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

Report of the Secretary-General

Summary

In his previous request for a subvention to the Extraordinary Chambers in the Courts of Cambodia ([A/75/242](#)), the Secretary-General identified progress made in the judicial work across all sets of proceedings before the Extraordinary Chambers in the Courts of Cambodia. The Secretary-General also highlighted the continuing financial challenges facing both the international and national components of the Extraordinary Chambers and requested the approval of a subvention of up to \$8.5 million for the year 2021.

By its resolution [75/253 A](#), the General Assembly authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not exceeding \$7 million to supplement the voluntary financial resources of the international component of the Extraordinary Chambers for the period from 1 January to 31 December 2021, and requested the Secretary-General to report on the use of the commitment authority in the context of the next report.

In the present report, the Secretary-General outlines the judicial progress of the Extraordinary Chambers since the issuance of the previous report, provides a projection regarding the anticipated use of the commitment authority for 2021, presents information on the proposed budget of the Chambers 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 \$7.5 million for 2022.



I. Introduction

1. Since their establishment, and as detailed in the previous requests of the Secretary-General for a subvention to the Extraordinary Chambers in the Courts of Cambodia (A/58/617, A/59/432, A/59/432/Add.1, A/60/565, A/62/304, A/67/380, 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), the Extraordinary Chambers in the Courts of Cambodia have achieved substantial progress towards fulfilling their mandate. Since the issuance of the previous report of the Secretary-General, appeal proceedings in case 002/02 have continued. In case 003, the Pre-Trial Chamber issued its considerations on appeals against the separate closing orders, but the case was pending before the Pre-Trial Chamber as at 31 August 2021, further to additional filings made by the parties in the case. In the remaining case, case 004, a decision by the Pre-Trial Chamber on the appeals against the closing orders is expected by the third quarter of 2021.

2. Pursuant to the request for a completion strategy made by the General Assembly in its resolution 68/247 B, the Extraordinary Chambers continue to prepare a completion plan on a quarterly basis, highlighting a number of remaining procedural milestones and estimating the time required for judicial completion of the current caseload.¹ As it is unknown whether cases 003 and 004 will go to trial, it would be premature to project an overall timeline for the Chambers' judicial work. Nevertheless, according to the completion plan, appeal proceedings in case 002/02 will continue into the fourth quarter of 2022. The final timelines for cases 003 and 004 can be projected only when there is clarity regarding the outcome of those cases.

3. Further to General Assembly resolutions 73/279 A, 74/263 and 75/257 A, the Secretary-General submitted his report on the residual functions of the Extraordinary Chambers on 19 March 2021 (A/75/809), which detailed the consultations undertaken on the completion of the work and the residual functions of the Extraordinary Chambers, as well as an explanation of the outcome of the consultations conducted, which resulted in a set of provisions for a draft addendum to the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea. By its resolution 75/257 B, the General Assembly approved the draft addendum, which was signed by the United Nations and the Government of Cambodia in August 2021 and will enter into force after both parties have notified each other in writing that the legal requirements for the entry into force have been complied with.

4. The Extraordinary Chambers continue to face considerable financial challenges. It has proved difficult to attract the requisite voluntary funding to fully cover costs for 2021. The coronavirus disease (COVID-19) pandemic has had an adverse impact on the securing of voluntary contributions. The authorization by the General Assembly of a subvention to supplement the voluntary financial resources of the international component has been essential for the work of the Chambers. The anticipated level of voluntary contributions to the international component would require the full use of the commitment authority of \$7 million by the end of 2021. Regarding the national component, the financial contributions from the Government of Cambodia, coupled with pledges from the international community, have stabilized the funding situation of that component for 2021.

5. In its resolution 75/253 A, the General Assembly, recalling paragraph 37 of the report of the Advisory Committee (A/75/7/Add.19), requested the Secretary-General to conduct a review of the proposed change in the terms and conditions of international judges of the Extraordinary Chambers and to report thereon in the context of the present report. The results of the review are reported in section VII.

¹ See the latest completion plan, Revision 29 of 30 June 2021, available at https://eccc.gov.kh/sites/default/files/ECCC%20Completion%20Plan.rev%2029.FINAL__0.pdf.

II. Progress made in the case files

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

6. On 2 September 2020, Kaing Guek Eav died after having been admitted to hospital. Prior to his death, he had been serving a life sentence imposed by the Supreme Court Chamber at Kandal provincial prison, Cambodia, for his conviction for crimes against humanity and grave breaches of the 1949 Geneva Conventions.

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

7. On 15 September 2010, the co-investigating judges of the Extraordinary Chambers issued a closing order indicting 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 of Social Affairs of Democratic Kampuchea, Ieng Thirith, for crimes against humanity, grave breaches of the Geneva Conventions relating to the protection of victims of international armed conflicts, and genocide against the Cham and Vietnamese ethnic groups. Ieng Thirith was found unfit to stand trial on medical grounds and remained under judicial supervision until her death in August 2015 and the subsequent termination of the proceedings. The proceedings against Ieng Sary were also terminated upon his death in March 2013.

8. The charges in case 002 were severed into two separate cases (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. It also concerned the structure of Democratic Kampuchea, the history of the Communist Party of Kampuchea, the organizational structure of Democratic Kampuchea, and the roles of the accused in relation to the policies of the Democratic Kampuchea regime as relevant to all charges. 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) as part of internal purges, three worksites and a group of work cooperatives, a total of 11 crime scenarios.

9. On 7 August 2014, the Trial Chamber delivered its judgment in the proceedings in case 002/01. It found that Nuon Chea and Khieu Samphan had, through their participation in a joint criminal enterprise, committed the crimes against humanity of murder, political persecution and other inhumane acts (comprising forced transfers and attacks against human dignity) during the first phase of the movement of population; political persecution and other inhumane acts (comprising forced transfers and attacks against human dignity) during the second phase of the movement of population; and murder and extermination through executions of Khmer Republic officials at Tuol Po Chrey. They were also found to have planned, instigated, and aided and abetted the aforementioned crimes during the first and second phases of the movement of population and at Tuol Po Chrey. In addition, Nuon Chea was found to have ordered the crimes and to have been responsible as a superior for all crimes committed in the course of the movement of population and at Tuol Po Chrey. The Trial Chamber sentenced both Nuon Chea and Khieu Samphan to life imprisonment.

10. In late 2014, appeals were filed against the trial judgment by the co-prosecutors, as well as by both Nuon Chea and Khieu Samphan, who advanced 223 and 148 grounds

of appeal, respectively. On 23 November 2016, the Supreme Court Chamber rendered its judgment on the appeals. The Supreme Court Chamber upheld the convictions for the crimes against humanity of murder, persecution on political grounds and other inhumane acts in relation to the evacuation of Phnom Penh immediately after the fall of the city on 17 April 1975 and reversed the conviction for the crime against humanity of extermination in connection with that event. Regarding the second phase of the population transfers that occurred between 1975 and 1977, the Chamber affirmed the convictions of both accused for the crime against humanity of other inhumane acts, entered a conviction for the crime against humanity of murder, and reversed the convictions for the crimes against humanity of extermination and persecution on political grounds. While the Supreme Court Chamber upheld the Trial Chamber's finding that at least 250 soldiers and officials of the Khmer Republic had been executed at Tuol Po Chrey in April 1975 and that crimes against humanity were likely to have occurred, it considered the evidence to be inadequate to substantiate a finding that there had been a policy to kill all Khmer Republic soldiers at the time. As a result, the Chamber reversed the convictions for the crimes against humanity of extermination, murder and persecution on political grounds at Tuol Po Chrey. The Supreme Court Chamber considered that the imposition of a life sentence upon both Nuon Chea and Khieu Samphan was appropriate and therefore confirmed the sentence imposed by the Trial Chamber. The Supreme Court Chamber also found inadmissible the appeal by the co-prosecutors seeking declaratory relief on the applicability of the most extended form of joint criminal enterprise before the Extraordinary Chambers.

11. On 16 November 2018, the Trial Chamber pronounced its judgment together with a summary of its findings in case 002/02. The Chamber found Nuon Chea and Khieu Samphan guilty of crimes against humanity, grave breaches of the Geneva Conventions, and genocide against the Vietnamese ethnic, national and racial group. Both accused were also found to have aided and abetted the crime against humanity of murder at the Tram Kak cooperatives, the three worksites and the four security centres. The Chamber further convicted Nuon Chea under the doctrine of superior responsibility for genocide against the Cham ethnic and religious group. The reasoned judgment was issued in the three working languages of the Court on 28 March 2019. Both Nuon Chea and Khieu Samphan were sentenced to life imprisonment. The Chamber merged their sentences in cases 002/01 and 002/02 into a single life term. Following the death of Nuon Chea on 4 August 2019, the Supreme Court Chamber terminated the appellate proceedings against him on 13 August 2019 and subsequently found that the Trial Chamber's findings with respect to Nuon Chea were not vacated upon his death. The co-prosecutors filed their appeal on 20 August 2019, while Khieu Samphan, the remaining appellant in case 002/02, filed his appeal on 28 February 2020. Responses to the appeals were fully briefed in the three languages by late March 2021. Four days of appeal hearings were held from 16 to 19 August 2021.

C. Cases 003 and 004

12. On 7 September 2009, the international co-prosecutor filed two introductory submissions (subsequently supplemented by further submissions) with the co-investigating judges alleging the commission of further crimes falling under the jurisdiction of the Extraordinary Chambers by five additional suspects.

13. Pursuant to submissions filed by the international co-prosecutor, the co-investigating judges were seized of 10 crime scenarios in case 003 and 55 crime scenarios in case 004.

14. On 3 March 2015, the international co-investigating judge charged Meas Muth and Im Chaem in cases 003 and 004, respectively. Meas Muth was charged with crimes against humanity, war crimes and violations of the 1956 Penal Code of Cambodia,

while Im Chaem was charged with crimes against humanity and violations of the 1956 Penal Code of Cambodia. The charges were laid in absentia, as the charged persons had ignored formal summonses and ensuing arrest warrants had not been executed. On 27 March 2015, the international co-investigating judge charged Ao An in person in case 004 with crimes against humanity and violations of the 1956 Penal Code of Cambodia. On 2 June 2015, the co-investigating judges issued a decision dismissing the criminal allegations against Sou Met, until then a suspect in case 003, on account of his death in 2014. On 9 December 2015, the last remaining suspect in case 004, Yim Tith, appeared before the international co-investigating judge. He was charged with genocide, crimes against humanity, war crimes and violations of the 1956 Penal Code of Cambodia. On 14 December 2015, Meas Muth appeared voluntarily before the international co-investigating judge, where he was notified of additional charges, including genocide. A number of charges laid in the previous decision to charge him in absentia were rescinded, as was the outstanding arrest warrant.

15. On 18 December 2015, the co-investigating judges notified the parties that they considered the judicial investigations against Im Chaem concluded. Noting that Im Chaem had the right to determination of the charges brought against her without undue delay, on 5 February 2016, the co-investigating judges ordered the severance of the proceedings against Im Chaem from case 004 into a new case file, 004/01. On 22 February 2017, the co-investigating judges issued a dispositive closing order dismissing the case because, on the basis of the evidence collected during the investigation, Im Chaem was not subject to the personal jurisdiction of the Extraordinary Chambers, as she was neither a senior leader of Democratic Kampuchea nor otherwise most responsible for the serious crimes committed during the Khmer Rouge regime. On 10 July 2017, the co-investigating judges issued the reasoned closing order, dismissing case 004/01 against Im Chaem. On 9 August 2017, the international co-prosecutor filed an appeal against the closing order with the Pre-Trial Chamber. On 28 June 2018, the Pre-Trial Chamber disposed of the appeal on personal jurisdiction by finding that the decision of the co-investigating judges stood, thereby concluding the judicial proceedings in the case.

16. In respect of case 004/02, on 14 March 2016, the international co-investigating judge expanded the charges against Ao An to include additional crimes against humanity and genocide. On 16 December 2016, the co-investigating judges notified all parties in case 004 that they considered the judicial investigation against Ao An to be concluded and ordered the severance of the proceedings from case 004 and the creation of a new case file, 004/02, because as a charged person, he had the right to be informed of the decision on the charges brought against him without undue delay. The international co-investigating judge also issued a separate decision reducing the scope of the investigation pursuant to internal rule 66 bis, constituting the first application of this rule since its adoption in January 2015. On 19 May 2017, the co-investigating judges issued a forwarding order directing the co-prosecutors to file their final submission. On 18 and 21 August 2017, the international and national co-prosecutors filed their respective final submissions. On 16 August 2018, the co-investigating judges issued two separate closing orders in case 004/02. The international co-investigating judge indicted Ao An for genocide, crimes against humanity and domestic crimes. The national co-investigating judge dismissed the case for lack of personal jurisdiction. Submissions on appeal were filed by the co-lawyers for Ao An, the national co-prosecutor and the international co-prosecutor. On 19 December 2019, 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. The national and international judges attached their respective opinions to the considerations. Further to filings made by

the international co-prosecutor, the Trial Chamber issued a statement on 3 April 2020, noting that the Chamber had never been formally notified of the case and had not received the case file. On 4 May 2020, the international co-prosecutor filed an immediate appeal of the Trial Chamber's effective termination of case 004/02 before the Supreme Court Chamber. On 10 August 2020, the Supreme Court Chamber issued its decision, holding that neither of the closing orders was valid after the Pre-Trial Chamber unanimously found that the actions of the co-investigating judges were illegal, and the Supreme Court Chamber terminated the case against Ao An before the Extraordinary Chambers. The co-investigating judges sealed and archived case file 004/02 on 14 August 2020, concluding the judicial proceedings in the case.

17. In respect of case 003, on 10 January 2017, the international co-investigating judge notified all parties in case 003 that he considered the judicial investigation against Meas Muth in case 003 to be concluded and issued a separate decision reducing the scope of the judicial investigation pursuant to internal rule 66 bis. The national co-investigating judge reiterated that he had issued a notice of conclusion of the investigation in case 003 on 29 April 2011, followed by a forwarding order on 7 February 2013. On 25 July 2017, the international co-investigating judge forwarded the case file to the co-prosecutors for their final submissions. The co-prosecutors filed their final submissions in November 2017. On 28 November 2018, the co-investigating judges issued two separate closing orders in case 003 against Meas Muth. 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. Submissions on appeal were filed by the co-lawyers for Meas Muth, the national co-prosecutor and the international co-prosecutor. On 7 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. The national and international judges attached their respective opinions to the considerations. In their opinion, the national judges considered that the law in force did not allow the Pre-Trial Chamber to rule that the act of any co-investigating judge had preponderance, and they decided accordingly that the case file should be archived. While finding the national co-investigating judge's dismissal order null and void, the international judges confirmed the indictment and found that the Trial Chamber must be seized of case 003 on the basis of the indictment. On 20 May 2021, the co-investigating judges denied the international co-prosecutor's subsequent interlocutory request to immediately forward the Pre-Trial Chamber's considerations, case 003 indictment and remaining case file to the Trial Chamber, finding that there was neither unanimity nor a super-majority among the Pre-Trial Chamber judges for a closing order in case 003. On 17 June 2021, the co-lawyers for Meas Muth submitted to the Pre-Trial Chamber a motion to terminate, seal and archive case 003, while on 21 June, the international co-prosecutor requested the Chamber to conclude the pretrial stage by confirming that Meas Muth was indicted and to order him to be sent for trial. Both motions remained pending before the Pre-Trial Chamber as at 31 August 2021.

18. In respect of case 004, on 13 June 2017, the co-investigating judges notified all parties in the case that they considered the judicial investigation against Yim Tith to be concluded and issued a separate decision reducing the scope of the judicial investigation pursuant to internal rule 66 bis. The national co-prosecutor filed her final submission on 31 May 2018, and the international co-prosecutor filed his final submission on 4 June 2018. On 28 June 2019, the co-investigating judges issued two separate closing orders in case 004 against Yim Tith. 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. Submissions on appeal were filed by the co-lawyers for Yim Tith, the national co-prosecutor, the

international co-prosecutor and the civil parties in the case. On 18 March 2021, the Pre-Trial Chamber informed the parties that it would determine the appeals against the closing orders on the basis of their written submissions only.

III. Completion plan and road map: projected timelines

19. Pursuant to the request of the General Assembly in its resolution [68/247 B](#) for a completion strategy with a clear road map, the Extraordinary Chambers continue to update their completion plan that details the remaining work to be completed in the proceedings of which they are currently seized. The current proceedings represent the entire caseload of the Chambers. The plan sets out a road map in which the remaining procedural milestones are highlighted and the timelines required for the judicial completion of the current caseload are projected. The plan was first prepared in March 2014 and has subsequently been revised on a quarterly basis to reflect the most accurate perspective as the proceedings evolved. It also sets out a series of measures that may assist expeditious completion.

20. In cases 003 and 004, a milestone was reached in 2020 with the completion of proceedings in case 004/02 against Ao An. Further progress was made in 2021 with the Pre-Trial Chamber's issuance of considerations on closing order appeals in case 003 against Meas Muth. In 2021, it is expected that one milestone will be reached: a decision of the Pre-Trial Chamber on the appeals against the closing orders in case 004 against Yim Tith by the third quarter of 2021. Projections for the overall timelines for cases 003 and 004 can be made only when there is clarity regarding the outcome of the Pre-Trial Chamber's decisions in those cases.

21. The Secretary-General reaffirms the importance of conducting all judicial proceedings before the Extraordinary Chambers in a manner that conforms with the terms of 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. In its resolutions [73/279 A](#) and [74/263](#), the General Assembly requested the Secretary-General to undertake consultations with the 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, which would need to be performed following the completion of the mandate. In its resolution [75/257 A](#), 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 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 Secretary-General, in his report dated 19 March 2021 ([A/75/809](#)), detailed the consultations undertaken on the completion of the work and the residual functions of the Chambers, as well as the outcome of the consultations conducted, which resulted in a set of provisions for a draft addendum to the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea. By its resolution [75/257 B](#), the Assembly approved the draft addendum, which, as mentioned previously, was signed by the United Nations and the Government of Cambodia in August 2021 and will enter into force after both parties have notified each other in writing that the legal requirements for the entry into force have been complied with.

IV. Current financial position and fundraising efforts

22. Previous reports of the Secretary-General have highlighted to Member States the financial challenges faced by the Extraordinary Chambers. These challenges have continued in 2021. The pandemic has had an adverse impact on the rate at which the voluntary contributions have been secured during both 2020 and 2021 compared with previous years. Some traditional donors to the international component of the Chambers are experiencing delays in finalizing the decisions regarding the amount and timing of their contributions. The impacts of these challenges have included recruitment freezes and the uncertainty of staff working on month-to-month contracts, with the potential for distraction from the discharge of core functions. Owing to severe financial constraints in previous years, the national component staff went without contracts and salaries for prolonged periods, resulting, inter alia, in a walkout by 100 staff in September 2013. Given the structure of the Chambers, wherein national and international component staff work side by side, the overall work of the Chambers was severely impeded by this action. Nevertheless, with the increased contributions from the Government of Cambodia since 2014, the financial situation of the national component has improved significantly in recent years. The financial situation of the international component, however, remains uncertain.

23. Under 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 is responsible for defraying the costs of the national component, including salaries of national personnel, utilities and service expenses of the Chambers. In its resolution [75/253 A](#), the General Assembly encouraged all Member States to provide continuing and additional voluntary support for both the international and national components of the Chambers and requested the Secretary-General to continue his intensive efforts to obtain additional voluntary contributions, including by broadening the donor base, for funding the future activities of the Chambers.

24. **International component.** Historically, funding for the international component of the Extraordinary Chambers has been raised from a limited number of Governments each year, many of which participate in the principal donors group. In the period 2010–2018, a Special Expert on United Nations Assistance to the Khmer Rouge Trials designated by the Secretary-General assisted in fundraising for the Chambers. Past fundraising activities have focused on reaching out to potential new donor Governments and included two pledging conferences in 2010 and 2013, written appeals from the Secretary-General to all Member States, bilateral requests by senior United Nations officials to donor countries, written appeals from the Chairs of the principal donors group to permanent missions of Member States in New York in 2015 and 2017, and the development of a fundraising strategy adopted in 2016. In 2018, further to a number of letters that were sent by the principal donors group, Norway and the Republic of Korea formally joined the principal donors group. In 2019, the steering committee, in coordination with the Secretariat, organized an awareness-raising event entitled “The recent milestone judgment in Extraordinary Chambers case 002/02: looking at the implications for international criminal accountability, in Cambodia and beyond”, which was focused on topics related to the prosecution and prevention of genocide, the role of civil society and victim participation in the work of the Chambers, and the methods for assessing the impact and legacy of the Chambers. The vital importance of continued financial support for the work of the Chambers from the international community was underlined at the event. In 2020, given the challenges posed by the pandemic, the Secretariat updated the donors regularly on the funding situation, reiterating the need for their renewed and expedited

contributions. To broaden and maintain the existing donor base, the Secretary-General sent a letter to all permanent missions of Member States in June 2020 and July 2021.

25. **National component.** In the first years of operation of the Extraordinary Chambers, the national component was funded by voluntary contributions covering 80 per cent of the budget, with the remainder paid by the Government of Cambodia, which also provided in-kind contributions of buildings, facilities and local services. The contribution of the Government has increased significantly in past years. For the previous six years, it has covered over 70 per cent of the national component's resource requirements. In response to the serious financial constraints experienced by the national component, extensive efforts were made by the senior officials of the Chambers, senior Cambodian government officials, the Special Expert, and Cambodian ambassadors in foreign capitals to jointly seek support from key foreign Governments for the national component. These efforts resulted in sufficient funds raised for the national component in 2016, 2017, 2018, 2019 and 2020.

Fundraising efforts in 2021

26. Efforts continue to be made to pursue the fundraising strategy developed during 2016 to broaden the donor base and to maintain the support of traditional donors. Senior Cambodian government officials continue their fundraising efforts with donors in the capital on a regular basis.

27. The Secretariat has continued to pursue fundraising efforts through communications with diplomatic missions. To broaden and maintain the existing donor base, the Secretary-General sent a letter to all permanent missions of Member States in July 2021, seeking their financial support for the Extraordinary Chambers. In addition, the Coordinator for United Nations Assistance to the Khmer Rouge Trials continues to hold meetings on a regular basis with representatives of Member States to seek voluntary contributions for the international component of the Chambers. Furthermore, regular consultations between the Secretariat and the members of the principal donors group have taken place with a view to maintaining their contributions.

28. Despite the ongoing fundraising efforts, 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) and \$6.2 million in 2019 (39 per cent of the budget) and dropping further to \$4.4 million in 2020 (38 per cent of the approved budget). From indications from the current donors, the levels of voluntary contributions for 2021 are estimated at \$3.9 million (30 per cent of the approved budget). This estimate consists of \$3.3 million in received contributions, some \$0.3 million in confirmed pledges and \$0.3 million in anticipated pledges. Voluntary contributions of \$4 million are foreseen for 2022 (\$1.1 million in confirmed pledges and \$2.9 million in anticipated contributions).

Current financial position and use of the commitment authority

29. The General Assembly approved a commitment authority of \$15.5 million for the international component of the Extraordinary Chambers for 2014; these funds, however, were never drawn upon, as voluntary funding eventually covered the international component's obligations in full during 2014. The Assembly again approved commitment authorities for the international component amounting to \$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, \$7.0 million for 2020 and \$7.0 million for 2021, thus ensuring that the salaries and expenses of personnel could be paid on time and without any disruption to the work of the Chambers.

30. The General Assembly, in section V of its resolution 74/263 A, authorized the Secretary-General to enter into commitments in an amount not exceeding \$7 million to supplement the voluntary financial resources of the international component of the Extraordinary Chambers for the period from 1 January to 31 December 2020. On the basis of the expenditures for 2020, and taking into account the voluntary financial resources received, the full amount of the subvention was utilized and reflected in the audited financial statements for 2020. The utilization of the \$7 million will be reported in the financial performance report on the programme budget for 2020 and covered from the approved appropriation under the regular budget for 2020 reflected in resolutions 74/264 A to C. After further adjustments to income, a surplus of \$580,100 for 2020 will be reported in the financial performance report on the programme budget for 2021 and credited to Member States in that context, in line with the established financial and budgetary policies and procedures.

31. The commitment authority has functioned as a bridging financing mechanism, permitting the United Nations to extend the contracts for international officials and other personnel at the Extraordinary Chambers, and as a source of operating funds should voluntary funding fall short. Taking into account the availability of voluntary contributions and the commitment authority, the United Nations extended staff contracts in four steps in 2020, and in three steps so far in 2021, covering a one-month, a seven-month and a three-month period, in line with available funding and the approved staffing table. Further contract extensions, to cover the remaining month of 2021, would be subject to the availability of funds.

32. The group of interested States approved a revised budget for 2021, including a provision for cases 003 and 004, amounting to \$12.9 million for the international component and \$4.9 million for the national component. As at 30 June 2021, voluntary contributions of \$3.3 million had been received for the international component for 2021, which, together with the drawdown of \$7.0 million from the commitment authority, were sufficient to cover the expenditures for the first 11 months of 2021. To meet the operational requirements of the international component for the last month of 2021, additional voluntary contributions of \$0.5 million are required. Should the trial or trials in cases 003 and/or 004 be triggered in 2021, further voluntary contributions of \$2.1 million would be required. For the national component, as at 30 June 2021, contributions of \$2.8 million had been received from the Government of Cambodia. An additional \$0.8 million had been pledged by the Government, which, together with the remaining balance of \$0.7 million carried forward from 2020 and a confirmed pledge of \$1.1 million from one international donor, in combination with the implemented cost-saving and cost avoidance measures, would be sufficient to secure the operations of the national component of the Extraordinary Chambers until the end of 2021.

33. Taking into account that the confirmed and anticipated pledges, together with the voluntary contributions received, were not sufficient to meet the budgetary requirements, cost-saving measures put in place in previous years to achieve cost avoidance for the international component continue during 2021, through continued coordination with the Economic and Social Commission for Asia and the Pacific for a range of administrative services, the freezing of recruitment against vacant posts unless hiring was absolutely necessary for the uninterrupted continuation of judicial proceedings, and the curtailing of spending in areas such as travel, operating expenses and contractual services. It should be noted that, although the measures above will yield savings, thus ensuring that the available funding is adequate to conduct the essential judicial operations, short-term extensions of staff contracts have affected staff morale and contributed to higher-than-expected staff turnover.

V. Funding requirements of the Extraordinary Chambers for 2022

34. The international component and the national component are funded separately, with the Secretariat being responsible for the receipt and management of voluntary funds for the international component and the Government of Cambodia being responsible for funding the national component, including through contributions from the international community for this purpose. The budget proposal for 2022 is aligned with the resource requirements for the year of operations in line with the judicial workplan, as reflected in revision 29 of the completion plan, dated 30 June 2021.

35. The budget proposal, which is subject to review by the principal donors group and the steering committee and to final approval by the group of interested States, takes into account the relevant recommendations of the Advisory Committee on Administrative and Budgetary Questions contained in its report (A/75/7/Add.19) and endorsed by the General Assembly in its resolution 75/253 A. Details of the recommendations and actions taken by the Extraordinary Chambers are provided in annex I.

36. The budget proposal for 2022, as indicated in tables 1 to 3, reflects the resources for the international component, including staff resources, for the operation of the Extraordinary Chambers throughout the year. Further details on the financial status of the Extraordinary Chambers are provided in annex II.

Table 1

Financial resources for the international component of the Extraordinary Chambers

(Thousands of United States dollars)

Component	2020 expenditure	2021 revised budget	Resource growth		2022 budget ^a
			Amount	Percentage	
A. Judicial offices	4 364.6	4 932.6	(2 160.1)	(43.8)	2 772.5
B. Defence and Victims Support Sections	2 030.4	1 050.6	(529.7)	(50.4)	520.9
C. Office of Administration	4 388.4	4 749.1	398.6	8.4	5 147.7
D. Provision for cases 003 and 004	–	2 142.5	938.3	43.8	3 080.8
Subtotal	10 783.4	12 874.8	(1 352.9)	(10.5)	11 521.9
Pledges, contributions and other income	4 363.5	3 928.4	76.4	1.9	4 004.8
Amount of subvention used or authorized	7 000.0 ^b	7 000.0 ^b	(7 000.0)	(100.0)	–
Total income	11 363.5	10 928.4	(6 923.6)	(63.4)	4 004.8
Surplus/(shortfall)	580.1^c	(1 946.4)	(5 570.7)	286.2	(7 517.1)

^a The 2022 budget figures are subject to review and approval by the group of interested States.

^b The amount of subvention used in 2020 will be reflected in the financial performance report on the programme budget for 2020 and has been absorbed within the approved appropriation for 2020 under the regular budget. The final expenditures and related appropriation of the 2021 commitment authority will be requested in the context of the financial performance report on the programme budget for 2021.

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

Table 2
Requirements by object of expenditure and funding availability, international component

(Thousands of United States dollars)

<i>Object of expenditure</i>	<i>2020 expenditure</i>	<i>2021 revised budget</i>	<i>Resource change</i>		<i>2022 budget^a</i>
			<i>Amount</i>	<i>Percentage</i>	
Posts	5 834.4	6 392.5	(2 315.5)	(36.2)	4 077.0
Non-staff compensation	1 559.8	2 250.3	(347.9)	(15.5)	1 902.4
Other staff costs	–	848.9	957.1	112.7	1 806.0
Consultants and experts	2 549.5	2 375.2	(273.5)	(11.5)	2 101.7
Travel of staff	3.7	22.0	–	–	22.0
Contractual services	148.4	240.5	212.1	88.2	452.6
General operating expenses	559.1	606.1	193.1	31.9	799.2
Supplies	31.1	91.5	–	–	91.5
Furniture and equipment	97.4	47.8	221.7	463.8	269.5
Total expenditure	10 783.4	12 874.8	(1 352.9)	(10.5)	11 521.9
Pledges and contributions	4 363.5	3 928.4	76.4	1.9	4 004.8
Amount of subvention used or authorized	7 000.0 ^b	7 000.0 ^b	(7 000.0)	(100.0)	–
Total income	11 363.5	10 928.4	(6 923.6)	(63.4)	4 004.8
Surplus/(shortfall)	580.1^c	(1 946.4)	(5 570.7)	286.2	(7 517.1)

^a The 2022 budget figures are subject to review and approval by the group of interested States.

^b The amount of subvention used in 2020 will be reflected in the financial performance report on the programme budget for 2020 and has been absorbed within the approved appropriation for 2020 under the regular budget. The final expenditures and related appropriation of the 2021 commitment authority will be requested in the context of the financial performance report on the programme budget for 2021.

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

Table 3
Post resources for the international component of the Extraordinary Chambers

<i>Category</i>	<i>Approved</i>		<i>Proposed^a</i>
	<i>2020</i>	<i>2021</i>	<i>2022</i>
Professional and higher			
United Nations officials ^b	10	12	12
D-1	1	1	1
P-5	4	4	1
P-4	9	6	4
P-3	9	9	2
P-2	5	5	–
Subtotal	38	37	20
Other levels			
Field Service	9	6	4
National Professional Officer	10	9	8

Category	Approved		Proposed ^a
	2020	2021	2022
Local level	37	34	24
Subtotal	56	49	36
Total	94	86	56

^a The 2022 proposed budget figures are subject to review and approval by the group of interested States.

^b Includes positions of the international judges and co-prosecutor of the Extraordinary Chambers, irrespective of whether they are full-time or part-time positions. For 2022, seven full-time and five part-time positions are required.

37. In 2022, resource requirements in the amount of \$11,521,900 would provide for 56 positions (12 United Nations officials, 1 D-1, 1 P-5, 4 P-4, 2 P-3, 4 Field Service, 8 National Professional Officer and 24 Local level) and non-post items, such as other staff costs, consultants and experts, travel of staff, contractual services, general operating expenses, supplies and furniture and equipment. The budget proposal for 2022 reflects a decrease of \$1,352,900 compared with the 2021 approved resources, as follows:

(a) **Judicial offices.** The decrease of \$2,160,100 reflects the net effect of: (i) a decrease of \$2,325,800 under posts (\$1,891,100) and non-staff compensation (\$434,700) due to reduced judicial activity projected for 2022; and (ii) an increase of \$165,700 under consultants and experts due to additional requirements for short-term legal consultants in the Supreme Court Chamber to finalize its judgment in case 002/02;

(b) **Defence and victims' support.** The decrease of \$529,700 under posts (\$196,200) and consultants and experts (\$333,500) reflects the reduced judicial activity planned for 2022;

(c) **Office of Administration.** The increase of \$398,600 reflects the net effect of: (i) an increase of \$626,700 under contractual services (\$212,100), general operating expenses (\$193,100) and furniture and equipment (\$221,500) due mainly to the mandatory upgrade of key websites (ZyLAB and Drupal), the critical requirement of archiving judicial documents in hard copy and storing those records in permanent file boxes in line with internationally recognized archival standards, and the replacement of obsolete information technology equipment to safeguard the integrity of digital judicial archives, the processing of judicial documents and ensuring secure connectivity between judicial stakeholders; and (ii) a decrease of \$228,100 under posts due mainly to the reductions in posts in line with the reduced judicial activity projected for 2022;

(d) **Provision for cases 003 and 004.** The increase of \$938,300 reflects the net effect of: (i) an increase of \$1,044,000 under non-staff compensation (\$86,900) and other staff costs (\$957,100) relating to the standard salaries for judges as well as additional requirements for temporary positions in support of cases 003 and 004 in line with the internal rules of the Extraordinary Chambers and judicial orders for sending a case for trial; and (ii) a decrease of \$105,700 under consultants and experts due mainly to the reduced requirement for interpreter services during hearings in 2022, as full-time evidence hearings are forecast for 2023 only.

38. In 2022, the total funding requirements for both the national and international components are estimated at \$16,181,400 (\$11,521,900 for the international component and \$4,659,500 for the national component). For the international component, at the time of reporting, the Secretariat had received pledges for 2022 of \$1,054,800, while anticipated voluntary funding was projected to amount to \$2,950,000. Based on the pattern of contributions in the period 2017–2021, it is expected that resources in 2022 will be pledged in piecemeal and varied amounts,

with insufficient fund balances available at any given time to ensure a reasonable duration of staff contracts. The operational reserve of \$4.2 million that had accumulated since the inception of the Extraordinary Chambers was fully depleted in 2012 to meet staff payroll costs and remains at zero. With continuing shortfalls in voluntary contributions and owing to the terms of use of the subvention from the regular budget since 2015, under which any unspent balance is to be returned to the United Nations, the Secretariat has been unable to reinstate any financial reserve and thus has no funding mechanism to address ongoing operational requirements.

39. To address the situation, the Secretary-General is proposing a subvention of \$7,517,100 for the international component for the year 2022. The level of the requested subvention takes into account the proposed budget for 2022 of \$11,521,900, the estimated voluntary contributions of \$4,004,800 in 2022 and the fact that voluntary funds raised from Governments have continued to fall short of overall budgetary needs. The level of the requested subvention reflects the financial resources necessary to secure the operation of the Extraordinary Chambers during 2022, with the assumption that the budget for 2022 would be approved by the group of interested States. Should the proposed budget be approved at a different level, updated information on any adjustments to the budget or the consequent adjustment to the proposed level of subvention will be provided to the General Assembly. The proposed subvention would allow the uninterrupted continuation of the judicial operation of the Extraordinary Chambers, pending the receipt of additional voluntary contributions necessary for the operation throughout the year. The Secretary-General proposes that the subvention be available to be drawn upon, should the extrabudgetary funds on hand be insufficient to meet salary and operational costs of the international component. Given the financial situation of the Extraordinary Chambers, the Secretary-General proposes a subvention to be appropriated in order not to negatively affect the cash flow of the Organization. Cognizant of the difficulties of securing funds through voluntary contributions and, at the same time, the need to ensure the expeditious completion of the remaining cases, the Secretary-General will continue his intensive fundraising efforts.

40. The Government of Cambodia has continuously provided significant contributions in support of the Extraordinary Chambers, with contributions of \$4.1 million in 2015, \$4.2 million each in 2016 and 2017, \$4.0 million in 2018, \$3.9 million in 2019, \$3.8 million in 2020 and \$3.6 million in 2021. Despite the improvement in the situation of the national component in recent years, the timing of voluntary contributions remains an important factor and the overall funding remains uncertain in 2022 and beyond. The Government of Cambodia has reiterated its strong commitment to the Extraordinary Chambers and to addressing its funding challenges. The United Nations will also continue to support the Government of Cambodia in seeking to obtain additional voluntary contributions from the international community for the national component. As has been seen in previous years, any funding shortfall on either side is likely to seriously affect the activities of the Extraordinary Chambers as a whole.

VI. End-of-service liabilities for judges, prosecutor and staff

41. The financial situation of the Extraordinary Chambers, including for the international component, remains precarious. At the time of writing, staff contracts had been extended only until 30 November 2021 pending receipt of expected contributions to cover requirements for the remaining part of the year. The proposed 2022 budget assumes that the international component of the Extraordinary Chambers will continue to operate and provides for end-of-service payments due to staff and international judges who are expected to separate during 2022 in line with the approved staffing table, to the extent that full funding is made available.

42. Should full funding not be available in 2022, the extension of contracts for continuing staff, judges and the co-prosecutor would not be possible. Existing contracts

would be allowed to expire under their terms and conditions, which would result in additional liabilities not provided for in the proposed 2022 budget. These liabilities would include entitlements and benefits payable upon separation, such as relocation travel and shipment and repatriation grant for judges, the co-prosecutor and staff and commutation of unused annual leave for staff members. For the international component, these liabilities are currently estimated at \$1,098,600 (\$269,700 for United Nations officials and \$828,900 for staff members). That amount does not include any costs required for the proper and orderly closure of operations, should the need arise.

43. As previously indicated, the operational reserve was depleted in 2012 to meet payroll expenses at that time owing to shortfalls in voluntary contributions. The terms of use of the subvention have not allowed the rebuilding of any reserves to meet end-of-service liabilities. The Secretariat has been taking the estimated end-of-service liabilities into account when considering the duration of contract extensions for personnel of the international component of the Extraordinary Chambers. This has resulted in contracts of shorter duration.

VII. Remuneration of international judges and international co-prosecutor

44. In its resolution [75/253 A](#), the General Assembly, recalling paragraph 37 of the report of the Advisory Committee ([A/75/7/Add.19](#)), requested the Secretary-General to conduct a review of the proposed change in the terms and conditions of the international judges of the Extraordinary Chambers and to report thereon in his next report. That review was conducted by the Department of Economic and Social Affairs, in consultation with the Department of Management Strategy, Policy and Compliance and the Office of Legal Affairs. The review was concluded in July 2021.

45. The terms and conditions of service of the international judges and the international co-prosecutor are derived from the Agreement between the United Nations and the Royal Government of Cambodia and approved by the group of interested States. The latest terms and conditions of service were approved by the group of interested States on 17 September 2019.

46. The review took into account the current terms and conditions of service of the international judges and the international co-prosecutor, as well as those applicable to staff members at the D-2 level. To ensure a meaningful comparison and review, the following approach and assumptions were applied: (a) the annual remuneration and costs of relevant entitlements were calculated on the basis of available personal details of seven full-time judges and the prosecutor currently on the bench; (b) entitlements that are identical under the current terms and conditions of service of the international judges and those of staff members at the D-2 level were not included; and (c) commutation of accrued annual leave and repatriation grant entitlement, which are not immediately due and will be incurred only upon separation, were also excluded from the calculation.

47. The current annual costs of the international judges and the international co-prosecutor, who are considered officials of the United Nations, amount to \$224,707 (net base salary of \$163,423 and post adjustment of \$61,284 at the rate of 37.5 per cent, effective 1 June 2021).

48. The annual costs of staff members at the D-2, step V, level amount to \$236,395 for 2021, which is higher than the current annual costs of the international judges and the international co-prosecutor. This is because the entitlements due to staff members at the D-2 level include not only the net base salary and post adjustment but also the Organization's contribution to the United Nations Joint Staff Pension Fund (15.8 per cent of a participant's pensionable remuneration) and the provision for after-service

health insurance, neither of which is provided to the international judges and international co-prosecutor. In addition, a staff member at the D-2 level is entitled to hardship allowance, dependency allowances and health insurance coverage. Aligning the entitlements of the international judges and international co-prosecutor with those of staff members at the D-2 level would therefore lead to higher costs. A summary of the cost comparison is provided in table 4.

49. As the international component of the Extraordinary Chambers is financed by voluntary contributions from Member States, the budget of the Chambers is subject to approval by the group of interested States, guided by the steering committee. A change in terms and conditions of service to align the entitlements of the international judges and international co-prosecutor with those of staff members at the D-2 level will result in higher resource requirements for the operations of the Chambers. Given the declining trend in voluntary contributions for the Chambers, mobilizing additional resources would be challenging and any adjustments to the budget would need to be approved by the group of interested States.

50. Furthermore, it should be noted that, while the realignment of the terms and conditions of service of the international judges and international co-prosecutor with those of staff members at the D-2 level will result in additional costs, the net take-home remuneration at the D-2 level (\$179,665) for the international judges and international co-prosecutor will be lower, as the Organization's share of the health plan premium and pension contributions and the provision for after-service health insurance will not be directly paid to the international judges and international co-prosecutor.

51. Consistent with the implementation of the Basic Principles on the Independence of the Judiciary, it would be necessary to obtain agreement from the international judges and international co-prosecutor for any changes resulting in a lower net take-home remuneration. In addition, even if changes were to be applied only to new judges, this would mean different remuneration between judges performing identical judicial functions at the Extraordinary Chambers, resulting in contradiction of the principle of equal pay for work of equal value.

Table 4
Cost comparison
(United States dollars)

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

VIII. Conclusions

52. The Secretary-General welcomes the progress made by the Extraordinary Chambers across all sets of current proceedings in the year since the issuance of his previous report, particularly in the context of the challenges imposed by the COVID-19 pandemic. In this context and bearing in mind the mandate of the Chambers, the Secretary-General notes the continuing importance of conducting all judicial proceedings before the Chambers in a manner that conforms to the terms of 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.

53. With the final judgments in cases 001 and 002/01, the landmark trial judgment in case 002/02, the dismissal of case 004/01 and the completion of case 004/02, the Extraordinary Chambers have made substantial progress in the completion of their mandate. Considerations against closing order appeals were delivered in case 003 in April 2021, while case 004 continues to progress in the pretrial stage.

54. The Secretary-General commends the judicial officials and staff of both components of the Extraordinary Chambers for their sustained commitment and dedication in fulfilling the Chambers' challenging mandate.

55. The Secretary-General welcomes the provision of the majority of the funding of the national component by the Government of Cambodia from 2015 to 2021 and acknowledges the commitment to the success of the Chambers shown by the Government. At the same time, the Secretary-General is concerned that the Extraordinary Chambers face persisting financial challenges and that voluntary funds raised from Governments have continued to fall short of overall budgetary needs during the past seven years. It remains clear that the current funding mechanisms of the Chambers are not sustainable without additional assistance.

56. It remains critical for the international community to ensure that the Extraordinary Chambers have the necessary financial means to ensure full accountability, within the scope of their mandate, for the crimes perpetrated during the former Khmer Rouge regime. A financial failure of the Chambers would constitute a renewed tragedy in the quest for justice of the people of Cambodia, who have waited more than four decades for these efforts to reach belated fruition, and would constitute a serious setback to the international community's fight against impunity.

IX. Recommendations

57. The Secretary-General requests the General Assembly:

(a) To take note of the present report and the use of the commitment authority approved for 2021;

(b) To note that the subvention utilized in 2020 in the amount of \$7 million is reflected in the financial performance report on the programme budget for 2020 and covered from the approved appropriation under the regular budget for 2020, resulting in no additional appropriation for 2020;

(c) To take note of the resource requirements of the Extraordinary Chambers for the period from 1 January to 31 December 2022, estimated at \$11,521,900 for the international component of the Chambers, to continue to fulfil its judicial mandate;

(d) To appropriate an amount of \$7,517,100 under section 8, Legal affairs, by way of subvention for 2022 for the international component of the Extraordinary Chambers under the proposed programme budget for 2022, with the understanding that any additional voluntary contributions received would reduce the utilization of the funding provided by the United Nations, which would be reported in the financial performance report on the programme budget for 2022;

(e) To take note of the end-of-service liabilities for judges, the prosecutor and staff of the Extraordinary Chambers, currently estimated at \$1,098,600.

Annex I

Summary of follow-up action taken to implement relevant recommendations

Brief description of the recommendation

Action taken or to be taken to implement the recommendation

Report of the Advisory Committee on Administrative and Budgetary Questions (A/75/7/Add.19)

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

The Extraordinary Chambers are taking all available measures to expedite completion of their mandate and manage available resources diligently to ensure cost-efficiency, while respecting the independent nature of the judicial process and adhering to all statutory requirements. Besides the statutory framework, the work of the Chambers is also directed by the substantive development in the cases before them often initiated by legally independent parties to the cases.

Projection of a timeline is based on information available to the Chambers at a given time on what the known workload is and how this is to progress going forward. The projection will need adjustments when the work progresses differently than first stipulated, often owing to deviating requirements subsequently presented by the parties in the case. The projected timelines are adjusted if and when available information changes. Committed to efficiency and transparency in their projections, the Extraordinary Chambers assess their work progress quarterly and adjust the projections as required by the substantive development in the respective cases. These revised projections are subsequently reflected in the quarterly updates to the completion plan.

Since the issuance of the previous report of the Secretary-General ([A/75/242](#)), the Extraordinary Chambers have continued to make progress in all remaining cases. In case 002, the Supreme Court Chamber held four days of appeal hearings from 16 to 19 August 2021, with a judgment forecast by the latest completion plan for the fourth quarter of 2022. In case 003, the Pre-Trial Chamber delivered its considerations on appeals against closing orders, with litigation in that case continuing before that Chamber. Case 004 continues to progress in the pretrial stage, with a judgment in the appeals forecast by the current completion plan for the third quarter of 2021.

In line with the judicial progress made thus far, related resource requirements have been accordingly reduced. For example, in total, 21 positions under the international component that were no longer required for completion of the Extraordinary Chambers mandate were abolished in the 2020 budget. Following the reduced structure of the Extraordinary Chambers, for 2021, a further eight posts were abolished.

The Advisory Committee recalls that in its resolution [74/263](#), the General Assembly requested the Secretary-General to expedite the finalization of the framework for the completion of the work of the Extraordinary Chambers. The Committee reiterates its recommendation that the Assembly request the Secretary-General to identify possible residual functions (see also [A/74/7/Add.16](#), para. 14). (para.13)

The Advisory Committee trusts that the unencumbered balance for 2020 will be returned to Member States as soon as possible. (para. 14)

The Advisory Committee recommends that the General Assembly request the Secretary-General to credit the unencumbered balance for 2019 of \$649,900 to Member States in January 2021. (para. 15)

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

The Advisory Committee trusts that detailed information on the variances between the projected expenditures for 2020 and the revised budget for 2021, by object of expenditure, will be provided to the General Assembly at the time of its consideration of the present report and that updated information will be included in the budget submission for 2022. (para. 25)

With regard to remuneration adjustment, the Advisory Committee considers that there is no clear justification for applying the mechanism of the members of the International Court of Justice, the principal judicial organ of the United Nations, to the international judges of the Extraordinary Chambers, and for providing them with net salaries higher than those of Under-Secretaries-General. The Committee recommends that the General Assembly request the Secretary-General to review the terms of conditions of the international judges of the

The Secretary-General, in his report dated 19 March 2021 ([A/75/809](#)), detailed the consultations undertaken on the completion of the work and the residual functions of the Extraordinary Chambers, as well as the outcome of the consultations conducted, which resulted in a set of provisions for a draft addendum to the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea. By its resolution [75/257](#) B, the General Assembly approved the draft addendum, which was signed by the United Nations and the Government of Cambodia in August 2021 and will enter into force after both parties have notified each other in writing that the legal requirements for its entry into force have been complied with.

See para. 30 of the present report.

The unencumbered balance for 2019 of \$649,900 was returned to Member States in the context of General Assembly resolution [75/254](#) C on the financing of appropriations for the year 2021.

See paras. 26–28 of the present report.

Updated information on the actual expenditures for 2020 and the revised budget for 2021 by object of expenditure for the international component is provided in table 2 of the present report.

See paras. 44–51 of the present report for the details and result of the review.

*Brief description of the recommendation**Action taken or to be taken to implement the recommendation*

Extraordinary Chambers to realign them with those of staff members at the D-2 level. (para. 37)

Furthermore, the Advisory Committee again notes that, after eight consecutive requests for subventions since 2013 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. (para. 41)

See para. 28 of the report for details on the trend of voluntary contributions causing the increased reliance on the regular budget.

While the fundraising efforts continued in 2021 (see paras. 26–28 for details), in view of the trend referred to above and from indications from the current donors, the level of voluntary contributions is anticipated to decline further to about \$3.9 million in 2021.

Annex II

Financial status of the Extraordinary Chambers in the Courts of Cambodia

International component: United Nations Assistance to the Khmer Rouge Trials

Table A.1

Financial status of the international component as at 31 December 2020

(Thousands of United States dollars)

A. Income	
Contributions received from 2005 to 2020	226 688.6
Interest earned from 2005 to 2020 and other adjustments	5 305.5
Subtotal	231 994.1
B. Expenditure^a	
	(283 756.2)
Fund balance (shortfall)^b	(51 762.1)

^a Figures include a grant of \$3,255,000 in 2013 and loans of \$780,000 in 2014 to the national component to cover salary costs. These costs are also reflected in the national component tables.

^b The shortfall was covered by the regular budget subvention for 2015 (\$10,678,400), 2016 (\$10,407,700), 2017 (\$10,619,000), 2018 (6,856,200), 2019 (\$6,780,900) and 2020 (6,419,900).

Table A.2

Financial status of the international component for 2021 and projection for 2022

(Thousands of United States dollars)

A. Income	
Contributions received for 2021	3 277.8
Outstanding pledges for 2021 ^a	298.3
Anticipated pledges for 2021	352.3
Subtotal	3 928.4
B. Revised budget for 2021	(12 874.8)
C. Estimated surplus/(shortfall) for 2021	(8 946.4)
D. Income for 2022	
Outstanding pledges for 2022 ^b	1 054.8
Anticipated pledges for 2022	2 950.0
Subtotal	4 004.8
E. Estimated budget requirement for 2022^c	(11 521.9)
F. Estimated shortfall for 2022	(7 517.1)

^a Germany (€250,000) revalued as at 30 June 2021.

^b Australia (\$A 1 million) and Germany (€250,000) revalued as at 30 June 2021.

^c The 2022 budget figures are subject to review and approval by the group of interested States.

National component: Cambodia

Table A.3

Financial status of the national component as at 31 December 2020

(Thousands of United States dollars)

A. Income	
Contributions received from 2005 to 2020	89 956.6
B. Expenditure	(89 300.0)
Fund balance	656.6

Table A.4

Financial status of the national component for 2021 and projection for 2022

(Thousands of United States dollars)

A. Income for 2021	
Cash balance brought forward as at 1 January 2021	656.6
Contributions received for 2021	2 800.0
Outstanding pledges for 2021	1 900.0
Anticipated pledges for 2021	–
Subtotal	5 356.6
B. Revised budget for 2021	(4 940.1)
C. Estimated surplus/(shortfall) for 2021	416.5
D. Income for 2022	
Outstanding pledges for 2022	–
Anticipated pledges for 2022	–
Subtotal	–
E. Estimated requirements for 2022	4 659.5
F. Estimated surplus/(shortfall) for 2022	(4 659.5)

Indicative resource requirements for the national component

Table A.5.1

Requirements by component and funding availability

(Thousands of United States dollars)

Component	2020 expenditure	2021 revised budget	Resource growth		2022 budget ^a
			Amount	Percentage	
A. Judicial offices	978.0	922.5	(312.7)	(33.9)	609.8
B. Defence and Victims Support Sections	276.0	333.1	(22.6)	(6.8)	310.5
C. Office of Administration	3 306.1	3 489.4	(136.5)	(3.9)	3 352.9
D. Provision for cases 003 and 004	–	195.1	191.2	98.0	386.3
Total	4 560.1	4 940.1	(280.6)	(5.7)	4 659.5

Component	2020 expenditure	2021 revised budget	Resource growth		2022 budget ^a
			Amount	Percentage	
Balance brought forward	260.3	656.6	(656.6)	(100.0)	–
Pledges and contributions	4 956.4	4 700.0	(4 700.0)	(100.0)	–
Total income	5 216.7	5 356.6	(5 356.6)	(100.0)	–
Surplus/(shortfall)	656.6	416.5	(5 076.0)	(1 218.7)	(4 659.5)

^a The 2022 budget figures are subject to review and approval by the group of interested States.

Table A.5.2
Requirements by object of expenditure and funding availability

Object of expenditure	2020 expenditure	2021 revised budget	Resource change		2022 proposed ^a
			Amount	Percentage	
Posts	2 172.6	2 330.8	(176.0)	(7.6)	2 154.8
Non-staff compensation	621.0	662.0	(91.2)	(13.8)	570.8
Other staff costs	150.0	239.7	95.1	39.7	334.8
Consultants and experts	141.7	141.7	–	–	141.7
Travel of staff	0.1	16.2	(4.6)	(28.4)	11.6
Contractual services	1 030.5	1 057.7	(15.2)	(1.4)	1 042.5
General operating expenses	310.2	388.9	(62.1)	(16.0)	326.8
Hospitality	27.1	27.2	(6.6)	(24.3)	20.6
Premises alteration	106.9	45.5	–	–	45.5
Training and meeting	–	30.4	(20.0)	(65.8)	10.4
Total expenditure	4 560.1	4 940.1	(280.6)	(5.7)	4 659.5
Balance brought forward	260.3	656.6	(656.6)	(100.0)	–
Pledges and contributions	4 956.4	4 700.0	(4 700.0)	(100.0)	–
Total income	5 216.7	5 356.6	(5 356.6)	(100.0)	–
Surplus/(shortfall)	656.6	416.5	(5 076.0)	(1 218.7)	(4 659.5)

^a The 2022 budget figures are subject to review and approval by the group of interested States.

Table A.5.3
Post requirements

Category	Approved		Proposed ^a
	2020	2021	2022
Professional and higher			
D-1	13	14	14
P-5	1	1	1
NO-D	16	15	13
NO-C	8	8	8
NO-B/NO-A	12	12	11
Subtotal	50	50	47

<i>Category</i>	<i>Approved</i>		<i>Proposed^a</i>
	<i>2020</i>	<i>2021</i>	<i>2022</i>
Other levels			
Local level	79	79	76
Subtotal	79	79	76
Total	129	129	123

^a The 2022 budget figures are subject to review and approval by the group of interested States.

Approved budget and actual expenditure, 2011–2021

Table A.6

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

(Thousands of United States dollars)

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

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

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

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

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

Table A.7
Approved budget and actual expenditure – national component, 2011–2021

(Thousands of United States dollars)

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

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

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