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Proposed programme budget for 2022

Report on the use of the commitment authority and request for a subvention to the Extraordinary Chambers in the Courts of Cambodia

Thirteenth report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for 2022

I. Introduction and background

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the use of the commitment authority and request for a subvention to the Extraordinary Chambers in the Courts of Cambodia (A/76/331), in which he outlines the judicial progress achieved by the Extraordinary Chambers, provides a projection regarding the anticipated use of the approved commitment authority for 2021 and seeks the approval by the General Assembly of an appropriation for a subvention for the international component of the Chambers in the amount of \$7,517,100 for 2022. During its consideration of the report, the Committee received additional information and clarification, concluding with written responses received on 26 October 2021.

2. In its resolution 57/228 B, the General Assembly approved 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 had been committed during the period from 17 April 1975 to 6 January 1979. The agreement entered into force on 29 April 2005.

3. The Extraordinary Chambers comprise both national and international components, which are financed separately. The Government of Cambodia is responsible for the salaries and emoluments of the Cambodian judges and local personnel, while those of the international judges, the international co-prosecutor and personnel recruited by the United Nations are to be funded through voluntary contributions.



4. 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 steadily worsening financial position of the Extraordinary Chambers. Subsequently, 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 \$15,540,000 to supplement the voluntary financial 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 in full the obligations of the international component during 2014.

5. In view of the declining voluntary contributions during the following years, the General Assembly has authorized the Secretary-General to enter into commitments for the international component in an amount not to exceed \$12.1 million for 2015 (see resolution 69/274 A), \$12.1 million for 2016 (see resolution 70/248 A), \$11.0 million for 2017 (see resolution 71/272 A), \$8.0 million for 2018 (see resolution 72/262 A), \$7.5 million for 2019 (see resolution 73/279 A), \$7.0 million for 2020 (see resolution 74/263) and \$7.0 million for 2021 (see resolution 75/253 A) (see A/75/7/Add.19, para. 7, and A/76/331, para. 29).

II. Activities of the Extraordinary Chambers in the Courts of Cambodia

Judicial activity

6. Information on the progress made in the case files is contained in section II of the report of the Secretary-General (A/76/331). Upon enquiry, the Advisory Committee was provided with a table indicating the timelines of cases (see annex I), and the following information, updated as at 19 October 2021, on the cases presently before the Extraordinary Chambers:

(a) Case 002/02 against Khieu Samphan: a guilty judgment was issued in March 2019. Khieu Samphan appealed the judgment in February 2020. Appeal hearings were held in August 2021. The Chamber projects that it will file its appeals judgment by the end of 2022;

(b) Case 003 against Meas Muth: in November 2018, the co-investigating judges issued two separate and conflicting closing orders. In April 2021, the Pre-Trial Chamber issued its considerations on the appeals against the closing orders, by which it declared that the co-investigating judges' issuance of the two conflicting closing orders had been illegal that it had not reached a decision based on common reasoning on the merits. In June 2021, the lawyers for Meas Muth submitted to the Pre-Trial Chamber a motion to terminate, seal and archive the case; while the international co-prosecutor requested the Chamber to conclude the pretrial stage by confirming that Meas Muth was indicted and to order him to be sent for trial. Both motions remained pending before the Pre-Trial Chamber;

(c) Case 004 against Yim Tith: in June 2019, the co-investigating judges issued two separate and conflicting closing orders. Submissions on appeal were filed by the co-lawyers for Yim Tith, the national co-prosecutor, the international co-prosecutor and the civil parties. In September 2021, the Pre-Trial Chamber issued its considerations on the closing orders, by which it declared that the issuance of two closing orders had been illegal and that it had not reached a decision based on common reasoning on the merits. Litigation regarding these considerations is ongoing.

Completion plan

7. The Secretary-General indicates that, pursuant to the request of the General Assembly in its resolution [68/247](#) B for a completion strategy, the Extraordinary Chambers continue to update their completion plan. Projections for the overall timelines for cases 003 and 004 would only be made when there is clarity regarding the outcome of the Pre-Trial Chamber's decisions in those cases (*ibid.*, para. 20).

8. With regard to the residual functions of the Extraordinary Chambers, the Secretary-General indicates that in its resolution [75/257](#) B, the General Assembly approved a draft addendum to the 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. The addendum, which was signed in August 2021, will enter into force after both parties have notified each other in writing that the legal requirements for the entry into force have been complied with ([A/76/331](#), para. 3). Upon enquiry, the Advisory Committee was informed that while the addendum may enter into force later this year, the commencement of the residual phase is forecasted for the beginning of 2023 at the earliest, as it would only start upon completion of the current cases before the Court. The Committee was also informed that the annual funding requirement for the operations of the Extraordinary Chambers during the residual phase is currently estimated at \$2,995,000 (approximately \$1,974,500 for the international component and \$1,020,500 for the national component).

9. The Advisory Committee notes the issuance of the considerations of the Pre-Trial Chamber in two cases in 2021. The Committee continues to emphasize the importance of regularly updating the comprehensive case completion plan and reiterates the need to take all necessary measures to expedite case completion, including more effective planning, while fully respecting the requirements of the judicial process (see [A/75/7/Add.19](#), para. 12 and [A/73/448](#), para. 13). Considering the length of the proceedings to date, uncertainty over the timelines for the remaining cases and the likelihood of continued judicial activity for several years beyond the current financial period, the Committee reiterates once again its concern regarding the related potential financial implications (see [A/75/7/Add.19](#), para. 12 and [A/74/7/Add.16](#), para. 12).

Fundraising efforts

10. In its resolution [57/228](#) B, the General Assembly decided that the expenses of the Chambers would be borne by voluntary contributions. The Secretary-General indicates that fundraising efforts through communications with diplomatic missions continued in 2021 and that he sent a letter to all the permanent missions of Member States in July 2021, seeking their financial support for the Extraordinary Chambers. In addition, the Coordinator for the United Nations Assistance to the Khmer Rouge Trials continued to hold meetings with representatives of several Member States to seek voluntary contributions for the international component of the Chambers. Furthermore, regular consultations between the Secretariat and the members of the principal donors group have taken place with a view to maintaining their contributions ([A/76/331](#), para. 27).

III. Financial situation of the Extraordinary Chambers in the Courts of Cambodia

Voluntary contributions

11. The Secretary-General indicates, that despite the ongoing fundraising efforts, voluntary contributions for the international component have continued to decline, from \$17.7 million in 2015 to \$13.1 million in 2016, \$9.4 million in 2017, \$8.4 million in 2018, \$6.2 million in 2019 and \$4.4 million in 2020. Voluntary contributions are estimated at \$3.9 million for 2021 (\$3.3 million in received contributions, \$0.3 million in confirmed pledges and \$0.3 million in anticipated pledges) and at \$4 million for 2022 (\$1.1 million in confirmed pledges and \$2.9 million in anticipated contributions). The percentage of the voluntary contributions vis-à-vis the approved budget declined from 65 per cent in 2017 to 38 per cent in 2020 (A/76/331, para. 28). Upon enquiry, the Advisory Committee was informed that the decline is attributable to potential donors experiencing donor fatigue and being faced with requests for competing interests for the past several years. During 2021, this downward trend has continued to be affected by the ongoing coronavirus disease (COVID-19) pandemic.

12. In view of the persistent funding challenges faced by the Extraordinary Chambers, the Advisory Committee reiterates the ongoing need for intensified fundraising efforts, in support of the expeditious completion of the mandate of the Chambers, including by broadening the donor base and encouraging the members of the principal donors group and the group of interested States to renew their efforts in terms of cost efficiency (see also A/75/7/Add.19, para. 17, A/74/7/Add.16, para. 25 and A/73/448, para. 25).

13. With regard to the national component, the Secretary-General indicates that the contribution of the Royal Government of Cambodia has increased significantly in the past few years. For the previous six years, it has covered over 70 per cent of the national component's resource requirements. Together with the support of key foreign Governments, those efforts resulted in sufficient funds being raised for the national component from 2016 to 2020. As at 30 June 2021, contributions of \$2.8 million had been received from the Government of Cambodia. An additional \$0.8 million had been pledged by the Government, which, together with the remaining balance of \$0.7 million carried forward from 2020 and a confirmed pledge of \$1.1 million from one international donor, in combination with the implemented cost-saving and cost avoidance measures, would be sufficient to secure the operations of the national component until the end of 2021 (A/76/331, paras. 25 and 32). **The Advisory Committee notes with appreciation the sustained contributions made by the Government of Cambodia (see A/75/7/Add.19, para. 18).**

Use of the commitment authority

14. In its resolution 74/263, the General Assembly authorized the Secretary-General to enter into commitments in an amount not exceeding \$7,000,000 to supplement the voluntary financial resources of the international component of the Extraordinary Chambers for the period from 1 January to 31 December 2020. The Secretary-General indicates that the full amount of the subvention was utilized and reflected in the audited financial statements for 2020. However, after further adjustments to income, it was determined that total funding available for 2020 amounted to \$11,363,500 (including \$4,301,900 of voluntary contributions, \$61,600 of interest and \$7,000,000 of commitment authority), while total expenditure amounted to \$10,783,400, resulting in a surplus of \$580,100, which will be reported in the financial performance report on the programme budget for 2021 and credited to Member States (see A/76/331, para. 30 and annex II). **The Advisory Committee considers that the**

Secretary-General should only use the portion of the commitment authority required to supplement the voluntary contributions and recommends that the General Assembly request the Secretary-General to credit the unencumbered balance for 2020 of \$580,100 to Member States in January 2022 (see also [A/75/7/Add.19](#), para. 15).

15. In its resolution [75/253](#), the General Assembly authorized the Secretary-General to enter into commitments in an amount not exceeding \$7,000,000 to supplement the voluntary financial resources of the international component of the Extraordinary Chambers for the period from 1 January to 31 December 2021. In his report, the Secretary-General indicates that the funding available for 2021 would amount to \$10,928,400, including \$3,928,400 of voluntary contributions and \$7,000,000 of commitment authority ([A/76/331](#), annex II, table A.6). Upon enquiry, the Advisory Committee was informed that expenditures amounted to \$7,582,126 as at 30 September 2021, and would total \$10,732,227 at the end of 2021, which represents a slight decrease compared with the total expenditure for 2020.

16. The Secretary-General indicates that the anticipated level of voluntary contributions to the international component would require the full use of the commitment authority by the end of 2021 and that should the trial or trials in cases 003 and/or 004 be triggered in 2021, further voluntary contributions of \$2.1 million would be required ([A/76/331](#), paras. 4 and 32). Upon enquiry, the Advisory Committee was informed that the estimate of \$2.1 million reflects resource requirements for judges' honoraria, general temporary assistance and consultants and experts, including a legal defence team, civil party co-lawyer and interpreters to service a trial process. **The Advisory Committee trusts that any unencumbered balance for 2021 will be returned to Member States as soon as possible (see also [A/75/7/Add.19](#), para. 14).**

Cost-saving measures

17. The Secretary-General also indicates that cost-saving measures put in place in previous years to achieve cost avoidance for the international component continued during 2021, through continued coordination with the Economic and Social Commission for Asia and the Pacific (ESCAP) ([A/76/331](#), para. 33). Upon enquiry, the Advisory Committee was informed that coordination with ESCAP has led to a reduction of 10 administrative positions since 2016. As a result, the United Nations Assistance to the Khmer Rouge Trials yielded savings on administrative staff requirements in the amount of \$820,733 in 2021 against actual fees paid to ESCAP of \$343,800, leading to a net savings of \$476,933 for 2021. The scope of the memorandum of understanding with ESCAP was expanded in 2021 to also include non-staff administration tasks of approving and issuing contracts for consultants and individual contractors and processing vendor payments, as well as access to ESCAP procurement and property management committees. Other cost-saving measures included a freeze on recruitment. In this context, 19 posts remained vacant in 2021 for a total of 186 work months, representing savings of \$1.87 million. **The Advisory Committee notes the efforts to implement cost-saving measures. In view of the persistent funding challenges facing the Extraordinary Chambers, the Committee trusts that the United Nations Assistance to the Khmer Rouge Trials will redouble its efforts in terms of cost efficiency.**

IV. Resource requirements and request for a subvention for 2022

Resource requirements

18. The budget proposal for 2022 for the international component of the Extraordinary Chambers amounts to \$11,521,900, which represents a decrease of \$1,352,900, or 10.5 per cent compared with the revised budget for 2021. The Secretary-General indicates that the revised budget proposal is subject to review by the principal donors group and the steering committee and final approval by the group of interested States ([A/76/331](#), para. 35 and table 1).

19. The proposed post resources of \$4,077,000 represent a decrease of \$2,315,500, or 36.2 per cent, compared with the revised budget for 2021. These resources would provide for 44 posts (1 D-1, 1 P-5, 4 P-4, 2 P-3, 4 Field Service, 8 National Professional Officer and 24 Local level) representing a reduction of 30 posts (3 P-5, 2 P-4, 7 P-3, 5 P-2, 2 Field Service, 1 National Professional Officer and 10 Local level) compared with 2021 (*ibid.*, para. 37, tables 2 and 3).

20. The proposed non-post resources of \$7,444,900 represent an increase of \$962,600, or 14.8 per cent, compared with the revised budget for 2021. The overall requirement increase reflects increases under other staff costs (\$957,100), furniture and equipment (\$221,700), contractual services (\$212,100) and general operating expenses (\$193,100) which would be partially offset by reductions under non-staff compensation (\$347,900) and consultants and experts (\$273,500) (*ibid.*, table 2).

21. In terms of the proposed requirement for other staff cost of \$1,806,000, the information provided indicates that the increase of \$957,100 compared with the revised budget for 2021 is attributable to additional work-months for temporary positions in support of cases 003 and 004. Upon enquiry, the Advisory Committee was informed that the budget proposal reflects the minimum requirement for one trial with one accused.

22. With regard to the proposed requirement for contractual services of \$452,600, the information provided indicates that the increase of \$212,100 compared with the revised budget for 2021 is attributable to the upgrade of the digital platforms on which the Chambers' judicial database and website are based.

23. The Advisory Committee notes that, while the proposed budget for 2022 reflects reduced requirements compared with the revised budget for 2021, it also represents a resource increase compared with the estimated total expenditure for 2021 (see para. 15 above). The Committee trusts that detailed information on the variances between the projected expenditures for 2021 and the proposed budget for 2022, by object of expenditure, will be provided to the General Assembly at the time of its consideration of the present report (see also [A/75/7/Add.19](#), para. 25).

Request for a subvention

24. The Secretary-General proposes to appropriate an amount of \$7,517,100 for the international component for 2022, taking into account the proposed budget of \$11,521,900 and the estimated voluntary contributions of \$4,004,800 ([A/76/331](#), para. 57 (d) and table 1).

25. The Advisory Committee notes that the commitment authority has functioned as a bridging mechanism and recalls that the General Assembly decided to establish the Extraordinary Chambers on the basis of voluntary funding and has considered the subventions as exceptional measures authorizing the Secretary-General to enter into commitments to supplement the voluntary financial resources of the international component of the Extraordinary

Chambers (see, for instance, resolution [75/253](#), section XX, para. 11). The Committee is of the view that appropriating the subvention would defeat the purpose of the decision to rely primarily on voluntary contributions to finance the Extraordinary Chambers by acting as a disincentive to potential contributions. The Committee, therefore, considers that the subvention to the Extraordinary Chambers should remain a commitment authority (see also [A/75/7/Add.19](#), para. 27).

26. The Advisory Committee notes that the appropriation for the Extraordinary Chambers is requested under section 8, Legal affairs, while the trust fund for United Nations Assistance to the Khmer Rouge Trials is administered under section 9, Economic and social affairs, by the Department of Economic and Social Affairs. **The Advisory Committee recommends that the General Assembly request the Secretary-General to present options to ensure that a single entity of the Secretariat oversees the operational, budgetary and financial interactions with the United Nations Assistance to the Khmer Rouge Trials.**

V. Other matters

Impact of the coronavirus disease pandemic

27. The Secretary-General indicates that the COVID-19 pandemic has had an adverse impact on the securing of voluntary contributions in both 2020 and 2021 ([A/76/331](#), para. 4). Regarding the impact of the pandemic on the operations of the Chambers, the Advisory Committee was informed, upon enquiry, that from 21 March 2020 until 1 November 2020, and again from 23 January 2021 to date, the Chambers instituted alternate working arrangements owing to the increased transmission of the virus. During this time, while physical access to office premises was possible on an ad hoc basis, judicial work continued generally unimpeded, with staff having uninterrupted remote digital access to all judicial documents and databases. The Supreme Court Chamber postponed appeal hearings in case 002/02 from May to August 2021, however, owing to the risks and challenges brought about by the pandemic. In addition, the Extraordinary Chambers limited their outreach activities so as to prevent the spread of the virus. Accordingly, no visits to their premises or study tours were organized for victims of the Khmers Rouge in 2021.

End-of-service liabilities

28. The Secretary-General requests the General Assembly to take note of the end-of-service liabilities for the international component, estimated at \$1,098,600, including \$269,700 for United Nations officials and \$828,900 for staff members ([A/76/331](#), paras. 42 and 57 (e)). **Bearing in mind that the General Assembly decided to establish the Extraordinary Chambers on the basis of voluntary funding, the Advisory Committee still considers that it would be for the Assembly to decide, as a matter of policy, the appropriate source and modality of funding for the end-of-service liabilities of the judges and staff members (see [A/75/7/Add.19](#), para. 29, and [A/74/7/Add.16](#), para. 27).**

Remuneration of the international judges and co-prosecutor

29. In its resolution [75/253](#) A, the General Assembly requested the Secretary-General to conduct a review of the proposed change in the terms and conditions of the international judges of the Extraordinary Chambers and to report thereon in his next report. Information on the review is contained in section VII of the report of the Secretary-General ([A/76/331](#)).

30. The Secretary-General indicates that the terms and conditions of service of the international judges and the international co-prosecutor are derived from the Agreement between the United Nations and the Royal Government of Cambodia and approved by the group of interested States. The latest terms and conditions of service were approved by the group of interested States on 17 September 2019. The current annual costs of the international judges and the international co-prosecutor, who are considered officials of the United Nations, amount to \$224,707. According to the Secretary-General, the annual costs of staff members at the D-2, step V level, which amount to \$236,395 for 2021, are higher than the current annual costs of the international judges and the international co-prosecutor because they include the Organization's contribution to the United Nations Joint Staff Pension Fund, the provision for after-service health insurance, hardship allowance, dependency allowances and health insurance coverage (A/76/331, paras. 45, 47 and 48 and table 4).

31. The Advisory Committee recalls that the international judges of the Extraordinary Chambers are subject to the Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials and Experts on Mission. The Committee also recalls that in the context of the request for a subvention for 2018, it had been informed that, as indicated in paragraph 20 of their terms and conditions of service, the amount of the net remuneration paid to the judges was equal to the gross (rather than net) salary of a staff member at the D-2 level, including a post adjustment component applicable to Cambodia. The Committee had recommended in this context that the General Assembly request the Secretary-General to discontinue as soon as possible the practice of providing the international judges with a net remuneration in the amount of a gross remuneration (see A/75/7/Add.19, paras. 33 and 36, and A/72/7/Add.7, paras. 14, 16 and 17). The table below provides a comparison between the costs related to the remuneration of a United Nations official of the Extraordinary Chambers and a United Nations staff member at the D-2 level, step V.

Cost comparison

(United States dollars)

| <i>Details</i> | | <i>Current annual remuneration – United Nations officials in the Chambers</i> | <i>Annual remuneration based on D-2, step V (midpoint)</i> |
|----------------------------|--|---|--|
| (a) | Base salary | 163 423 | 122 665 |
| (b) | Post adjustment (37.5) | 61 284 | 45 999 |
| (c)=(a)+(b) | Net salary excluding entitlements | 224 707 | 168 664 |
| Entitlements | | | |
| (d) | Hardship allowance | – | 8 300 |
| (e) | Dependency allowance | – | 2 701 |
| (f) | Organization's contribution to the Pension Fund | – | 44 433 |
| (g) | Organization's subsidy to health insurance scheme and after-service health insurance | – | 12 297 |
| (h)=(d)+(e)+(f)+(g) | Subtotal, entitlements | – | 67 731 |
| (i)=(c)+(h) | Total costs to the Organization | 224 707 | 236 395 |
| (j)=(c)+(d)+(e) | Total immediate take-home remuneration | 224 707 | 179 665 |

32. **The Advisory Committee notes that the net remuneration of a United Nations official of the Extraordinary Chambers (\$224,707) is still higher than the net remuneration of a staff member at the D-2 level (\$168,664) by the amount of the United Nations staff assessment. The Committee reaffirms its recommendation to discontinue this practice and considers that it is a matter for the General Assembly to decide.**

33. The table above shows that the base salary of the international judges and co-prosecutor of the Extraordinary Chambers (\$163,423) is higher than that of United Nations staff at the D-2, step V level (\$122,665). In his report, the Secretary-General indicates that the United Nations contributions to the Pension Fund and the provision for after-service health insurance are not included in the annual costs for the international judges and co-prosecutor of the Extraordinary Chambers. The Advisory Committee recalls that the information provided by the Secretariat in 2020 indicated that the net base salary for the international judges and co-prosecutor of the Extraordinary Chambers was not only higher than that of United Nations staff at the D-2, step IV level, but also higher than those for United Nations staff at the Under-Secretary-General and Assistant Secretary-General levels (A/75/7/Add.19, para. 32). The Committee requested but did not receive information as to how the base salary for the international judges and co-prosecutor of the Extraordinary Chambers is determined and calculated. **The Advisory Committee is of the view that an explanation should be given as to whether such a level of base salary results from the continuation of paying the judges and co-prosecutor a gross salary instead of a net salary, or the inclusion of provisions for pension and after-service health insurance contributions, or even a mix of both.**

34. Moreover, the table above shows that post adjustment is applied against the base salary of the international judges and co-prosecutor of the Extraordinary Chambers. According to the International Civil Service Commission, post adjustment is applied only to the net base salary. Should the base salary for the Extraordinary Chambers include any kind of provisions other than the net base salary, the computation of post adjustment would have been erroneously based.

35. **The Advisory Committee wishes to clarify that its recommendation contained in A/75/7/Add.19, paragraph 37, was made with a view to addressing the irregularities concerning the base salary for the international judges and co-prosecutor of the Extraordinary Chambers. The Committee considers that clarity should be provided with respect to the components of the base salary for the international judges and co-prosecutor of the Extraordinary Chambers and the computation thereof. The Committee reiterates that the base salary for the international judges and co-prosecutor of the Extraordinary Chambers should be the same as that for United Nations staff at the D-2 level.**

36. The Advisory Committee was informed, upon enquiry, that the post of the Coordinator of the United Nations Assistance to the Khmer Rouge Trials was budgeted at a standard cost of \$282,600 (including staff assessment and programme support cost) for 2022. **The Advisory Committee trusts that the total amount of staff assessment budgeted for the United Nations Assistance to the Khmer Rouge Trials posts and positions will be provided to the General Assembly at the time of its consideration of the current report.**

37. With regard to the number of United Nations officials, the Advisory Committee was informed, upon enquiry, that the overall number of positions required for 2022 was fixed by the Agreement between the United Nations and the Government of Cambodia and the law establishing the Extraordinary Chambers and cannot be changed administratively. Of the 12 United Nations officials, one is the co-prosecutor and eleven are judges. Of the 11 judges, one is the co-investigating judge, three are

required in relation to cases 003 or 004, and the remaining seven are required for the Pre-Trial and Supreme Court Chambers. The Committee was also informed that the budgetary increase of two United Nations officials in 2021 was attributable to filling vacancies, as a result of the judicial work programmed at the time. **In view of the limited number of active cases before the Extraordinary Chambers and the proposed reduction of their workforce, the Advisory Committee considers that some flexibility should be introduced regarding the number of United Nations officials of the Extraordinary Chambers.**

VI. Conclusions and recommendations

38. **The Advisory Committee notes again the adverse funding situation of the Extraordinary Chambers, the persisting financial difficulties and the increasing reliance on the commitment authorized by the Assembly. The Committee recalls General Assembly resolutions 69/274 A, 70/248 A, 71/272 A, 72/262 A, 73/279 A, 74/263 and 75/253 A, in which the Assembly encouraged all Member States to provide voluntary support for both the international and national components of the Chambers.**

39. **Moreover, the Advisory Committee again notes that, after nine consecutive requests for subventions to support the international component of the Extraordinary Chambers, the practice is in fact no longer exceptional in nature. Nevertheless, the Committee continues to stress that voluntary contributions should remain a major source of funding for the Chambers and that additional efforts should be made to avoid continued reliance on the subvention.**

40. **The Advisory Committee therefore reaffirms its view that a decision to appropriate an amount of the budget of the international component for 2022 would undermine the voluntary nature of the current funding arrangements and related fundraising efforts. Nonetheless, in view of the projected funding shortfall in the international component for 2022, the fluid nature of outstanding pledges and commitments and the need to ensure the continued operations of the Extraordinary Chambers, the Committee recommends that the General Assembly authorize the Secretary-General to enter into commitments in an amount not to exceed \$7 million to supplement the voluntary financial resources of the international component for the period from 1 January to 31 December 2022 as a bridging mechanism, in lieu of appropriation. The Committee also recommends that the Assembly request the Secretary-General to report on the use of the commitment authority to the Assembly during the main part of its seventy-seventh session.**

41. **The Advisory Committee reiterates that the final use of the commitment authority will depend upon receipt of voluntary contributions from donors and continues to stress that its recommendations are made on the basis that:**

(a) **The Secretary-General engages in all efforts to increase the level of voluntary contributions;**

(b) **Should voluntary contributions be received in excess of the remaining requirements for the Extraordinary Chambers for 2022, any regular budget funds provided to the Chambers for this period would be refunded to the United Nations;**

(c) **Appropriate measures for achieving operational savings and efficiencies in the Extraordinary Chambers are in place;**

(d) **The Extraordinary Chambers engage in all efforts to expeditiously complete their judicial mandate;**

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

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

Annex I

Breakdown of timelines of cases

| | <i>Judicial investigation (OCIJ)</i> | <i>Pre-Trial phase (PTC)</i> | <i>Trial phase (TC)</i> | <i>Appeal phase (SCC)</i> | <i>Current disposition and duration</i> |
|---|---|--|---|--|---|
| Kaing Guek Eav (Duch) (case 001) | July 2007– August 2008 Total: 1 year 1 month | August 2008– December 2008 Total: 4 months | December 2008– July 2010 Total: 1 year 7 months | August 2010– February 2012 Total: 1 year 5 months | Completed Total: 4 years 6 months |
| Nuon Chea (case 002) | July 2007– September 2010 Total: 3 years 1 month | September 2010– January 2011 Total: 4 months | <u>Case 002/01</u> February 2011– August 2014 | <u>Case 002/01</u> September 2014– November 2016 | <u>Case 002/01</u> Completed Total: 9 years 4 months |
| <u>Case 002/02</u> July 2014– November 2018 Total: 7 years 9 months | | | <u>Case 002/02</u> July 2019– August 2019 | <u>Case 002/02</u> Terminated due to death Total: 5 years | |
| | | | <u>Case 002/01</u> September 2014– November 2016 | <u>Case 002/01</u> Completed Total: 9 years 4 months | |
| | | | <u>Case 002/02</u> July 2019–present | <u>Case 002/02</u> Ongoing Total: 7 years 2 months | |
| | | | | | |
| Ieng Sary (case 002) | | | April 2011– March 2013 Total: 1 year 11 months | N/A | Terminated due to death Total: 5 years 8 months |
| Ieng Thirith (case 002) | | | February 2011– November 2011 (<i>unfit</i>); and August 2015 (<i>death</i>) Total: 4 years 6 months | N/A | Released conditionally due to unfitness Total: 4 years 4 months Terminated due to death Total: 8 years 1 month |
| Meas Muth (case 003) | November 2008– November 2018 Total: 10 years | November 2018– present Total: 2 years 10 months | N/A | N/A | Ongoing Total: 12 years 10 months |
| Sou Meth (case 003) | November 2008– June 2013 Total: 4 years 6 months | N/A | N/A | N/A | Charges dismissed due to death Total: 4 years 6 months |

| | <i>Judicial investigation (OCIJ)</i> | <i>Pre-Trial phase (PTC)</i> | <i>Trial phase (TC)</i> | <i>Appeal phase (SCC)</i> | <i>Current disposition and duration</i> |
|-------------------------------|---|--|-------------------------|---------------------------|--|
| Im Chaem (case 004/01) | November 2008– February 2017 Total: 8 years 3 months | February 2017– June 2018 Total: 1 year 4 months | N/A | N/A | Charges dismissed due to jurisdiction Total: 9 years 7 months |
| Ao An (case 004/02) | November 2008– August 2018 Total: 9 years 8 months | August 2018– August 2020 Total: 2 years | N/A | N/A | Terminated Total: 11 years 8 months |
| Yim Tith (case 004) | November 2008– June 2019 Total: 10 years 7 months | June 2019– present Total: 2 years 3 months | N/A | N/A | Ongoing Total: 12 years 10 months |

Abbreviations: N/A, not applicable; OCIJ, Office of the Co-Investigating Judges; PTC, Pre-Trial Chamber; SCC, Supreme Court Chamber; TC, Trial Chamber.

Annex II

Approved budget and actual expenditure, 2011–2021

Table 1
Approved budget and actual expenditure – international component, 2011–2021

(Thousands of United States dollars)

| Year | Funding available for the year | | | | | | Total funding available for the year (7)=(2)+(3)+(4)+(5)+(6) | Commitment authority used (8) | Actual full-year expenditure (9) | Unspent balance (10)=(7)-(9) | Commitment authority returned (11)=(6)-(8) |
|-----------------------------|--------------------------------|-------------------------|---|---------------------------------------|---------------------------------------|---|---|--------------------------------------|-------------------------------------|---------------------------------|---|
| | Approved budget | Balance brought forward | Contributions of the Government of Cambodia | International voluntary contributions | Interest earned and other adjustments | Commitment authority authorized by the General Assembly | | | | | |
| | (1) | (2) | (3) | (4) | (5) | (6) | | | | | |
| 2011 | 30 834.7 | 9 472.5 | – | 21 458.7 | 193.8 | – | 31 125.0 | – | 22 912.9 | 8 212.1 | – |
| 2012 | 25 011.7 | 8 212.2 | – | 16 576.1 | 30.2 | – | 24 818.5 | – | 23 340.3 | 1 478.2 | – |
| 2013 | 26 005.1 | 1 478.2 | – | 22 903.4 | 20.4 | – | 24 402.0 | – | 23 746.2 | 655.8 | – |
| 2014 | 23 421.9 | 655.7 | – | 16 785.3 | – | 15 540.0 | 32 981.0 | – | 21 728.1 | 11 252.9 | 15 540.0 |
| 2015 ^a | 27 096.6 | (4 287.1) | – | 17 760.1 | (112.9) | 12 100.0 | 25 460.1 | 10 678.4 | 24 038.5 | 1 421.6 | 1 421.6 |
| 2016 ^a | 25 697.7 | – | – | 13 234.2 | (93.1) | 12 100.0 | 25 241.1 | 10 407.7 | 23 548.9 | 1 692.2 | 1 692.3 |
| 2017 ^a | 23 763.0 | – | – | 9 229.8 | 244.4 | 11 000.0 | 20 474.2 | 10 619.0 | 20 093.1 | 381.1 | 381.0 |
| 2018 ^a | 17 713.7 | – | – | 8 411.2 | 100.9 | 8 000.0 | 16 512.1 | 6 856.2 | 15 368.3 | 1 143.8 | 1 143.8 |
| 2019 ^a | 16 014.1 | – | – | 6 271.4 | 186.1 | 7 430.8 | 13 888.3 | 6 780.9 | 13 238.4 | 649.9 | 649.9 ^b |
| Annual budget period | | | | | | | | | | | |
| Year | Approved budget | Balance brought forward | Contributions of the Government of Cambodia | International voluntary contributions | Interest earned and other adjustments | Commitment authority authorized by the General Assembly | Commitment authority received/used | Total funding available for the year | Actual full-year expenditure | Unspent balance | Commitment authority returned |
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8)=(2)+(3)+(4)+(5)+(7) | (9) | (10)=(8)-(9) | (11) |
| 2020 ^c | 11 681.6 | – | – | 4 301.9 | 61.6 | 7 000.0 | 7 000.0 | 11 363.5 | 10 783.4 | 580.1 | 580.1 |
| 2021 ^d | 12 874.8 | – | – | 3 928.4 | – | 7 000.0 | – | 10 928.4 | – | – | – |

^a Since 2015, any remaining balances at year end are to be returned to the regular budget and cannot be carried forward to the next period, under the terms of use of the subvention from the regular budget.

^b The unencumbered balance for 2019 of \$649,900 was returned to Member States in the context of General Assembly resolution 75/254 C.

^c The surplus of \$580,100 for 2020 will be reported in the financial statements for 2021 and the financial performance report on the programme budget for 2021 and credited to Member States in that context, in line with the established financial and budgetary policies and procedures.

^d The final expenditures and related appropriation of the 2021 commitment authority will be requested in the context of the financial performance report on the programme budget for 2021.

Table 2
Approved budget and actual expenditure – national component, 2011–2021

(Thousands of United States dollars)

| Year | Funding available for the year | | | | | | | | | | |
|-----------------------------|--------------------------------|-------------------------|---|---------------------------------------|---------------------------------------|---|--------------------------------------|--------------------------------------|------------------------------|-----------------|-------------------------------|
| | Approved budget | Balance brought forward | Contributions of the Government of Cambodia | International voluntary contributions | Interest earned and other adjustments | Commitment authority authorized by the General Assembly | Total funding available for the year | Commitment authority used | Actual full-year expenditure | Unspent balance | Commitment authority returned |
| | (1) | (2) | (3) | (4) | (5) | (6) | (7)=(2)+(3)+(4)+(5)+(6) | (8) | (9) | (10)=(7)-(9) | (11)=(6)-(8) |
| 2011 | 9 857.9 | 1 229.9 | 350.0 | 7 233.3 | – | – | 8 813.2 | – | 9 071.8 | (258.6) | – |
| 2012 | 9 240.5 | (258.6) | 1 700.0 | 7 168.7 | – | – | 8 610.1 | – | 8 926.6 | (316.5) | – |
| 2013 | 9 370.3 | (316.6) | 3 600.0 | 4 481.6 | – | – | 7 765.0 | – | 7 523.9 | 241.1 | – |
| 2014 | 6 380.7 | 241.2 | 3 959.0 | 2 021.5 | – | – | 6 221.7 | – | 6 063.3 | 158.4 | – |
| 2015 | 6 653.8 | 158.5 | 4 100.0 | 2 316.4 | – | – | 6 574.9 | – | 6 476.0 | 98.9 | – |
| 2016 | 6 643.5 | 98.9 | 4 150.0 | 2 350.9 | – | – | 6 599.8 | – | 6 561.1 | 38.7 | – |
| 2017 | 6 371.8 | 38.7 | 4 150.0 | 1 730.3 | – | – | 5 919.0 | – | 5 829.7 | 89.3 | – |
| 2018 | 5 697.8 | 89.3 | 4 000.0 | 1 487.0 | – | – | 5 576.3 | – | 5 278.7 | 297.6 | – |
| 2019 | 5 374.3 | 297.6 | 3 900.0 | 1 003.9 | – | – | 5 201.5 | – | 4 941.2 | 260.3 | – |
| Annual budget period | | | | | | | | | | | |
| Year | Approved budget | Balance brought forward | Contributions of the Government of Cambodia | International voluntary contributions | Interest earned and other adjustments | Commitment authority authorized by the General Assembly | Commitment authority received | Total funding available for the year | Actual full-year expenditure | Unspent balance | Commitment authority returned |
| | (1) | (2) | (3) | (4) | (5) | (6) | (7) | (8)=(2)+(3)+(4)+(5)+(7) | (9) | (10)=(8)-(9) | (11) |
| 2020 | 4 870.6 | 260.3 | 3 800.0 | 1 156.4 | – | – | – | 5 216.7 | 4 560.1 | 656.6 | – |
| 2021 | 4 940.1 | 656.6 | 3 600.0 ^a | 1 100.0 ^a | – | – | – | 5 356.6 ^a | ^b | ^b | – |

^a Reflects the updated status of voluntary contributions and pledges as at 30 June 2021.

^b Actual full-year expenditure and unspent balance will be available at year end.