

EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (ECCC)

COMPLETION PLAN

REVISION 27

31 December 2020

<i>Summary</i>	2
I. INTRODUCTION.....	3
II. MEASURES THAT MAY ASSIST EXPEDITIOUS COMPLETION OF PROCEEDINGS	6
III. JUDICIAL INVESTIGATIONS COMPLETION PLAN	7
<i>A. Office of the Co-Investigating Judges</i>	7
<i>B. Pre-Trial Chamber</i>	7
IV. TRIALS COMPLETION PLAN	8
V. APPEALS COMPLETION PLAN.....	8
<i>A. Case 002/02</i>	8
<i>B. Case 003 and case 004</i>	8
VI. CONCLUSION.....	9

Annex - Chart of projected timelines for the completion plan including milestones

Note to the reader:

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

Summary

The Completion Plan for the Extraordinary Chambers in the Courts of Cambodia (“Extraordinary Chambers”) was initially developed in March 2014 through consultation by the Office of Administration with the judges of the chambers, the co-investigating judges and the co-prosecutors for their respective responsibilities. This is the twenty-seventh quarterly update of the Completion Plan covering the quarter ending 31 December 2020.

During this quarter, the Supreme Court Chamber received one response to Khieu Samphan’s appeal against the trial judgment in case 002/02. The Pre-Trial Chamber continued its deliberations on the appeals against closing orders in both case 003 and case 004.

I. INTRODUCTION

1. The Extraordinary Chambers in the Courts of Cambodia (“Extraordinary Chambers”) began its operations in February 2006 and became fully operational after the adoption of its Internal Rules in June 2007. The mandate of the Extraordinary Chambers is to prosecute “senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979”.¹
2. This Completion Plan is elaborated by the Extraordinary Chambers in the context of the General Assembly resolution A/RES/68/247B, which *inter alia* mandates the Extraordinary Chambers’ preparation of a completion strategy with a clear road map. The document has been developed by the Extraordinary Chambers through consultation by the Office of Administration with the judges of the Pre-Trial Chamber, the Trial Chamber and the Supreme Court Chamber, with the co-investigating judges, and with the co-prosecutors for their respective responsibilities. The Extraordinary Chambers updates this Completion Plan on a quarterly basis. The current document is the twenty-seventh revision, and it incorporates adjustments based on the developments in the ongoing judicial proceedings between 1 October and 31 December 2020.
3. The document focuses in particular on the recent developments in the remaining cases before the Extraordinary Chambers and provides information on the status of those cases as well as what steps will have to be completed before the judicial proceedings in respect of the cases reaching legal finality. Judicial proceedings in case 002 will be completed upon the final adjudication of case 002/02.² The co-prosecutors have stated publicly that there will be no further cases after case 004.³ The existing caseload thus represents the totality of the caseload to be addressed by the Extraordinary Chambers.
4. **Case 001**, against Kaing Guek Eav (alias *Duch*), was the first case tried before the Extraordinary Chambers. On 3 February 2012, the Supreme Court Chamber pronounced its judgement in the appeal against the Trial Chamber judgement which brought the case to a conclusion. The convicted person passed away on 2 September 2020 in hospital while serving a life sentence.
5. The charges in **case 002** were severed into two trials. The Trial Chamber rendered judgement in the first trial, styled as case 002/01, on 7 August 2014, against Nuon Chea and Khieu Samphan.⁴ Two further accused in the case, Ieng Sary and Ieng Thirith, passed away on 14 March 2013 and 22 August 2015 respectively, and proceedings against them were therefore terminated. The Trial Chamber found Khieu Samphan and Nuon Chea guilty of crimes against humanity committed between 17 April 1975 and December 1977 and sentenced them each to life imprisonment. Appeal proceedings in the case were concluded on 23 November 2016, with the pronouncement of the Supreme Court Chamber’s judgement. The Chamber affirmed the sentence of life imprisonment imposed on both accused.⁵
6. The second trial in this case, styled as case 002/02, focused on a representative selection of the remaining charges against Nuon Chea and Khieu Samphan. These comprised charges of genocide, war crimes and crimes against humanity on topics including the treatment of the Cham and the

¹ Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, 6 June 2003.

² On 27 February 2017, the Trial Chamber issued a ruling by which it decided to terminate the proceedings concerning the facts set out in the closing order in case 002 which were not included in case 002/01 or case 002/02: Case No. 002/19-09-2007/ECCC/TC (*Document E439/5*).

³ *Statement of Acting International Co-Prosecutor – Filing of Two New Introductory Submissions*, 8 September 2009; *Public Statement by the Co-Prosecutors regarding Investigation in Case 003*, 5 June 2012; and *Statement by the International Co-Prosecutor regarding ECCC Caseload*, 26 November 2014.

⁴ Case No. 002/19-09-2007/ECCC/TC (*Document E313*).

⁵ Case No. 002/19-09-2007/ECCC/SC (*Document F36*).

Vietnamese, the Tram Kak Cooperatives (including the treatment of Buddhists), four security centres, four worksites, internal purges, and the regulation of marriage. Evidentiary hearings commenced on 8 January 2015 and concluded on 11 January 2017. The Trial Chamber delivered an oral summary of the findings and the disposition of the judgement on 16 November 2018, and issued its written judgement in all three working languages on 28 March 2019. The Chamber found Khieu Samphan and Nuon Chea guilty of genocide, war crimes and crimes against humanity, and sentenced them each to life imprisonment.⁶ After registering notices of appeal by the co-prosecutors, Nuon Chea and Khieu Samphan, the Trial Chamber forwarded the case file to the Supreme Court Chamber on 1 July 2019.

7. On 4 August 2019, Nuon Chea passed away aged 93 while admitted to the Khmer-Soviet Friendship Hospital. The Supreme Court Chamber terminated further appellate proceedings against him on 13 August 2019 and confirmed that no further proceedings are possible in the case against Nuon Chea. Appellate proceedings continue in case 002/02 against Khieu Samphan only.
8. Judicial investigations in **cases 003** (related to Meas Muth) **and case 004** were initiated following introductory submissions filed by the international co-prosecutor in 2009 and subsequent supplementary submissions. Case 004 was severed by the co-investigating judges into three case files: case 004/01 regarding Im Chaem; case 004/02 related to Ao An; and with case 004 remaining the case against Yim Tith.
9. On 10 July 2017, the co-investigating judges issued the closing order with reasons for the dismissal of case 004/01 against Im Chaem. The international co-prosecutor filed an appeal against the closing order before the Pre-Trial Chamber. On 28 June 2018, the Pre-Trial Chamber disposed of the appeal on personal jurisdiction concluding the judicial proceedings in the case. The decision of the co-investigating judges that the Extraordinary Chambers has no jurisdiction over Im Chaem stands, ending the judicial proceedings in the case.⁷
10. On 16 August 2018, the co-investigating judges issued two separate and opposing closing orders in case 004/02 against Ao An. The Pre-Trial Chamber filed its considerations on appeals on 19 December 2019, unanimously declaring “that the Co-Investigating Judges’ issuance of the Two Conflicting Closing Orders was illegal”. Since the Chamber had “not attained the required majority of four affirmative votes to reach a decision based on common reasoning on the merits”, the judges attached their respective opinions to the unanimous considerations.⁸ Following an appeal to the Supreme Court Chamber by the international co-prosecutor, the case against Ao An was terminated before the Extraordinary Chambers on 10 August 2020 on the basis that no “definite and enforceable indictment” exists.⁹ The co-investigating judges ordered case file 004/02 to be sealed and archived on 14 August 2020, thereby completing judicial proceedings in the case.¹⁰
11. The progress of cases 003 and 004 stands as follows:
 - a) On 28 November 2018, the co-investigating judges issued two separate closing orders in case 003 against Meas Muth in each judge’s working language only (Khmer and English, respectively), with translations to follow. The international co-investigating judge indicted Meas Muth for genocide, crimes against humanity, war crimes and domestic offences.¹¹ The national co-investigating judge dismissed the case for lack of personal jurisdiction.¹² The closing orders were accompanied by decisions on civil party applications. The English and Khmer translations of the closing orders in this case were notified on 1 February and 6

⁶ Case File No. 002/19-09-2007-ECCC/TC (*Document E465*).

⁷ Case File No. 004/1/07-09-2009-ECCC/OCIJ (PTC50) (*Document D308/3/1/20*).

⁸ Case File No. 004/2/07-09-2009-ECCC/OCIJ (PTC60) (*Document D359/24-D360/33*).

⁹ Case File No. 004/2/07-09-2009-ECCC/TC/SC (*Document E004/2/1/1/2*).

¹⁰ Case File No. 004/2/07-09-2009-ECCC/OCIJ (*Document D363/3*).

¹¹ Case File No. 003/07-09-2009-ECCC/OCIJ (*Document D267*).

¹² Case File No. 003/07-09-2009-ECCC/OCIJ (*Document D266*).

February 2019, respectively. Three appeals were filed against the closing orders: the defence and national co-prosecutor appealed the international co-investigating judge's closing order (indictment), while the international co-prosecutor appealed the national co-investigating judge's dismissal order. All responses and replies to the appeals were filed by the parties in English and Khmer by the end of the third quarter of 2019. In addition, on 7 March 2019, the civil parties filed an appeal against the international co-investigating judge's order on the admissibility of civil parties. On 27 to 29 November 2019, the Pre-Trial Chamber held three days of hearings on the appeals against the closing orders. On 7 May 2020, the co-lawyers for Meas Muth filed a confidential supplement to his appeal against the indictment. The co-prosecutor's response and the co-lawyers' reply were fully briefed by 17 June 2020. On 26 August 2020, the international co-prosecutor requested to file additional submissions before the Chamber. The request was fully briefed on 29 September 2020 and disposed of by the Chamber on 3 November.¹³ The Pre-Trial Chamber now projects its judgement(s) on appeals against the closing orders by the first quarter of 2021.¹⁴

- b) On 28 June 2019 the co-investigating judges issued two separate closing orders in case 004 against Yim Tith in each judge's working language only (Khmer and English, respectively), with translations to follow. The international co-investigating judge indicted Yim Tith for genocide, crimes against humanity, war crimes and domestic offences.¹⁵ The national co-investigating judge dismissed the case for lack of personal jurisdiction.¹⁶ The closing orders were accompanied by decisions on civil party applications. The Khmer and English translations of the closing orders in this case were notified on 14 August and 5 September 2019, respectively. Five appeals were filed against the closing orders: the defence and national co-prosecutor appealed the international co-investigating judge's closing order (indictment); the international co-prosecutor and civil parties appealed the national co-investigating judge's dismissal order; and the defence further appealed the issuance of separate closing orders. In addition, on 13 September 2019, the civil parties filed an appeal against the international co-investigating judge's order on the admissibility of civil parties. The Pre-Trial Chamber's projection that its judgement(s) on appeals against the closing orders will be delivered by the first quarter of 2021 remains unchanged.

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

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

13. In cases 003 and 004 a total of two distinct milestones have been identified for the investigation appeals phase. In the case or cases proceed to trial, additional milestones will be identified for the trial and appellate phases.¹⁷ The milestones for the remainder of the investigation appeals phase are:

- (ii) disposal by the Pre-Trial Chamber of appeals against the closing orders in case 003, either sending the case for trial or ending the judicial proceedings in the case (first quarter of 2021); and
(iii) disposal by the Pre-Trial Chamber of appeals against the closing orders in case 004, either sending the case for trial or ending the judicial proceedings in the case (first quarter of 2021).

¹³ Case File No. 003/07-09-2009-ECCC/OCIJ (PTC35) (*Document D266/25*). Two defence requests similarly prompted by the Chamber's case 004/02 considerations were disposed of on the same day. See *D266/24-D267/32*, and *D267/33*.

¹⁴ Projected by the third quarter of 2020 in *revision 25 of the Completion Plan*.

¹⁵ Case File No. 004/07-09-2009-ECCC/OCIJ (*Document D382*).

¹⁶ Case File No. 004/07-09-2009-ECCC/OCIJ (*Document D381*).

¹⁷ Given the current state of proceedings, it is premature at this point to forecast specific time points in respect of eventual trial milestones.

II. MEASURES THAT MAY ASSIST EXPEDITIOUS COMPLETION OF PROCEEDINGS

14. The effective functioning of the Extraordinary Chambers has in the past been hampered by significant and persistent financial insecurity, which resulted in two walkouts of national staff during 2013 as well as unwarranted staff turnover. The General Assembly's approval of subventions for the calendar years 2014 through 2020 for the international component of the Extraordinary Chambers were essential measures that stabilized the funding situation and enabled concentrated focus on progressing the court's judicial mandate. On the national side, cash-flow difficulties led 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.
15. Following the expression of support from the Royal Government of Cambodia, the General Assembly authorized the Secretary-General in December 2019, as an exceptional measure, to enter commitments in an amount not to exceed \$7.0 million to supplement the voluntary financial resources of the international component of the Extraordinary Chambers for the period from 1 January to 31 December 2020. This timely action greatly facilitated the uninterrupted operations of the Extraordinary Chambers during 2020, opening space for continued solicitation of voluntary contributions. In addition, the Royal Government's commitment of direct contribution of \$3.8 million to the national component, to cover the first six months of national staff costs as well as operational costs arising in 2020 is a key measure facilitating the ongoing operation of the Extraordinary Chambers' national component. In combination, these measures have ensured that the ongoing workload of the Extraordinary Chambers continues to receive sustained attention and necessary funding. Voluntary contributions received for 2020 as at 31 December are \$4.3 million for the international component and \$1.2 million for the national component. This is against the revised budgetary requirement for 2020 of \$11.7 million for the international component and \$4.9 million for the national component.¹⁸
16. 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.¹⁹ The international co-investigating judge reduced the scope of the judicial investigations in relation to Meas Muth in case 003, Ao An in case 004/02 and Yim Tith in case 004 pursuant to this provision. Similarly, the Trial Chamber is authorized to reduce the scope of a trial by excluding certain facts set out in the indictment, as long as the remaining facts subject to trial are representative of the scope of the indictment.²⁰ On this basis, the Trial Chamber terminated the proceedings concerning the facts set out in the closing order in case 002 which were not included in case 002/01 or case 002/02.
17. The Office of Administration has continued to contract the services of a number of linguistic personnel to support the judicial offices as required to ensure timely translation services.
18. In March 2020, the Office of Administration took measures to prevent the transmission of Covid-19 at the ECCC. Between 25 March and 1 December,²¹ and again from 8 December through the reporting period, *alternate work arrangements* were in place for all personnel.²² All network resources, administrative as well as judicial, were available remotely to all personnel, facilitating continuity of both judicial and administrative processes.

¹⁸ Revised budget figures for 2020-2021 were endorsed by the Group of Interested States on 23 December 2020.

¹⁹ Rule 66*bis*.

²⁰ Rule 89*quater*.

²¹ Such arrangements were in effect for the international component from Monday 23rd and for the national component from Wednesday 25th March 2020.

²² These arrangements direct all personnel to work remotely from a location within or outside the duty station. See United Nations, Administrative Guidelines for Offices on the Novel Coronavirus (COVID-19) Outbreak (para 14 and 22 of *version 1 of 13 February 2020* and para 15 and 26 of current *version 4 of 14 April 2020*).

III. JUDICIAL INVESTIGATIONS COMPLETION PLAN

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

A. Office of the Co-Investigating Judges

20. The statutory mandate of the co-investigating judges will be completed on the same day as the mandate of the Pre-Trial Chamber.

B. Pre-Trial Chamber

21. At the outset of the fourth quarter of 2020, the Pre-Trial Chamber was seized of fourteen motions: two interlocutory requests, one supplement to an appeal and four appeals in case 003 (one regarding civil party admissibility and three concerning the closing orders); one interlocutory request and six appeals (one regarding civil party admissibility and five relating to closing orders) in case 004. Within the reporting period, the Pre-Trial Chamber disposed of two interlocutory requests and one supplement in case 003. At the end of the reporting period, eleven motions remained pending before the Pre-Trial Chamber in cases 003 and 004.²³
22. The Pre-Trial Chamber intends to dispose of appeals against closing orders in cases 003 and 004 within four quarters from the time the appeals are fully briefed.²⁴ To dispose of appeals against orders on civil party admissibility, the Chamber would need approximately two quarters following the decision on appeals against the closing orders.²⁵
23. Subject to staffing circumstances of the Pre-Trial Chamber, unforeseen litigation related to current cases and to the expeditious translation of the parties' submissions and judicial decisions into all three working languages of the Extraordinary Chambers, the current projections are as follows:²⁶
 - a) In *case 003*, appeals against the closing orders were fully briefed by 2 September 2019. Additional submissions were filed by the international co-prosecutor on 26 August 2020 which were fully briefed on 29 September 2020. The revised projection is to issue the judgement(s) on appeals against the closing orders in the first quarter of 2021. The decision on the appeal against the international co-investigating judge's order on admissibility of civil party applications is reassessed for delivery in the second quarter of 2021 at the earliest.
 - b) In *case 004*, appeals against the closing orders were fully briefed by 27 March 2020. The projection to have the judgement(s) on appeals against the closing orders, subject to the complexity and magnitude of the appeals, issued by the first quarter of 2021, remains. The decision on the appeal against the international co-investigating judge's order on admissibility of civil party applications is expected by the third quarter of 2021 at the earliest.

²³ Case File No. 003/07-09-2009-ECCC/OCIJ (PTC35): documents D266/2, D267/3, D267/4, D269/3. Case File No. 004/07-09-2009-ECCC/OCIJ (PTC61): documents D381/18-D382/21, D381/19, D381/20, D381/29, D382/4/1, D382/22, D384/5. All documents are classified as confidential by the Chamber.

²⁴ The projection was re-estimated from two to four quarters in revision 24 of the Completion Plan.

²⁵ The projection is based on the Chamber's experience in case 004/02.

²⁶ The Chamber's projection takes into consideration the impact of Covid-19 on work progress. On the Office of Administration's request for clarification on the impact of Covid-19, the Pre-Trial Chamber provided no further information.

IV. TRIALS COMPLETION PLAN

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

V. APPEALS COMPLETION PLAN

A. Case 002/02

25. On 20 August 2019, the Co-Prosecutors filed their appeal against the trial judgement comprising one ground.²⁷ Taking into account the size, scale and complexity of case 002/02 proceedings, and the legal and/or factual issues presented by the Khieu Samphan defence in their notice of appeal,²⁸ the Supreme Court Chamber granted the defence additional time and pages to file their appeal in one language only.²⁹ The appeal was notified in French on 27 February 2020.³⁰ At the Chamber's direction,³¹ the co-prosecutors filed their response in one language on 12 October 2020.³² The civil party lead co-lawyers' response is expected 40 days from the notification of the co-prosecutors' response.³³ Replies to those responses will be heard at an oral hearing currently projected to take place in the second quarter of 2021.
26. The Supreme Court Chamber anticipates that an appeals judgement will be delivered in all three official languages by the fourth quarter of 2022.³⁴ This projection is subject to the exigencies of the appeal process and related factors such as sufficient staffing, the health and fitness of the accused and timely and effective translation services.

B. Case 003 and case 004

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

²⁷ Case File No. 002/19-09-2007-ECCC/SC (*Document F50*). The defence responded on 23 September 2019 (see *Document F50/1*).

²⁸ The defence presented some 1,824 alleged errors of law and/or fact in the trial judgement, as well as 355 other (159 oral and 196 written) decisions of the Trial Chamber.

²⁹ Internal Rule 107(4) provides that appeal briefs shall be filed within 60 days of the filing of the notice of appeal. The Supreme Court Chamber granted the defence an extension of 180 days to file its appeal and increased the page limit from the Practice Direction's 60 pages to 750 pages.

³⁰ Case File No. 002/19-09-2007-ECCC/SC (*Document F54*). The Practice Direction on Filing of Documents, article 7.1, requires all documents to be filed in Khmer as well as in English or French. The Khmer translation was filed on 12 June 2020.

³¹ The Chamber directed that the co-prosecutors' response to the appeal be filed within 120 days of the appeal's notification. The Chamber subsequently granted the co-prosecutors 145 additional pages (495 in total) to effectively respond to Khieu Samphan's appeal.

³² Case File No. 002/19-09-2007-ECCC/SC (*Document F54/1*). The Khmer translation was notified on 27 November 2020.

³³ The lead co-lawyers' response was filed on 4 January 2021: Case File No. 002/19-09-2007-ECCC/SC (*Document F54/2*).

³⁴ The impact of Covid-19 has been considered by the Chamber as not affecting the current projection.

VI. CONCLUSION

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

Chart of projected timelines, including milestones

Completion Plan, revision 27 - 31 December 2020

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

(e) Separate closing orders in one language only

(f) Separate closing orders in both English and Khmer

(g) Pre-Trial Chamber decision(s) on appeals against closings orders