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### Extraordinary Chambers in the Courts of Cambodia – residual functions

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### Report of the Secretary-General

#### I. Introduction

1. The General Assembly, in its resolution [73/279](#) A requested the Secretary-General to undertake consultations with the Extraordinary Chambers in the Courts of Cambodia and the Government of Cambodia, in order to begin developing a framework for the completion of the work of the Chambers, including with regard to the drawdown of activities, and to identify residual functions, if any, that would need to be performed following the completion of the mandate. In its resolution [74/263](#), the Assembly noted the steps taken by the Secretary-General to develop such a framework and requested him to expedite its finalization.

2. In its resolution [75/257](#), the General Assembly requested the Secretary-General to continue consultations with the Government of Cambodia, while keeping relevant stakeholders informed, in order to finalize, for consideration by the Assembly, a proposed framework for the completion of the work of the Extraordinary Chambers, including with regard to the drawdown of activities and the residual functions requiring performance. In the same resolution, the Assembly also requested the Secretary-General to report to it, at its resumed seventy-fifth session and by 15 May 2021, on the implementation of the resolution. The present report is submitted for that purpose.

3. In the present report, the Secretary-General addresses six main points. Section II contains a brief outline of the essential background information relating to the Extraordinary Chambers. Section III contains a summary of the progress made by the Chambers and an overview of the work that remains to be completed and the expected judicial timelines. Section IV consists of an account of the consultations undertaken on the completion of that work and the residual functions of the Chambers. Section V contains an explanation of the outcome of the consultations conducted, which resulted in a set of provisions for a draft addendum (see annex) 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, signed in 2003. Section VI contains an overview of administrative arrangements. In section VII, the Secretary-General presents his recommendations as to the steps that would need to be taken for the addendum to be concluded between the United Nations and the Government of Cambodia on the basis of the draft addendum and for that addendum to enter into force.

## **II. Background**

### **A. Conclusion of the 2003 Agreement**

4. On 21 June 1997, the First and Second Prime Ministers of Cambodia sent a letter to the Secretary-General, in which they asked “for the assistance of the United Nations and the international community in bringing to justice those persons responsible for the genocide and crimes against humanity during the rule of the Khmer Rouge from 1975 to 1979” ([A/51/930-S/1997/488](#), annex).

5. In its resolution [52/135](#), the General Assembly, requested the Secretary-General to examine the request by the Cambodian authorities for assistance in responding to past serious violations of Cambodian and international law, including the possibility of the appointment, by the Secretary-General, of a group of experts to evaluate the existing evidence and propose further measures, as a means of bringing about national reconciliation, strengthening democracy and addressing the issue of individual accountability. The Group of Experts for Cambodia established pursuant to Assembly resolution [52/135](#) was thus appointed to evaluate the existing evidence, with a view to determining the nature of the crimes committed by Khmer Rouge leaders in the period from 1975 to 1979; to assess the feasibility of their apprehension; and to explore legal options for bringing them to justice before an international or national jurisdiction (see [A/53/850-S/1999/231](#)).

6. By a letter dated 17 June 1999, Prime Minister Hun Sen requested that the United Nations provide experts to assist Cambodia in drafting legislation that would provide for a special national Cambodian court to try Khmer Rouge leaders and that would provide for foreign judges and prosecutors to participate in its proceedings. In response to that request, negotiations with the Government of Cambodia were initiated with a view to reaching agreement on how such a court would have to be organized and how it would have to function, if the United Nations were to provide or arrange assistance to help to establish it and help it to function. Following several stages of negotiations, the text of a draft agreement was developed and provided in the annex to the 2003 report of the Secretary-General on Khmer Rouge trials ([A/57/769](#)). By its resolution [57/228 B](#), the General Assembly approved the draft agreement between the United Nations and the Government of Cambodia, annexed thereto.

7. 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 was signed in Phnom Penh on 6 June 2003 and entered into force on 29 April 2005, in accordance with its article 32. The Extraordinary Chambers began operations in February 2006 and became fully operational in June 2007.

### **B. Nature and structure of the Extraordinary Chambers**

8. The Extraordinary Chambers were established in the existing court structure of Cambodia through the promulgation of the Law on the Establishment of the

Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea. The Chambers are made up of national and international components and include the co-investigating judges; the co-prosecutors; three chambers, namely, the Pre-Trial Chamber, the Trial Chamber and the Supreme Court Chamber; and the Office of Administration.

9. There are two co-investigating judges: one Cambodian co-investigating judge and one international co-investigating judge. There are two co-prosecutors: one Cambodian co-prosecutor and one international co-prosecutor. The Pre-Trial Chamber and the Trial Chamber are both composed of three Cambodian judges and two international judges. The Supreme Court Chamber is composed of four Cambodian judges and three international judges. The Office of Administration has a Cambodian director and an international deputy director.

### **C. Jurisdiction of the Extraordinary Chambers**

10. In accordance with article 2 of the 2003 Agreement, the Extraordinary Chambers have subject-matter jurisdiction over crimes set forth in the Law on the Establishment of the Chambers. Those include the following crimes under international law: genocide, crimes against humanity and grave breaches of the Geneva Conventions of 12 August 1949. They also include the following crimes under Cambodian law: homicide, torture and religious persecution. In addition, they include the following violations of international conventions recognized by Cambodia: the destruction of cultural property during armed conflict in circumstances prohibited under the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and crimes against internationally protected persons in circumstances prohibited under the Vienna Convention on Diplomatic Relations of 1961.

11. The temporal jurisdiction of the Extraordinary Chambers is limited to crimes committed during the period from 17 April 1975 to 6 January 1979, pursuant to article 1 of the 2003 Agreement. The personal jurisdiction of the Chambers is limited to crimes committed by senior leaders of Democratic Kampuchea and those who were most responsible for the crimes falling within the subject-matter and temporal jurisdictions of the Chambers.

### **D. Procedural law**

12. Under article 12 of the 2003 Agreement, the Extraordinary Chambers are to apply Cambodian procedural law, except where there is a gap in such law or where there is an uncertainty or an inconsistency with international standards. The Chambers exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in articles 14 and 15 of the International Covenant on Civil and Political Rights of 1966, to which Cambodia is a party.

### **E. Financing structure**

13. Under the 2003 Agreement, the United Nations is responsible for financing the costs of the international component of the Extraordinary Chambers, and the Government is responsible for defraying the costs of the national component.

14. In paragraph 74 of his report of 2003, the Secretary-General advised that an operation of the nature of the Extraordinary Chambers, mandated by Member States, would constitute an expense of the Organization under Article 17 of the Charter of the United Nations and should be financed from assessed contributions, given that a

financial mechanism based on voluntary contributions would not provide the assured and continuous source of funding that would be needed to set up the Chambers, nor would it provide a secure basis for the conduct of investigations, prosecutions and trials.

15. In its resolution [57/228](#) B, the General Assembly decided that the expenses of the Extraordinary Chambers to be defrayed by the United Nations should be borne by voluntary contributions from the international community. Historically, funding for the international component of the Chambers has been raised from a limited number of Member States each year. In recent years, the Secretary-General also had to resort to the extraordinary measure of seeking a subvention of the United Nations to supplement the voluntary financial resources raised.<sup>1</sup>

### III. Progress made in the proceedings

16. Since their establishment, the Extraordinary Chambers have made substantial progress towards fulfilling their mandate. Over the years of operation of the Chambers, almost 250,000 people have attended public hearings in person and more than 70,000 have followed proceedings remotely in villages around Cambodia. Furthermore, over 300 individuals have given evidence before the Chambers in the proceedings before them, and applications have been received from more than 6,500 civil party applicants (62 per cent female and 38 per cent male) in the various cases. Through their work, the Chambers are establishing a judicial record on the Khmer Rouge period for the Cambodian people and the international community.

#### A. Case 001: Kaing Guek Eav, alias “Duch”

17. Case 001 against Kaing Guek Eav, alias “Duch”, was the first case tried before the Extraordinary Chambers. The sole accused, Kaing Guek Eav, was the former Chairman of the Khmer Rouge S-21 security centre in Phnom Penh. On 3 February 2012, the Supreme Court Chamber rendered its decision on appeals against the Trial Chamber’s decision to sentence Kaing Guek Eav to 35 years in prison, quashing that sentence and increasing it to life imprisonment. Kaing Guek Eav was found guilty of crimes against humanity of persecution, extermination (encompassing murder), enslavement, imprisonment, torture and other inhumane acts and of grave breaches of the Geneva Conventions of 1949. Kaing Guek Eav died on 2 September 2020.

#### B. Case 002: Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith

18. In case 002, the former Chair of the Democratic Kampuchea People’s Representative Assembly and Deputy Secretary of the Communist Party of Kampuchea, Nuon Chea, the former Deputy Prime Minister for Foreign Affairs of Democratic Kampuchea, Ieng Sary, the former Head of State of Democratic Kampuchea, Khieu Samphan, and the former Minister for Social Affairs of Democratic Kampuchea, Ieng Thirith, were indicted for crimes against humanity, grave breaches of the Geneva Conventions of 1949 and genocide against the Cham and Vietnamese minorities. Ieng Sary and Ieng Thirith died on 14 March 2013 and 22 August 2015, respectively, and proceedings against them were therefore terminated.

19. Case 002 was severed into two trials. The first trial, case 002/01, was focused on alleged crimes against humanity relating to the forced movement of the population

<sup>1</sup> See [A/68/532](#), [A/69/536](#), [A/70/403](#), [A/71/338](#), [A/72/341](#), [A/73/331](#), [A/74/359](#) and [A/75/242](#).

from Phnom Penh and later from other regions and the alleged execution of former Khmer Republic soldiers at Tuol Po Chrey. On 23 November 2016, the Supreme Court Chamber rendered its judgment on the appeals, confirming the convictions for the crimes against humanity of murder, persecution on political grounds and other inhumane acts and upholding the sentence of life imprisonment imposed on both Nuon Chea and Khieu Samphan.

20. The second trial, case 002/02, was focused on additional charges against Nuon Chea and Khieu Samphan related to the genocide against the Cham and Vietnamese minorities, forced marriage and rape, the treatment of Buddhists and the targeting of former Khmer Republic officials, as well as alleged crimes against humanity and grave breaches of the Geneva Conventions of 1949 committed at four security centres, three worksites and a group of work cooperatives. On 16 November 2018, the Trial Chamber pronounced its judgment in case 002/02, together with a summary of its findings, and issued its reasoned judgment on 28 March 2019. In the judgment, both accused were found guilty of crimes against humanity, grave breaches of the 1949 Geneva Conventions and genocide against the Vietnamese ethnic, national and racial group, while Nuon Chea was also found guilty of genocide against the Cham ethnic and religious group. Both accused were sentenced to life imprisonment. Following Nuon Chea's death on 4 August 2019, the Supreme Court Chamber terminated the appellate proceedings against him and subsequently confirmed that no further proceedings were possible in the case against him. Appellate proceedings continue in case 002/02 against Khieu Samphan only. The Supreme Court Chamber is expected to render its judgment in case 002/02 by the fourth quarter of 2022.

### **C. Cases 003 and 004: Meas Muth, Im Chaem, Ao An and Yim Tith**

21. In case 003, the former Commander of Division 164,<sup>2</sup> Meas Muth, was charged by the international co-investigating judge in March 2015, and additional charges were laid against him in December 2015. In case 004, the former Preah Net Preah District Secretary and a member of the Sector 5 Committee, Im Chaem, and the former Sector 41 Secretary, Ao An, were formally charged by the international co-investigating judge in March 2015. Additional charges against Ao An were announced in March 2016. The former Secretary of Sectors 1, 3, 4 and 13, Yim Tith, the last suspect in case 004, was charged by the international co-investigating judge in December 2015. Case 004 has been severed into three cases, one for each person charged, to guarantee the right of the persons charged to be informed of the decision on the charges brought against them without undue delay.

22. On 10 July 2017, the co-investigating judges issued a reasoned closing order for the dismissal of case 004/01 against Im Chaem, finding that she was not subject to the personal jurisdiction of the Extraordinary Chambers. The international co-prosecutor filed an appeal against the dismissal. On 28 June 2018, the Pre-Trial Chamber disposed of the appeal, confirming the dismissal decision of the co-investigating judges and concluding the judicial proceedings relating to Im Chaem.

23. In cases 003, 004 and 004/02, the co-investigating judges issued separate closing orders. Although the international co-investigating judge indicted the three accused (Meas Muth and Yim Tith for genocide, crimes against humanity, war crimes and domestic crimes and Ao An for genocide, crimes against humanity and domestic crimes), the national co-investigating judge dismissed all three cases for lack of

<sup>2</sup> The title "Secretary of Division 164" is also used in relevant documents of the Extraordinary Chambers; see for example, Order Dismissing the Case against Meas Muth (Case No. 003/07-09-2009/ECCC/OCIJ, document D266).

personal jurisdiction. Submissions on appeal against the closing orders were filed in all three cases.

24. On 19 December 2019, the Pre-Trial Chamber issued its considerations on the appeals against the closing orders in case 004/02 against Ao An, unanimously declaring that the issuance of the two conflicting closing orders by the co-investigating judges was illegal and that the Chamber had not assembled an affirmative vote of at least four judges for a decision based on common reasoning on the merits. The national and international judges attached their respective opinions to the considerations. On 10 August 2020, the Supreme Court Chamber terminated the case against Ao An, holding that the unanimous finding by the Pre-Trial Chamber meant that neither closing order was valid. The co-investigating judges sealed and archived the case file on 14 August 2020, thus concluding the judicial proceedings in case 004/02.

25. The Pre-Trial Chamber is expected to render its judgments on the appeals against the closing orders in cases 003 and 004 by the first quarter of 2021.

#### **IV. Consultations on the completion of work and residual functions**

26. In September 2018, the steering committee for the United Nations Assistance to the Khmer Rouge Trials wrote to the Secretary-General, requesting, inter alia, that the Secretariat, and specifically the Office of Legal Affairs, undertake consultations with the Extraordinary Chambers and the Government of Cambodia in order to begin developing a framework for the completion of the work of the Chambers and to identify residual functions, if any, that would need to be performed following the completion of the mandate of the Chambers. The committee also requested that a report in that regard be submitted to it by the end of June 2019.

27. In November 2018, the Under-Secretary-General for Legal Affairs, the United Nations Legal Counsel, travelled to Cambodia for the delivery of the trial judgment in case 002/02 and to initiate discussions with the Deputy Prime Minister of Cambodia, Bin Chhin, regarding the framework for consultations on the completion of the work of the Extraordinary Chambers and the identification of potential residual functions. The Legal Counsel and Mr. Bin designated focal points for continued consultations.

28. Subsequently, on 22 December 2018, in its resolution [73/279](#), the General Assembly requested the Secretary-General to undertake consultations with the Extraordinary Chambers and the Government of Cambodia, in order to begin developing a framework for the completion of the work of the Chambers, including with regard to the drawdown of activities, and to identify residual functions, if any, that would need to be performed following the completion of the mandate. Accordingly, and in view of the request from the steering committee, the representatives of the Office who had been designated United Nations focal points visited Phnom Penh from 4 to 8 February 2019, to undertake the consultations requested. Those representatives attended various meetings with representatives of the Government of Cambodia, as well as with the Coordinator of United Nations Assistance to the Khmer Rouge Trials, the international co-prosecutor, the international co-investigating judge, the international judges of the Pre-Trial Chamber, the Trial Chamber and the Supreme Court Chamber, the President of each of the three Chambers, the Chief of the Defence Support Section, the Chief of the Victims Support Section and members of the Public Affairs Section.

29. On the basis of the consultations conducted, the Office of Legal Affairs provided its report to the steering committee on 28 June 2019.

30. In its resolution [74/263](#), the General Assembly noted the steps taken with regard to those consultations and requested the Secretary-General to expedite the finalization of the framework. Pursuant to that resolution, consultations with the Government of Cambodia continued.

31. Following the adoption of General Assembly resolution [75/257](#), the Secretary-General, through the designated focal points, continued consultations with the Government of Cambodia, while keeping relevant stakeholders informed, in order to finalize the framework for the completion of the work of the Extraordinary Chambers, including with regard to the drawdown of activities and the residual functions requiring performance. On that basis, a framework has now been finalized, in the format of an addendum to the 2003 Agreement. The Legal Counsel, as the representative of the Secretary-General, and Mr. Bin, as the representative of the Government of Cambodia, have initialled the draft addendum, indicating that it is the text that they have elaborated, in order to provide their respective authorities with a single and certain text for their review and consideration.

## V. Draft addendum

32. Concerning the framework for the performance of residual functions, the Government of Cambodia and the Secretary-General supported a residual entity that would retain international and national components. It became clear early in the consultations that the most efficient and practical way forward would be to incorporate the residual functions into the current framework and structure, rather than to attempt to establish a new entity. Those were the two main premises upon which the consultations proceeded and which are reflected in the draft addendum.

33. The draft addendum contains several preambular paragraphs and six articles. Article 1 covers transitional arrangements; article 2 covers the residual functions that may be required; article 3 concerns archives; article 4 contains the approval requirement for the addendum to be binding upon the parties; article 5 covers the application of the addendum within Cambodia; and article 6 concerns the entry into force of the addendum.

34. Under article 1 of the draft addendum, it is envisaged that, upon the completion of proceedings before any Chamber of the Extraordinary Chambers, all judges of that Chamber would be deinstalled. Following their deinstallation, the judges would be remunerated on a pro rata basis for any work performed and would work remotely except when required to be present in the Chambers at the request of the President of the Chamber.

35. Under article 2 of the draft addendum, it is envisaged that the Extraordinary Chambers would continue to carry out, for an initial period of three years, the following functions: review applications and conduct proceedings for the revision of final judgments; provide for the protection of victims and witnesses; sanction or refer to the appropriate authorities any wilful interference in the administration of justice or provision of false testimony; supervise the enforcement of sentences and monitor the treatment of convicted prisoners; maintain, preserve and manage the archives of the Chambers, including the declassification of documents and materials; respond to requests for access to documents; disseminate information to the public regarding the Chambers; and monitor the enforcement of reparations awarded to Civil Parties, as required. The performance of residual functions would begin upon the completion of

proceedings under article 1 of the 2003 Agreement, including any appeals related thereto before the Supreme Court Chamber.

36. After the initial three-year period, the United Nations and the Government of Cambodia would review the progress of the residual functions and would determine whether the Extraordinary Chambers would continue to perform those functions, or some part thereof, and for how long.

37. Article 2 also provides that the judges, co-prosecutors, defence counsels and civil party lead co-lawyers would be remunerated on a pro rata basis when required to perform residual functions and that they would perform their work remotely, except when their functions require their attendance in person at the Extraordinary Chambers.

38. Under article 3 of the draft addendum, the parties would recognize that it is vital to ensure that the archives of the Extraordinary Chambers are preserved in accordance with international standards and that they are as broadly accessible as possible. As part of their residual functions and for the purpose of preserving and promoting their legacy, the Chambers would provide electronic access to, and printed copies of, the public archives to the public. Also under article 3, the parties would agree that they would each have a complete set of the archives of the Chambers, including all documents and materials. In particular, upon the completion of the proceedings under article 1 of the 2003 Agreement, the parties would each receive a complete set of the public archives; upon the completion of the residual functions under article 2 of the draft addendum, the parties would each receive any additional public documents and materials, as well as a complete set of classified documents and materials.

## **VI. Administrative arrangements**

39. The operations of the Extraordinary Chambers would involve a phased drawdown approach, influenced by the completion of work before them, as envisioned under the transitional arrangements. As the judicial work decreases, the staffing tables would be assessed accordingly, to ensure that only staff who are essential to perform the functions envisaged are retained at any given time. Once the proceedings set out in article 1 of the 2003 Agreement are completed, including any appeals, the structure of the international and national components of the Chambers would continue to exist; however, it is anticipated that, operationally, they would do so on a significantly smaller scale and be staffed in a manner commensurate with their reduced functions.

### **A. Premises**

40. Pursuant to article 14 of the 2003 Agreement, it is the responsibility of the Government of Cambodia to provide, at its expense, premises for the co-investigating judges, the Prosecutors' Office, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration. It is anticipated that premises more commensurate with the operationally reduced size of the Chambers during their residual work may be required. The United Nations and the Government of Cambodia will conduct further consultations on possible future premises of the Chambers if the draft addendum is concluded between the United Nations and the Government of Cambodia.

## B. Operating expenses

41. Notwithstanding the fact that not all parameters are yet established, the funding requirement for each year of operation of the Extraordinary Chambers at the residual stage is currently estimated at \$2,995,000. It is estimated that the international component would require approximately \$1,974,500 per year and the national component approximately \$1,020,500. The international component would provide for 11 posts in management and judicial support, while the national component would provide for 22 posts. Posts in management would include administrative officers, financial and information technology specialists, and posts in connection with judicial support would include specialists in archives, outreach activities and the protection of victims and witnesses. It is estimated that the required financial resources related to personnel of the international component would amount to approximately \$1,200,000. The United Nations would continue to be responsible for defraying the costs already foreseen under the 2003 Agreement, including with regard to salaries and emoluments for the international component.

## VII. Recommendation

42. In article 4 of the draft addendum, it is stipulated that, to be binding on the parties, the addendum must be approved by the General Assembly and ratified by Cambodia. **The Secretary-General thus recommends that the Assembly approve the draft addendum contained in the annex to the present report.** In the event that the Assembly approves that draft, the Secretary-General would then sign the addendum on behalf of the United Nations.

43. Article 6 of the draft addendum provides that the addendum would enter into force once both parties had notified each other in writing that the legal requirements for the entry into force had been complied with.

## **Annex**

**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  
on  
the Transitional Arrangements and the Completion of Work of the  
Extraordinary Chambers**

Recalling 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, done on 6 June 2003 at Phnom Penh (hereinafter the “Agreement”);

Whereas the parties to the Agreement agree that upon the completion of all judicial proceedings under Article 1 of the Agreement, the Extraordinary Chambers will need to carry out a number of essential residual functions identified in this Addendum;

Whereas the parties to the Agreement are convinced that in view of the substantially reduced nature of the residual functions, the Extraordinary Chambers should be comprised of such number of staff that is commensurate with its reduced functions;

Whereas the parties to the Agreement have engaged in consultations on transitional arrangements for the completion of the work of the Extraordinary Chambers and on the performance of residual functions;

Now therefore the United Nations and the Royal Government of Cambodia have agreed as follows:

### **Article 1**

#### **Transitional Arrangements**

Upon the completion of proceedings before any chamber of the Extraordinary Chambers, all judges of that Chamber shall be de-installed from the Extraordinary Chambers. Following their de-installation, the judges shall be remunerated on a pro-rata basis for any work performed, and they shall work remotely except when required to be present at the Extraordinary Chambers at the request of the President of the Chamber.

### **Article 2**

#### **Residual Functions**

1. Upon the completion of the proceedings under Article 1 of the Agreement, including any appeals related thereto before the Supreme Court Chamber, the Extraordinary Chambers shall continue to carry out the following functions for an initial period of three years: review applications and conduct proceedings for revision of final judgments; provide for the protection of victims and witnesses; sanction or refer to the appropriate authorities any wilful interference with the administration of justice or provision of false testimony;

supervise the enforcement of sentences as well as monitor the treatment of convicted prisoners; maintain, preserve and manage its archives, including the declassification of documents and materials; respond to requests for access to documents; disseminate information to the public regarding the Extraordinary Chambers; and monitor the enforcement of reparations awarded to Civil Parties, as required.

2. The United Nations and the Royal Government of Cambodia shall review the progress of these functions after the initial three-year period, following which the Extraordinary Chambers will continue to perform these functions, or some part thereof, for a further period to be determined between the parties.
3. An application for revision of final judgment may only be filed during the lifetime of the convicted person by the convicted person or the co-prosecutors.
4. If a convicted person is eligible for commutation of sentence, early release, or parole, the Royal Government of Cambodia shall notify the Extraordinary Chambers accordingly. There shall only be a commutation of sentence, early release, or parole if the Supreme Court Chamber so decides on the basis of the interests of justice and general principles of law.
5. Judges, co-prosecutors, defence counsels and Civil Party Lead Co-Lawyers shall be remunerated on a pro-rata basis when required to perform the functions identified in paragraph 1 of this article, and they shall work remotely except when their functions require their attendance in person at the Extraordinary Chambers. In the case of the judges, this would be at the request of the President of their respective chambers. Any judicial plenary sessions shall be conducted remotely and amendments of the Internal Rules shall be decided remotely by written procedure.
6. Upon the commencement of the functions identified in paragraph 1 of this article, the Secretary-General shall undertake to provide a list of nominees for international judges further to paragraph 5 of Article 3 of the Agreement to ensure that there are a sufficient number of international judges available to carry out the functions under paragraph 1 of this article should any appointed international judge be unavailable to serve when required. The Royal Government of Cambodia shall similarly ensure the availability of Cambodian judges should any appointed Cambodian judge be unavailable to serve when required.

### **Article 3**

#### **Archives**

1. The United Nations and the Royal Government of Cambodia agree that it is vital to ensure that the archives of the Extraordinary Chambers are preserved in accordance with international standards and that they are as broadly accessible as possible.
2. For the purpose of preserving and promoting the legacy of the Extraordinary Chambers, as part of its residual functions, the Extraordinary Chambers shall provide electronic access to, and printed copies of, the public archives to the public.

3. The United Nations and the Royal Government of Cambodia shall each have a complete set of the archives of the Extraordinary Chambers, including all documents and materials. Upon the completion of the proceedings under Article 1 of the Agreement, the United Nations and the Royal Government of Cambodia shall each receive a complete set of the public archives. Upon the completion of the residual functions under Article 2 of this Addendum, the United Nations and the Royal Government of Cambodia shall each receive any additional public documents and materials, as well as a complete set of classified documents and materials.

**Article 4**  
**Approval**

To be binding on the parties, the present Addendum must be approved by the General Assembly of the United Nations and ratified by the Kingdom of Cambodia. The Royal Government of Cambodia will make its best endeavors to obtain this ratification by the earliest possible date.

**Article 5**  
**Application within Cambodia**

The present Addendum shall apply as law within the Kingdom of Cambodia following its ratification in accordance with the relevant provisions of the internal law of the Kingdom of Cambodia regarding competence to conclude treaties.

**Article 6**  
**Entry into force**

The present Addendum shall enter into force on the day after both parties have notified each other in writing that the legal requirements for the entry into force have been complied with.

Done at [place] on [day, month] 2021 in two originals in both the Khmer and English languages. In a case of divergence, the English text shall prevail.

**For the Royal Government of Cambodia**

**For the United Nations**

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