

**Sixty-ninth session**

Agenda item 132

Programme budget for the biennium 2014-2015**Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia****Report of the Advisory Committee on Administrative and Budgetary Questions****I. Introduction**

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General ([A/69/536](#)) in which he provides details on the progress achieved by the Extraordinary Chambers in the Courts of Cambodia, gives an update on the financial situation facing both the international and national components of the Chambers, sets out a case completion plan along with projected timelines and seeks the approval by the General Assembly of a number of actions to address shortfalls in voluntary funding and to ensure continuity of the Court's operations through 31 December 2015. 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 26 November 2014.

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 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 General Assembly approved, in its resolution 57/228 B, an agreement that regulated the cooperation between the United Nations and the 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 accordance with paragraph 3 of the resolution, the Assembly also 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 (see [A/60/565](#), para. 3). The above-mentioned agreement between the United Nations and the Government of Cambodia thus entered into force on 29 April 2005. Since then, the Secretary-General has issued three 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](#) and [A/68/532](#)).

4. The Extraordinary Chambers comprise both national and international components that are separately financed. The 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 paragraph 66 of 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. 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). He stated that the effective functioning of the Extraordinary Chambers had been jeopardized by significant and persistent financial insecurity that had resulted in two walkouts and various resignations by national staff that, in turn, threatened judicial operations and prolonged their timeline (*ibid.*, para. 3). He further stated that, given the advanced age and deteriorating capacities of the accused, the lack of financial resources could frustrate the delivery of justice (*ibid.*, para. 37).

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 2014 to 31 December 2014. In his most recent report, the Secretary-General recalls that the amount of the commitment authority approved by the General Assembly represented the pledging shortfall in the same amount for the international component as at 16 December 2013 (see [A/69/536](#), para. 32).

7. In the same report, the Secretary-General indicates that the approval by the General Assembly of the commitment authority was instrumental in enabling the Secretariat to issue contract extensions for staff in the international component through to the end of 2014 as well as recruit against long vacant positions (*ibid.*, para. 33). He also states that the international component would remain solvent until August 2014. The Secretary-General indicated in his report that a drawdown on the

commitment authority in an estimated amount of \$6.97 million to cover the costs of the international component, might be required if additional voluntary contributions were not forthcoming. Upon inquiry, the Advisory Committee was informed that since the finalization of that report, two pledges from donors had not materialized as expected, and that the Secretariat had been required to draw on the commitment authority in the amount of \$3 million to cover the September deficit and to meet the October expenditures of the international component. The Committee was also informed that there were no pledges announced for the remainder of 2014.

8. In terms of the national component, the report of the Secretary-General indicates that in late 2013, following high-level consultations between representatives of the United Nations and the Government of Cambodia, the Government agreed to make contributions totalling \$2.9 million to cover both 2013 salary arrears and staff and salary costs through to the first quarter of 2014 (*ibid.*, para. 34). The Secretary-General indicates that the national component received no voluntary contributions to cover its staff costs for 2014. In order to avoid another staff walkout, under the guidance of the principal donors group, a donor agreed to a redirection of its pledge of \$1 million to the national component to cover salaries from April 2014. In addition, it was subsequently agreed that two additional loans totalling \$780,000 would be made from the contributions made to the international component to cover national salaries up to September 2014 (*ibid.*, para. 37 and annex). Subsequent to the issuance of the report of the Secretary-General, the Advisory Committee was informed that following a meeting between the Secretary-General and the Prime Minister of the Government of Cambodia that took place in November 2014, the Government had agreed to make a new contribution of \$1.15 million to cover national salaries through to the end of 2014. The Government also indicated that it would be ready to advance salaries for six months in 2015.

Current financial position

9. The financial status of the Extraordinary Chambers, together with the indicative resource requirements for both the international and national components, disaggregated by component and funding availability, is set out in the annex to the report of the Secretary-General (A/69/536). The Secretary-General forecasts a cash shortfall for the international component of \$6.97 million for 2014, which also equates to the estimated drawdown from the approved commitment authority as indicated in paragraph 7 above (*ibid.*, para. 53). The funding shortfall for 2015 is estimated at \$23.96 million after deducting outstanding pledges of \$3.53 million (*ibid.*, para. 54).

10. For the national component, the annex to the report indicates a projected cash shortfall of \$1.15 million for the remainder of 2014 and a forecasted funding shortfall of \$5.03 million for 2015, after deducting one outstanding donor pledge of \$25,000, together with a contribution of \$1.6 million from the Government of Cambodia, pursuant to the terms of its agreement with the United Nations, to cover operational costs at the Extraordinary Chambers (*ibid.*, paras. 37 and 55). The Advisory Committee notes that these figures do not reflect the commitments recently made by the Government of Cambodia referred to in paragraph 8 above.

11. In his report, the Secretary-General describes the efforts of the Special Expert to advise on United Nations Assistance to the Khmer Rouge trials to intensify

fundraising efforts for both components, in line with the recommendation of the General Assembly (*ibid.*, para. 35). With specific reference to the national component, it is also indicated that the Special Expert had worked closely with senior-level representatives of the Government of Cambodia to reach out to potential donors (*ibid.*, para. 36).

12. In response to a query concerning fundraising activities undertaken to date in support of the Court, the Advisory Committee was informed that they included: two pledging conferences (in 2010 and 2013); a written appeal from the Secretary-General to all Member States; bilateral requests by senior United Nations officials to donor countries; frequent meetings between the Chef de Cabinet and the permanent representatives and deputy permanent representatives of the Principal Donor Group; visits to the capitals of potential new donors; and speaking engagements by the Special Expert and other officials of the Chambers.

13. With respect to the two pledging conferences, the Committee was informed that, in the view of the Secretary-General, they had not yielded positive results, with few new pledges received. Nevertheless, another pledging conference is planned for 2015 in order to inform Member States of the Court's achievements, to solicit funding and to encourage contributions from new donors. In addition, the Committee was informed that a major part of the Special Expert's responsibilities was to raise funds for both components of the Court, and that \$250,000 had been earmarked to support the cost of the Special Expert in this regard, including the related travel costs.

14. **In view of the persistent funding challenges facing both components of the Extraordinary Chambers, the Committee stresses the ongoing need for intensified fundraising efforts in respect of both components, including by broadening the donor base for the Extraordinary Chambers** (see also paras. 34-39 below on future financing arrangements).

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

15. In paragraph 47 of his report, the Secretary-General indicates that the group of interested States approved an initial budget for 2014-2015 for the Extraordinary Chambers in the amount of \$57.1 million, less contingency, disaggregated as \$44.7 million for the international component and \$12.4 million for the national component. As per past practice, the Chambers submits revised estimates for the second year of the biennium during the fourth quarter of the first year, taking into account the judicial programme of work and updated requirements. In this regard, the Chambers has submitted a revised proposal for 2015, totalling \$27.5 million for the international component and \$6.7 million for the national component. The Advisory Committee was informed, upon request, that approval from the Group of Interested States for this revision is anticipated by mid-December 2014.

16. In terms of the financing actions sought from the General Assembly, the Secretary-General is seeking the approval of the General Assembly for: (a) an appropriation of \$6.97 million for 2014 expected to be drawn from the commitment authority of \$15.54 million already approved by the General Assembly in its resolution 68/247 B; (b) an appropriation of up to \$28.98 million, representing the

shortfall in pledges for both the international and national components for the Extraordinary Chambers in 2015; and (c) an approval to provide reimbursable loans to the Government of Cambodia from the subvention for 2015 of up to \$5.03 million to cover national staff costs (A/69/536, paras. 53-55).

17. With respect to the international component, the Secretary-General indicates that the proposed subvention in the full amount of the 2015 budget, less existing pledges of \$3.53 million,¹ would be considered as a line of credit to secure staff contracts and to facilitate the expeditious discharge of the remaining mandate of the Chambers (ibid., para. 46). As indicated earlier, the Advisory Committee notes that the recommendation of the Secretary-General with respect to the national component does not incorporate the commitments recently made by the Government of Cambodia since the issuance of the report of the Secretary-General (see para. 8 above).

Staffing requirements

18. Proposed staffing levels for both the international and national components of the Extraordinary Chambers are set out in the annex to the report of the Secretary-General (A/69/536). Staffing for the international component is projected to increase from 159 in 2014 to 165 in 2015. Similarly, the overall staffing for the national component is projected to increase from 181 in 2014 to 185 in 2015. Although the proposed staffing levels are slightly higher in 2015, the Advisory Committee notes that the staffing numbers in both components have decreased since 2012, with projected reductions of 11 per cent and 37 per cent in the international and national components, respectively, since that time.

19. In connection with the staffing split between international and national components, particularly with respect to the judicial staff, the Advisory Committee was informed, upon request, that a considerable number of legal functions had already been nationalized. In terms of the mix of international and national judges, however, the Committee was informed that the current balance has been carefully negotiated between the United Nations and the Government of Cambodia in order to ensure an appropriate balance of both national ownership and adherence to international due process and fair trial standards.

20. Given that the Extraordinary Chambers have been funded from voluntary sources for their operations from 2005 through 2013, the Advisory Committee has not, thus far, expressed any observations or recommendations on the level of the proposed budget or related staffing levels of the Court. In 2013, the Secretary-General sought for the first time the General Assembly's approval for a subvention from the regular budget to supplement the voluntary contributions. This year, for the second year in a row, the Secretary-General makes a request for a subvention, rather than a full-fledged budget proposal, since the Chambers will continue to be funded primarily from voluntary contributions.

21. In this connection, the Advisory Committee was provided, upon request, with a list of approved and proposed posts, showing the number of posts per organizational unit, their levels and job titles. The Committee stresses that it has not undertaken a detailed review of the resource requirements for the Extraordinary Chambers, nor has it reviewed proposed staffing levels, given that the voluntary funding basis remains in place. The Committee notes, however, that three of the

¹ As at 30 September 2014 (see A/69/536, annex).

new posts in the international component (graded at the FS-6 level) are being proposed for the purposes of Umoja implementation within the Administration Section. **The Advisory Committee questions the necessity of establishing new posts for the implementation of Umoja when existing staff in the Extraordinary Chambers could be trained in this regard. In the view of the Committee, any additional resources required for Umoja implementation should be of a temporary nature. The Committee also expects that once Umoja is fully implemented in the Extraordinary Chambers, efficiencies will be realized as a result of enhanced administrative support systems and reengineered business processes.**

22. **The Advisory Committee stresses again that it has not performed a detailed examination of the staffing and budgetary requirements for the Extraordinary Chambers. In the light of the Chambers' difficult financial circumstances, which continue to persist, and in view of the increasing reliance on subventions from the regular budget of the United Nations, the Committee expects that the Extraordinary Chambers will undertake all efforts to exercise budgetary discipline and identify operational efficiencies.**

IV. Case progress and management

23. Periodic reports of the Secretary-General have contained details concerning the progress of cases before the Extraordinary Chambers.² Section II of the most recent report of the Secretary-General provides the most up-to-date details of progress made on the individual case files, including the judgement delivered in August 2014 by the Trial Chamber on case 002/1, noting that the Chamber considered the gravity of the crimes to be among the highest of any decided case concerning international crimes, finding that a very large number of victims had suffered immeasurable harm and, in a novel innovation in international criminal practice, the Chamber endorsed implementation of 11 specific reparation projects. Defence teams subsequently filed notices of appeal, and the parties are currently preparing their appeal briefs (A/69/536, paras. 11-13). For case 002/2, evidentiary hearings began in late October 2014. The remaining two cases (003 and 004) are in the investigative phase, which, according to the report, is expected to be concluded by the end of March 2015 and June 2015 respectively (ibid., para. 21).

24. The General Assembly, in paragraph 10 of its resolution 68/247 B, recalling the related recommendation of the Advisory Committee, requested the Extraordinary Chambers to prepare a case completion strategy with a clear road map and to report to it thereon by no later than at the main part of its sixty-ninth session. In this connection, section III of the report of the Secretary-General describes the case completion plan, including projected timelines and related milestones for the judicial completion of the Chambers' mandate. The Secretary-General indicates that it is projected that the Chambers will, in 2014, reach five distinct milestones towards case completion (see A/69/536, para. 24). Upon request, the Committee was provided with the full details of the case completion plan and was informed that the plan is updated on a quarterly basis and submitted to the principal donors group and the group of interested States.

² See A/58/617, A/59/432 and Add.1, A/60/565, A/62/304, A/67/380 and A/68/532.

25. The Advisory Committee notes that the timelines contained in the case completion plan were made on the basis that all Chambers and offices would be sufficiently staffed, and that the judicial proceedings would not be further disrupted as a result of financial insecurity. The Committee also notes from the plan that several measures have been taken that may assist expeditious case completion, including the simultaneous conduct of activities relating to the different cases, proposed changes to the rules for judicial investigation and augmentation of the investigative capacity in the Chambers. **The Advisory Committee welcomes the development of a comprehensive case completion plan that is regularly updated, and notes that its achievement is dependent on sustainable funding. The Committee encourages full implementation of all measures necessary to expedite case completion. The Advisory Committee notes that the plan foresees judicial activity for several more years beyond the current financial period.** Further comments on the future financing of the judicial proceedings of the Court are contained in section VI below.

V. Agreement between the United Nations and the Government of Cambodia

26. In accordance with the agreement between the United Nations and the Government of Cambodia,³ the Government 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 Government has maintained that it can fully meet its obligations under the agreement only through a combination of funding arrangements, which include allocations from its national budget and voluntary funding from the donor community (see [A/69/536](#), para. 40).

27. In his previous report on the Extraordinary Chambers, the Secretary-General explained that the national component was experiencing a serious shortfall in pledges. Following approaches by the Secretariat to certain donors to redirect their pledges from the international component to the national component, two reimbursable loans totalling \$3.25 million were put in place throughout 2013 (see [A/68/532](#), paras. 32-34). During its consideration of the previous report, the Advisory Committee was informed that the redirection of those voluntary contributions had been governed by agreements with the donors and their decision to have the funds redirected to ensure that the work of the Extraordinary Chambers was not disrupted.

28. As mentioned in paragraph 8 above, in late 2013, the Government of Cambodia agreed to make contributions totalling \$2.9 million to cover both 2013 salary arrears and staff and salary costs through to the first quarter of 2014. However, owing to the ongoing shortfall in contributions for the national component in 2014, additional loans of \$780,000 were subsequently made from contributions made to the international component to cover salaries up to September 2014 in order not to disrupt the judicial processes.

³ Agreement between the United Nations and the Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, article 15 (see resolution 57/228 B, annex).

29. During its deliberations on the most recent report of the Secretary-General, the Advisory Committee was provided with information, upon request, concerning the terms and conditions of those loans. The Committee was informed that the loans were provided under the guidance of the principal donors group. Each loan was formalized through an exchange of letters between the Chef de Cabinet and the Deputy Prime Minister of Cambodia. The conditions included a provision stating that the transfer did not derogate from the Government's obligations under the above-mentioned agreement, and that full repayment was expected at the earliest opportunity.

30. In the report of the Secretary-General, it is indicated that the Government had requested that the United Nations write off the loans granted in 2013, given that there were insufficient funds mobilized for it to effect repayment (A/69/536, para. 43). Upon inquiry, the Advisory Committee was informed that this request had been received in February 2014, subsequent to the Government itself making two supplementary contributions to the national component, and that at that time no voluntary contributions had been pledged to cover the expenses of the national components. The Committee was also informed that the United Nations Secretariat had agreed to this request for a write-off, and that those loans have been recorded as grants to the Extraordinary Chambers in the accounts of the Organization.

31. The Advisory Committee notes that in its decision in 2014 to approve a commitment authority, the General Assembly did not authorize the Secretary-General to draw on this commitment authority to support the national component (see resolution 68/247 B, para. 7). The Committee also notes the comments of the Secretary-General in his report that the loans for the national component have become more frequent and are placing a considerable drain and burden on the resources of the international component (A/69/536, para. 43). In addition, he states that donors have thus far been more inclined to contribute to the international component (A/69/536, para. 49).

32. The Advisory Committee considers that continued or frequent redirection of voluntary funds originally intended for the international component could have a detrimental impact on the overall level of funding intended for that component and on related fundraising efforts for both components. While recognizing that the terms and conditions of the above-mentioned loans and the matter of their write-off is principally a matter of concern for the relevant donors whose funds have been redirected away from their original intended purposes, the Committee questions writing off the balance of the loans so soon after they were made, particularly given the explicit expectation that those loans were not intended to represent a derogation of the original agreement between the Government of Cambodia and the United Nations.

33. At the same time, the Committee notes the recent commitments made by the Government of Cambodia concerning the coverage of the staff costs of the national component. The Committee trusts that the Secretary-General will continue to engage at the highest level with the relevant authorities charged with the proper functioning of the national component to ensure that the terms of the above-mentioned agreement are observed.

VI. Future financing of the judicial proceedings of the Extraordinary Chambers

34. In its resolution 68/257 B, the General Assembly, following a recommendation of the Advisory Committee, requested the Secretary-General to submit information on a comprehensive examination of the future financing of the Extraordinary Chambers for 2015 and beyond. This information is contained in section V of the most recent report of the Secretary-General.

35. As he has mentioned since his first report on the Khmer Rouge trials, the Secretary-General continues to maintain, as a point of general principle, that an operation of the nature of the Chambers should not be left to the vagaries of voluntary contributions. He states that a key lesson confirmed by the operations of the Extraordinary Chambers is that a criminal tribunal that involves United Nations support should be funded from assessed contributions (A/69/536, para. 44).

36. In his report, the Secretary-General states his view that it would be difficult to fundamentally change the resource base of the Extraordinary Chambers that has been in place for 10 years, given the particular need to examine the application of any new mechanism to the national component in view of the experience acquired in the implementation of the related agreement. The Secretary-General also notes that while the commitment authority approved by the General Assembly stabilized the international component in 2014, funding for the national component has continued to be a major concern, in particular because any staff walkout could bring judicial operations to a standstill (ibid., para. 45). Given that the General Assembly did not authorize the reimbursable loan of funds under the approved commitment authority, the Secretary-General again requests the approval of the Assembly for the provision of such loans under the subvention, in order to preserve the voluntary funding of the international component (ibid., para. 49).

37. With regard to the possibility of an altered funding arrangement for the national component, the Advisory Committee was informed, upon inquiry, that amendments to the agreement with the Government of Cambodia would theoretically be possible as a matter of law. However, the Secretary-General is of the view that it would be appropriate to seek the views of the General Assembly, in addition to those of the respective parties, prior to any revision of the modalities.

38. In the conclusions to his report, the Secretary-General reiterates his concern that voluntary funds are inadequate and are pledged on a limited and piecemeal basis. Concerning the national component, the Secretary-General points out the need for an operating reserve mechanism to secure national staff contracts and salary payments pending the receipt of funds, notwithstanding the obligations of the Government to meet its financial commitments under the related agreement (ibid., para. 52).

39. Given the funding challenges facing the Extraordinary Chambers and in order to increase the level of intergovernmental oversight and scrutiny, the Advisory Committee recommends that the General Assembly consider the possibility of having the Secretary-General submit a full fledged budget proposal, separate from the proposed programme budget, to it for its consideration and approval. This would allow the General Assembly to scrutinize the resource requirements and proposed staffing table of the Extraordinary Chambers. The submission of the budget proposal for the Extraordinary Chambers would be without prejudice to the voluntary nature of the current funding arrangements.

VII. Conclusions and recommendations

40. The Advisory Committee recognizes an overall improvement over last year regarding the financial situation of the Extraordinary Chambers brought about by the General Assembly's approval of a commitment authority at the end of 2013 to supplement the voluntary financial resources of the international component along with the contributions of the Government of Cambodia to the national component. However, the Advisory Committee also notes the ongoing concern of the Secretary-General that voluntary funds for both components continue to be inadequate and pledged on a limited and piecemeal basis, and the ongoing risk that this poses to the continuity of judicial proceedings.

41. For 2014, the projected shortfall for the international component amounted to \$6,974,861 at the time of the issuance of the report of the Secretary-General and assumes that no additional voluntary contributions would be received before the end of the year. Any appropriation for this period against the approved commitment authority should be adjusted to reflect any such contributions (A/69/536, annex). For 2015, assuming a pattern of voluntary contributions equivalent to those received for the first nine months of 2014, which amounted to \$15,396,112 (ibid.), the Advisory Committee estimates the projected shortfall for the international component in 2015 will be approximately \$12.1 million.

42. In view of the continuing projected funding shortfall in the international component for the remainder of 2014 and for 2015 and the need for resources to ensure continued operations of the Extraordinary Chambers, the Advisory Committee recommends that the General Assembly:

(a) **Approve an appropriation in the amount of up to \$6,974,900 to cover the shortfall for 2014 in the international component from the approved commitment authority under section 29B, Office of Programme Planning, Budget and Accounts, of the programme budget for the biennium 2014-2015. In the event that additional voluntary contributions are received after October 2014, the amount of the appropriation should be reduced accordingly;**

(b) **Authorize the Secretary-General to enter into commitments in an amount not to exceed \$12.1 million for the period from 1 January to 31 December 2015 as a bridging financing mechanism, and request the Secretary-General to report to the General Assembly on the use of the commitment authority during the main part of its seventieth session in the second performance report on the programme budget for the biennium 2014-2015.**

43. **This commitment authority would be pending receipt of voluntary contributions from donors, so that the Chambers can make progress towards completing their work.**

44. **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 2015, 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. 22 above);**

(c) **The Chambers continue their efforts to seek voluntary contributions (see para. 14 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 Government of Cambodia and the United Nations are observed, including the requirement to reimburse the amounts of any loans made from contributions intended for the international component.**
