



# General Assembly

Distr.: General  
12 November 2022

Original: English

---

Seventy-seventh session

Agenda item 138

Proposed programme budget for 2023

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

### **Eighteenth report of the Advisory Committee on Administrative and Budgetary Questions on the proposed programme budget for 2023**

#### **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/77/513). In his report, the Secretary-General outlines the judicial progress achieved by the Extraordinary Chambers, provides a projection regarding the anticipated use of the approved commitment authority for 2022 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 \$4,010,400 for 2023. During its consideration of the report, the Committee received additional information and clarification, concluding with written responses received on 2 November 2022.

2. The Extraordinary Chambers in the Courts of Cambodia were established pursuant to the Agreement between the United Nations and the Royal Government of Cambodia, which entered into force in April 2005. 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.

3. As a result of shortfalls in voluntary contributions, the General Assembly authorized the Secretary-General, as an exceptional measure, to enter into commitments to supplement the voluntary financial resources of the international component for the first time in 2014. Those funds were not drawn upon, but since then, the Assembly has authorized the Secretary-General to enter into commitments for the international component every year (\$12.1 million for 2015, \$12.1 million for 2016, \$11.0 million for 2017, \$8.0 million for 2018, \$7.5 million for 2019 and



\$7.0 million each year for 2020, 2021 and 2022). For 2023, the Secretary-General seeks the approval of the Assembly for a subvention for the international component amounting to \$4,010,400.

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

### *Judicial activity*

4. The recent activities of the Extraordinary Chambers are set out in paragraphs 6–16 of the report of the Secretary-General. A summary of the judicial activities is outlined below:

(a) Case 001, against Kaing Guek Eav, alias “Duch”: the defendant passed away on 2 September 2020 while serving a life sentence at Kandal provincial prison, Cambodia;

(b) Case 002 against Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith: the defendant Ieng Thirith was found medically unfit to stand trial and remained under judicial supervision until her death in August 2015. All legal proceedings against Ieng Sary were terminated upon his death in 2013. The charges in case 002 were severed into two trials, styled as cases 002/01 and 002/02, each with a separate trial and judgment. Case 002/01 was focused on alleged crimes against humanity relating to the forced movement of the population from Phnom Penh (phase one) and later from the regions (phase two) and the alleged execution of former Khmer Republic soldiers at Tuol Po Chrey. Case 002/02 encompassed charges relating to genocide against the Muslim Cham and Vietnamese minorities, forced marriage and rape, the treatment of Buddhists and the targeting of former Khmer Republic officials, in addition to alleged crimes against humanity and war crimes committed at four security centres (including S-21) in the context of internal purges, three worksites and a group of work cooperatives, representing a total of 11 crime scenarios;

(c) Case 002/01 against Nuon Chea and Khieu Samphan: the Supreme Court Chamber delivered a judgment in November 2016 upholding the sentence of life imprisonment imposed on Nuon Chea and Khieu Samphan for crimes against humanity. In case 002/02, against the same defendants, a guilty judgment was issued in March 2019 with a sentence of life imprisonment. Nuon Chea died in August 2019. On 22 September 2022, the Supreme Court Chamber pronounced its judgment on the appeals in case 002/02, affirming the Trial Chamber’s convictions of Khieu Samphan for genocide and grave breaches of the Geneva Conventions in their entirety, and upholding all but two convictions for crimes against humanity. The Supreme Court Chamber will finalize appeal proceedings with respect to the Khieu Samphan case with the issuance of the written judgment, expected by the end of 2022;

(d) Case 003 against Meas Muth: in November 2018, the co-investigating judges issued two separate closing orders. The international co-investigating judge indicted Meas Muth for genocide, crimes against humanity, war crimes and domestic crimes. The national co-investigating judge dismissed the case for lack of personal jurisdiction. In April 2021, the Pre-Trial Chamber issued its considerations on the appeals against the closing orders, unanimously declaring that the co-investigating judges’ issuance of the two conflicting closing orders had been illegal and that the Chamber had not attained the required majority of four affirmative votes to reach 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. In September 2021, the Pre-Trial Chamber found both the request to terminate and archive case 003 from Meas Muth's co-lawyers and the request from the international co-prosecutor to confirm the indictment of Meas Muth inadmissible. The co-lawyers for Meas Muth and the international co-prosecutor motioned the Supreme Court Chamber in October 2021, seeking the same relief. In December 2021, the Supreme Court Chamber denied the international co-prosecutor's request, clarifying that, in the absence of a definitive and enforceable indictment, case 003 was terminated. Subsequently, the co-investigating judges sealed and archived case 003, concluding judicial proceedings in the case;

(e) Case 004 against Im Chaem, Ao An and Yim Tith: case 004 has been severed into three cases, one for each charged person, as follows:

(i) In case 004/01 against Im Chaem, the co-investigating judges found that she was not subject to the personal jurisdiction of the Extraordinary Chambers and issued a closing order of dismissal in 2017. In June 2018, the Pre-Trial Chamber confirmed the dismissal, thereby concluding the judicial proceedings in the case;

(ii) In case 004/02 against Ao An, the Supreme Court Chamber terminated the case in August 2020. The Supreme Court Chamber held that neither of the separately issued closing orders was valid after the Pre-Trial Chamber unanimously found that such issuance by the co-investigating judges was illegal;

(iii) In case 004/03 against Yim Tith, the co-investigating judges issued two separate closing orders in June 2019. The international co-investigating judge indicted Yim Tith for genocide, crimes against humanity, war crimes and domestic crimes. The national co-investigating judge dismissed the case for lack of personal jurisdiction. On 17 September 2021, the Pre-Trial Chamber issued its considerations on the appeals against the closing orders, unanimously declaring that the co-investigating judges' issuance of the two conflicting closing orders had been illegal and that the Chamber had not attained the required majority of four affirmative votes to reach a decision based on common reasoning on the merits. On 20 October 2021, the international co-prosecutor petitioned the Supreme Court Chamber to send case 004 to trial. The Supreme Court Chamber denied the request, clarifying that, in the absence of a definitive and enforceable indictment, proceedings in case 004 were terminated. On 29 December 2021, the co-investigating judges sealed and archived case 004, concluding judicial proceedings in the case.

**5. The Advisory Committee notes the issuance of the judgments by the Supreme Court Chamber in two cases in 2021, whereby the co-investigating judges did not adequately address the legal framework of the Extraordinary Chambers, leading to a termination of judicial proceedings. The Committee expresses its concern at the delays incurred in completing litigation and the resultant financial implications, and reiterates its previous requests to expedite case completion (see [A/76/7/Add.12](#), para. 9, [A/75/7/Add.19](#), para. 12, and [A/74/7/Add.16](#), para. 12).**

#### *Completion plan*

6. The Secretary-General provides an update on the completion plan in paragraphs 17–20 of his report. The Extraordinary Chambers have continued to make progress in all remaining cases. Judicial proceedings in cases 003 and 004 have been completed. In case 002/02, the Supreme Court Chamber held four days of appeal hearings from 16 to 19 August 2021 and pronounced its judgment on the appeals on

22 September 2022. The completion of appeal proceedings in this last case is expected in the fourth quarter of 2022, with the issuance of the written judgment.

7. The Secretary-General indicates that the Extraordinary Chambers will commence its residual phase in 2023 for an initial period of three years, in line with the addendum to the Agreement between the United Nations and the Royal Government of Cambodia. Upon enquiry, the Advisory Committee was informed that, during the negotiations on the addendum, the United Nations and the Government of Cambodia decided to establish a process under which the scope and scale of the residual functions to be performed would be assessed by the parties in order to determine the extent to which some would still be required, with a view to ensuring that the size of the Chambers remained commensurate with its functions. The parties agreed that an initial period of three years was appropriate for such an assessment. The duration of the residual functions will be determined by their scope and scale and the timelines for key functions, for example, the supervision of the enforcement of sentences, the possibility of receiving requests for the revision of judgments and the preservation and management of the archives, to ensure that they are as broadly accessible as possible.

8. The Advisory Committee was informed, upon enquiry, that during the residual phase, the archives of the Extraordinary Chambers would be housed in a specially equipped repository at its new residual premises, as agreed by the United Nations and the Government of Cambodia. The archives will be located in central Phnom Penh, making them easily accessible to the public during working hours. Any person will be able to enter the residual premises of the Chambers and freely utilize publicly available material at designated areas on site. The Chambers' archives comprise three elements, all of which are accessible to the public, subject to judicial classifications, as follows:

(a) The paper repository comprises the original, physical collection of all judicial documents filed before, or issued by, the Extraordinary Chambers since their inception. Public access to hard-copy records will be managed by the Chambers' Records and Archives Unit through a designated access point at the residual premises;

(b) The audiovisual repository includes all audiovisual recordings of proceedings before the Extraordinary Chambers. Public access to audiovisual records is managed in the same way as the paper repository;

(c) The digital archive consists of electronic versions of the paper and audiovisual repositories. Material judicially classified as "public" is accessible on the Extraordinary Chambers' website. Required facilities (e.g. desktop and tablet computers) to access the website and the judicial database will be made available to the public at the residual premises.

**9. The Advisory Committee notes that the Extraordinary Chambers are entering the residual phase with an initial three-year assessment period. The Committee emphasizes that any agreements between the United Nations and the Government of Cambodia should take into consideration the challenging financial situation faced by the international component of the Chambers in terms of voluntary contributions. All Member States should be made aware of any resultant financial implications for the international component of the Chambers from such agreements. The Committee trusts that the assessment of the residual functions and tasks will include the respective roles of the international and national components, with a view to enhancing the role of the national component. The Committee encourages the Chambers to use this opportunity to seek an orderly closure of all judicial activities, actively preserve the legacy of the Chambers and enhance national ownership. The Committee considers the archives of the Chambers as an important component of**

international humanitarian law, and that all efforts should be pursued to ensure accessibility for the general public. The Committee trusts that further clarity on the duration of the assessment period will be provided to the General Assembly at the time of its consideration of the present report, and that the outcome of the assessment will be included in the report to the Assembly at its seventy-eighth session on the use of the commitment authority.

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

#### *Voluntary contributions*

10. The Secretary-General provides an update on the major fundraising activities in paragraphs 23–27 of his report. He indicates that voluntary contributions for the international component have continued to decline, falling from \$17.7 million in 2015 (65 per cent of the approved 2015 budget) to \$13.1 million in 2016 (51 per cent of the approved budget), \$9.4 million in 2017 (30 per cent of the approved budget), \$8.4 million in 2018 (47 per cent of the approved budget), \$6.2 million in 2019 (39 per cent of the budget) and \$4.4 million in 2020 (38 per cent of the approved budget) and further dropping to \$3.6 million in 2021 (28 per cent of the approved budget). For 2022, the levels of voluntary contributions are estimated at \$3.5 million (41 per cent of the approved budget). Upon enquiry, the Advisory Committee was informed that, during the preparation of the proposed budget for 2023, the Secretariat and the United Nations Assistance to the Khmer Rouge Trials continued to consult with donors on a bilateral basis to raise funds. Such efforts have led to consideration by the Government of Germany to provide 250,000 euros per year for the initial three years of the residual functions. The amount for the first year (2023) has been included in the report of the Secretary-General as an anticipated pledge.

11. **The Advisory Committee welcomes the contribution made by the Government of Germany for the residual functions. The Committee notes the steady decline in the levels of voluntary contributions from 65 per cent of the approved 2015 budget to 41 per cent of the approved budget in 2022, and reiterates the ongoing need for intensified fundraising efforts to support 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 financial efforts (see also [A/76/7/Add.12](#), para. 12, [A/74/7/Add.16](#), para. 25, and [A/73/448](#), para. 25).**

12. The Secretary-General notes that, pursuant to the Agreement between the United Nations and the Royal Government of Cambodia, the United Nations is responsible for financing the costs of supporting the international component of the Extraordinary Chambers, while the Government of Cambodia is responsible for defraying the costs of the national component, including the salaries of national personnel, utilities and service expenses of the Chambers ([A/77/513](#), para. 22). **The Advisory Committee notes with appreciation the sustained contributions made by the Government of Cambodia (see [A/76/7/Add.12](#), para. 13).**

#### *Use of the commitment authority*

13. In its resolution [75/253](#) A, 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 in 2021. As at 31 December 2021, total expenditure amounted to \$10,306,900, which was covered by voluntary contributions and other income (\$3,624,500) and resources drawn from the subvention (\$6,682,400).

14. In its resolution 76/246 A, the General Assembly authorized the Secretary-General to enter into commitments in an amount not to exceed \$7,000,000 to supplement the voluntary financial resources of the international component of the Extraordinary Chambers in 2022. Upon enquiry, the Advisory Committee was informed that expenditure amounted to \$6,110,600 (72 per cent) as at 30 September 2022. Total Extraordinary Chambers expenditure at the end of 2022 is estimated at \$8,441,100. The Chambers intend to cover the expenditure by using the anticipated pledges, contributions and other income (\$3,496,400) and drawing an amount of \$4,944,700 from the commitment authority (A/77/513, para. 31).

15. Upon enquiry, the Advisory Committee was provided with a table showing the requirements by component and funding availability as at 30 September 2022 and projected from 1 October to 31 December 2022 (see annex). **The Advisory Committee trusts that any unencumbered balance for 2022 will be returned to Member States as soon as possible (see also A/76/7/Add.12, para. 16).**

#### *Cost-saving measures*

16. 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 2022, through continued coordination with the Economic and Social Commission for Asia and the Pacific (ESCAP) (see A/77/513, annex I). Upon enquiry, the Advisory Committee was informed that ESCAP is engaged as service provider for the United Nations Assistance to the Khmer Rouge Trials through a memorandum of understanding covering personnel recruitment and administration of international and national staff, payroll, non-staff (consultancies and individual contractor administration), staff counselling services, conduct and discipline, procurement services, travel services, accounts payable, and Umoja security liaison and related information and communications technology services. The arrangement avoids retaining in-house administrative staff for the United Nations Assistance to the Khmer Rouge Trials and provides an economy of scale advantage, since ESCAP provides staffing services for multiple United Nations entities. For the United Nations Assistance to the Khmer Rouge Trials, the scope of the memorandum of understanding resulted in the reduction of nine administrative positions in 2022 and 2023, with the related cost avoidance estimated at \$827,484 (see table 1). The fees for ESCAP services are negotiated annually, and for 2022 the negotiated amount is \$329,284. The fee for 2023 is currently being negotiated. **The Advisory Committee notes the efforts to implement cost-saving measures and trusts that updated information will be provided in the next report. In view of the persistent funding challenges facing the international component of the Extraordinary Chambers, the Committee reiterates the need for the United Nations Assistance to the Khmer Rouge Trials to redouble its efforts in terms of cost efficiency (see A/76/7/Add.12, para. 17).**

Table 1  
**Abolishment of positions relevant to the memorandum of understanding with the Economic and Social Commission for Asia and the Pacific for 2022–2023**

(United States dollars)

	<i>Position</i>	<i>Level</i>	<i>No. of staff</i>	<i>Month abolished</i>	<i>Standard salary costs for 2023</i>
1.	Chief, Budget and Finance Section	P-4	1	Jan. 2022	216 365
2.	Finance Assistant	Local level	1	Jan. 2022	52 263
3.	Human Resources Assistant	Local level	1	Jan. 2022	52 263

	<i>Position</i>	<i>Level</i>	<i>No. of staff</i>	<i>Month abolished</i>	<i>Standard salary costs for 2023</i>
4.	Human Resources Assistant	Local level	1	Jan. 2022	52 263
	<b>Subtotal</b>				<b>373 154</b>
5.	Chief, Information and Communications Technology Section	P-4	1	Jan. 2023	216 365
6.	Information and Communications Technology Assistant	Local level	1	Jan. 2023	52 263
7.	Associate Human Resources Officer	NO-B	1	Jan. 2023	81 176
8.	Procurement Assistant	Local level	1	Jan. 2023	52 263
9.	Senior Travel Assistant	Local level	1	Jan. 2023	52 263
	<b>Subtotal</b>				<b>454 330</b>
	<b>Total</b>				<b>827 484</b>

#### IV. Requirements and subvention request for 2023

##### *Budget requirements*

17. The Secretary-General indicates that the proposed resource requirements for 2023 amount to \$4,528,600, representing a decrease of \$3,912,500 (or 46.4 per cent) compared with the projected expenditure of \$8,441,100 for 2022 (A/77/513, table 2). The annex to the present report provides an account of the financial performance for the international component of the Extraordinary Chambers for the periods 2021 and 2022 to date and a comparison with the estimated requirements for 2023.

18. The proposed post resources of \$1,494,500, representing a decrease of \$2,308,000 (or 60.7 per cent) compared with the estimated expenditure of \$3,802,500 for 2022, would provide for the continuation of 11 positions (1 D-1, 2 P-4, 1 P-3, 1 Field Service, 3 National Professional Officer and 3 Local level) (ibid., para. 35 and table 3).

19. Pursuant to article 1 of the addendum to the Agreement between the United Nations and the Royal Government of Cambodia, all international judges, except the judges of the Supreme Court Chamber, have been deinstalled from Cambodia, are working remotely and are remunerated on a pro rata basis for any work performed (ibid., para. 43). Resource requirements for judicial offices are estimated at \$957,800, showing a reduction of \$1,314,400 (or 57.8 per cent) (supplementary information, table I).

20. The proposed non-post resources amount to \$3,034,100, representing a decrease of \$1,604,500 (or 34.6 per cent) compared with the projected expenditure for 2022. The overall decrease vis-à-vis projected expenditure reflects decreases under non-staff compensation (\$590,500), consultants and experts (\$311,900), general operating expenses (\$295,400) and contractual services (\$293,300) (A/77/513, table 2).

21. In terms of staffing, the Secretary-General indicates that there is a reduction of 42 positions from the approved staffing level in 2022 (ibid., table 3). Upon enquiry, the Advisory Committee was informed that, of the 11 positions retained for the residual functions in 2023, 5 are international and 6 are national. This balance is required to ensure the minimum required skill sets within the workforce of the United Nations Assistance to the Khmer Rouge Trials. The five international positions include one Deputy Director of Administration (D-1); one Programme Management

Officer (P-4); one Judicial Clerk of the Supreme Court Chamber (P-4), who is the only judicial officer to be focal point for all judicial issues; one Information Management Officer (P-3), who is the Head of the Records and Archives Unit and is responsible for the totality of the records of the Extraordinary Chambers; and one Head of Security and Safety (Field Service), required by Supplementary Agreement as the responsibility of the United Nations. The six national positions include one Budget and Finance Officer (National Professional Officer); one Finance Assistant (Local level) to coordinate all financial issues with ESCAP and handle budgetary issues; two Information and Communications Technology Assistants (Local level) to manage and operate the entire information technology infrastructure of the Extraordinary Chambers, including judicial databases and all digital platforms; one Administrative Officer (National Professional Officer) to handle all witness and victim protection issues; and one Associate Public Information Officer (National Professional Officer). The Committee was informed that all staff are engaged full-time and deployed at the duty station.

22. Upon enquiry, the Advisory Committee was informed that the need to maintain both the D-1 and P-4 positions for the international component in the Office of the Director of Administration was due to the separation of duties required by human resources and financial rules, which stipulate a minimum of two management officials. The Deputy Director of Administration (D-1) provides for the coordination of all activities of the United Nations Assistance to the Khmer Rouge Trials, including, but not limited to, administrative matters, financial delegations, operational guidance, fundraising with diplomatic missions and interfacing between host country authorities and United Nations entities at Headquarters. The Programme Management Officer (P-4) supports the Deputy Director of Administration on all management activities of the United Nations Assistance to the Khmer Rouge Trials, which otherwise would require separate support staff, such as for dispute resolution, desk work related to recruitment, financial and grant reporting and liaison with ESCAP on its service provision.

23. The Secretary-General indicates that one new position of Associate Public Information Officer (National Professional Officer) is proposed for establishment under the international component. Upon enquiry, the Advisory Committee was informed that the position was required pursuant to article 2 (1) of the addendum to the Agreement, which requires that the Extraordinary Chambers disseminate information to the public, and article 3 of the addendum, which requires that the archives of the Extraordinary Chambers be made accessible to the public, within and outside Cambodia. The Associate Public Information Officer will also be responsible for ensuring that information about the Extraordinary Chambers intended for the general public, especially the domestic audience, is communicated in a meaningful manner to those who are not legally trained. The position will serve as the hub for updates to the Chambers' website and social platforms, including on newly declassified judicial documents, and will also ensure the effective harnessing of the full range of the judicial databases, such as through optical character recognition in Khmer, to simplify content navigability and improve searchability for non-skilled users. **The Advisory Committee notes that the Chambers is transitioning to the residual phase and, as such, believes that greater national ownership will be needed during this critical period. The Committee trusts that due consideration will be given to incorporating the Associate Public Information Officer (National Professional Officer) position under the national component.**

24. Upon enquiry, the Advisory Committee was informed that travel-related resources showed a small increase of \$16,000, which was attributed to domestic travel for victim support. The Committee was also informed, upon enquiry, that resources under consultants and experts (\$385,200) were related to defence and victim support



for case 002/02. As noted in paragraph 4 (c) above, the proceedings have been finalized and the issuance of the written judgment is expected by the end of 2022.

25. Upon enquiry, the Advisory Committee was informed that the proposed budget for 2023 had been endorsed by the principal donors group and was currently before the steering committee, consisting of members of the principal donors group and the Government of Cambodia, for further endorsement. After the endorsement from the steering committee, which is expected in early November, the budget will be submitted to the group of interested States, which consists of members of the steering committee plus 18 additional Member States, for final approval. On the basis of the current timeline, it is expected that the approval of the group of interested States will be obtained by early December 2022. **Taking into account the concluding developments in the judicial proceedings, the Advisory Committee is not fully convinced about the requested level of resources in 2023 for operational costs, especially considering the transition of the Chambers to the residual phase.**

#### *Subvention request*

26. The Secretary-General indicates that, despite fundraising efforts, minimal contributions have been received for the 2023 fiscal year, and there are limited prospects that more pledges will be made. Consequently, the Secretary-General is seeking the approval of the General Assembly for a subvention from the regular budget in the amount of \$4,010,400, against a proposed budget of \$4,528,600 and taking into account estimated voluntary contributions of \$518,200, to cover the major requirements of the international component of the Extraordinary Chambers (A/77/513, paras. 37 and 51 (a)–(e)).

27. **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 A, sect. 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/76/7/Add.12, para. 25).**

## V. Other matters

#### *End-of-service liabilities*

28. The Secretary-General indicates that end-of-service liabilities for staff in the international component would amount to \$311,777 (A/77/513, para. 40). Upon enquiry, the Advisory Committee was informed that an orderly closure of the Extraordinary Chambers would require an agreement between the United Nations and the Government of Cambodia. In a scenario where the United Nations is no longer in a position to meet its obligations under the Agreement between the United Nations and the Royal Government of Cambodia and the addendum thereto and must withdraw from the Extraordinary Chambers, three working months are required to finalize ongoing judicial work and an additional three working months are required for operational liquidation, including securing documentation, disposal of all assets, including arms and ammunition, and separation and deinstallation of all personnel.

The related cost is estimated at \$2.2 million, including end-of-service liabilities in the amount of \$311,777.

29. **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/76/7/Add.12, para. 28, A/75/7/Add.19, para. 29, and A/74/7/Add.16, para. 27).**

*Remuneration of the international judges and co-prosecutor*

30. The Secretary-General indicates that remuneration of the international judges and co-prosecutor has been established on the basis of the net salary of United Nations staff at the D-2 level, as the outcome of the review requested by the General Assembly in its resolution 76/246 A (A/77/513, paras. 42–43). Upon enquiry, the Advisory Committee was informed that the Supreme Court Chamber was staffed with three international judges, two installed at the duty station and one working remotely owing to personal circumstances. The two installed international judges will be deinstalled with the completion of the reclassification work and subsequent drawdown of operations in April 2023. The one non-installed judge is projected to work remotely for a total of three work-months. The co-prosecutor works remotely and is remunerated pro rata, with the remunerated workload in 2023 projected to be a total of three work-months. The projected work of the Supreme Court Chamber relates to the reclassification of case file documents to be completed by the end of the first quarter of 2023, requiring 11 work-months for three international judges. The Committee was informed, upon enquiry, that the prorated daily rate for the international judges and co-prosecutor was \$635, in comparison to the daily rate of \$657 for a position at the midpoint step of the D-2 level (step V). Table 2 provides the revised daily fee for the international judges and co-prosecutor. The daily fee for part-time work was established by prorating the annual remuneration based on 261 working days per year (i.e. 21.75 working days per month), which is a standard working-day count for the purposes of the proration of staff entitlements in the United Nations Secretariat.

Table 2  
**Revised daily rate for the international judges and co-prosecutor**

	<i>Net base salary level (US dollars)</i>	<i>Post adjustment (percentage)</i>	<i>Number of working days</i>	<i>Prorated daily rate (US dollars)</i>
Revised daily rate as endorsed by the principal donors group	D-2, step IV, 2022 annual rate: 121 511	Cambodia, 2021 12-month average: 36.5	261	635
Daily rate based on midpoint step of D-2 level	D-2, step V, 2022 annual rate: 123 794	Cambodia, October 2022: 38.5	261	657

*Operational, budgetary and financial interactions with the United Nations Assistance to the Khmer Rouge Trials*

31. The Secretary-General indicates that efforts to seek a single entity of the Secretariat overseeing the operational, budgetary and financial interactions with the United Nations Assistance to the Khmer Rouge Trials are still ongoing, with limited results. The Secretary-General indicates that the Office of Legal Affairs, the Department of Economic and Social Affairs and the Office of the Controller continue to provide guidance and assistance to the United Nations Assistance to the Khmer Rouge Trials on operational and administrative matters (ibid., paras. 44–45). Upon

enquiry, the Advisory Committee was informed that the United Nations Assistance to the Khmer Rouge Trials was established as a technical assistance project, supported by the Department of Economic and Social Affairs, whose functions included the provision of administrative and technical support to the international component. The role of the Office of Legal Affairs is limited to providing legal support and the Office does not have a mandate to undertake the functions of an administrative nature that are currently performed by the Department of Economic and Social Affairs and by the United Nations Assistance to the Khmer Rouge Trials. The Committee was informed that, in 2023, the Department of Economic and Social Affairs would work closely with the United Nations Assistance to the Khmer Rouge Trials to determine and ensure that administrative processes could be put in place and allow for a seamless transition to the United Nations Assistance to the Khmer Rouge Trials in 2024. **The Advisory Committee recalls the General Assembly's request (see resolution 76/246 A, sect. XII, para. 8) to the Secretary-General to present the feasibility of, and options for, a single entity of the Secretariat overseeing the operational, budgetary and financial interactions with the United Nations Assistance to the Khmer Rouge Trials. The Committee trusts that updated information will be provided to the Assembly for its consideration at its seventy-eighth session.**

## **VI. Conclusion and recommendations**

32. **The Advisory Committee notes that the Extraordinary Chambers will commence its residual phase in 2023 for an initial period, during which the scope, scale and timelines of the residual phase are meant to be assessed. The Committee trusts that this assessment will take into account the benefits of transitioning towards greater national ownership. The 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 General Assembly. The Committee recalls General Assembly resolutions 69/274 A, 70/248 A, 71/272 A, 72/262 A, 73/279 A, 74/263, 75/253 A and 76/246 A, in which the Assembly encouraged all Member States to provide voluntary support for both the international and national components of the Chambers.**

33. **Moreover, the Advisory Committee again notes that, after 10 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.**

34. **The Advisory Committee therefore reaffirms its view that a decision to appropriate an amount of the budget of the international component for 2023 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 2023, 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 \$3,409,000 to supplement the voluntary financial resources of the international component for the period from 1 January to 31 December 2023 as a bridging mechanism, in lieu of appropriation. This reflects a 15 per cent reduction from the requested subvention of \$4,010,400.**

35. 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 2023, 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 seek an orderly closure of all judicial activities, actively preserve the legacy of the Chambers and enhance national ownership;

(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 Royal Government of Cambodia are observed.

## Annex

## Financial resources for the international component of the Extraordinary Chambers in the Courts of Cambodia

(Thousands of United States dollars)

	(1) 2021 actual expenditure	(2) 2022 revised budget	(3) Jan.–Sept. 2022 expenditure	(4) Oct.–Dec. 2022 estimated expenditure	(5)=(3)+(4) Jan.–Dec. 2022 estimated expenditure	Resource growth		(8)=(2)+(6) 2023 estimated requirements <sup>a</sup>
						(6) Amount	(7)=(6)/(2) Percentage	
<b>Expenditure/requirements</b>								
Judicial offices	4 458.7	2 272.2	1 625.0	647.2	2 272.2	(1 314.4)	(57.8)	957.8
Defence and Victims Support Sections	1 452.6	317.4	197.1	120.3	317.4	302.9	95.4	620.3
Office of Administration	4 395.6	5 851.5	4 288.5	1 563.0	5 851.5	(2 901.0)	(49.6)	2 950.5
<b>Subtotal</b>	<b>10 306.9</b>	<b>8 441.1</b>	<b>6 110.6</b>	<b>2 330.5</b>	<b>8 441.1</b>	<b>(3 912.5)</b>	<b>(46.4)</b>	<b>4 528.6</b>
<b>Funds available</b>								
Pledges, contributions and other income	3 624.5	–	3 496.4	–	3 496.4	–	–	–
Previous year's unspent balance	–	–	–	–	–	–	–	–
Anticipated pledges	–	–	–	–	–	–	–	518.2
Amount of subvention used or authorized <sup>b</sup>	6 682.4	–	7 000.0	(2 055.3)	4 944.7	–	–	–
<b>Subtotal</b>	<b>10 306.9</b>	<b>–</b>	<b>10 496.4</b>	<b>(2 055.3)</b>	<b>8 441.1</b>	<b>–</b>	<b>–</b>	<b>518.2</b>
<b>Surplus/(shortfall)</b>	<b>–</b>	<b>–</b>	<b>4 385.8</b>	<b>(4 385.8)</b>	<b>–</b>	<b>–</b>	<b>–</b>	<b>(4 010.4)</b>

<sup>a</sup> The 2022 revised and 2023 budget figures are subject to review and approval by the group of interested States.

<sup>b</sup> The amount of subvention used in 2021 is reflected in the financial performance report on the programme budget for 2021. The final expenditure for 2022 and related amount of subvention used will be reported in the context of the financial performance report on the programme budget for 2022.