

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

**COMPLETION PLAN**

**REVISION 7**

**31 DECEMBER 2015**

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## 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 seventh quarterly update of the Completion Plan covering the quarter ending 31 December 2015.

During the last quarter, one additional milestone projected for 2015 was reached with the notification of conclusion of investigation in case 004 with respect to the charged person Im Chaem.

The Supreme Court Chamber commenced further appeal hearings in case 002/01 on 17 November 2015. Following a boycott by the Nuon Chea Defence, it ordered appointment of a standby counsel for Nuon Chea and scheduled final appeal hearings from 16 to 18 February 2016.

In the trial proceedings in case 002/02, the evidentiary hearings have progressed with the continuation of the third trial topic, namely the treatment of the Cham and Vietnamese, encompassing charges of genocide among other crimes. Due to the combined effect of the Defence boycott during the last quarter of 2014, time accorded to the parties to prepare for the case 002/01 appeal proceedings, as well as judicial adjournments for the purposes of reviewing documentary disclosures from cases 003 and 004, it is necessary to amend the projected timeline for the close of the hearings, closing statements and the delivery of the judgement in case 002/02 each by three months respectively. The timeline for appeal proceedings in case 002/02, if any, has also been extended by three months accordingly.

Substantive progress was also made over the last quarter in the judicial investigations in cases 003 and 004, where the last remaining suspect in case 004, Yim Tith, was charged in person by the international Co-Investigating Judge on 9 December 2015. Meas Muth, who was charged in absentia in case 003 in March 2015, appeared in person for an initial appearance and was charged by the international Co-Investigating Judge on 14 December 2015. Consequently, the previous decision to charge him in absentia become moot, and an outstanding arrest warrant was rescinded. On 18 December 2015, the Co-Investigating Judges jointly issued a notification of conclusion of investigation in case 004 with respect to the charged person Im Chaem. A status review of remaining investigations in cases 003 and 004 carried out by the newly appointed international Co-Investigating Judge during the fourth quarter concluded that the previously projected timelines were, in the circumstances, unduly optimistic. Consequently, the overall projected timelines for cases 003 and 004 have been extended with three and six months respectively to reflect the assessment of the new international Co-Investigating Judge .

The narrative part of the Completion Plan is updated to reflect the status of the judicial proceedings as of 31 December 2015.

## 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 seventh 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 2015.
3. The document focuses in particular on the recent developments in the three remaining cases currently before the Extraordinary Chambers, and provides information on the status of those cases as well as what steps will have to be completed before the judicial proceedings in respect of the cases currently before the Extraordinary Chambers reach legal finality. The Co-Prosecutors have stated publicly that there will be no further cases after cases 003 and 004.<sup>5</sup> The existing caseload thus represents the totality of the caseload to be addressed by the Extraordinary Chambers.
4. The charges in case 002 have been, to date, severed into two trials. The Trial Chamber rendered judgment in the first trial, styled by the Extraordinary Chambers as case 002/01, on 7 August 2014, against Nuon Chea and Khieu Samphan. Two further accused in the case, Ieng Sary and Ieng Thirith passed away on 14 March 2013 and 22 August 2015 respectively, and proceedings against them were therefore terminated. The Trial Chamber found Khieu Samphan and Nuon Chea guilty of crimes against humanity committed between 17 April 1975 and December 1977 and sentenced them each to life imprisonment. Both Nuon Chea and Khieu Samphan filed appeals against the trial judgement in case 002/01. In addition, the Co-Prosecutors filed an appeal limited to seeking

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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.

<sup>5</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>).

declaratory relief on the application of the most extended form of joint criminal enterprise known as JCE III as a mode of liability before the Extraordinary Chambers.

5. The appeal proceedings in case 002/01 are ongoing. The Supreme Court Chamber held its first appeal hearings on 2, 3 and 6 July 2015, and further appeal hearings on 17 November 2015, with conclusion thereof being scheduled for February 2016. The postponement of appeal hearings, due to unpredictable circumstances detailed in chapter V below, has no impact on the projected timeline for the delivery of the appeal judgment in case 002/02.
6. The second, current trial in this case, styled as case 002/02, focuses on a representative selection of the remaining charges against the two remaining accused. These include charges of genocide against the Cham and the Vietnamese ethnic groups, forced marriages and rape, treatment of Buddhists, internal purges and alleged crimes against humanity committed at four security centres, three worksites and one group of cooperatives. Evidentiary hearings commenced on 8 January 2015, and, by 31 December 2015, the Trial Chamber had heard a total of 56 witnesses, 30 Civil Parties and one expert. A number of Civil Parties were heard during hearings specifically devoted to the suffering of Civil Parties at cooperatives and worksites. Due to the combined effect of the Defence boycott during the last quarter of 2014, time accorded to the parties to prepare for the case 002/01 appeal proceedings, as well as judicial adjournments for the purposes of reviewing disclosures from cases 003 and 004, it has been necessary to extend the timelines the trial proceedings in case 002/02 by three months. This is further explained in chapter IV below.
7. Cases 003 and 004 remain currently in the phase of judicial investigation. The international Co-Investigating Judge is actively investigating these cases, involving allegations against four charged persons. Significant progress continued to be achieved in both cases during the fourth quarter of 2015, with the international Co-Investigating Judge charging Yim Tith in person in case 004 and Meas Muth in person in case 003. The Co-Investigating Judges jointly issued a notification of conclusion of investigation in case 004 with respect to the charged person Im Chaem. Having reviewed the status of remaining investigations in cases 003 and 004, the newly appointed international Co-Investigating Judge concluded that previously estimated timelines were, in the circumstances, unduly optimistic. As further elaborated in Chapter III below, the projected overall timelines for cases 003 and 004 have accordingly been extended by three and six months respectively.
8. In view of progress over the last quarter, this Completion Plan of the Extraordinary Chambers identifies 13 remaining milestones for the three cases with which the Chambers are seized. The remaining milestones in case 002<sup>6</sup> and associated indicative forecasts are:
  - (i) conclusion of appeal hearings in case 002/01 (by first quarter of 2016)
  - (ii) delivery of an appeal judgment in case 002/01 (by second quarter of 2016);
  - (iii) conclusion of substantive hearings in case 002/02 (by fourth quarter of 2016);
  - (iv) closing statements in case 002/02 (by first quarter of 2017);
  - (v) delivery of a trial judgment in case 002/02 (by fourth quarter of 2017);
  - (vi) deadline for filing any appeals against the trial judgment in case 002/02 (by first quarter of 2018); and
  - (vii) delivery of an appeal judgment in case 002/02, if any (by third quarter of 2019).
9. 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>7</sup> The milestones for the remainder of the judicial investigation phase are:

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<sup>6</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>7</sup> As noted in paragraph 40 below, given the current state of proceedings it is premature at this point to forecast specific time points in respect of eventual trial milestones.

- (viii) notification of conclusion of judicial investigations in case 003 (by third quarter of 2016);
- (ix) notification of conclusion of remaining judicial investigations in case 004 (by second and/or fourth quarter of 2016, depending on any severance);
- (x) issuance of closing order in case 003, with a decision either to send the case for trial or to end the proceedings (by fourth quarter of 2016);
- (xi) 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 and fourth quarter of 2016 and/or second quarter of 2017);
- (xii) 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 second quarter of 2017) ; and
- (xiii) 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 fourth quarter of 2017).

## **II. MEASURES THAT MAY ASSIST EXPEDITIOUS COMPLETION**

10. The effective functioning of the Extraordinary Chambers has in the past been hampered by significant and persistent financial insecurity, which resulted in two staff walkouts during 2013 as well as unwarranted staff turnover. The General Assembly's approval of a subventions for the calendar years 2014 and 2015 for the international component of the Extraordinary Chambers were essential measures that stabilized the funding situation and enabled concentrated focus on progressing the court's judicial mandate. Nevertheless, on the national side, cash-flow difficulties led to repeated delays in payment of national staff salaries in the course of the second half of 2015, with attendant impact on staff focus and morale.
11. Following early commitment of support from the Royal Government of Cambodia, on 23 December 2015 the General Assembly, in its resolution 70/248, authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed \$12.1 million to supplement the voluntary financial resources of the ECCC's international component for the period from 1 January to 31 December 2016. This timely action will greatly facilitate the ECCC's uninterrupted operations into the new year, opening space for continued solicitation of voluntary contributions. In addition, the Royal Government's commitment of direct contributions to again cover, as in 2015, the first six months of national staff costs as well as operational costs arising in 2016 is a key complementary measure facilitating the ongoing operation of the ECCC's national component. In combination, these measures ensure that the ongoing phase of peak workload in the Extraordinary Chambers' work continues to receive sustained attention into 2016. The projections of the timelines below are made on the basis that all Chambers and offices are sufficiently staffed, and that the judicial proceedings will not be further disrupted as a result of financial insecurity. Should financial insecurity emerge, there may be need to revise the timelines accordingly.
12. The projections for completion of the trial of case 002/02, the appeal of the case 002/01 trial judgement and the completion of investigations in cases 003 and 004, presume that all activities will continue to be carried out simultaneously. Until the conclusion of the appeal proceedings in case 002/01, the defence teams for Nuon Chea and Khieu Samphan, as well as the Civil Party Lead Co-Lawyers will be engaged in both the appeal of case 002/01 and the trial of case 002/02, in parallel. The Co-Prosecutors will also be simultaneously engaged in both of these cases, and the investigations and preparation of closing submissions in cases 003 and 004.
13. In January 2015, the Plenary of the Extraordinary Chambers adopted amendments to the court's Internal Rules that permit a reduction of the scope of judicial investigation, so long as the reduced scope of the investigation is representative of the charges and alleged criminal responsibility of the suspect. Similarly, the Trial Chamber may reduce the scope of the trial by excluding certain facts set

out in the indictment, as long as the remaining facts subject to trial are representative of the scope of the indictment. These rule amendments, if utilized, may expedite the conclusion of the judicial proceedings. The international Co-Investigating Judge continues to assess whether the new rules can be applied to narrow the scope of investigations in cases 003 and 004.

14. With the aim of augmenting the investigative capacity of the Office of the Co-Investigating Judges, nine international legal officers have been accredited by the Ministry of Justice to conduct investigative interviews, a task normally falling to the investigators. This enhanced capacity to conduct such interviews will accelerate the pace of the investigations. The international Co-Investigating Judge has in addition taken initiatives to augment his human resources with qualified personnel under non-reimbursable loan arrangements and additional interns to enhance judicial production. The investigative capacity was further increased when three new international investigators on secondment joined the Office of the Co-Investigating Judges during the first quarter of 2015. The new international Co-Investigating Judge continues to reach out to Member States and professional organizations with the aim of recruiting additional investigators as gratis personnel.
15. The Office of Administration has during the third and fourth quarter of 2015 recruited a number of freelance linguistic staff to support the judicial offices and Chambers, to ensure timely translation services.

### **III. JUDICIAL INVESTIGATIONS COMPLETION PLAN**

16. The timeline for the end of investigation is influenced by various factors such as the nature and complexity of the case, the number of witnesses to be interviewed, the number of field missions required, the availability of qualified staff and the ability to retain experienced staff, and logistical and practical impediments that may affect the conduct of the investigation. In this context, it is crucial to point out that investigations cannot be carried out consistently and regularly at all times across the year as in other environments. There are a large number of Cambodian national holidays, and during the rice planting and harvesting seasons people will very often not be available to be interviewed; in addition, a number of the remote locations are virtually inaccessible for missions during parts of the rainy season. The number of motions filed by the parties and the length of time required by the Pre-Trial Chamber to issue decisions on interlocutory appeals are also relevant related considerations. With these variables in mind, predictions on future timelines are based on past experience within the Extraordinary Chambers and must be anticipated as an overall approximation. It is also crucial to understand that quite a number of the above-mentioned factors are entirely beyond the control, and thus the planning schedule, of the Co-Investigating Judges.
17. Given that the Office of the Co-Investigating Judges is already working to a significant degree with the help of gratis personnel provided to the Extraordinary Chambers by States, consultants, interns and highly- experienced pro-bono support, the personnel situation allows scant margin for absorbing unexpected additional work due to sudden changes in the investigation effort. For example, the Office of the Co-Investigating Judges will lose three gratis investigators – out of a total of eight investigators – in the course of the first quarter of 2016 and replacements are yet to be found. The time any eventual replacements will need to acquaint themselves with the investigations will inevitably lead to a further loss of investigative capacity. Almost all legal officers and consultants have additionally been accredited as investigators with the Cambodian authorities and have to double up in roles in order to keep the witness interview rate within tolerable parameters. However, this practice has an unavoidable knock-on effect on the speed with which motions can be analysed and decisions drafted.
18. 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 must 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 and these may necessitate a substantial investigative effort, depending on the specific circumstances. A refusal to accommodate such a request can be appealed to the Pre-Trial Chamber. The current experience is that the Chamber may require between three to six months to decide such appeals. Depending on the subject matter of the appeal and its outcome, the appellate decision may have a significant impact on the ongoing investigations and add significantly to the time needed to finish them. The same applies to annulment requests to the Pre-Trial Chamber regarding alleged unlawful investigative acts, since the Co-Investigating Judges do not have the power to annul their own investigative acts.

19. When the Co-Investigating Judges consider that an investigation has been concluded, they notify all the parties who have 15 days to request further investigative actions, unless they waive such period. If the Co-Investigating Judges decide to reject such requests made, they must issue a reasoned order. All parties may, within 30 days from notice of such order, file appeals to the Pre-Trial Chamber. There is thus considerable potential for further unforeseeable delay. 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, will the Co-Investigating Judges be in a position to issue a Closing Order, either indicting a charged person, sending him or her for trial, or dismissing the case.
20. 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 the Co-Prosecutors have also appealed the 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.
21. Judicial investigations in cases 003 and 004 were initiated following introductory submissions filed by the international Co-Prosecutor in September 2009; several supplementary submissions have been made since. The national and international Co-Investigating Judges have, in accordance with the Internal Rules of the Extraordinary Chambers, recorded a number of disagreements regarding the investigation and are pursuing separate approaches in consequence in these cases. It should be noted that despite different views on certain legal and factual issues, the professional cooperation between both judges is excellent. The international Co-Investigating Judge is actively investigating the commission of alleged crimes in case 003 and in case 004.
22. Since the beginning of the investigations in cases 003 and 004, a total of 201 field missions have been carried out and 1,109 witness statements taken. In 2015 alone, up to 15 December 2015, 63 field missions (31.3 % of the total) have been conducted and 421 witness interviews (38 % of the total) completed. In addition, a major investigation with regard to the S-21 prison documentation is under way and making good progress. The international Co-Investigating Judge also recently initiated the wholesale digitisation of all available audio-recordings from the Documentation Center of Cambodia (DC-Cam) with the aim of placing them all on the case files in cases 003 and 004 in order to obviate the need for any future motions by the parties for *ad hoc* digitisation, thus minimising judicial and team time spent on such motions and cutting down further on the time needed for investigative action. This project is being set up at present and is anticipated for completion within the first quarter of 2016. This could not have been achieved by the Office of the Co-Investigating Judges without the substantial use of interns' time, reflecting the general comment on the staffing levels above.
23. The international Co-Investigating Judge carried out a status review of all remaining investigations in cases 003 and 004 in the fourth quarter of 2015, and the following comments are based upon that review. The state of progress regarding the investigations in both cases 003 and 004 established during this stock-taking exercise revealed that the previous timeline estimate had been, in the

circumstances, unduly optimistic due to a number of necessary investigative activities that could not be completed as had been foreseen at the time. The case of Yim Tith, in particular, will have a major impact on the development of the investigation in case 004, because that part of the investigation had been progressing without any substantial input from the Defence until the recent decision by the international Co-Investigating Judge granting access to the case file on 4 December 2015. Yim Tith was charged on 9 December 2015 at his initial appearance, where he appeared voluntarily on the basis of a summons issued by the international Co-Investigating Judge. The charged person and his counsel will need a substantial amount of time to familiarise themselves with the material accrued so far in the investigation, which has been ongoing since 2009, before they can meaningfully participate in it. A substantial number of investigative requests and other motions can now be expected to be filed once the Defence have sufficiently familiarised themselves with the case file. Any prediction of the remaining time for that particular part of case 004 is thus tentative at best at this time, given these contingencies. This fact is also of clear relevance to the question of severing individual sub-cases in case 004 for those charged persons whose investigations have been progressing with their participation for up to nine months.

24. The charged person in case 003, Meas Muth, voluntarily followed a renewed summons to an initial appearance on 14 December 2015 and was charged by the international Co-Investigating Judge with the totality of the alleged crimes as supported by the current state of the investigation, as opposed to the merely partial *in absentia* charging decision of 3 March 2015, which thereby became moot, as did the outstanding arrest warrant, which was accordingly rescinded.
25. Regarding the charged person in case 004, Im Chaem, a notification regarding the conclusion of the judicial investigation was issued on 18 December 2015 by both Co-Investigating Judges, and the parties may submit investigative requests within 15 days of notification.
26. It is the preferred avenue of the Co-Investigating Judges, at this time, to sever the proceedings against the three individual charged persons in case 004 as their respective investigations near completion, although the parties will be consulted on the matter in each case. The best approximate projections that can be given at this point in time are that:
  - (i) investigations into case 003 regarding Meas Muth will conclude by the third quarter of 2016;
  - (ii) investigations into case 004, depending on whether or not the case will be severed, will be concluded by the fourth quarter of 2015 for charged person Im Chaem and by the end of the second quarter of 2016 for Ao An, but not before the end of the fourth quarter of 2016 for the most recently charged person, Yim Tith;
  - (iii) the closing order in case 003 will be issued by the fourth quarter of 2016;
  - (iv) the closing order(s) in case 004, depending on whether, and if so, how, the cases will be severed, will be issued by the second quarter of 2016 for Im Chaem; by the fourth quarter of 2016 for Ao An; and by the second quarter of 2017 for Yim Tith;
  - (v) any appeals against the closing orders will be decided by the Pre-Trial Chamber by the second quarter of 2017 for case 003 and fourth quarter of 2017 for case 004.
27. These time projections remain contingent on a number of previously-identified factors such as, among others, retention of key staff, sufficient funds for the timely recruitment of new and qualified staff to fill vacant posts, timely translation of documents, sufficient interpretation and transcription capacity made available to support field missions and witness interviews, timely resolution of any appeals filed with the Pre-Trial Chamber and full support from the judicial police.



#### IV. TRIALS COMPLETION PLAN

28. The timeline for the completion of trials is influenced by various factors such as the nature and complexity of the case, the health of the aging accused, the number of witnesses, Civil Parties and experts called, their availability and the length of their testimonies, the logistical and practical impediments to the conduct of proceedings, the number of motions filed by the parties and other administrative considerations, including accuracy of interpretation and timely translation of documents. With these variables in mind, predictions on future timelines are based on past experience, both within the Extraordinary Chambers and in similar judicial bodies.
29. 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 hears evidence presentation. The onus is on the Co-Prosecutors to prove the guilt of the accused. In order to convict the accused, the Chamber must be convinced of the guilt of the accused beyond reasonable doubt. After examining all the evidence, the Chamber hears closing statements from the parties before it retires to deliberate on a judgment. If the accused is convicted, the Trial Chamber also decides on the appropriate sentence in this judgment. It is on the basis of the above procedural steps that the different milestones for each of the trials have been identified.

##### A. Case 002/02

30. On 4 April 2014, the Trial Chamber issued a severance decision, defining the scope of case 002/02, the second trial against Khieu Samphan and Nuon Chea. The Trial Chamber decided that the following alleged crime sites and factual allegations will form the basis for case 002/02: genocide against the Cham and the Vietnamese (excluding crimes 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). On 29 July 2014, the Supreme Court Chamber upheld the Trial Chamber's new severance decision.
31. 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.
32. On 17 October 2014, the Trial Chamber heard an opening statement by the national and international Co-Prosecutors. Khieu Samphan and Nuon Chea then took the floor to indicate their unwillingness to participate in the case 002/02 proceedings until the resolution of specific issues, and their instructions to counsel to follow suit. Nuon Chea resumed his participation in case 002/02 on 17 November, whereas the defence of Khieu Samphan continued to boycott the proceedings, forcing the Trial Chamber to postpone the evidentiary proceedings until January 2015.

33. Evidentiary proceedings commenced on 8 January 2015, with the Trial Chamber initially sitting for three days per week. Medical assessments of the Accused in January 2015 indicated that a four-day per week schedule was appropriate with a slightly shorter morning session. The Chamber therefore returned to a 4 days per week schedule in February 2015, accelerating the pace of trial. As of 31 December 2015, the Chamber had heard a total of 56 witnesses, 30 Civil Parties and one expert on the Tram Kok Cooperatives (including Kraing Ta Chan Security Centre and the treatment of Buddhists), 1<sup>st</sup> January Dam Worksite, the Kampong Chhnang Airport Construction site, Trapeang Thma Dam worksite as well as the treatment of the Cham and the Vietnamese.
34. It will be possible to fully project the number of hearing days required to complete the trial in case 002/02 only when the overall number of witnesses, civil parties and experts to be called to testify is fixed by the Trial Chamber. A total of 265 testimonies were initially proposed by the parties. An additional 45 testimonies of new witnesses, Civil Parties and an expert have been proposed since the beginning of the trial. The current projection as to the case 002/02 timeline is therefore based on the assumption that the second trial will be as complex and time consuming as the trial in case 002/01, but may vary considerably once this factor is fully determined.
35. Since the resumption of evidentiary hearings in January 2015, there has been no further indication of a renewed boycott in the case 002/02 trial. However, several hundred relevant statements have been disclosed from the case 003 and 004 investigations to the parties in case 002, which has required the Chamber to adjourn several weeks of hearings in order to allow the parties to review this new material. This disclosure has also led to requests from parties to hear further witnesses. Further, it has been necessary to provide the parties with time to prepare for and participate in the case 002/01 appeal hearings.
36. The Trial Chamber has now assessed the combined effect of the Defence boycott in the last quarter of 2014, the judicial adjournments for the purposes of reviewing documentary disclosures from cases 003 and 004, and time accorded to the parties to prepare for the anticipated case 002/01 appeal hearings. Although these factors collectively resulted in the loss of more than four months of hearing time, the progress made by Chamber in the trial in case 002/02, particularly in the first six months of 2015, makes it necessary at this time to move the expected milestones for the close of the proceedings, closing statements and delivery of the judgement by only three months respectively.
37. The Trial Chamber notes that it will be necessary to review the situation again in mid-2016 to determine whether these projections remain accurate on the basis of the trial's status as it then may stand. It is clear that before that time a number of factors are likely to impact further on the schedule. For example, the appeal hearings in case 002/01 are expected to be rescheduled in early 2016, during which time (including limited additional time for preparation) the parties will not be available to sit concurrently in trial hearings. Further disclosure from cases 003 and 004 may also be anticipated and could necessitate further adjournments. In this regard, the Co-Prosecutor has indicated that a majority of the relevant statements from cases 003 and 004 currently in his possession have already been disclosed in case 002/02 and therefore future delays resulting from additional disclosures are not likely to be as significant as those in 2015.
38. The Trial Chamber has also taken steps to further limit this disclosure process by declaring that the Co-Prosecutors have a continuing obligation to disclose to the Defence exculpatory evidence comprised of any material that in the actual knowledge of the Co-Prosecutors may suggest the innocence or mitigate the guilt of the Accused or affect the credibility of the inculpatory evidence and ordering, *inter alia*, the Co-Prosecutors to seek the admission, by 30 January 2016 at latest, of any case 003 and 004 materials disclosed to date in case 002/02 and upon which they intend to rely. Other factors potentially relevant to the projected length of

trial which may arise in the future include a change in the health conditions of the accused creating the need to reduce the number of hearing days per week, and/or the length of each hearing day, as well as the availability of witnesses and civil parties. The Trial Chamber has further expressed to the Office of Administration concerns with respect to interpretation and translation and the potential for delay that could result if these concerns are not addressed. The Office of Administration has taken steps to address this issue and continues to oversee the issue on an on-going basis.

B. Remaining charges/factual allegations in case 002

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

C. Case 003 and case 004

40. 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**

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

A. Case 002/01

42. Upon a request from the defence teams, in light of the size and complexity of the case and the Trial Judgment, the Supreme Court Chamber extended the deadline for the filing of the defence teams' notices of appeal against the case 002/01 trial judgment as well as the deadline and page limits for the filing of the appeal briefs, which were permitted to be filed initially in French or English only, with translations in the Khmer language to follow.
43. The defence teams of Nuon Chea and Khieu Samphan filed their notices of appeals on 29

September 2014 and their appeal briefs on 29 December 2014, advancing 223 and 148 grounds of appeal respectively, covering almost the entirety of the findings of the case 002/01 trial judgment), as well as several Trial Chamber decisions which were not open to interlocutory appeal until the delivery of the judgment on the merits. In addition, the Co-Prosecutors on 29 September 2014 filed a notice of appeal, limited to seeking declaratory relief from the Supreme Court Chamber regarding the applicability of the most extended form of joint criminal enterprise known as “JCE III” before the Extraordinary Chambers. The corresponding appeal brief were filed by the Co-Prosecutors on 28 November 2014.

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

48. As to further steps in the appeal process, the next months will involve further review of all filings, drafting of preparatory documents, and holding of appeal hearings. The Supreme Court Chamber will thereafter complete its deliberations and prepare and issue its appeal judgment in case 002/01.

B. Case 002/02

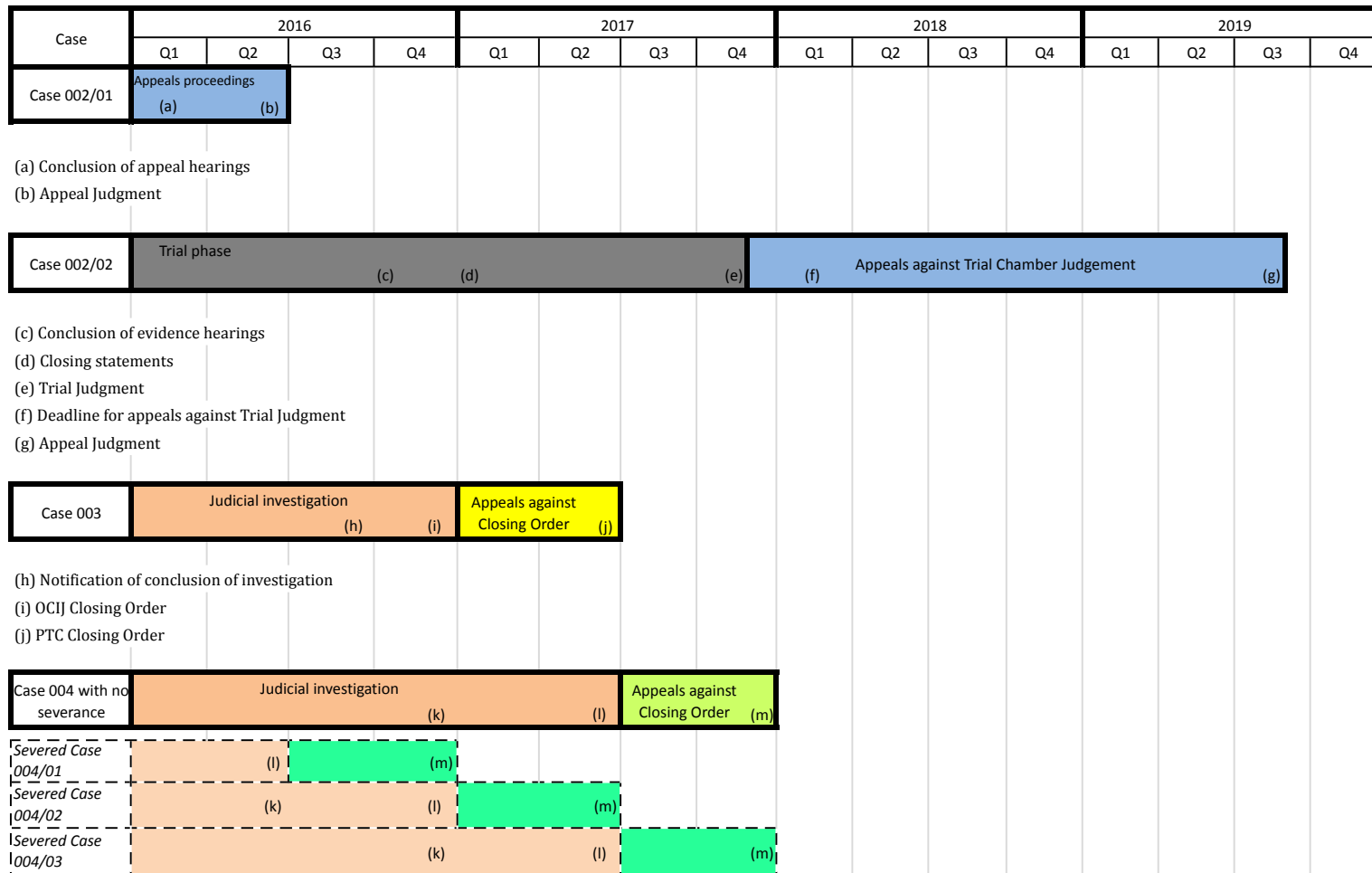
49. For case 002/02, based on the Trial Chamber's current projection that the second trial will likely be equally complex and time consuming as the first trial, the Supreme Court Chamber similarly projects at this time that the appeal(s) against the eventual judgment of the Trial Chamber in case 002/02 will be as complex and time-consuming as the appeal in case 002/01 and factors such as requests for extensions of time to file submissions or motions proposing additional evidence, may have a prolonging effect on the duration of the appeal proceedings. Any such dimensions will need to be factored into planning after appeals have been filed.
50. For the time being, noting the Trial Chamber's extension of the timeline for the case 002/02 trial by three months, the Supreme Court Chamber consequentially projects an equal time extension to the completion of the case 002/02 appeal.
51. Furthermore, possible immediate appeals against decisions of the Trial Chamber in case 002/02 must be decided within a statutory 3-month deadline. Extrapolating from experience in case 002/01, where on average one immediate appeal per month was filed, numerous immediate appeals are expected to arise from the trial proceedings in case 002/02 as well. This may stretch resources of the Supreme Court Chamber and affect the timeline for delivery of the appeal judgment in case 002/01.

## VI. CONCLUSION

52. For 2016, it is expected that that two milestones will be reached in cases 002/01 and 002/02: (i) the delivery of an appeal judgment in case 002/01; and (ii) the conclusion of evidentiary hearings in case 002/02. For cases 003 and 004, it is expected that four milestones will be reached: (i) notification of conclusion of the judicial investigation in case 003; (ii) issuance of a closing order in case 003 with a decision of the Co-Investigating Judges either to send the case for trial or to terminate the proceedings; (iii) notification of conclusion of the judicial investigation for the remaining charged persons in case 004; and (iv) issuance of two closing orders in case 004 with a decision of the Co-Investigating Judges either to send the case(s) for trial or to terminate the proceedings.
53. For 2017, it is expected that three milestones will be reached in case 002/02, namely; (i) ; delivery of closing statements; (ii) the delivery of a trial judgment; and (iii) the deadline for filing notices of appeals against the trial judgment . In cases 003 and 004, it is expected that three further milestones will be reached: (i) disposal of any appeals against the closing order in case 003; (ii) issuance of one closing order in case 004; and (iii) 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.
54. 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.

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

## Chart of projected timelines, including milestones



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

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

(m) PTC Closing Order