

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

**COMPLETION PLAN**

**REVISION 30**

**30 September 2021**

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**Note to the reader:**

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

## Summary

The Completion Plan for the Extraordinary Chambers in the Courts of Cambodia (“Extraordinary Chambers”) was initially developed in *March 2014* through consultation by the Office of Administration with the judges of the chambers, the co-investigating judges and the co-prosecutors for their respective responsibilities. This is the thirtieth quarterly update of the Completion Plan covering the quarter ending 30 September 2021.<sup>1</sup>

During this quarter, the Supreme Court Chamber held hearings on appeal in case 002/02. The Pre-Trial Chamber issued its considerations on the appeals against the closing orders in case 004, as well as its considerations on the appeal against the international co-investigating judge’s decision on civil party admissibility in case 004.

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<sup>1</sup> The initial Completion Plan and its revisions are available publicly on the *ECCC website*.

## 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>2</sup>
2. This Completion Plan is elaborated by the Extraordinary Chambers in the context of the General Assembly resolution *A/RES/68/247B*, which *inter alia* mandates the Extraordinary Chambers’ preparation of a completion strategy with a clear road map. 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 updates this Completion Plan on a quarterly basis. The current document is the thirtieth revision, and it incorporates adjustments based on the developments in the ongoing judicial proceedings between 1 July and 30 September 2021.
3. The document focuses in particular on the recent developments in the remaining cases before the Extraordinary Chambers and provides information on the status of those cases as well as what steps will have to be completed before the judicial proceedings reach legal finality. Judicial proceedings in case 002 will be completed upon the final adjudication of case 002/02.<sup>3</sup> The co-prosecutors have stated publicly that there will be no further cases after case 004.<sup>4</sup> The existing caseload thus represents the totality of the caseload to be addressed by the Extraordinary Chambers.
4. **Case 001**, against Kaing Guek Eav (alias *Duch*), was the first case tried before the Extraordinary Chambers. On 3 February 2012, the Supreme Court Chamber pronounced its judgement in the appeal against the Trial Chamber judgement which brought the case to a conclusion. The convicted person passed away on 2 September 2020 in hospital while serving a life sentence.
5. The charges in **case 002** were severed into two trials. The Trial Chamber rendered judgement in the first trial, styled as case 002/01, on 7 August 2014, against Nuon Chea and Khieu Samphan.<sup>5</sup> Two further accused in the case, Ieng Sary and Ieng Thirith, passed away on 14 March 2013 and 22 August 2015 respectively, and proceedings against them were therefore terminated. The Trial Chamber found Khieu Samphan and Nuon Chea guilty of crimes against humanity committed between 17 April 1975 and December 1977 and sentenced them each to life imprisonment. Appeal proceedings in the case were concluded on 23 November 2016, with the pronouncement of the Supreme Court Chamber’s judgement. The Chamber affirmed the sentence of life imprisonment imposed on both accused.<sup>6</sup>
6. The second trial in this case, styled as case 002/02, focused on a representative selection of the remaining charges against Nuon Chea and Khieu Samphan. The Trial Chamber delivered an oral summary of the findings and the disposition of the judgement on 16 November 2018, and issued its written judgement in all three working languages on 28 March 2019. The Chamber found Khieu

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<sup>2</sup> *Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea*, 6 June 2003.

<sup>3</sup> On 27 February 2017, the Trial Chamber issued a ruling by which it decided to terminate the proceedings concerning the facts set out in the closing order in case 002 which were not included in case 002/01 or case 002/02: Case No. 002/19-09-2007/ECCC/TC (*Document E439/5*).

<sup>4</sup> *Statement of Acting International Co-Prosecutor – Filing of Two New Introductory Submissions*, 8 September 2009; *Public Statement by the Co-Prosecutors regarding Investigation in Case 003*, 5 June 2012; and *Statement by the International Co-Prosecutor regarding ECCC Caseload*, 26 November 2014.

<sup>5</sup> Case No. 002/19-09-2007/ECCC/TC (*Document E313*).

<sup>6</sup> Case No. 002/19-09-2007/ECCC/SC (*Document F36*).

Samphan and Nuon Chea guilty of genocide, war crimes and crimes against humanity, and sentenced them each to life imprisonment.<sup>7</sup>

7. On 4 August 2019, Nuon Chea passed away aged 93 while admitted to the Khmer-Soviet Friendship Hospital. The Supreme Court Chamber terminated further appellate proceedings against him on 13 August 2019 and confirmed that no further proceedings are possible in the case against Nuon Chea. Appellate proceedings continue in case 002/02 against Khieu Samphan only.
8. Judicial investigations in **cases 003** (related to Meas Muth) and **case 004** were initiated following introductory submissions filed by the international co-prosecutor in 2009 and subsequent supplementary submissions. Case 004 was severed by the co-investigating judges into three case files: case 004/01 regarding Im Chaem; case 004/02 related to Ao An; and with case 004 remaining the case against Yim Tith.
9. On 10 July 2017, the co-investigating judges issued their reasoned closing order dismissing case 004/01 against Im Chaem. The international co-prosecutor appealed the decision before the Pre-Trial Chamber. On 28 June 2018, the Pre-Trial Chamber disposed of the appeal, declaring that the decision of the co-investigating judges – namely, that the Extraordinary Chambers have no jurisdiction over Im Chaem – stands, thereby completing judicial proceedings in the case.<sup>8</sup>
10. On 16 August 2018, the co-investigating judges issued two separate and conflicting closing orders in case 004/02 against Ao An. The Pre-Trial Chamber filed its considerations on appeals on 19 December 2019 stating that it had “not attained the required majority of four affirmative votes to reach a decision based on common reasoning on the merits”.<sup>9</sup> The case against Ao An was terminated before the Extraordinary Chambers on 10 August 2020 on the basis that no “definite and enforceable indictment” exists.<sup>10</sup> Case file 004/02 was sealed and archived by judicial order on 14 August 2020, thereby completing judicial proceedings in the case.<sup>11</sup>
11. The progress of cases 003 and 004 stands as follows:
  - a) On 28 November 2018, the co-investigating judges issued two separate and conflicting closing orders in case 003 against Meas Muth. Three appeals were filed against the closing orders: the defence and national co-prosecutor appealed the international co-investigating judge’s closing order (indictment), while the international co-prosecutor appealed the national co-investigating judge’s dismissal order.<sup>12</sup> The Pre-Trial Chamber filed its considerations on the appeals on 7 April 2019 stating that it had “not attained the required majority of four affirmative votes to reach a decision based on common reasoning on the merits”.<sup>13</sup> The co-investigating judges dismissed a subsequent request from the international co-prosecutor to forward the case for trial, finding that “[t]here is neither unanimity nor a super-majority among the PTC judges for either [closing order] in case 003” and that accordingly no basis existed for forwarding the case file to the Trial Chamber.<sup>14</sup> Following the co-investigating judges’ decision the co-lawyers for Meas Muth seized the Pre-Trial Chamber with a motion to terminate, seal and archive case 003,<sup>15</sup> while the international co-prosecutor requested the Chamber to conclude the pre-trial stage by confirming that Meas Muth is indicted and order him to be sent for trial.<sup>16</sup> The Chamber declared these requests to be inadmissible on 8 September 2021, stating that “[i]t is now the Co-Investigating Judges’ responsibility to

<sup>7</sup> Case File No. 002/19-09-2007-ECCC/TC (*Document E465*).

<sup>8</sup> Case File No. 004/1/07-09-2009-ECCC/OCIJ (PTC50) (*Document D308/3/1/20*).

<sup>9</sup> Case File No. 004/2/07-09-2009-ECCC/OCIJ (PTC60) (*Document D359/24-D360/33*).

<sup>10</sup> Case File No. 004/2/07-09-2009-ECCC/TC/SC (*Document E004/2/1/1/2*).

<sup>11</sup> Case File No. 004/2/07-09-2009-ECCC/OCIJ (*Document D363/3*).

<sup>12</sup> The full procedural history is available in *revision 27* of the Completion Plan.

<sup>13</sup> Case File No. 003/07-09-2009-ECCC/OCIJ (PTC35) (*Document D266/27-D267/35*).

<sup>14</sup> Case File No. 003/07-09-2009-ECCC/OCIJ (*Document D270/7*).

<sup>15</sup> Case File 003/07-09-2009-ECCC/OCIJ (PTC38) (*Document D272*).

<sup>16</sup> Case File 003/07-09-2009-ECCC/OCIJ (PTC37) (*Document D271/1*).

comply with the Considerations immediately”.<sup>17</sup> On 16 September 2021, the co-investigating judges requested the international co-prosecutor to declare whether she intends to seize the Supreme Court Chamber with the case,<sup>18</sup> to which she responded in the affirmative.<sup>19</sup> On 22 September 2021, the Supreme Court Chamber directed the international co-prosecutor to file her request in two languages in accordance with the legal framework.<sup>20</sup> The determination of case 003 remained pending at the end of the quarter.

- b) On 28 June 2019 the co-investigating judges issued two separate and conflicting closing orders in case 004 against Yim Tith. Five appeals were filed against the closing orders: the defence and national co-prosecutor appealed the international co-investigating judge’s closing order (indictment); the international co-prosecutor and civil parties appealed the national co-investigating judge’s dismissal order; and the defence further appealed the issuance of separate closing orders.<sup>21</sup> The Pre-Trial Chamber filed its considerations on the appeals on 17 September 2021 declaring that it had “not assembled an affirmative vote of at least four judges for a decision based on common reasoning on the merits”.<sup>22</sup> On 23 September, the international co-prosecutor requested an extension of time to file an application in case 004 before the Supreme Court Chamber.<sup>23</sup> The determination of case 004 remained pending at the end of the quarter.

12. In view of progress over the quarter, this Completion Plan identifies three remaining milestones for the cases of which the Extraordinary Chambers are seised. The remaining milestone in case 002 and associated indicative forecast is:

- (i) issuance of an appeal judgement in all three working languages (fourth quarter of 2022).

13. In cases 003 and 004 a total of two distinct milestones have been identified for the investigation appeals phase. In the case or cases proceed to trial, additional milestones will be identified for the trial and appellate phases.<sup>24</sup> The milestones for the remainder of the investigation appeals phase are:

- (ii) implementation of the Pre-Trial Chamber’s considerations on appeals against the closing orders in case 003, either sending the case for trial or ending the judicial proceedings in the case (fourth quarter of 2021); and  
(iii) implementation of the Pre-Trial Chamber’s considerations on appeals against the closing orders in case 004, either sending the case for trial or ending the judicial proceedings in the case (fourth quarter of 2021).

## II. MEASURES THAT MAY ASSIST EXPEDITIOUS COMPLETION OF PROCEEDINGS

14. The effective functioning of the Extraordinary Chambers has in the past been hampered by significant and persistent financial insecurity, which resulted in two walkouts of national staff during 2013 as well as unwarranted staff turnover. The General Assembly’s approval of subventions for the calendar years 2014 through 2020 for the international component of the Extraordinary Chambers were essential measures that stabilized the funding situation and enabled concentrated focus on progressing the court’s judicial mandate. On the national side, cash-flow difficulties led

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<sup>17</sup> Case File 003/07-09-2009-ECCC/OCIJ (PTC37, PTC38) (*Document D271/5-D272/3*).

<sup>18</sup> Case File 003/07-09-2009-ECCC/OCIJ (*Document D273*).

<sup>19</sup> Case File 003/07-09-2009-ECCC/OCIJ (*Document D273/1*).

<sup>20</sup> Case File 003/07-09-2009-ECCC/SC (*No document number assigned*).

<sup>21</sup> The full procedural history is available in *revision 27* of the Completion Plan.

<sup>22</sup> Case File No. 003/07-09-2009-ECCC/OCIJ (PTC61) (*Document D381/45-D382/43*).

<sup>23</sup> Referring to its decision of 22 September (see above, fn. 20), the Supreme Court Chamber on 4 October ordered the international co-prosecutor to file her submission in two languages, without setting a deadline.

<sup>24</sup> Given the current state of proceedings, it is premature at this point to forecast specific time points in respect of eventual trial milestones.

to repeated delays in payment of national staff salaries in the course of the second half of 2015, with impact on staff focus and morale.

15. Following the expression of support from the Royal Government of Cambodia, the General Assembly authorized the Secretary-General in December 2020, as an exceptional measure, to enter commitments in an amount not to exceed \$7.0 million to supplement the voluntary financial resources of the international component of the Extraordinary Chambers for the period from 1 January to 31 December 2021. As of 30 September 2021, the full amount has been drawn down. This timely action greatly facilitated the uninterrupted operations of the Extraordinary Chambers during the first half of 2021, opening space for continued solicitation of voluntary contributions. In addition, the Royal Government's commitment of direct contribution of \$3.6 million to the national component, to cover the first six months of national staff costs as well as operational costs arising in 2021 is a key measure facilitating the ongoing operation of the Extraordinary Chambers. In combination, these measures have ensured that the ongoing workload of the Extraordinary Chambers continues to receive sustained attention and necessary funding. Voluntary contributions received or pledged as at 30 September 2021 are \$3.6 million for the international component and \$1.2 million for the national component. This is against the budgetary requirement for 2021 of \$12.9 million for the international component and \$4.9 million for the national component.<sup>25</sup>
16. In January 2015, the Plenary of the Extraordinary Chambers adopted amendments to the Extraordinary Chambers' 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.<sup>26</sup> The international co-investigating judge reduced the scope of the judicial investigations in relation to Meas Muth in case 003, Ao An in case 004/02 and Yim Tith in case 004 pursuant to this provision. Similarly, the Trial Chamber is authorized to reduce the scope of a 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.<sup>27</sup> On this basis, the Trial Chamber terminated the proceedings concerning the facts set out in the closing order in case 002 which were not included in case 002/01 or case 002/02.
17. The Office of Administration contracted the services of several legal experts on a consultancy basis to facilitate the Supreme Court Chamber's judgement drafting in case 002/02, and has continued to engage linguistic personnel to ensure timely translation services.
18. To prevent the transmission of Covid-19, *alternate work arrangements* were in place for all personnel at the ECCC between 1 and 5 January, and again from 23 February through this reporting period.<sup>28</sup> All network resources, administrative as well as judicial, were available remotely to all personnel, facilitating continuity of both judicial and administrative processes.

### III. JUDICIAL INVESTIGATIONS COMPLETION PLAN

19. The judicial investigation stage encompasses the jurisdictions of (a) the Office of the Co-Investigating Judges; and (b) the Pre-Trial Chamber at appellate instance.

#### *A. Office of the Co-Investigating Judges*

20. The statutory mandate of the co-investigating judges will be completed upon finalization of case 003 and case 004.

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<sup>25</sup> Revised budget figures for 2020-2021 were endorsed by the Group of Interested States on 23 December 2020.

<sup>26</sup> Rule 66bis.

<sup>27</sup> Rule 89quater.

<sup>28</sup> These arrangements direct all personnel to work remotely from a location within or outside the duty station. See United Nations, Administrative Guidelines for Offices on the Novel Coronavirus (COVID-19) Outbreak (para 14 and 22 of *version 1 of 13 February 2020* and para 15 and 26 of current *version 4 of 14 April 2020*). For 2020, these arrangements were in place between 25 March and 1 December and from 8 December through the year.

## ***B. Pre-Trial Chamber***

21. At the outset of the third quarter of 2021, the Pre-Trial Chamber was seized of nine motions: two interlocutory requests in case 003; one interlocutory request and six appeals (one regarding civil party admissibility and five relating to closing orders) in case 004.<sup>29</sup> During the quarter, the Chamber disposed of the two interlocutory requests in case 003,<sup>30</sup> filed its considerations on the closing order appeals in case 004,<sup>31</sup> and filed its considerations on the appeal against the international co-investigating judge's order on civil party admissibility in case 004.<sup>32</sup> No motions remain pending before the Pre-Trial Chamber by quarter's end.

## **IV. TRIALS COMPLETION PLAN**

22. Until final decisions are made on whether both or any of **case 003** and/or **case 004** are sent for trial, it is premature to make a projection on the required time to complete these trials. An assessment of the time required would depend on the number of defendants and legal and factual complexity of the charges included in the indictment(s).

## **V. APPEALS COMPLETION PLAN**

### ***A. Case 002/02***

23. On 20 August 2019, the Co-Prosecutors filed their appeal against the trial judgement comprising one ground.<sup>33</sup> The Khieu Samphan defence filed their appeal in French on 27 February 2020.<sup>34</sup> The co-prosecutors and civil party lead co-lawyers filed their respective responses in one language on 12 October 2020 and 4 January 2021.<sup>35</sup> Replies to those responses were heard at an oral hearing from 16 through 19 August 2021.
24. The Supreme Court Chamber anticipates that an appeals judgement will be delivered in all three official languages by the fourth quarter of 2022. This projection is subject to the exigencies of the appeal process and related factors such as sufficient staffing, the health and fitness of the accused and timely and effective translation services.

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<sup>29</sup> Case File No. 003/07-09-2009-ECCC/OCIJ: documents *D271/1* (PTC37), *D272* (PTC38). Case File No. 004/07-09-2009-ECCC/OCIJ (PTC61): documents *D381/18-D382/21*, *D381/19*, *D381/20*, *D381/29*, *D382/4/1*, *D382/22*, *D384/5*. The listed case 004 documents are classified as confidential by the Chamber.

<sup>30</sup> Case File No. 003/07-09-2009-ECCC/OCIJ: document *D271/5-272/3* (PTC 37-38).

<sup>31</sup> See above, para. 11.a).

<sup>32</sup> Case File No. 003/07-09-2009-ECCC/OCIJ (PTC62) (*Document D384/7269/4*). The Chamber did not "assemble[] an affirmative vote of at least four judges for a decision based on common reasoning on the merits". The national and international judges appended their respective opinions to the decision. While the national judges considered that all civil party applications should be rejected, the international judges considered that fourteen applicants should have been found admissible as civil parties in case 004, in addition to those found admissible by the international co-investigating judge. No decision was rendered by a four-judge majority on the relationship of this decision to, or the legal relevance of, the national co-investigating judge's decision to reject all civil parties, which was not appealed to the Pre-Trial Chamber.

<sup>33</sup> Case File No. 002/19-09-2007-ECCC/SC (*Document F50*). The defence responded on 23 September 2019 (see *Document F50/1*).

<sup>34</sup> Case File No. 002/19-09-2007-ECCC/SC (*Document F54*). The Khmer translation was filed on 12 June 2020. The timing of this filing and translation is explained in detail in revision 27 of the Completion Plan.

<sup>35</sup> Co-Prosecutors: Case File No. 002/19-09-2007-ECCC/SC (*Document F54/1*). The Khmer translation was notified on 27 November 2020. Civil Party Lead Co-Lawyers: Case File No. 002/19-09-2007-ECCC/SC (*Document F54/2*). The Khmer translation was notified on 5 February 2021.

***B. Case 003 and case 004***

25. Should case 003 and case 004 proceed to trial, immediate appeals as well as appeals against eventual trial judgements may arise. Nevertheless, given that it is currently not known which cases, if any, will proceed to trial and on which charges, it is premature to provide any estimate for time required to dispose of any appeal arising therefrom.

**VI. CONCLUSION**

26. For 2021, two milestones are expected with the implementation of the Pre-Trial Chamber's considerations on appeals against the closing orders in (i) case 003 against Meas Muth and (ii) case 004 against Yim Tith with decisions to either send the cases for trial or terminate the proceedings; and
27. For 2022, one milestone is expected with (iii) the issuance of an appeal judgement in case 002/02 by the Supreme Court Chamber.
28. If case 003 and/or case 004 are sent for trial, in whole or in part, timelines in these cases will then be projected.
29. The various projected milestones are reflected in a chart attached to this plan.



## Chart of projected timelines, including milestones

Completion Plan, revision 30 - 30 September 2021

Case	2018				2019				2020				2021				2022				
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	
Case 002/02 Khieu Samphan	Trial phase (b)				(c)	Appeals phase (d)															(e)
(a) Closing statements (prior to 2018)																					
(b) Trial judgement - summary and disposition																					
(c) Trial judgement - reasoned, in three languages																					
(d) Deadline for appeals against trial judgement																					
(e) Appeal judgement																					
Case 003 Meas Muth	Investigation phase (f)				(g)	Appeals against closing orders (h)															(i)
Case 004 Yim Tith	Investigation phase (f)				(g)	Appeals against closing orders (h)															(i)

(f) Separate and conflicting closing orders in one language only

(g) Separate and conflicting closing orders in both English and Khmer

(h) Pre-Trial Chamber's considerations on appeals against closings orders

(i) Judicial decision on implementation of the Pre-Trial Chamber's considerations