

ANNEX I - PROCEDURAL HISTORY

1. ARREST, TRANSFER AND DETENTION OF THE ACCUSED

1. On 19 September 2007, the Accused NUON Chea was detained by order of the Co-Investigating Judges and transferred to the ECCC detention facility.¹ On 14 November 2007, the Accused IENG Sary and IENG Thirith were detained by order of the Co-Investigating Judges and transferred to the ECCC detention facility.² On 19 November 2007, the Accused KHIEU Samphan was detained by order of the Co-Investigating Judges and transferred to the ECCC detention facility.³ The provisional detention of each Accused was periodically renewed.⁴

2. INVESTIGATION PHASE

2.1. Preliminary Investigation

2. The Co-Prosecutors initiated a preliminary investigation on 10 July 2006. On 18 July 2007, they filed an Introductory Submission with the Co-Investigating Judges, opening a judicial investigation against five suspects, including each of the Accused and KAING Guek Eav *alias* Duch.⁵

2.2. Severance Order – Duch/Case File 001

3. On 19 September 2007, the Co-Investigating Judges ordered the severance of the case of KAING Guek Eav in relation to facts concerning the S-21 security centre.⁶ This portion of the judicial investigation was completed and the facts tried under Case File 001/19-07-2007-ECCC.⁷ On 14 September 2010, the Co-Investigating Judges

¹ Detention Order of NUON Chea, C10, 19 September 2007.

² Detention Order of IENG Sary, C23, 14 November 2007; Detention Order of IENG Thirith, C21, 14 November 2007.

³ Detention Order of KHIEU Samphan, C27, 19 November 2007.

⁴ *See e.g.* Order on Extension of Provisional Detention of NUON Chea, C9/6, 15 September 2009.

⁵ Introductory Submission, D3, 18 July 2007.

⁶ Separation Order, D18, 19 September 2007.

⁷ On 26 July 2010, the Trial Chamber issued the Judgement in Case 001, sentencing Duch to 35 years of imprisonment: *KAING Guek Eav alias Duch*, Case 001/18-07-2007/ECCC/TC, Trial Judgement, E188, 26 July 2010. On 3 February 2012 the Supreme Court Chamber issued its Appeal

issued a Dismissal Order, finding that KAING Guek Eav's criminal activity had already been subject to extensive litigation, no new evidence in relation to his participation was revealed in the investigation of Case 002 and, therefore, there was no reason to continue proceedings against him in Case File 002.⁸

2.3. Conclusion of Investigation and Closing Order in Case 002

4. On 14 January 2010, the Co-Investigating Judges notified the parties pursuant to Internal Rule 66(1) that they considered their investigation in Case 002 to be concluded.⁹ On 19 July 2010, the Co-Investigating Judges forwarded the Case File to the Office of the Co-Prosecutors pursuant to Internal Rule 66(4).¹⁰ On 16 August 2010, the Co-Prosecutors filed their Final Submission.¹¹

5. On 15 September 2010, the Co-Investigating Judges issued the Closing Order in Case 002, finding there to be sufficient evidence that the Accused NUON Chea, IENG Sary, IENG Thirith, and KHIEU Samphan are responsible for: crimes against humanity (namely, murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecution on political, racial and religious grounds, and other inhumane acts); genocide; grave breaches of the Geneva Conventions of 1949 (namely, wilful killing, torture or inhumane treatment, wilfully causing great suffering or serious injury to body or health, wilfully depriving a prisoner of war or civilian of the rights of fair and regular trial, unlawful deportation and unlawful confinement of a civilian); and homicide, torture and religious persecution under the 1956 Penal Code.¹²

2.4. Appeals of the Closing Order

6. All Defence teams filed appeals against the Closing Order.¹³ On 13 January 2011, the Pre-Trial Chamber issued three decisions on the appeals, amending two

Judgement, increasing Duch's sentence to life imprisonment: *KAING Guek Eav alias Duch*, Case 001/18-07-2007/ECCC/SC, Appeal Judgement, F28, 3 February 2012.

⁸ Dismissal Order, D420, 14 September 2010.

⁹ Notice of Conclusion of Judicial Investigation, D317, 14 January 2010.

¹⁰ Forwarding Order, D385, 19 July 2010.

¹¹ Co-Prosecutors' Rule 66 Final Submission, D390, 16 August 2010.

¹² Closing Order, D427, 15 September 2010, para. 1613.

¹³ NUON Chea's Appeal against the Closing Order, D427/3/1, 18 October 2010; IENG Thirith Defence Appeal against the Closing Order, D427/2/1, 18 October 2010; Appeal Against the Closing

points of the Closing Order and dismissing all other grounds of appeal, indicating that full reasons would follow.¹⁴ The reasoned decisions on the appeals followed on 21 January 2011,¹⁵ 15 February 2011¹⁶ and 22 April 2011.¹⁷ The Pre-Trial Chamber found that during the period covered by the ECCC's temporal jurisdiction, customary international law required a nexus between the underlying acts of crimes against humanity and an armed conflict.¹⁸ The Pre-Trial Chamber further found that in 1975-1979 rape did not exist as a stand-alone crime against humanity and struck rape from the Closing Order, noting that facts characterised as crimes against humanity in the form of rape can be categorised as crimes against humanity of other inhumane acts.¹⁹ The Closing Order was not reissued to incorporate these amendments and therefore must be read in conjunction with the Pre-Trial Chamber decisions.

3. CIVIL PARTIES

3.1. Admission of Civil Parties

7. During the investigation of Case 002, the Co-Investigating Judges admitted 2,123 Civil Parties.²⁰ Ninety-four appeals were filed before the Pre-Trial Chamber on behalf of 1,747 applicants who were initially denied Civil Party status.²¹ On 24 June 2011, the Pre-Trial Chamber declared all of these appeals admissible and overturned most of the orders of the Co-Investigating Judges, granting further 1,728 individuals Civil

Order, D427/4/3, 18 October 2010; IENG Sary's Appeal against the Closing Order, D427/1/6, 25 October 2010.

¹⁴ Decision on KHIEU Samphan's Appeal against the Closing Order (PTC), D427/4/14, 13 January 2011; Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/26, 13 January 2011; Decision on IENG Thirith and NUON Chea's Appeal against the Closing Order (PTC), D427/2/12, 13 January 2011.

¹⁵ Decision on KHIEU Samphan's Appeal against the Closing Order (PTC), D427/4/15, 21 January 2011.

¹⁶ Decision on Appeals by NUON Chea and IENG Thirith Against the Closing Order (PTC), D427/2/15 and D427/3/15, 15 February 2011.

¹⁷ Decision on IENG Sary's Appeal against the Closing Order (PTC), D427/1/30, 11 April 2011.

¹⁸ Decision on IENG Thirith and NUON Chea's Appeal against the Closing Order (PTC), D427/3/12, 13 January 2011, p. 6.

¹⁹ Decision on IENG Thirith and NUON Chea's Appeal against the Closing Order (PTC), D427/3/12, 13 January 2011, p. 6.

²⁰ Closing Order, D427, 15 September 2010, para. 12. For a complete list *see* Annex: List of Civil Parties, D427.1, 15 September 2010.

²¹ *See e.g.* Civil Party Lawyers' Notice of Appeal against the Order On Admissibility of Civil Party Applicants Residing Outside the Kingdom of Cambodia, D404/2, 9 September 2010; Civil Party Lawyers' Notice of Appeal against the Order On Admissibility of Civil Party Applicants From Current Residents of Kampong Chhnang Province, D417/2, 14 September 2010.

Party status.²² Judge Marchi-Uhel dissented in part, agreeing with the majority that the appeals were admissible, but finding that the *de novo* review on appeal undertaken by the majority was unwarranted.²³ On 1 July 2011, the Pre-Trial Chamber reconsidered its denial of certain Civil Party applications and granted status to an additional 12 applicants.²⁴

8. At the commencement of the trial proceedings, 3,869 Civil Parties formed a single consolidated group represented by two designated Lead Co-Lawyers (Mr. PICH Ang and Ms. Elisabeth SIMONNEAU-FORT).²⁵ The current number of Civil Parties in Case 002 is 3,867. The civil actions of Civil Parties who passed away during the trial proceedings were continued in several cases by their successors, following formal approval by the Trial Chamber.²⁶ Effective 31 May 2014, Ms. SIMONNEAU-FORT resigned and Ms. Marie GUIRAUD was appointed as International Civil Party Lead Co-Lawyer on 1 June 2014.²⁷

3.2. Reparations

9. In June 2011, the Civil Party Lead Co-Lawyers informed the Trial Chamber of their intent, subject to further discussions, to request four types of reparations: (i) the construction of memorials; (ii) rehabilitation projects; (iii) the compilation of a list of victims and educational projects; and (iv) other awards.²⁸

10. In order to ensure that the proceedings in Case 002/01 could result in meaningful reparations for victims in the event of the guilt of the Accused, the Trial Chamber

²² Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications (PTC), D404/2/4, 24 June 2011; Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications (PTC), D411/3/6, 24 June 2011.

²³ Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications (PTC), D404/2/4, 24 June 2011; Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications (PTC), D411/3/6, 24 June 2011.

²⁴ Decision on the Reconsideration of the Admissibility of Civil Party Applications (PTC), D250/3/2/1/8, 1 July 2011. *See also* Decision on the Reconsideration of the Admissibility of Civil Party Application (PTC), D364/1/6, 7 January 2011.

²⁵ T. 21 November 2011, p. 3.

²⁶ *See e.g.* Succession of deceased Civil Parties in Case 002 (TC), E2/20, 21 May 2013; Succession of Deceased Civil Party VAN Sary in Case 002 (TC), E2/22/1, 16 September 2013; Succession of Deceased Civil Party, E2/26/1, Request to continue civil action of IENG Siphach, E2/30, 2 June 2014; Succession of deceased Civil Party MAO Son in Case 002, E2/24/1, 23 January 2014; Succession of deceased Civil Party MIECH Ponn in Case 002, E2/29/1, 22 May 2014. In addition, two Civil Parties withdrew from the case.

²⁷ Letter of Resignation of Ms. SIMONNEAU-FORT, 9 January 2014; PAS – Press Release, Marie Guiraud Appointed as International Civil Party Lead Co-Lawyer, 26 May 2014.

²⁸ T. 29 June 2011, pp. 107-114.

requested the Civil Party Lead Co-Lawyers to prioritise a small number of reparations awards for development and commence preparations for their implementation as soon as possible.²⁹ In February 2013, the Civil Party Lead Co-Lawyers identified seven prioritised projects: (i) a Remembrance Day project; (ii) a public memorials initiative; (iii) a testimonial therapy project; (iv) self-help groups; (v) a mobile exhibition and education project; (vi) a permanent exhibition; and (vii) a booklet on adjudicated facts and civil party participation at the ECCC.³⁰ On 23 August 2013, the Civil Party Lead Co-Lawyers informed the Trial Chamber of proposed funding for each of the projects and requested that the Trial Chamber take note of an additional project: (viii) a book chapter for inclusion in school curricula on forced population movement and executions at Tuol Po Chrey.³¹ In the Civil Parties' final claim for reparations, the Lead Co-Lawyers reiterated their requests for these projects, and added new requests with respect to: (ix) the construction of a memorial in Phnom Penh to honour victims of forced evacuation; (x) the construction of a memorial to the victims of the Khmer Rouge regime for Cambodians living in France; (xi) the construction of a peace learning centre; (xii) the publication and distribution of the verdict in Case 002/01 in both full and summary versions; (xiii) and the inclusion of Civil Party names on the ECCC website.³² The Lead Co-Lawyers sought the approval of thirteen projects in total.

4. TRIAL PROCEEDINGS

11. The Trial Chamber was seised of the present case following resolution of all appeals against the Closing Order on 13 January 2011.³³

²⁹ Indication of priority projects for implementation as reparation (Internal Rule 80*bis*(4) (TC), E218/7, 3 December 2012.

³⁰ Civil Party Lead Co-Lawyers' Indication to the Trial Chamber of the Priority Projects for Implementation as Reparations (Internal Rule 80*bis*(4)) with strictly confidential annexes, E218/7/1, 12 February 2013.

³¹ Civil Party Lead Co-Lawyers' Response to the Trial Chamber's Memorandum E218/7/2 concerning Reparations Projects for Civil Parties in Case 002/01, with confidential annexes, E218/7/3, 23 August 2013.

³² Civil Parties' Final Claim for Reparations, E218/7/6, 8 October 2013.

³³ Order to File Material in Preparation for Trial, E9, 17 January 2011, p. 2.

4.1. Trial Preparation

4.1.1. *Preliminary Objections*

12. On 8 and 14 February 2011, each of the Accused filed preliminary objections concerning, *inter alia*, the Trial Chamber's jurisdiction, the legality of the Internal Rules, and statutes of limitations for domestic crimes and grave breaches of the Geneva Conventions.³⁴ On 27 May 2011, the Co-Prosecutors filed supplementary submissions concerning the statute of limitations for national crimes.³⁵ On 8 June 2011, IENG Sary filed a request for leave to file a supplementary submission to his Rule 89 preliminary objection on national crimes.³⁶

13. Over the months that followed, the Trial Chamber determined those preliminary objections which it considered constituted a potential barrier to the commencement of trial.³⁷ In particular, the Chamber decided that it was not validly seized of the offences

³⁴ Preliminary Objection Concerning the Jurisdiction of the Trial Chamber, E36, 08 February 2011; Preliminary Objection Concerning the Legality of the Internal Rules and Effect of the Trial Chamber's Order of 17 January 2011, E42, 11 February 2011; IENG Thirith Defence's Preliminary Objections, E44, 14 February 2011; Preliminary Objections Concerning Jurisdiction, E46, 14 February 2011; Preliminary Objections Concerning Termination of Prosecution (Domestic Crimes), E47, 14 February 2011; IENG Sary's Rule 89 Preliminary Objection (Rule 89(1)(C)), E48, 14 February 2011; IENG Sary's Rule 89 Preliminary Objection (Statute of Limitations for Grave Breaches), E43, 14 February 2011; Consolidated Preliminary Objections, E51/3, 25 February 2011. *See also* Civil Parties' Joint Response to Defence Rule 89 Preliminary Objections, E51/5/4, 7 March 2011; Co-Prosecutors' Joint Response to Defence Rule 89 Preliminary Objections, E51/5/3/1, 21 March 2011; IENG Sary's Indication of the Portions of the Pre-Trial Chamber's Decision on IENG Sary's Appeal against the Closing Order which require Supplementary Submissions related to the Application of International Crimes and Forms of Liability at the ECCC, E83, 3 May 2011; IENG Sary's Supplement to his Rule 89 Preliminary Objection (*Ne Bis In Idem*), E51/11, 27 May 2011; IENG Sary's Supplement to his Rule 89 Preliminary Objection (Royal Pardon and Amnesty), E51/10, 27 May 2011; Réponse des Co-avocats des parties civiles au mémoire supplémentaire sur l'exception préliminaire selon règle 89 (*Ne Bis In Idem*), E51/11/1, 06 June 2011; Civil Party Co-Lawyers' Response to the Supplement to Rule 89 Preliminary Objection (Royal Pardon and Amnesty), E51/10/3, 10 June 2011; Co-Prosecutors' Combined Response to IENG Sary's Supplements to his Rule 89 Objection (*Ne Bis In Idem* and Royal Pardon and Amnesty), E51/13, 07 June 2011.

³⁵ Co-Prosecutors' Submission on Statute of Limitations for National Crimes, E51/7/1, 27 May 2011. *See also* Joint Response of IENG Sary, IENG Thirith and NUON Chea to Co-Prosecutors' Submission on Statute of Limitations for National Crimes, E51/7/3, 17 June 2011; Response to Co-Prosecutors' Submission on Statute of Limitations for National Crimes, E51/7/2, 17 June 2011.

³⁶ IENG Sary's Request for Leave to File a Supplemental Submission to his Rule 89 Preliminary Objection (National Crimes), E94, 8 June 2011.

³⁷ Decision on NUON Chea's Preliminary Objection Alleging the Unconstitutional Character of the ECCC Internal Rules, E51/14, 8 August 2011; Decision on NUON Chea's Motions Regarding Fairness of Judicial Investigations (E51/3, E82, E88 and E92), E116, 9 September 2011; Decision on the Applicability of Joint Criminal Enterprise, E100/6, 12 September 2011; Decision on IENG Sary's Rule 89 Preliminary Objection (*Ne Bis In Idem* and Amnesty and Pardon), E51/15, 3 November 2011. Other submissions, while described as preliminary objections by the parties, were instead considered by the Chamber as more appropriate for resolution in the Judgement or deferred to future trials in Case 002 insofar as they concerned matters beyond the scope of Case 002/01 (Response to Issues Raised by

in the 1956 Penal Code included in the dispositive of the Closing Order in Case 002, and that therefore it had no basis to try the Accused for domestic crimes.³⁸ The Trial Chamber rejected NUON Chea's preliminary objections on the validity of the ECCC Internal Rules,³⁹ a decision later upheld by the Supreme Court Chamber.⁴⁰

14. On 15 June 2011, the Co-Prosecutors requested that the Trial Chamber exclude the armed conflict nexus requirement from the definition of crimes against humanity,⁴¹ a request which was supported by the Civil Party Lead Co-Lawyers.⁴² However, IENG Thirith, NUON Chea, KHIEU Samphan and IENG Sary all requested that the Trial Chamber reject this request.⁴³ On 26 October 2011, the Trial Chamber granted the request, finding that there was no basis upon which to reconsider its ruling in Case 001 that the armed conflict nexus was not part of the customary definition of crimes against humanity during the period over which the Court has

Parties in Advance of Trial and Scheduling of Informal Meeting with Senior Legal Officer on 18 November 2011 (TC), E141, 17 November 2011).

³⁸ Decision on Defence Preliminary Objections (Statute of Limitations on Domestic Crimes), E122, 22 September 2011, paras 21-23.

³⁹ Decision on NUON Chea's Preliminary Objection Alleging the Unconstitutional Character of the ECCC Internal Rules, E51/14, 8 August 2011; Decision on NUON Chea's Motions Regarding Fairness of Judicial Investigations (E51/3, E82, E88 and E92), E116, 9 September 2011.

⁴⁰ Summary of the Reasons for the Decision on Immediate Appeal by NUON Chea against the Trial Chamber's Decision on Fairness of Judicial Investigation, E116/1/6, 30 January 2012.

⁴¹ Co-Prosecutors' Request for the Trial Chamber to Exclude the Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity, E95, 15 June 2011. *See also* IENG Sary's Request for an Expedited Decision as to Whether the Co-Prosecutors' May Raise Requests for Re-characterization at this Stage in the Proceedings and Request for Extension of Time to Respond to Such Requests, Should Responses be Necessary, E103, 24 June 2011.

⁴² Civil Party Lead Co-Lawyers' Response in Support of the Co-Prosecutors' Request for the Trial Chamber to Exclude the Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity, E95/1, 17 June 2011.

⁴³ Defence Response to Co-Prosecutors' Request for the Trial Chamber to Amend the Definition of Crimes Against Humanity, E95/2, 22 July 2011; Defence Response to Co-Prosecutors' Request for the Trial Chamber to Re-characterize the Facts Establishing the Conduct of Rape as the Crime Against Humanity of Rape Rather than the Crime Against Humanity of Other Inhumane Acts, E99/2, 22 July 2011; Defence Response to Co-Prosecutors' Request for the Trial Chamber to Consider JCE III as an Alternative Mode of Liability, E100/1, 22 July 2011; Response to the Co-Prosecutors' Request for the Trial Chamber to Exclude the Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity, E95/5, 22 July 2011; Response to the Co-Prosecutors' Request for the Trial Chamber to Exclude the Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity, E95/3, 22 July 2011; IENG Sary's Response to the Co-Prosecutors' Request for the Trial Chamber to Exclude the Armed Conflict Nexus Requirement from the Definition of Crime Against Humanity and Request for an Oral Hearing, E95/4, 22 July 2011.

temporal jurisdiction.⁴⁴ The Supreme Court Chamber rejected IENG Sary's appeal of the decision as inadmissible.⁴⁵

15. In June 2011, the Co-Prosecutors requested that the Trial Chamber re-characterize the facts in the Closing Order establishing the conduct of rape as the crime against humanity of rape rather than the crime against humanity of other inhumane acts.⁴⁶ The Trial Chamber found this issue to be premature in light of the scope of the first trial as stipulated by it following the Severance Order, and deferred its decision to a later stage of the proceedings.⁴⁷

16. In June 2011, the Co-Prosecutors requested that the Trial Chamber consider JCE III to be a valid mode of liability before the ECCC and to re-characterize the charges at Judgement, where appropriate, as crimes committed pursuant to JCE III.⁴⁸ The Civil Party Lead Co-Lawyers supported this request, while the Accused submitted that the Trial Chamber should reject it.⁴⁹ On 12 September 2011, the Trial Chamber issued a decision rejecting the request, finding that JCE III did not form part of

⁴⁴ Decision on Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity, E95/8, 26 October 2011.

⁴⁵ Decision on IENG Sary's Appeal against Trial Chamber's Decision on Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity (SCC), E95/8/1/4, 19 March 2012. *See also* IENG Sary's Appeal against the Trial Chamber's Decision on Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity, E95/8/1/1, 25 November 2011; Appeal register – IENG Sary's Appeal against the Trial Chamber's Decision on Co-Prosecutors' Request to Exclude Armed Conflict Nexus Requirement from the Definition of Crimes Against Humanity, E95/8/1, 28 November 2011.

⁴⁶ Co-Prosecutors' Request for the Trial Chamber to Recharacterize the Facts Establishing the Conduct of Rape as the Crime Against Humanity of Rape Rather than the Crime Against Humanity of Other Inhumane Acts, E99, 16 June 2011. *See also* Civil Party Lead Co-Lawyers' Response to the Co-Prosecutors' Request to Recharacterize the Facts Establishing the Conduct of Rape as a Crime Against Humanity, E99/1, 21 July 2011; Defence Response to Co-Prosecutors' Request for the Trial Chamber to Amend the Definition of Crimes Against Humanity, E95/2, 22 July 2011; Defence Response to Co-Prosecutors' Request for the Trial Chamber to Consider JCE III as an Alternative Mode of Liability, E100/1, 22 July 2011; Response to the Co-Prosecutors' Request to Recharacterize the Facts Establishing the Conduct of Rape, E99/3, 22 July 2011; IENG Sary's Response to the Co-Prosecutors' Request for the Trial Chamber to Recharacterize the Facts Establishing the Conduct of Rape as the Crime Against Humanity of Other Inhumane Acts and Request for an Oral Hearing, E99/4, 22 July 2011; Defence Response to Co-Prosecutors' Request for the Trial Chamber to Recharacterize the Facts Establishing the Conduct of Rape as the Crime Against Humanity of Rape Rather than the Crime Against Humanity of Other Inhumane Acts, E99/2, 22 July 2011.

⁴⁷ Severance Order pursuant to Rule 89ter, E124, 22 September 2011, para. 9.

⁴⁸ Co-Prosecutors' Request for the Trial Chamber to Consider JCE III as an Alternative Mode of Liability, E100, 17 June 2011.

⁴⁹ Brief in Support of the Co-Prosecutors' Request for the Trial Chamber to Consider Joint Criminal Enterprise III as an Alternative Mode of Liability, E100/4, 22 July 2011; Response to the Co-Prosecutors' Request for the Trial Chamber to Consider JCE III as an Alternative Mode of Liability, E100/5, 22 July 2011; Response to the Co-Prosecutors' Request Concerning JCE III, E100/3, 22 July 2011; IENG Sary's Response to the Co-Prosecutors' Request for the Trial Chamber to Consider JCE III as an Alternative Mode of Liability and Request for an Oral Hearing, E100/2, 22 July 2011.

customary international law and was not a general principle of law at the time relevant to Case 002.⁵⁰

17. After the Trial Chamber severed the charges in Case 002, it decided in September 2011, to defer the resolution of certain preliminary objections to a later stage.⁵¹

18. On 3 November 2011, the Trial Chamber dismissed IENG Sary's preliminary objections concerning *ne bis in idem* (double jeopardy) and amnesty.⁵² On 20 March 2012, the Supreme Court Chamber declared IENG Sary's appeal of this decision to be inadmissible.⁵³

19. In November 2011, the Trial Chamber stated that it had disposed of all preliminary objections with implications for trial management for Case 002/01.⁵⁴

4.1.2. Accused Fitness to Stand Trial

20. In February 2011, NUON Chea and IENG Thirith asked for the appointment of experts to assess their fitness to stand trial,⁵⁵ and the Chamber appointed medical experts in April 2011, also ordering a medical assessment of IENG Sary following his request for the trial to be conducted through half day sessions because of his age and ill-health.⁵⁶ KHIEU Samphan did not challenge his fitness to stand trial.⁵⁷ Expert reports were issued in relation to the Accused IENG Sary, NUON Chea and IENG Thirith. A preliminary hearing on the fitness of NUON Chea and IENG Thirith to stand trial was held from 29 to 31 August 2011.⁵⁸

⁵⁰ Decision on the Applicability of Joint Criminal Enterprise, E100/6, 12 September 2011, paras 31, 35-38.

⁵¹ Severance Order pursuant to Internal Rule 89ter, E124, 22 September 2011.

⁵² Decision on IENG Sary's Rule 89 Preliminary Objection (*Ne Bis In Idem* and Amnesty and Pardon), E51/15, 03 November 2011, paras 27, 30-36.

⁵³ Decision on IENG Sary's Appeal against Trial Chamber's Decision on IENG Sary's Rule 89 Preliminary Objections (*Ne Bis In Idem* and Amnesty and Pardon) (SCC), E51/15/1/2, 20 March 2012.

⁵⁴ Response to Issues Raised by Parties in Advance of Trial and Scheduling of Informal Meeting with Senior Legal Officer on 18 November 2011 (TC), E141, 17 November 2011.

⁵⁵ Urgent Application for Appointment of Fitness Expert, E30, 2 February 2011; Defence Request for Appointment of a Neuropsychiatrist to Assess Madame IENG Thirith's Fitness to Stand Trial, E52, 21 February 2011.

⁵⁶ Order Assigning Expert, E62/3, 4 April 2011. *See also* IENG Sary's Motion to Conduct the Trial through Half-Day Sessions, E20, 19 January 2011.

⁵⁷ Scheduling Order for Preliminary Hearing to Stand Trial, E110, 11 August 2011.

⁵⁸ Geriatric Report of NUON Chea dated on 13 June 2011 in Response to Trial Chamber's Order Assigning Expert, E62/3/4, 13 June 2011; Geriatric Report of IENG Sary dated on 13 June 2011 in Response to Trial Chamber's Order Assigning Expert, E62/3/5, 13 June 2011; Geriatric Report of

21. IENG Sary did not challenge the expert report, which concluded that he was fit to stand trial but recommended certain measures designed to improve his comfort and concentration.⁵⁹ IENG Sary's health was re-evaluated in October 2012 and, on 26 November 2012, the Chamber found that he remained fit to stand trial, and later rejected a motion for reconsideration of this decision.⁶⁰

4.1.2.1. Nuon Chea's Fitness to stand trial

22. On 15 November 2011, after examining the medical expert's report and having heard the parties on the matter, the Trial Chamber found NUON Chea fit to stand trial.⁶¹ On 18 December 2012 however, the Trial Chamber noted that NUON Chea was suffering from chronic physical ailments and ordered that his health be reassessed by two medical experts.⁶² On the basis of their reports and testimony, on 29 March 2013, the Chamber re-affirmed its earlier decision that NUON Chea was capable of meaningful participation in his own defence and therefore fit to stand trial.⁶³

4.1.2.2. IENG Thirith's fitness to stand trial

23. On 19 and 20 October 2011 at a public hearing, the parties presented oral arguments in relation to the conclusions contained in the expert reports on IENG Thirith's health condition, and directly questioned the expert.⁶⁴

24. On 17 November 2011, the Trial Chamber unanimously found IENG Thirith unfit to stand trial. The Chamber ordered the severance of charges and a stay of the proceedings against her, as well as her release without condition.⁶⁵ On 13 December 2011, the Supreme Court Chamber set aside the Trial Chamber's order, finding that

IENG Thirith dated on 23 June 2011 in Response to Trial Chamber's Order Assigning Expert, E62/3/6, 23 June 2011.

⁵⁹ Scheduling Order for Preliminary Hearing to Stand Trial, E110, 11 August 2011.

⁶⁰ Decision on Accused IENG Sary's Fitness to Stand Trial, E238/9, 26 November 2012; Decision on IENG Sary's Request for Reconsideration of the Trial Chamber Decision on the Accused's Fitness to Stand Trial and Supplemental Request, E238/11/1, 19 December 2012.

⁶¹ Decision on NUON Chea's Fitness to Stand Trial and Defence Motion for Additional Medical Expertise, E115/3, 15 November 2011.

⁶² Reappointment of Experts to Review the Health and Fitness of IENG Sary and NUON Chea during the Week of 11 March 2013, E256, 18 December 2012, paras 1-2.

⁶³ T. 29 March 2013, p. 2; Second Decision on Accused NUON Chea's Fitness to Stand Trial, E256/5, 2 April 2013.

⁶⁴ Scheduling Order for Hearings on 19 and 20 October 2011, E129, 10 October 2011. *See also* T. 19 October 2011, E1/11.1, pp.80-131; T. 20 October 2011, E1/12.1, pp.2-29 and pp. 73-81; pp. 30-56; pp.57-69. The parties were also heard on the issue of severing the case against IENG Thirith from Case 002.

⁶⁵ Decision on IENG Thirith's Fitness to Stand Trial, E138, 17 November 2011.

unconditional release was not appropriate since there was a possibility that the Accused's health might improve, which might then allow the stay of proceedings to be lifted. The Supreme Court Chamber directed the Trial Chamber to request additional medical treatment for IENG Thirith and to order that she undergo medical examination by an expert to determine her fitness to stand trial 6 months into such treatment.⁶⁶

25. Following the Supreme Court Chamber's decision, the Trial Chamber, having re-appointed experts who reported that her dementing illness had progressed and that available therapeutic options had been exhausted, reassessed IENG Thirith's fitness to stand trial. On 13 September 2012, reaffirmed its finding that she is unfit to stand trial and confirmed the severance of the charges against her from the rest of Case 002. The Trial Chamber ordered her unconditional and immediate release from the ECCC Detention Facility.⁶⁷ The Co-Prosecutors appealed this decision insofar as it did not impose conditions on her release,⁶⁸ and on 16 September 2012 the Supreme Court Chamber issued a decision granting in part the Co-Prosecutors' request and ordering that the Accused's release be subject to conditions until the determination of the full appeal.⁶⁹ IENG Thirith was released the same day.

26. After the Co-Prosecutors filed supplementary written submissions on the issue of release conditions, the Supreme Court Chamber held an appeal hearing on 13 November 2012. On 14 December 2012, the Supreme Court Chamber set aside the Trial Chamber's decision in this regard and ordered a regime of judicial supervision, including six-monthly medical examinations and a monthly check by the judicial police.⁷⁰ Following the IENG Thirith Defence request for clarification of the interpretation and implementation of the Supreme Court Chamber's decision,⁷¹ on 26

⁶⁶ Decision on Immediate Appeal against the Trial Chamber's Order to Release the Accused IENG Thirith (SCC), E138/1/7, 13 December 2011.

⁶⁷ Decision on Reassessment of the Accused IENG Thirith's Fitness to Stand Trial Following Supreme Court Chamber Decision of 13 December 2011, E138/1/10, 13 September 2012.

⁶⁸ Immediate Appeal Against Decision on Reassessment of Accused IENG Thirith's Fitness to Stand Trial Following the Supreme Court Chamber Decision of 13 December 2011, E138/1/10/1/1, 14 September 2012.

⁶⁹ Decision on Co-Prosecutors' Request for Stay of Release Order of IENG Thirith (SCC), E138/1/10/1/2/1, 16 September 2012.

⁷⁰ Decision on Immediate Appeal Against the Trial Chamber's Order to Unconditionally Release the Accused IENG Thirith (SCC), E138/1/10/1/5/7, 14 December 2012.

⁷¹ Decision on Immediate Appeal Against the Trial Chamber's Order to Unconditionally Release the Accused IENG Thirith (SCC), E138/1/10/1/5/7, 14 December 2012; IENG Thirith Defence Request for Clarification of the Execution of the Supreme Court Chamber's Decision on Immediate Appeal Against

March 2013 the Trial Chamber forwarded the request to the Supreme Court Chamber for clarification of who would bear the costs of medical assessments, as well as the appropriate sanctions were the Accused to breach the terms of her judicial supervision.⁷² On 31 May 2013, the Supreme Court Chamber remanded the issue to the Trial Chamber with guidance as to the implementation of judicial supervision.⁷³ On 27 June 2013, the Trial Chamber notified the IENG Thirith Defence of measures for the implementation of the Supreme Court Chamber Decision, including specific directions pertaining to notification of change of address and/or international travel, medical examinations and reports on compliance.⁷⁴ On 1 October 2013, the Chamber appointed an expert to perform a six-monthly re-evaluation of the Accused's cognitive condition.⁷⁵ The expert reported a further decline in her condition since the last evaluation.⁷⁶

4.1.2.3. Death of Accused IENG Sary

27. The Accused IENG Sary died on the 14 March 2013.⁷⁷ Pursuant to Article 7(1) of the Cambodian Code of Criminal Procedure, the death of the Accused terminated all criminal and civil actions against him before the ECCC.⁷⁸

4.1.3. *Lists of witnesses, civil parties and experts*

28. On 17 January 2011, the Trial Chamber ordered the parties to file lists of proposed witnesses, experts and Civil Parties.⁷⁹ The parties filed their lists in the months following.⁸⁰

the Trial Chamber's Order to Unconditionally Release the Accused IENG Thirith, E138/1/10/1/5/8, 3 January 2013.

⁷² Decision on the Implementation of the Supreme Court Chamber's Decision on Immediate Appeal Against the Trial Chamber's Order to Unconditionally Release the Accused IENG Thirith, E138/1/10/1/5/8/1, 26 March 2013.

⁷³ Decision on Requests by the Trial Chamber and the Defence for IENG Thirith for Guidance and Clarification (SCC), E138/1/10/1/5/8/2, 31 May 2013.

⁷⁴ IENG Thirith Defence request for Clarification of the Execution of the Supreme Court Chamber's Decision on Immediate Appeal against the Trial Chamber's Order to Unconditionally Release the Accused IENG Thirith, E138/1/10/1/5/8, 3 January 2013.

⁷⁵ Appointment of Medical Practitioners to perform six-monthly medical examination of IENG Thirith (TC), E138/1/10/1/5/9, 1 October 2013.

⁷⁶ Six-Monthly Medical Examination of IENG Thirith in Response to Trial Chamber Request dated 1 October 2013, E138/1/10/1/5/9/2, para. 26.

⁷⁷ Certificate of Death of IENG Sary, E270, 14 March 2013.

⁷⁸ Termination of the Proceedings Against the Accused IENG Sary, E270/1, 14 March 2013.

⁷⁹ Order to File Material in Preparation for Trial, E9, 17 January 2011.

29. On 3 June 2011, the Trial Chamber informed the parties that their right to a fair and expeditious trial required the Chamber to reduce significantly the number of witnesses to be called at trial, and directed the parties to indicate by 20 June 2011 the witnesses they considered most relevant in connection with the four initial trial topics announced at the Trial Management Meeting.⁸¹ The parties provided the Trial Chamber with their revised lists on 14, 20 and 21 June 2011 respectively.⁸² On 28 July 2011, the Civil Party Co-Lead Lawyers provided a revised list of Civil Parties relevant to the first four trial topics,⁸³ and on 26 August 2011 their revised list of Civil Parties related to the later phases of the trial.⁸⁴

⁸⁰ See eg, Co-Prosecutors' Rule 80 Expert, Witness and Civil Party Lists, including Confidential Annexes 1, 2, 3, 3a, 4, and 5, E9/4, 28 January 2011; IENG Sary's List of Proposed Experts and Notification Concerning his Witness and Civil Party Lists, E9/4/2, 14 February 2011; Civil Party Lead Co-Lawyers' Rule 80 Witness, Expert and Civil Party lists, including Confidential Annexes 1, 2a, 2b, 3a, 3b, and 4, E9/4/3, 14 February 2011; List of Proposed Witnesses, Experts, and Civil Parties, E9/4/4, 15 February 2011; IENG Thirith List of Witnesses and Expert, E9/4/5, 15 February 2011; Proposed List of Witnesses and Experts, E9/4/6, 21 February 2011; Co-Prosecutors' Rule 80 Witness, Civil Party and Expert Summaries, E9/13, 23 February 2011; Civil Party Lead Co-Lawyers' Rule 80 Summaries and Expert Qualifications with Points of the Indictment, including Confidential Annexes, E9/8, 23 February 2011 (in English and Khmer, and 28 February 2011 in French); Summaries of proposed Witnesses, Experts, and Civil Parties, E9/10, 23 February 2011; IENG Sary's Rule 80 Summaries of Expertise and Qualifications of Each Proposed Expert and Points of the Indictment to Which Each is Expected to Testify, E9/12, 23 February 2011; Further Details Concerning Proposed Witnesses and Experts, E9/11, 23 February 2011 ; IENG Thirith's Further Information on Witnesses and Expert, E9/9, 23 February 2011; IENG Sary's Motion in Support of Certain Witnesses Proposed by the Other Defence Teams, E9/15, 16 March 2011.

⁸¹ Directive in Advance of Initial Hearing Concerning Proposed Witnesses, E93, 03 June 2011.

⁸² IENG Thirith's Supplemental Information to Witnesses and Expert List in Relation to the First Four Trial Topics, E93/1, 14 June 2011; Classification of Proposed Witnesses and Experts in Preparation for the Initial Hearing, E93/2, 20 June 2011; Civil Party Lead Co-Lawyers' Supplemental Information to Witness and Expert List in Relation to the First Four Trial Topics and Request for Clarification of the 4th Heading "Policies of the Democratic Kampuchea", E93/2/1, 20 June 2011; Co-Prosecutors' Response to Trial Chamber Directive in Advance of Initial Hearing concerning Proposed Witnesses, E93/3, 21 June 2011; Updated Summaries of Proposed Witnesses, Experts, and Civil Parties, E93/4, 21 June 2011.

⁸³ Civil Party Lead Co-Lawyers Supplemental Information to Civil Party List in relation to the First Four Trial Topics, E108/1, 28 July 2011; Annex: Lead Co-Lawyers Revised List of Civil Parties Relevant to the First Four Trial Segments, E108/1.1, 28 July 2011 .

⁸⁴ Civil Party Lead Co-Lawyers Supplemental Information to Civil Party List related to the Later Phases of the Trial, E108/2, 26 August 2011; Annex 3a: Revised List of Civil Parties Related to the Later Phases of the Trial, E108/2.1, 26 August 2011.

4.1.4. *Uncontested Facts*

30. While IENG Sary did agree with some of the facts alleged in the Closing Order, there was no general agreement between the parties on any fact in the Closing Order.⁸⁵

4.1.5. *Requests for Investigative Action*

31. During the course of the trial proceedings, the NUON Chea defence made a number of requests for investigations, including into alleged interference by the Royal Government of Cambodia in the activities of the ECCC.⁸⁶ The Trial Chamber rejected all but one of these requests.⁸⁷ The Trial Chamber noted that statements attributed in the press to Prime Minister HUN Sen which characterised NUON Chea as a “killer” and “perpetrator of genocide” would be incompatible with the presumption of innocence. It was also concerned that the statements, having been allegedly spoken by a senior public official, might have an unacceptable impact on public opinion. The Trial Chamber found, however, that such remarks would not influence it or any of its judges in the exercise of their duties.⁸⁸ The Trial Chamber granted NUON Chea’s request for new investigative actions regarding alleged interference with the administration of justice, including alleged intimidation of a witness.⁸⁹ However,

⁸⁵ Uncontested Facts, E9/17, 23 March 2011; IENG Thirith Notification to the Trial Chamber in Response to the Order to file a Joint List of Uncontested Facts, E9/20, 25 March 2011; Initial Submissions Regarding Uncontested Facts, E9/19, 25 March 2011; Co-Prosecutors’ Response to Trial Chamber Order Regarding Uncontested Facts, E9/21, 25 March 2011.

⁸⁶ See e.g. Request for Investigation Pursuant to Rule 35, E82, 28 April 2011; First Consolidated Request for Additional Investigations, E88, 18 May 2011; Application for Immediate Action pursuant to Rule 35, E189, 25 April 2012; Rule 35 Request Calling for Summary Action against Minister of Foreign Affairs HOR Namhong, E219, 13 August 2012.

⁸⁷ Decision on NUON Chea’s Motions Regarding Fairness of Judicial Investigation (E51/3, E82, E88 and E92), E116, 9 September 2011, para. 23; Decision on Rule 35 Request Calling for Summary Action Against Minister of Foreign Affairs HOR Namhong (E219), E219/3, 22 November 2012, para 17; Decision on Rule 35 Applications for Summary Action, E176/2, 11 May 2012, paras 23 and 32; *affirmed by* Decision on NUON Chea’s Appeal against the Trial Chamber’s Decision on Rule 35 Applications for Summary Actions (SCC), E176/2/1/4, 14 September 2012, para. 69; Decision on Application for Immediate Action Pursuant to Rule 35, E189/3, 22 November 2012, para. 14.

⁸⁸ Decision on Rule 35 Applications for Summary Action, E176/2, 11 May 2012, para. 27, *affirmed by* Decision on NUON Chea’s Appeal against the Trial Chamber’s Decision on Rule 35 Applications for Summary Actions (SCC), E176/2/1/4, 14 September 2012, para. 68.

⁸⁹ Second Request for Investigation pursuant to Rule 35, E92, 3 June 2011.

following inquires by WESU, the Trial Chamber decided that no further measures were required.⁹⁰

4.1.6. *Presence of the Accused at trial*

32. On 28 October 2011, the Trial Chamber decided that each Accused would be allowed to waive his or her right to be present during trial after providing the Chamber with a signed, unequivocal waiver on each day that he or she wished to be absent. However, the Trial Chamber noted that the attendance of the Accused in Court may be ordered where necessary for the Chamber to discharge its duty to safeguard the rights of the Accused or where presence is indispensable for the effective conduct of proceedings. The Trial Chamber directed that an Accused who elects to invoke his or her right to remain silent must appear in court and confirm this decision publicly before proceeding to the holding cell under the courtroom which is equipped with a bed and technology permitting audio-visual participation.⁹¹ During the trial proceedings, at times the Accused invoked their right to participate in the proceedings from the holding cell, while at other times they were excused altogether. On 8 November 2012, taking into consideration the report of a medical expert, the Trial Chamber ordered IENG Sary's return to the ECCC Detention Facility in the absence of a waiver of the Accused's right to be present during the proceedings.⁹²

33. The Trial Chamber decided to require IENG Sary to be present in the courtroom during opening statements. IENG Sary appealed this decision on 5 January 2012, claiming it amounted to knowing and wilful interference with the administration of

⁹⁰ Decision on NUON Chea's Motions Regarding Fairness of Judicial Investigation (E51/3, E82, E88 and E92), E116, 9 September 2011. Note that NUON Chea appealed the Trial Chamber's decision and on 30 January 2012 the Supreme Court Chamber rejected NUON Chea's appeal: Immediate appeal against the Trial Chamber decision regarding the Fairness of the Judicial Investigation, E116/1/1, 10 October 2011; Summary of the Reasons for the Decision on Immediate Appeal by NUON Chea against the Trial Chamber's Decision on Fairness of Judicial Investigation (SCC), E116/1/6, 30 January 2012, paras 13, 14-17, 20; Decision on Immediate Appeal by NUON Chea against the Trial Chamber's Decision on Fairness of Judicial Investigation (SCC), E116/1/7, 27 April 2012, paras 28, 33-35, 38.

⁹¹ Trial Chamber Response to IENG Sary's 'Observations' of 14 October 2011 (E130), E130/3, 28 October 2011, p. 2.

⁹² Decision on Accused IENG Sary's Fitness to Stand Trial, E238/9, 26 November 2012, paras 24, 32-34, 37.

justice under Internal Rule 35.⁹³ However, on 13 January 2012, the Supreme Court Chamber declared the appeal inadmissible.⁹⁴

34. On 4 December 2012, upon medical recommendation, the Trial Chamber decided to require IENG Sary to participate in proceedings from his holding cell and prohibited him from being video recorded while in his holding cell.⁹⁵ On 18 December 2012, the IENG Sary Defence appealed this decision.⁹⁶ On 21 March 2013, following the death of IENG Sary, the Supreme Court Chamber dismissed this appeal.⁹⁷

4.1.7. Professional misconduct of NUON Chea Defence Council

35. On 29 June 2012, the Trial Chamber issued a decision on defence counsel misconduct following a consistent pattern of misconduct during the proceedings by the NUON Chea Defence, and in particular Mr. Andrew IANUZZI and Mr. Michiel PESTMAN.⁹⁸ Following an oral warning, the Trial Chamber referred their misconduct to their respective domestic bar associations and apprised the Bar Association of the Kingdom of Cambodia.

36. On 19 October 2012, the Trial Chamber reiterated its warning to Mr. IANUZZI. The portion of the transcript regarding this incident was referred to the Department Disciplinary Committee for the First Judicial Department of the Appellate Division of the New York State Supreme Court.⁹⁹ On 16 November 2012, the Departmental Disciplinary Committee informed the Trial Chamber of its policy to hold investigations of alleged professional misconduct in abeyance where the relevant

⁹³ IENG Sary's Appeal Against the Trial Chamber's Decision Denying his Right to Waive his Presence in the Courtroom During Trial and Denying his Constitutional Right to Assist in his Own Defence, E130/4/1, 5 January 2012, paras 6-8, 12, 14.

⁹⁴ Decision on IENG Sary's Appeal against the Trial Chamber's Order Requiring his Presence in Court (SCC), E130/4/3, 13 January 2012, p. 2.

⁹⁵ T. 4 December 2012, pp. 1-4, 17-19.

⁹⁶ IENG Sary's Appeal against the Trial Chamber's Oral Decision to Deny his Right to be Present in the Courtroom and to Prohibit Him from Being Video Recorded in the Holding Cell, E238/9/1/1, 18 December 2012.

⁹⁷ Post-Mortem Dismissal of IENG Sary's Immediate Appeals, E238/9/1/5, 21 March 2013.

⁹⁸ Decision on NUON Chea Defence Counsel Misconduct, E214, 29 June 2012. The misconduct included wilful violation of court orders, unauthorized disclosure to the press of confidential or strictly confidential material, and statements in court which are disrespectful or which otherwise do not accord with the recognized standards and ethics of the legal profession. *See also* Professional Misconduct of Lawyer(s) Admitted to Your Bar Association, E214/1, 29 June 2012, pp. 2-11.

⁹⁹ Addendum: Continuing Professional Misconduct of Lawyer Admitted to Your Bar Association, E214/4, 26 October 2012.

proceeding is ongoing.¹⁰⁰ On 14 January 2013, following Mr. IANUZZI's resignation as counsel for the Accused NUON Chea, the Trial Chamber requested the Departmental Disciplinary Committee to reconsider its decision to defer its investigation of Mr. IANUZZI.¹⁰¹ No decision on this request or on the substance has been received by the Trial Chamber, nor has it been informed of the outcome of the earlier complaints to the two domestic bar associations.

4.1.8. Trial Management Meetings

37. A Trial Management Meeting was held on 5 April 2011, at which the Trial Chamber announced that the hearing would proceed in the following sequence:

1. The structure of Democratic Kampuchea.
2. Roles of each accused during the period prior to the establishment of Democratic Kampuchea, including when these roles were assigned.
3. Role of each accused in the Democratic Kampuchean government, their assigned responsibilities, the extent of their authority and the lines of communication, throughout the temporal period with which the ECCC is concerned.
4. Policies of Democratic Kampuchea on the issues raised in the indictment.¹⁰²

38. On 17 and 27 August 2012, additional Trial Management Meetings were held to enable planning of the remaining trial phases in Case 002/01 and the implementation of future measures designed to promote trial efficiency.¹⁰³

4.2. Initial Hearing

39. The Initial Hearing was held from 27 to 30 June 2011, with topics discussed including preliminary objections and provisional witness, Civil Party and expert lists.¹⁰⁴

¹⁰⁰ Letter regarding "Matter of Andrew Ianuzzi Docket No: 2012.1596", E214/4/1, 16 November, 2012.

¹⁰¹ Second Addendum: Continuing Professional Misconduct of Lawyer Admitted to Your Bar Association, E214/5, 14 January 2013.

¹⁰² T. 5 April 2011 (Trial Management Meeting), p. 52.

¹⁰³ Scheduling of Trial Management Meeting to enable planning of the remaining trial phases in Case 002/01 and implementation of future measures designed to promote trial efficiency (TC), E218, 3 August 2012. *See also* Co-Prosecutors' proposed extension of scope of trial in Case 002/01 (E163), E218.1, 3 August 2012.

¹⁰⁴ T. 27 June 2011 (Initial Hearing), pp. 2, 17.

4.3. Severance of Proceedings

40. On 22 September 2011, the Chamber issued an order severing the proceedings in Case 002 into a series of smaller cases. The Chamber decided that the first part of Case 002, later termed “Case 002/01”, should comprise:

- (a) Factual allegations described in the Indictment as population movement phases 1 and 2 ;
- (b) Crimes against humanity including murder, extermination, persecution on political grounds, forced transfer and enforced disappearances (insofar as they pertain to the movement of population phases 1 and 2).¹⁰⁵

41. On 27 January 2012, the Co-Prosecutors requested that the Trial Chamber include additional crime sites within Case 002/01.¹⁰⁶ On 8 October 2012, the Trial Chamber decided to expand the scope of the trial to include executions of former LON Nol soldiers and officials at Tuol Po Chrey, but declined to incorporate executions of evacuees at sites in Kampong Tralach Leu District or the S-21 security centre and related execution site Choeng Ek.¹⁰⁷ The Co-Prosecutors appealed the Trial Chamber’s decision on 7 November 2012, requesting it be amended to include the factual allegations denied in Case 002/01,¹⁰⁸ and on 8 February 2013, the Supreme Court Chamber annulled the entire severance decision, finding that the original severance of Case 002 in September 2011 and related subsequent decisions lacked clarity and reasoning. The Supreme Court Chamber found that the Trial Chamber had severed Case 002 and defined the scope of Case 002/01 without having given the

¹⁰⁵ Severance Order Pursuant to Internal Rule 89ter, E124, 22 September 2011, p. 3; Annex: List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, amended further to the Trial Chamber’s Decision on IENG Thirith’s Fitness to Stand Trial (E138) and the Trial Chamber’s Decision on the Co-Prosecutors’ Request to Include Additional Crime Sites within the Scope of Trial in Case 002/1, E124/7.3, 8 October 2012, p. 2. *See also* List of Paragraphs and Portions of the Closing Order relevant to Case 002/01, amended further to the Trial Chamber’s Decision on IENG Thirith’s Fitness to Stand Trial (E138), E124/7.2, 30 November 2011.

¹⁰⁶ Co-Prosecutors’ Request to Include Additional Crimes Sites within the Scope of Trial in Case 002/1, E163, 27 January 2012. On 3 February 2012, the IENG Sary Defence and the KHIEU Samphan Defence teams responded to the Co-Prosecutor’s Request. On 8 February 2012, the Co-Prosecutors sought leave to reply to IENG Sary. On 10 February 2012, IENG Sary Defence filed a motion to strike Co-Prosecutors’ leave to reply to IENG Sary’s response regarding additional crime sites within the scope of Trial in Case 002/01. The scope of Case 002/01 was again discussed during a Trial Management Meeting held on 17 August 2012.

¹⁰⁷ Notification of Decision on Co-Prosecutions’ request to include additional crime sites within the scope of Trial in Case 002/01 (E163) and deadline for submission of applicable law portion of Closing Briefs (TC), E163/5, 8 October 2012, paras 1-3.

¹⁰⁸ Co-Prosecutors’ Immediate Appeal of Decision Concerning the Scope of Trial in Case 002/01 with Annex I and Confidential Annex II, E163/5/1/1, 7 November 2012, para. 3.

parties sufficient opportunity to be heard, and ordered it to reconsider the issue after considering submissions of the parties.¹⁰⁹

42. The Trial Chamber issued an oral second decision on severance, on 29 March 2013 with reasons following one month later.¹¹⁰ Having heard the parties on the issue, the Trial Chamber decided that it remained in the interests of justice to sever the proceedings, deciding to confine the scope of the first trial in Case 002 to forced movement of population phases one and two and to executions committed at Tuol Po Chrey. The Chamber considered this to represent a proportionate balance between factors identified by the Supreme Court Chamber and to be necessary to safeguard its ability to reach any timely verdict in Case 002. The Chamber further considered that the addition of S-21 to the scope of Case 002/01 would not significantly advance the objective of reasonable representativeness of this first trial, and that further expansion of the scope of Case 002/01 would entail a risk to the Chamber's ability to render a timely verdict.¹¹¹

43. On 10 and 27 May 2013, the Co-Prosecutors and NUON Chea appealed the Trial Chamber's second decision on severance. The Co-Prosecutors requested an expansion of the scope of the Case 002/01 to include the S-21 security centre, while NUON Chea requested the decision be annulled in total, or, in the alternative, that the scope of Case 002/01 be expanded to include genocide and alleged crimes at cooperatives and working sites.¹¹² On 31 May 2013, the Trial Chamber announced that it would not defer the close of evidentiary proceedings in Case 002/01 pending resolution of appeal of the second severance decision,¹¹³ unless that was so ordered by the Supreme Court Chamber. On 23 July 2013, the Supreme Court Chamber issued a summary of its decision on the appeals against the second decision on severance. While refusing the appeals on the merits, it ordered that the evidentiary hearings in Case 002/02

¹⁰⁹ Decision on the Co-Prosecutors' Immediate Appeal of the Trial Chamber's Decision Concerning the Scope of Case 002/01 (SCC), E163/5/1/13, 8 February 2013, paras 48-50.

¹¹⁰ Decision on Severance of Case 002 following Supreme Court Chamber Decision of 8 February 2013, E284, 26 April 2013.

¹¹¹ Decision on Severance of Case 002 following Supreme Court Chamber Decision of 8 February 2013, E284, 26 April 2013, paras 122, 141, 147.

¹¹² Co-Prosecutors' Immediate Appeal of Second Decision on Severance of Case 002, E284/2/1, 10 May 2013; Immediate Appeal Against Trial Chamber's Second Decision on Severance and Response to Co-Prosecutors' Second Severance Appeal, E284/4/1, 27 May 2013; Decision on Co-Prosecutors' Request for Clarification (SCC), E284/2/1/2, 26 June 2013.

¹¹³ Announcement of Remaining Hearings Prior to the Close of Evidentiary Proceedings in Case 002/01 and Scheduling of Final Trial Management Meeting for 13 June 2013 (TC), E288, 31 May 2013, para. 10.

should commence as soon as possible after closing submissions in Case 002/01, and that Case 002/02, at a minimum, should include the charges related to S-21, a worksite, a cooperative, and genocide.¹¹⁴ The full reasons for this decision were issued on 25 November 2013,¹¹⁵ after the conclusion of the hearing on the substance of Case 002/01, but before the Trial Management Meeting scheduled to consider issues relating to Case 002/02 began on 11 December 2013.

4.4. Substantive Hearing

44. On 21 November 2011, the substantive hearing commenced with the Co-Prosecutors making their opening statements.¹¹⁶ On 22 November 2011, NUON Chea made his opening statement.¹¹⁷ On 23 November 2011, IENG Sary¹¹⁸ and KHIEU Samphan made statements.¹¹⁹

45. The hearing on the evidence concluded on 23 July 2013. The trial, including closing statements, lasted for a total of 222 hearing days. Ninety-two individuals gave evidence during the trial, including 3 expert witnesses, 53 fact witnesses, 5 character witnesses and 31 Civil Parties.

4.5. Filing of Closing Briefs and Closing Statements

46. On 26 and 27 September 2013, the parties filed their closing briefs.¹²⁰

47. Between 16 and 31 October 2013, the parties and the Accused presented their closing statements.

¹¹⁴ Decision on Immediate Appeals against Trial Chamber's Second Decision on Severance of Case 002: Summary of Reasons (SCC), E284/4/7, 23 July 2013, paras 11-13.

¹¹⁵ Decision on Immediate Appeals against Trial Chamber's Second Decision on Severance of Case 002 (SCC), E284/4/8, 25 November 2013, paras 28-76.

¹¹⁶ T. 21 November 2011, pp. 16-36, 37-64 and 65-133.

¹¹⁷ T. 22 November 2011, pp. 76-112.

¹¹⁸ T. 23 November 2011, pp. 3-5. On 22 November 2011, IENG Sary Defence waived its right to make an Opening Statement: T. 22 November 2011, pp. 117-120.

¹¹⁹ T. 23 November 2011, pp. 8-43.

¹²⁰ Civil Parties Closing Brief to Case 002/01, E295/6/2, 26 September 2013; Co-Prosecutors' Final Trial Brief in Case 002/01, E295/6/1, 27 September 2013; NUON Chea's Closing Submissions in Case 002/01, E295/6/3, 26 September 2013 (final version filed on 7 November 2013); Conclusions Finales, E295/6/4, 26 September 2013 (final version filed on 7 November 2013).