



Seventieth session

Agenda item 134

Proposed programme budget for the biennium 2016-2017**Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia****Twenty-first report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for the biennium 2016-2017****I. Introduction**

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General (A/70/403) in which he provides details on the progress achieved by the Extraordinary Chambers in the Courts of Cambodia, provides a projection regarding the anticipated use of the approved commitment authority for 2015, provides information on the estimated budget of the Extraordinary Chambers for 2016 and 2017 and seeks the Assembly's approval of an appropriation for a subvention for the international component of the Extraordinary Chambers in the amount of \$25.15 million for 2016. During its consideration of the report, the Committee met representatives of the Secretary-General, who provided additional information and clarification, concluding with written responses received on 23 October 2015.

II. Background

2. In its resolution 57/228 A on the Khmer Rouge trials, the General Assembly welcomed the efforts of the Secretary-General and the Royal Government of Cambodia towards the establishment of Extraordinary Chambers within the existing courts structure of Cambodia, with international assistance, for the prosecution of crimes committed during the period of Democratic Kampuchea. Subsequently, the Assembly approved, in its resolution 57/228 B, an agreement that regulated the cooperation between the United Nations and the Royal Government of Cambodia in bringing to trial 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. In paragraph 3 of the resolution, the Assembly decided that the expenses of the Extraordinary Chambers would be defrayed by the United Nations in accordance with the relevant provisions of the Agreement and would be borne by voluntary contributions from the international community.

3. In 2005, the Secretary-General reported to the General Assembly that sufficient contributions and pledges had been received to fund the international staff of the Extraordinary Chambers and their operations for a sustained period of time (A/60/565, para. 3). The above-mentioned Agreement between the United Nations and the Royal Government of Cambodia thus entered into force on 29 April 2005. Since then, the Secretary-General has issued five reports on the Khmer Rouge trials in which he has provided updates on the progress achieved towards establishing and operating the Extraordinary Chambers (A/62/304, A/67/380, A/68/532, A/69/536 and A/70/403).

4. The Extraordinary Chambers comprise both national and international components that are separately financed. The Royal Government of Cambodia is responsible for the salaries of the Cambodian judges and local personnel, while the United Nations is responsible for those of the international judges and international personnel, pursuant to articles 15 and 16 of the above-mentioned Agreement.

5. In his report of 2012 on the Khmer Rouge trials (A/67/380), the Secretary-General first alerted Member States to the adverse cash position and the steadily worsening financial position of the Extraordinary Chambers. At that time, he indicated that the international component faced an acute funding shortfall that could jeopardize the future operations of the Chambers (para. 66). In 2013, the Secretary-General informed the General Assembly that the national component was experiencing a serious shortfall in pledges for that year, creating a funding crisis of greater severity than that of the international component (A/68/532, para. 31).

6. Subsequently, following its consideration of the report of the Secretary-General and the conclusions and recommendations of the Advisory Committee thereon (see A/68/7/Add.12), the General Assembly, in its resolution 68/247 B, authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed \$15.54 million to supplement the voluntary resources of the international component for the period from 1 January to 31 December 2014. Those funds, however, were never drawn upon, as voluntary funding eventually covered the international component's obligations during 2014 in full.

7. In his report of 2014 (A/69/536), the Secretary-General highlighted the continuing financial challenges facing both the international and national components of the Extraordinary Chambers and requested the approval of a subvention of up to \$28,983,200 (comprising \$23,954,400 for the international component and \$5,028,800 for the national component) for the period from 1 January to 31 December 2015. By its resolution 69/274 A, the General Assembly endorsed the recommendations contained in the report of the Advisory Committee (A/69/652) and 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 international component of the Extraordinary Chambers for the period from 1 January to 31 December 2015.

III. Case progress and management

8. Periodic reports of the Secretary-General have contained details concerning the progress of cases before the Extraordinary Chambers.¹ Information on the progress made in the four case files during the most recent reporting period is provided in sections I and II of the most recent report of the Secretary-General (A/70/403). The report indicates that case 001, against Kaing Guek Eav, alias “Duch”, was the first case tried before the Chambers. His conviction became final by the appeal decision of the Supreme Court Chamber of 3 February 2012. He was sentenced to life imprisonment. Case 002, against Nuon Chea and Khieu Samphan, has been severed into two cases: case 002/1 (crimes against humanity) and case 002/2 (genocide and other crimes). In case 002/1, the Trial Chamber pronounced its judgement on 7 August 2014. The accused were sentenced to life imprisonment; both have appealed the convictions and the Chamber has commenced initial appeal hearings. In case 002/2, the trial commenced with opening statements on 17 October 2014, and evidentiary hearings commenced on 8 January 2015. Judicial investigations are ongoing in cases 003 and 004.

9. Pursuant to the request of the General Assembly in its resolution 68/247 B for a case completion strategy along with a clear road map, the Extraordinary Chambers submitted a completion plan that details the remaining work to be completed in the proceedings of which they are currently seized.² On the basis of current projections, the earliest anticipated completion of judicial proceedings in case 002 will be in the third quarter of 2017, with the delivery of a trial judgement in case 002/02, absent any appeal. Current projections estimate the delivery of any appeal judgement in case 002/2 to be in 2019. The timelines for cases 003 and 004 cannot be foreseen yet. The phases of judicial investigation in cases 003 and 004 are projected to conclude in 2015 and 2016, respectively. The projected milestones include the conclusion of judicial investigation in case 004 and the issuance of closing orders in cases 003 and 004, with decisions of the co-investigating judges to send either or both of the cases for trial, in whole or in part, or to dismiss the proceedings.

10. The Advisory Committee acknowledges the progress made in the current judicial proceedings and welcomes the regular updates to the comprehensive completion plan. The Committee reiterates its encouragement of the full implementation of all measures necessary to expedite case completion and notes that the plan foresees judicial activity for several more years beyond the current financial period.

IV. Current financial position

11. In its consideration of document A/70/403, information was provided to the Advisory Committee, upon request, summarizing the Court’s annual expenditure by funding source and component, which is reflected in the annex to the present report.

¹ See A/58/617, A/59/432 and Add.1, A/60/565, A/62/304, A/67/380, A/68/532 and A/69/536.

² The most recent revision of the case completion plan is contained in revision 6, dated 30 September 2015, and is available from www.eccc.gov.kh/en/about-eccc/finances.

National component

12. The year 2015 saw a significant improvement in the funding situation for the national component, with the Royal Government of Cambodia meeting more than 60 per cent of the costs with a contribution of \$4.1 million that covered \$1.6 million for operational costs and \$2.5 million for the salaries of national staff. The Advisory Committee was informed, upon enquiry, that the total requirements for the national component were estimated at \$6,568,600 in 2015, international donors being expected to contribute \$2,468,600. However, as at the end of October 2015, a large portion of the related pledges for 2015 was still outstanding. The Secretary-General indicates in his report that, owing to cash flow issues, temporary funding shortages in July 2015 were resolved with an exceptional temporary transfer arranged by one funding partner for the Chambers. As no funding was available for August 2015, payment of national salaries was postponed until the receipt of expected voluntary contributions. In addition to a serious effect on national staff, there is potential for a significant resulting impact on the work of the Chambers, including possible delays to the completion of its judicial mandate (A/70/403, para. 34).

13. Pursuant to the Agreement between the United Nations and the Royal Government of Cambodia, the United Nations is responsible for defraying the costs required to support the international component of the Chambers, while the Royal Government of Cambodia is responsible for defraying the costs of the national component, including salaries of national personnel, utilities and service expenses of the Chambers. In its resolution 69/274 A, the General Assembly encouraged all Member States to provide voluntary support for both the international and national components of the Extraordinary Chambers and requested the Secretary-General to continue his intensive efforts to obtain additional voluntary contributions, including by broadening the donor base, for funding the future activities of the Extraordinary Chambers.

14. The Advisory Committee notes the recent commitments made by the Royal Government of Cambodia concerning the coverage of the staff costs of the national component. The Committee views this commitment as an encouraging step towards the implementation of the Agreement with the United Nations, which provides that the Royal Government of Cambodia is fully responsible for the salaries of the Cambodian judges and Cambodian personnel, in addition to all costs associated with hosting and operating the premises of the Chambers. The Committee trusts that the Secretary-General will continue to engage at the highest level with the relevant authorities in charge of the proper functioning of the national component to ensure that the terms of the Agreement are observed.

International component

15. In its resolution 69/274 A, the General Assembly 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 international component of the Extraordinary Chambers for 2015. The Advisory Committee was informed, upon enquiry, that the full requirements for the international component for 2015 were estimated at \$25,514,100.³ As at the end of

³ Estimated at \$27,489,000 in the report of the Secretary-General of 2014 (A/69/536, para. 47).

October 2015, the full amount of the commitment for 2015 had been drawn upon. However, payment of three pledges totalling \$8.35 million was still outstanding. The Committee was also informed that receipt of those funds would reduce the drawdown of the commitment authority from \$12.1 million to approximately \$8.83 million at the end of 2015.

16. The Secretary-General indicates in his report that, historically, funding for the international component of the Chambers has been raised each year from a limited number of Governments, most of which participate in the Principal Donors Group. Since 2008, the Secretary-General has designated an expert to provide short-term technical assistance and guidance to the United Nations Assistance to the Khmer Rouge Trials. The current Special Expert assumed his duties in January 2012 and has developed a fundraising strategy for the Extraordinary Chambers. The strategy has been shared with the Principal Donors Group for feedback and, inter alia, focuses on efforts to broaden the donor base through outreach to potential new donor Governments. In coordination with the Special Expert, the Principal Donors Group approached a number of permanent missions to the United Nations in New York through a letter and funding appeal in September 2015 (A/70/403, para. 29).

17. In view of the persistent funding challenges faced by the Extraordinary Chambers, the Committee stresses again the ongoing need for intensified fundraising efforts, including by broadening the donor base for the Extraordinary Chambers.

V. Resource requirements and request for a subvention to the Extraordinary Chambers in the Courts of Cambodia

18. For 2016, resource requirements for the international component in the amount of \$25,697,700 would provide for the continuation of the 160 posts (12 D-2, 1 D-1, 7 P-5, 18 P-4, 38 P-3, 6 P-2, 23 Field Service, 10 National Professional Officers, 45 General Service) and non-post resource requirements. Pursuant to the recommendation of the Advisory Committee in its previous report (A/69/652, para. 39) and the request of the General Assembly in its resolution 69/274 A, a full justification is provided for the resource requirements without prejudice to the voluntary nature of the current funding arrangements.

19. With regard to financing sought for 2016, the Secretary-General is seeking approval by the General Assembly of an appropriation for a subvention for the international component of the Extraordinary Chambers in the amount of \$25,151,300, which represents the full 2016 budget (\$25,697,700) minus an existing voluntary pledge amounting to \$546,400 (A/70/403, para. 42). The Advisory Committee was informed, upon enquiry, that an additional outstanding pledge of \$3,820,200 for both the international and national components had not been taken into consideration in the determination of the level of the subvention request.

20. The Secretary-General indicates in his report that he will continue intensive fundraising efforts. However, the requested subvention would allow the United Nations to issue contracts to international staff of up to one year, or for shorter periods if the defined need is less, thereby providing stability to staff to enable them to fully focus on ensuring the smooth and uninterrupted operation of the Extraordinary Chambers. The Secretary-General proposes that the subvention be

available to be drawn upon, should there be insufficient extrabudgetary funds on hand to meet the international component's salary and operational costs (ibid.).

21. For 2016, the resource requirements for the national component amounting to \$6,643,500 would provide for the continuation of 185 posts (15 D-1, 1 P-5, 58 National Professional Officers, 111 General Service (Other level)). **The Advisory Committee notes that the General Assembly is not requested to appropriate any funds for the national component in 2016.**

22. For 2017, indicative resource requirements for the international component in the amount of \$20,089,300 would provide for 138 posts (12 D-2, 1 D-1, 7 P-5, 16 P-4, 30 P-3, 2 P-2, 21 Field Service, 10 National Professional Officers, 39 General Service) and non-post items, including non-staff compensation, consultants and experts, travel of staff, travel of witnesses, contractual services, general operating expenses, supplies, and furniture and equipment (ibid., table 2 and para. 40).

23. The shortfall in pledges for the international component as at the end of October 2015 amounted to \$8.83 million for the year 2015 and \$45.24 million for the biennium 2016-2017 (ibid., para. 41). Information on the financial status of both the international and national components of the Extraordinary Chambers is contained in the annex to document [A/70/403](#). **The Advisory Committee notes with concern the adverse cash position of the Extraordinary Chambers and the worsening financial situation of the international component in 2015.**

Staffing requirements

24. The Secretary-General proposes the reclassification of the post of Chief of the Legal Unit from the P-4 to the P-5 level in 2016. The post is located in the Office of the International Co-Investigating Judge. The Advisory Committee was informed that the proposed reclassification was aimed at reflecting the increase in responsibilities towards the conclusion of the investigation, issuance of the closing order and filing of appeals against the closing order. Upon enquiry, the Committee was further informed that the functions of the post had evolved from overseeing that unit to supervising the chiefs of the investigative and analysis units and that those functions had further evolved into those of the Chief of Staff of the Office of the International Co-Investigating Judge.

25. The Advisory Committee is not convinced by these arguments and considers that additional needs in terms of workload should be met through alternative means. Moreover, some of the new functions seem to belong to a different post category than those of a Legal Officer/Chief of the Legal Unit. **While recognizing that the staffing proposals are not being submitted for approval, the Advisory Committee considers that the upward reclassification from the P-4 to the P-5 level of the post of Chief of the Legal Unit is not justified.**

Contractual services

26. The Advisory Committee was informed, upon enquiry, that the requirements for contractual services related to translation, transcription and interpretation increased significantly in the recent period, from \$372,632 in 2014 to \$2,623,993 in 2015. The Advisory Committee was also informed that this increase relates mostly to the translation of documents for the conduct of the trials. The Secretary-General

indicates that, on 16 October 2014, the Trial Chamber directed the Office of Administration to ensure that the Interpretation and Translation Unit was provided with the resources necessary to prevent unnecessary delays in the trial proceedings for case 002/02. The President of the Supreme Court Chamber also issued an order on 14 November 2014 requesting the Administration to reinforce the Interpretation and Translation Unit of the Extraordinary Chambers. The Advisory Committee was further informed that, during the course of 2015, taking into account local capacities for translation services, it had been necessary to draw from both commercial providers and individual consultants. The requirements for consultants and experts for translation, transcription and interpretation amounted to \$367,955 in 2015. The Secretary-General also indicates that the official language of the Extraordinary Chambers is Khmer and that the official working languages are English, French and Khmer. Consequently, most of the documents need to be translated to or from Khmer, a service that cannot be provided by United Nations Headquarters.

27. The Advisory Committee encourages the Extraordinary Chambers to exercise restraint and to make judicious use of external contractors and consultants, without prejudice to the requisite caseload requirements for translation, transcription and interpretation. The Committee expects that the Chambers will undertake all efforts to exercise budgetary discipline and identify operational efficiencies in this regard.

Enterprise resource planning system (Umoja)

28. The Advisory Committee recalls that, in its previous report, it questioned the necessity of establishing new posts in the Chambers to support the implementation of Umoja but rather indicated that training of existing staff would be more appropriate (A/69/652, para. 21). The Committee notes that the three related Field Service posts are no longer included in the final approved budget for 2015. In addition, the Committee was informed, upon enquiry, that the Chambers had conducted a review of their administrative procedures in the context of Umoja implementation in 2016-2017. On the basis of that review, two Field Service posts (Human Resources Assistants) would be abolished, one in 2016 and the other in 2017.

VI. Conclusions and recommendations

29. The Advisory Committee notes that, from 2005 to 2013, the Extraordinary Chambers were fully funded through voluntary contributions. As mentioned in paragraphs 6 and 7 above, in 2014 the General Assembly, in its resolution 68/247 B, authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed \$15.54 million to supplement the voluntary resources of the international component. Those funds, however, were never drawn upon, as voluntary funding eventually covered in full the international component's obligations during 2014. For 2015, the Assembly, in its resolution 69/274 A, authorized commitments in an amount not to exceed \$12.1 million; as at October 2015, the funds had been fully drawn upon. **The Advisory Committee notes the persisting financial difficulties of the Chambers and the increasing reliance on subventions from the regular budget of the United Nations.** In this regard, the Committee recalls resolution 69/274 A, in which the Assembly encouraged all Member States to provide voluntary support for both the

international and national components of the Extraordinary Chambers and requested the Secretary-General to continue his intensive efforts to obtain additional voluntary contributions.

30. In the absence of any decision by the General Assembly to alter the financing arrangements for the Extraordinary Chambers, the Advisory Committee is of the view that a decision to appropriate almost the full amount of the budget of the international component for 2016 would undermine the voluntary nature of the current funding arrangements and related fundraising efforts. However, given the current funding challenges faced by the Extraordinary Chambers and the need to ensure the expeditious conclusion of the remaining cases before it, the Advisory Committee considers that for 2016 the United Nations should maintain the level of its support at the level approved by the Assembly for 2015.

31. In view of the projected funding shortfall in the international component for 2016, the fluid nature of outstanding pledges and commitments and the urgent need for resources to ensure the continued operations of the Extraordinary Chambers, the Advisory Committee recommends that the General Assembly authorize the Secretary-General to enter into commitments in an amount not to exceed \$12.1 million to supplement the voluntary financial resources of the international component of the Extraordinary Chambers for the period from 1 January to 31 December 2016 as a bridging financing mechanism and that the Assembly request the Secretary-General to report on the use of the commitment authority during the main part of its seventy-first session.

32. The level of commitment authority would depend on the receipt of voluntary contributions from donors, so that the Chambers can make progress towards completing their work.

33. The Advisory Committee continues to stress that its recommendations are made on the basis that:

(a) Should voluntary contributions be received in excess of the remaining requirements for the Extraordinary Chambers for 2016, any regular budget funds provided to the Chambers for this period would be refunded to the United Nations;

(b) Appropriate measures for achieving operational savings and efficiencies in the Extraordinary Chambers are in place (see para. 27 above);

(c) The Chambers continue their efforts to seek voluntary contributions (see para. 17 above);

(d) Appropriate monitoring and reporting arrangements are in place to ensure an incremental release of funds to the Extraordinary Chambers based on its monthly cash position;

(e) The Secretary-General continues his efforts to ensure that the terms of the Agreement between the Royal Government of Cambodia and the United Nations are observed.

Annex

Extraordinary Chambers in the Courts of Cambodia: expenditure and funding source for the period 2005-2015

(United States dollars)

	<i>Estimated requirements</i>											<i>Total</i>
	<i>1 Jan- 31 Dec 2005</i>	<i>1 Jan- 31 Dec 2006</i>	<i>1 Jan- 31 Dec 2007</i>	<i>1 Jan- 31 Dec 2008</i>	<i>1 Jan- 31 Dec 2009</i>	<i>1 Jan- 31 Dec 2010</i>	<i>1 Jan- 31 Dec 2011</i>	<i>1 Jan- 31 Dec 2012</i>	<i>1 Jan- 31 Dec 2013</i>	<i>1 Jan- 31 Dec 2014</i>	<i>1 Jan- 31 Dec 2015</i>	
International component												
Extrabudgetary	1 274 008	6 202 048	11 805 161	20 533 584	22 338 433	22 804 921	22 912 881	23 340 289	23 746 227	21 728 031	16 688 600	193 374 183
Regular budget	–	–	–	–	–	–	–	–	–	–	8 825 500	8 825 500
Subtotal	1 274 008	6 202 048	11 805 161	20 533 584	22 338 433	22 804 921	22 912 881	23 340 289	23 746 227	21 728 031	25 514 100	202 199 683
National component^a												
Royal Government of Cambodia	–	495 568	505 750	1 505 750	–	2 300 000	350 000	1 700 000	3 600 000	3 959 000	4 100 000	18 516 068
International donors	–	535 463	472 752	1 587 689	5 819 148	5 607 227	8 598 520	7 226 571	668 852	1 324 310	2 468 600	34 309 132
United Nations Trust Fund	–	656 085	2 712 593	1 770 433	109 021	–	123 285	–	3 255 000	–	–	8 626 417
United Nations loan	–	–	–	–	–	–	–	–	–	780 000	–	780 000
Subtotal	–	1 687 116	3 691 095	4 863 872	5 928 169	7 907 227	9 071 805	8 926 571	7 523 852	6 063 310	6 568 600	62 231 617
Total	1 274 008	7 889 164	15 496 256	25 397 456	28 266 602	30 712 148	31 984 686	32 266 860	31 270 079	27 791 341	32 082 700	264 431 300

^a Figures are provided by the national component.