

**EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)**

**COMPLETION PLAN**

**REVISION 3**

**31 DECEMBER 2014**

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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 third quarterly update of the Completion Plan covering the quarter ending 31 December 2014.

Over the last quarter, the Extraordinary Chambers reached two more milestones, namely, the commencement of the substantive phase of the trial in case 002/02 on 17 October 2014, and the filing of appeal briefs in case 002/01 by the Co-Prosecutors on 28 November 2014 and by the Nuon Chea and Khieu Samphan defence teams on 29 December 2014.

The narrative part of the Completion Plan is updated to reflect the status of the judicial proceedings as of 31 December 2014.

## 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”.<sup>1</sup> 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”.<sup>2</sup> 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”.<sup>3</sup>
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.<sup>4</sup> 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 third quarterly revision of the Completion Plan, and it incorporates necessary adjustments based on the developments in the ongoing judicial proceedings between 1 October and 31 December 2014.
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.

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<sup>1</sup> 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.

<sup>2</sup> Report of the Secretary-General on Khmer Rouge trials, A/57/769, para. 56.

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

<sup>4</sup> 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 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 would address charges related to three specific worksites. Thereafter, the trial would 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 Trial Chamber is currently reviewing the list of individuals to be heard in connection with each topic of the trial and is assessing the admissibility of the documents proposed by the parties as relevant to the proceedings. The substantive hearings in this trial commenced on 17 October 2014. The Trial Chamber heard an opening statement by the national and international Co-Prosecutors. Thereafter, Khieu Samphan and Nuon Chea 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. Counsel for Nuon Chea returned to the courtroom on 17 November 2014, but Khieu Samphan's counsel continued to be absent in direct violation of the Chamber's orders. Consequently, the Trial Chamber was forced to postpone the start of evidentiary proceedings in case 002/02 until 8 January 2015. The Trial Chamber ruled that the misconduct of Khieu Samphan's counsel amounted to obstruction of proceedings, and has referred the matter to counsels' respective professional bodies for possible disciplinary reactions. Although the Chamber has considered replacing the counsel of Khieu Samphan, it concluded that the time required to assign new counsel who would need to familiarize themselves with the case file, would lead to a further delay of the proceedings. Should defence counsel decide to obstruct the proceedings at future junction, they might be replaced by standby counsel which the Trial Chamber order to be appointed in a decision issued on 5 December 2014.
8. 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.<sup>5</sup> No suspect has been arrested or formally charged, and their identities remain confidential. On 31 October 2014, the international Co-Prosecutor filed a supplementary submission, formally requesting the Co-Investigating Judges to expand the investigations in case 003 to include allegations of forced marriages and rape.<sup>6</sup>
9. 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.
10. 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,

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<sup>5</sup> 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)).

<sup>6</sup> Statement by the International Co-Prosecutor regarding Case File 004, 04 November 2014

(<http://www.eccc.gov.kh/sites/default/files/media/ECCC%20OCP%20PR%204%20Nov%202014%20Eng.pdf>)

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.

11. The Co-Prosecutors have stated publicly that there will be no further cases after cases 003 and 004.<sup>7</sup> The existing caseload thus represents the totality of the caseload to be addressed by the Extraordinary Chambers.
12. In view of progress over the last quarter, this Completion Plan of the Extraordinary Chambers identifies 15 remaining milestones for the three cases with which the Chambers are seized. The remaining milestones in case 002<sup>8</sup> and associated indicative forecasts are:
  - (i) commencement of evidentiary hearings in case 002/02 (8 January 2015);
  - (ii) deadline for the filing of responses to case 002/01 appeals (by second quarter of 2015)
  - (iii) holding of appeal hearings in case 002/01 (by second quarter of 2015)
  - (iv) delivery of an appeal judgment in case 002/01 (by first quarter of 2016);
  - (v) conclusion of substantive hearings in case 002/02 (by third quarter of 2016);
  - (vi) closing statements in case 002/02 (by fourth quarter of 2016);
  - (vii) delivery of a trial judgment in case 002/02 (by third quarter of 2017);
  - (viii) deadline for filing any appeals against the trial judgment in case 002/02 (by fourth quarter of 2017); and
  - (ix) 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.<sup>9</sup> The milestones for the remainder of the judicial investigation phase are:
  - (x) notification of conclusion of judicial investigations in case 003 (by first quarter of 2015);
  - (xi) notification of conclusion of judicial investigations in case 004 (by first or second quarter of 2015);
  - (xii) 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);
  - (xiii) 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);
  - (xiv) 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 2016 for case 003) ; and
  - (xv) 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 2016).

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<sup>7</sup> 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](http://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>).

<sup>8</sup> 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.

<sup>9</sup> 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

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 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. At the conclusion of the current reporting period, the General Assembly had deferred to its resumed session in March 2015 consideration of the Secretary-General's recommendation for a further subvention for 2015, which would provide comparable stability over the coming year.<sup>10</sup> A very positive development in the last quarter has been increased contributions from the Royal Government of Cambodia, covering the final quarter of national salaries for 2014 and pledging coverage of national salaries for the first six months of 2015. It is currently imperative that additional funds are raised to stabilize the international component of the Extraordinary Chambers. That need is particularly acute absent the General Assembly's approval of a subvention for 2015.
15. 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 persist, there may be 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. Refusal by defence counsel to participate in evidentiary hearings in Case 002/02 from 17 October 2014 has resulted in a delay in the trial of nearly three months. In order to prevent a reoccurrence of this issue and associated delays in the future, the Trial Chamber has ordered the appointment of Standby Counsel to represent Khieu Samphan and replace present counsel should the latter refuse to participate in proceedings in future. It also referred the conduct of counsel to their respective bar associations for appropriate disciplinary proceedings. Although the Chamber considered replacing counsel for Khieu Samphan immediately, it did not do so because qualified counsel with knowledge of the Case File were not available and immediate replacement would lead to a more lengthy delay to the trial. 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.
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. The Rules and Procedure Committee (RPC) has recommended and forwarded a revised amendment proposal to the Plenary of the Extraordinary Chambers, which is scheduled to convene again in mid-January 2015. Should the Plenary adopt this amended proposal, it is anticipated that the rule amendment may expedite the conclusion of the judicial proceedings.
18. With the aim of augmenting the investigative capacity of the Office of the Co-Investigating Judges, the Ministry of Justice has accredited now nine international legal officers 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

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<sup>10</sup> Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia, A/69/536.

in addition taken initiatives to augment his human resources with qualified personnel under non-reimbursable loan arrangements 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. 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.
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 90 field missions have been conducted and more than 350 witness interviews have been completed. To increase the understanding of the on-going judicial investigations, with particular emphasis on the role of witnesses and the rights of individuals subject to investigation, the Office of Co-Investigating Judges conducted 9 public outreach forums in former Khmer Rouge strongholds during November 2014.

The best time projections that can be given at this point in time is that:

- (i) investigations into case 003 will conclude by first quarter of 2015;
- (ii) 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 the 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, 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.

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 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 002/01

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, focused 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 rendered its judgment on the merits on 7 August 2014.

##### A. 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.<sup>11</sup>

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.<sup>12</sup> 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).<sup>13</sup> On 29 July 2014, the Supreme Court Chamber upheld the Trial Chamber's new severance decision.
30. 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.
31. 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. Specifically, the Nuon Chea Defence insisted on the resolution of its motion to disqualify the Trial Chamber judges from hearing the charges in case 002/02. The Khieu Samphan Defence insisted that the proceedings not begin until it had filed its appeal brief against the case 002/01 judgement with the Supreme Court Chamber, due on 29 December 2014. After a Special Panel of the Trial Chamber issued its Decision dismissing motions to disqualify the Trial Chamber, counsel for Nuon Chea appeared in court on 17 November 2014. Thereafter, the Trial Chamber made repeated efforts to procure the participation of counsel for Khieu Samphan, by issuing warnings to counsel and reappointing them as court-appointed counsel. Counsel for Khieu Samphan maintained their position and the Chamber was forced to postpone the start of evidentiary proceedings in case 002/02 for resumption on 8 January 2015.
32. Evidentiary proceedings have been scheduled, with the Trial Chamber initially sitting for 3 days per week. Depending on the outcome of medical assessments ordered by the Chamber to take place in January 2015, this may be revised upwards to 4 days per week, accelerating the pace of trial. The Chamber has informed the parties of the initial 20 witnesses, Civil Parties and experts it has selected to be heard in the first quarter of 2015.
33. It will be possible to fully project the number of hearing days required to complete the trial in case

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<sup>11</sup> Decision on Immediate Appeals against Trial Chamber's Second Decision on Severance of Case 002, E284/4/8, 25 November 2013.

<sup>12</sup> Trial Chamber Workplan for Case 002/02 and Schedule for Upcoming Filings, E301/5, 24 December 2013.

<sup>13</sup> Decision on Additional Severance of Case 002 and Scope of Case 002/02, E301/9/1, 4 April 2014.

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 first trial, but may vary considerably once this factor is fully determined. Upon resumption of evidentiary hearings, the Chamber will also be in a better position to assess the impact of the delay in the trial as a consequence of the Defence refusal to attend the proceedings against the expected milestones for 2016.

34. In terms of factors potentially relevant to the projected length of trial which may arise in the future, a determination by the Trial Chamber in light of health conditions of the accused as to 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.

B. Remaining charges/factual allegations in case 002

35. 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.<sup>14</sup> 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.

C. Case 003 and case 004

36. 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**

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. 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

38. Upon a request from these defence teams, the Supreme Court Chamber extended the deadline for

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<sup>14</sup> 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.

filing notices of appeal against the case 002/01 trial judgment by an additional 21 days up to 29 September 2014.<sup>17</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> The Supreme Court Chamber granted no extension to the Co-Prosecutors to file their appeal brief,<sup>18</sup> which was duly filed, on 28 November 2014.<sup>19</sup> The Supreme Court Chamber granted an additional 60 pages to the defence for Nuon Chea for their appeal brief (the defence for Khieu Samphân having 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.<sup>20</sup> On 26 December 2014, the Supreme Court Chamber granted in part a request from the Civil Party Lead Co-Lawyers, recognizing their right to file a consolidated response to limited portions of the defence appeals, within 30 days after the response filed by the Co-Prosecutors. Based on the current projection of Khmer translation of the appeal briefs, it is estimated that the deadline for the Co-Prosecutors response to the appeal briefs will be by the end of March 2015 and the deadline for the response from the Civil Party lead Co-Lawyers will be by the end of April 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 take place towards the end of the second quarter of 2015.

39. It is difficult to make accurate projections as to expected duration of appellate proceedings before the appeals are fully briefed, which is expected in the first quarter of 2015 with the submission of reply briefs. 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.<sup>21</sup> However the full impact of these motions cannot be assessed in the absence of the complete parameters of the appeal submissions.

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

<sup>15</sup> 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.

<sup>16</sup> Co-Prosecutors’ Notice of Appeal of a Decision in Case 002/01, E313/3/1, 29 September 2014.

<sup>17</sup> 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.

<sup>18</sup> Decision on Appeal Extensions, para. 14.

<sup>19</sup> Co-Prosecutors’ Appeal against the Judgment of the Trial Chamber in Case 002/01, F11, 28 November 2014.

<sup>20</sup> Decision on Defence Motions for Extension of Pages to Appeal and Time to Respond, F13/2, 11 December 2014.

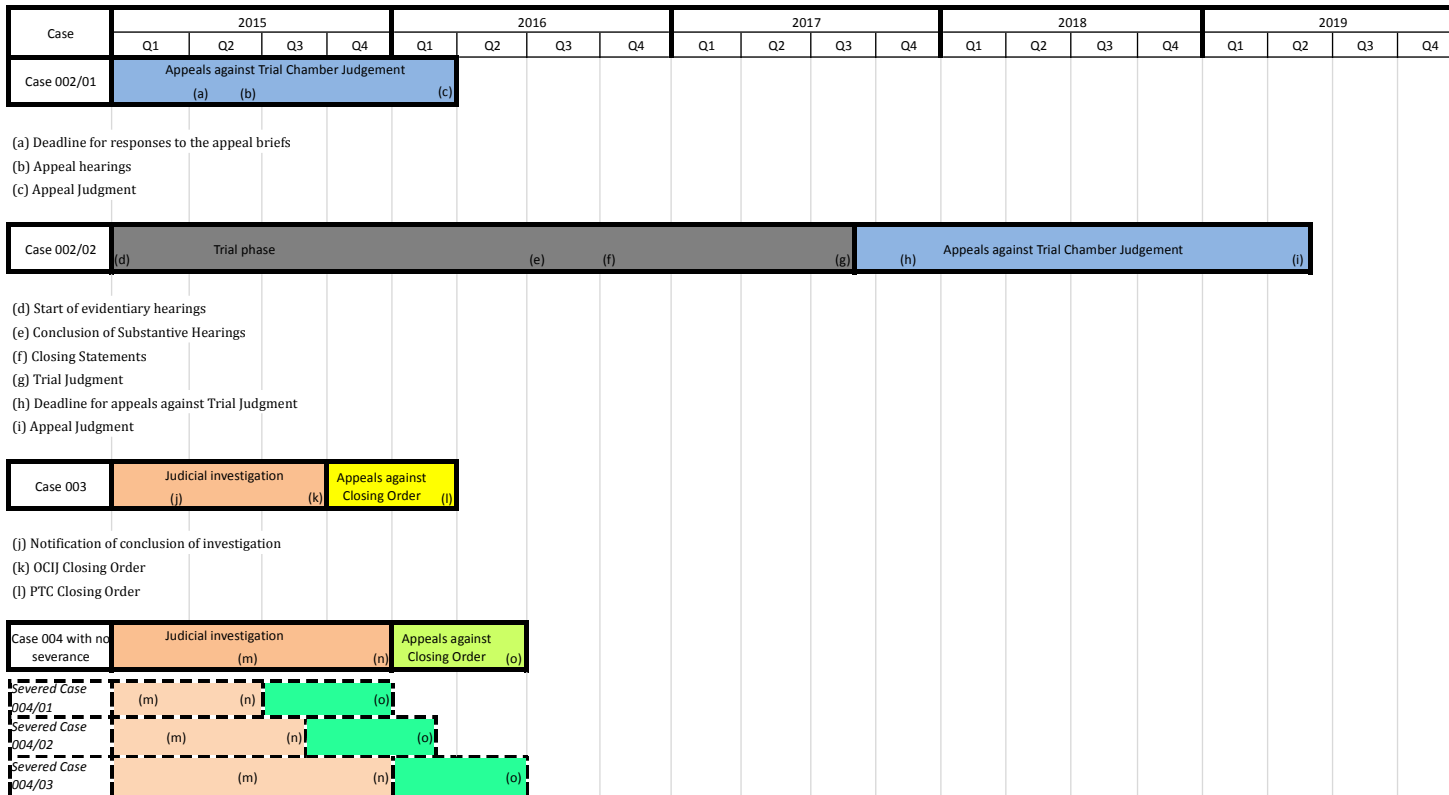
<sup>21</sup> Request to Obtain and Consider Additional Evidence in Connection with the Appeal against the Trial Judgment in Case 002/01, F2, 1 September 2014; Second Request to Consider Additional Evidence in Connection with the Appeal against the Trial Judgment in Case 002/01, F2/1, 3 September 2014; 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).

40. Taking into account these factors and the corresponding jurisprudence for cases of comparable size and complexity, the best estimate that can therefore be presently provided is that the appeal process may be concluded by first quarter of 2016 . 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.
41. 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 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 and will need to be factored into planning after appeals have been filed.
42. 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, on average one immediate appeal per month may be expected in the course of trial proceedings. This may stretch limited resources of the Supreme Court Chamber and affect the timeline for delivery of the appellate judgment in case 02/01.

## **VI. CONCLUSION**

43. 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 case 002/02, namely the commencement of evidentiary hearings on 8 January 2015. It is expected that four 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(s) 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;
44. 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 two 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.
45. 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.
46. 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.
47. For 2019, it is expected that one milestone will be reached, namely; (i) the delivery of an appeal judgment in case 002/02.
48. These various projected milestones are reflected in a chart attached to this plan.

### Chart of projected timelines, including milestones



- (m) Notification of conclusion of investigation. The timing will depended on whether or not the case will be severed.
- (n) OCJ Closing Order. The timing will depended on whether or not the case will be severed.
- (o) PTC Closing Order