in this fashion, is that it would likely take some 18 months to complete. The first 8 to 9 months would involve the preparation and submission of all filings by the parties followed by the preparation and holding of any appeal hearings. The Supreme Court Chamber would then require a following 9 to 10 months to complete its deliberations and prepare and issue its judgment in case 002/01.
39. 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 second appeal will be as complex and time-consuming as the first appeal. It should be noted, moreover, that a number of 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 and will need to be factored into planning after appeals have been filed.
40. Furthermore, possible immediate appeals from case 002/02 that must be decided within a statutory 3-month deadline. Extrapolating from experience in case 002/01, on the average one immediate appeal per month may be expected. This may stretch the limited resources of the Supreme Court Chamber and affect the timeline for delivery of the appellate judgment.

VI. CONCLUSION

For 2014, it is expected that five milestones will be reached: (i) the delivery of a trial judgment in case 002/01 on 7 August 2014; (ii) the deadline for filing appeals against the trial judgment in case 002/01; (iii) the issuance of a decision on the scope of case 002/02; (iv) holding an initial hearing in case 002/02; (v) commencement of substantive/evidentiary hearings in case 002/02;

41. For 2015, the trial proceedings in case 002/02 will continue throughout the year, and it is expected that four new milestones will be reached in respect of cases 003 and 004, namely; (i) notification of conclusion of the judicial investigation in case 003; (ii) notification of conclusion of the judicial investigation in case 004; (iii) 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; and (iv) 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;

42. For 2016, it is expected that that four milestones will be reached: (i) the delivery of an appeal judgment in case 002/01; (ii) the conclusion of substantive/evidentiary hearings in case 002/02; (iii) conclusion of closing statements in case 002/02; and (iv) disposal of any appeals against the closing orders in these cases 003 and 004 with a decision of the Pre-Trial Chamber either to send these cases for trial or to terminate the judicial 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.
43. For 2017, it is expected that two milestones will be reached, namely; (i) the delivery of a trial judgment in case 002/02; and (ii) the deadline for filing appeals against the trial judgment in case 002/02.
44. 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.
45. For 2019, it is expected that one milestone will be reached, namely; (i) the delivery of an appeal judgment in case 002/02.
46. These various projected milestones are reflected in a chart attached to this plan.

Chart of projected timelines, including milestones

Case	2014				2015				2016				2017				2018				2019					
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4		
Case 002/01	Trial phase		(a)	(b)	Appeals against Trial Chamber Judgement				(c)																	
Case 002/02	Preparatory work		(d)	(e)	(f)	Trial phase				(g)	(h)	(i)	Appeals against Trial Chamber Judgement				(j)	(k)								
Case 003	Judicial investigation						(l)	(m)	Appeals against Closing Order		(n)															
Case 004	Judicial investigation						(l)	(l)	(m)	(m)	Appeals against Closing Order		(n)													

(l) Notification of conclusion of investigation. For case 004, the timing will depend on whether or not the case will be severed.
(m) OCJ Closing Order: For case 004, the timing will depend on whether or not the case will be severed.
(n) PTC Closing Order