

**Sixty-ninth session**

Agenda item 132

**Programme budget for the biennium 2014-2015****Request for a subvention to the Extraordinary Chambers in  
the Courts of Cambodia****Report of the Secretary-General***Summary*

In his previous report on the Khmer Rouge trials ([A/68/532](#)), the Secretary-General highlighted the continuing financial crisis facing both the international and national components of the Extraordinary Chambers in the Courts of Cambodia and requested the approval of a subvention of up to \$51.1 million for the period from 1 January 2014 to 31 December 2015.

By its resolution 68/247 B, the General Assembly authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed \$15.54 million to supplement the voluntary financial resources of the international component of the Chambers for the period from 1 January to 31 December 2014. The Assembly requested the Secretary-General to submit at the main part of its sixty-ninth session a report on the use of the commitment authority as well as information on a comprehensive examination of the future financing of the Chambers for 2015 and beyond. It also requested the Secretary-General to ensure that the Chambers, in consultation with the key actors, prepared a completion strategy with a clear road map and to report thereon by no later than at the main part of its sixty-ninth session.

In the present report, the Secretary-General provides details on the progress achieved by the Chambers since his previous report; describes the completion plan and road map, which have been formulated on the basis of a rigorous forecast of the workload associated with the timely judicial completion of the three remaining cases; provides a projection regarding the anticipated use of the approved commitment authority for 2014; addresses mechanisms for the future financing of the Chambers; and seeks the Assembly's approval for a subvention of up to \$28,983,200 for the period from 1 January to 31 December 2015.



## I. Introduction

1. Since their establishment, and as detailed in the previous reports of the Secretary-General on the Khmer Rouge trials ([A/58/617](#), [A/59/432](#) and Add.1, [A/60/565](#), [A/62/304](#), [A/67/380](#) and [A/68/532](#)), the Extraordinary Chambers in the Courts of Cambodia have achieved substantial progress towards fulfilling their mandate. Case 001, against Kaing Guek Eav, alias “Duch”, was the first case tried before the Chambers. The Trial Chamber pronounced its judgement on 26 July 2010, which became final, as varied, by the appeal decision of the Supreme Court Chamber of 3 February 2012. He was sentenced to life imprisonment. In case 002/01, the Trial Chamber pronounced its judgement on 7 August 2014, convicting two surviving senior leaders of the Khmer Rouge regime, Nuon Chea and Khieu Samphan, of crimes against humanity in connection, notably, with forced movements of population from Phnom Penh and later from the regions and sentencing them to life imprisonment.

2. Concurrently with deliberating the judgement in case 002/01, the Trial Chamber initiated the trial in case 002/02. It encompasses charges relating to genocide, forced marriage and rape, internal purges, treatment of Buddhists and targeting of former Khmer Republic officials, in addition to alleged crimes committed at four security centres (including S-21), three worksites and a number of adjacent work cooperatives. The evidentiary hearings began on 17 October 2014.

3. The investigations in cases 003 and 004 are continuing. It is currently forecast that they will be concluded by the first and second quarters of 2015, respectively, with decisions on whether any of the cases will be sent for trial to follow by the third and fourth quarters of 2015, respectively.

4. Following the request of the General Assembly for a completion strategy with a clear road map for the Chambers, the Chambers prepared a completion plan in which major procedural milestones are defined and the timelines required for the judicial completion of the current caseload are projected. Further information is provided in section III below.

5. The Chambers have faced considerable political and financial challenges in recent years. The authorization by the General Assembly of a commitment authority of up to \$15.54 million for the international component has, however, enabled the Secretary-General to extend the contracts of the United Nations staff until the end of 2014. For the first time, the Government of Cambodia provided a supplementary contribution from its own national budget to meet the national staff salaries for a six-month period (the final quarter of 2013 and the first quarter of 2014). The intensive fundraising efforts of the Special Expert to advise on United Nations Assistance to the Khmer Rouge Trials notwithstanding, the national component faces serious funding shortfalls, which threaten the judicial operations of the Chambers and could, in the event of disruptions and delays, prolong the timelines.

## **II. Progress made in the case files**

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

6. Kaing Guek Eav continues to serve the remainder of his sentence at Kandal provincial prison.

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

7. On 15 September 2010, the co-investigating judges issued a closing order indicting the former Chair of the Democratic Kampuchea People’s National 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 of 1949 and genocide against the Cham and Vietnamese ethnic groups. Ieng Thirith has been found unfit to stand trial on medical grounds (she is suffering from dementia), although she remains under judicial supervision. The proceedings against Ieng Sary were terminated upon his death on 14 March 2013.

8. The charges in case 002 have been severed into two separate cases, styled as cases 002/01 and 002/02, each with a separate trial and judgement. Case 002/01 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 considered 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 relevant to all charges. Case 002/02 encompasses charges relating to genocide, forced marriage and rape, internal purges, treatment of Buddhists and targeting of former Khmer Republic officials, in addition to alleged crimes committed at four security centres (including S-21), three worksites and a number of adjacent work cooperatives. By order of the Supreme Court Chamber on 29 July 2014, further charges not encompassed in the two cases were provisionally stayed pending appropriate disposal by the Trial Chamber.

9. The substantive trial in case 002/01 began on 21 November 2011 with the co-prosecutors’ opening statements. The scope of the case was subject to two series of appellate proceedings. In a decision on an appeal by the co-prosecutors, who sought an expansion of the scope, the Supreme Court Chamber annulled the Trial Chamber’s original severance order and all related decisions and directed the Trial Chamber to reconsider the matter should it still wish to sever the cases. The Trial Chamber, upon reconsideration of the matter, again severed the proceedings in case 002, maintaining the same scope for case 002/01 as before. Both the co-prosecutors and the defence team of Nuon Chea subsequently appealed against the second decision. The Supreme Court Chamber rejected the appeals, upholding the Trial Chamber’s second decision on severance.

10. The presentation of evidence concluded on 23 July 2013 and the parties gave closing arguments between 16 and 31 October 2013. On 7 August 2014, the Trial

Chamber delivered its judgement in the historic proceedings. 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 movement of population (phase one), political persecution and other inhumane acts (comprising forced transfers and attacks against human dignity) during movement of population (phase two) 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 movement of population (phases one and two) and at Tuol Po Chrey. In addition, Nuon Chea was found to have ordered the crimes and to be responsible as a superior for all crimes committed in the course of movement of population and at Tuol Po Chrey.

11. The Trial Chamber sentenced both Nuon Chea and Khieu Samphan to life imprisonment. It considered the gravity of the crimes, including that they were committed throughout Cambodia for an almost two-year period against a vast number of victims, among the highest of any decided case concerning international crimes. The gravity was further illustrated by the conditions of forced transfer, which were severe, unrelenting and inhumane. Furthermore, the crimes had a serious and lasting impact upon the victims, their relatives and Cambodia in general. The Chamber found that a number of aggravating factors had been established. Notably, Nuon Chea and Khieu Samphan were well educated and knew the import and consequences of their actions, the crimes were committed in abuse of their positions of authority and influence and many victims were vulnerable and defenceless. The Chamber found limited mitigating circumstances.

12. The Trial Chamber found that, as a consequence of the crimes of which Nuon Chea and Khieu Samphan were convicted, the civil parties in the proceedings and a very large number of additional victims had suffered immeasurable harm, including physical suffering, economic loss, loss of dignity, psychological trauma and grief arising from the loss of family members or close relations. In a novel innovation in international criminal practice, the Chamber consequently endorsed the implementation of 11 specific reparation projects designed to appropriately acknowledge the harm suffered by the civil parties as a result of the commission of the crimes at issue and to provide benefits to the civil parties that addressed that harm. The following projects were endorsed: the institution of a national remembrance day project; the construction of a memorial in Phnom Penh to honour the victims of forced evacuations; a testimonial therapy project; self-help groups; a permanent exhibition; a mobile exhibition and education project; the inclusion of a chapter on forced population movement and executions at Tuol Po Chrey within the Cambodian school curriculum; the construction of a peace learning centre; a booklet on adjudicated facts and civil party participation; two editions of the verdict in the case; and the inclusion of civil party names on the website of the Chambers.

13. On 29 September 2014, the defence teams of Nuon Chea and Khieu Samphan filed notices of appeal to the Supreme Court Chamber in which they alleged extensive series of errors of fact and law invalidating the judgement of the Trial Chamber. The co-prosecutors filed an appeal limited to a plea for declaratory relief in respect of an issue of law concerning the applicability before the Chambers of a certain mode of liability. The parties are currently preparing their corresponding appeal briefs.

14. In preparation for the trial in case 002/02, the Trial Chamber convened a trial management meeting on 11 December 2013 at which the parties were invited to make submissions on the establishment of a second panel of judges, consideration of which had been instructed by the Supreme Court Chamber, and to make preliminary remarks on the scope of the trial. On 20 December 2013, the President of the Trial Chamber, taking into consideration legal uncertainties regarding the appointment of a second panel, in addition to the time that would be required for its establishment and preparations for the case, concluded that such appointment would be less expeditious than proceeding with the existing bench that was already familiar with the case. Consequently, he did not recommend establishing a second panel. The Trial Chamber issued a memorandum informing the parties of the next steps in the case and an accompanying workplan highlighting the major stages and activities necessary before the beginning of substantive hearings.

15. On 4 April 2014, the Trial Chamber further severed the remaining trial proceedings and decided on the scope of case 002/02, a decision appealed against by Khieu Samphan. The Chamber directed the parties to submit their lists of witnesses, experts and civil parties proposed to be called to testify and the lists of documents and exhibits sought to be admitted. On 29 July 2014, the Supreme Court Chamber upheld the further severance and clarified important procedural points. It also provisionally stayed the charges remaining outside the scope of cases 002/01 and 002/02 pending appropriate disposal by the Trial Chamber.

16. On 30 July 2014, the Trial Chamber held a further initial hearing in case 002/02, reviewing the status of preliminary objections and legal issues relevant to the case, the specification of civil party requests for reparations, the sequencing of trial proceedings and potential witnesses, civil parties and experts. The evidentiary hearings began on 17 October 2014.

### **Ieng Thirith**

17. As previously detailed (see [A/68/532](#)), Ieng Thirith has been found unfit to stand trial because she is suffering from progressive dementia. The proceedings against her have been formally stayed, but she is under a regime of judicial supervision. On 6 March 2014, the Chamber granted a request from her guardian to be allowed to transport her to Thailand for medical treatment. She was discharged from hospital in June 2014 and returned to Cambodia.

## **C. Cases 003 and 004**

18. 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 Chambers by five additional suspects. The crimes under investigation are genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949 and violations of the 1956 Penal Code of Cambodia. The names of the suspects remain confidential.

19. The current international co-investigating judge assumed his duties at the Chambers in October 2012 and resumed work on investigations in cases 003 and 004 that had been in abeyance since his predecessor's departure. On 28 February 2013, the co-investigating judges issued a joint statement concerning the status of

case 003 in which the national co-investigating judge announced that he considered the investigation into the case to be complete and that he had forwarded the case file to the co-prosecutors for their final submissions. Conversely, the international co-investigating judge stated his view that the case remained open and that investigations were proceeding.

20. In accordance with the internal rules of the Chambers, the co-investigating judges have recorded disagreements relating to the two cases and are consequently following differing approaches in them. The international co-investigating judge is actively investigating both cases.

21. Pursuant to submissions filed by the international co-prosecutor, the co-investigating judges are seized of more than 10 crime scenarios in case 003 and 55 crime scenarios in case 004. Under the internal rules, the co-investigating judges are legally obligated to investigate all crime scenarios of which they have been seized. Since the current international co-investigating judge assumed his duties, more than 80 field missions have been conducted and more than 300 witness interviews completed. It is currently forecast that the investigations in the two cases will be concluded by, at the latest, the end of March 2015 and June 2015, respectively. Closing orders with indictments and/or dismissal orders are expected to be issued by, at the latest, the end of September and December 2015, respectively.

### **III. Completion plan and road map: projected timelines**

22. Following the request of the General Assembly for a completion strategy with a clear road map, the Chambers prepared a completion plan that details the remaining work to be completed in the proceedings of which they are currently seized.<sup>1</sup> It is clarified that the current proceedings represent the entire caseload of the Chambers. Assessing each case individually, 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 subsequently revised twice to reflect the most accurate perspective as the proceedings evolved. It also sets out a series of measures that may assist expeditious completion.

23. According to the plan, a judicial conclusion of case 002 is projected in 2019 and of the investigative phases in cases 003 and 004 in 2015. Should either or both of the cases be sent for trial, in whole or in part, projections for trial timelines could then be assessed, taking into account the scope of the proceedings.

24. It is also projected that the Chambers will, in 2014, reach five distinct milestones towards the judicial completion of the mandate: the delivery of a trial judgement in case 002/01; the filing of appeals, if any, against that judgement; the issuance of a decision on the scope of case 002/02; the holding of initial hearings in that case; and the beginning of substantive/evidentiary hearings in that case. At the time of writing, the Chambers had met four of the milestones. It is expected that the remaining milestone, that of the filing of appeals, if any, against the trial judgement in case 002/01, will be met within the expected timeline.

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<sup>1</sup> Available from [www.eccc.gov.kh/en/eccc-completion-plan-revision-2](http://www.eccc.gov.kh/en/eccc-completion-plan-revision-2).

25. In 2015, the trial proceedings in case 002/02 will continue throughout the year. It is projected that two milestones will be reached in respect of cases 003 and 004: the conclusion of judicial investigations and the issuance of closing orders, with decisions of the co-investigating judges to send either or both of the cases for trial or to dismiss the proceedings.

26. It is projected that four milestones will be reached in 2016: the disposal of any appeals against the closing orders in cases 003 and 004 with a decision of the Pre-Trial Chamber to either confirm or reverse the closing order (either partially or in full) or, potentially, to order the co-investigating judges to conduct further investigations; the delivery of an appeal judgement in case 002/01; the conclusion of substantive/evidentiary hearings in case 002/02; and the conclusion of closing statements in case 002/02.

27. It is expected that two milestones will be reached in 2017: the delivery of a trial judgement in case 002/02 and the filing of appeals, if any. In 2018, the Supreme Court Chamber will, in the event of an appeal, be fully occupied with appeal hearings and deliberations. The delivery of the judgement on any such appeal is expected to follow in 2019.

#### **IV. Financial updates**

28. In his report to the General Assembly in 2012 ([A/67/380](#)), the Secretary-General informed Member States of the financial challenges faced by the international component of the Chambers, which had resulted in the institution of a recruitment freeze in July 2012 and the issuance of staff contracts on a month-to-month basis, affecting the mental health and psychological well-being of the staff. He advised that putting the judicial proceedings in jeopardy for lack of funds would run counter to the message of “no impunity” that had been underlined in two decades of United Nations and United Nations-assisted criminal tribunals. In his subsequent report ([A/68/532](#)), he advised that the financial instability had continued throughout 2013, severely affecting the national component. The national staff had gone without contracts and salaries for prolonged periods, resulting in the threat of a staff walkout in March 2013 and an actual walkout by 100 staff in September 2013. Both instances had required the United Nations, under the guidance of the principal donors group, to provide reimbursable loans from its own voluntary resources to the national component in the total amount of \$3.255 million to pay salary arrears and ensure the return of the national staff to the Chambers.

29. In an effort to raise funds for the national component, the Special Expert undertook a special fundraising tour in 2013, accompanied by a senior representative of the Government of Cambodia, to several States members of the Association of Southeast Asian Nations, seeking funding exclusively for the national component. No funding was secured for 2013, however. The Secretary-General then held a joint pledging conference in New York, which was chaired by the Deputy Secretary-General, alongside the Secretary of State of the Council of Ministers of Cambodia, Keo Remy. While the pledges announced totalled \$10.3 million for the international component and \$3.3 million by the Government of Cambodia for the national component, only \$2.9 million of the amount pledged to the international component was new. The poor outcome of the conference left

both components of the Chambers in a precarious financial situation for the period 2014-2015.

30. In a meeting between the Secretary-General and the Prime Minister of Cambodia, Samdech Akka Moha Sena Padei Techo Hun Sen, in October 2013 in Brunei Darussalam during the twenty-third Association of Southeast Asian Nations Summit, the Government indicated that it would provide \$1.8 million to fund national staff salaries for the final quarter of 2013. That represented the first payment by the Government towards those salaries, the costs of which had previously been met from voluntary contributions to the national component.

31. In an effort to provide the Chambers with sufficient financial stability, the Secretary-General sought the approval of the General Assembly for funding up to \$51.1 million for the period from 1 January 2014 to 31 December 2015 to supplement the financial resources of the Chambers. He proposed that the Assembly should approve an additional appropriation in the amount of \$24.8 million for 2014 and to consider a subvention of up to \$26.3 million for 2015 at the main part of its sixty-ninth session. He also sought approval for the United Nations to use its discretion to provide reimbursable loans to the Government of Cambodia from the subvention of up to \$4.6 million in 2014 and up to \$4.2 million in 2015, to ensure the welfare of the national staff and their families. Such action would also eliminate the need for loans from voluntary contributions intended for the United Nations.

32. In its resolution 68/247 B, the General Assembly authorized the Secretary-General, as an exceptional measure, to enter into commitments in an amount not to exceed \$15.54 million to supplement the voluntary financial resources of the international component of the Chambers for the period from 1 January to 31 December 2014. It is recalled that the approved commitment authority in the amount of \$15.54 million represented the pledging shortfall in the same amount for the international component as at 16 December 2013.

33. The approval of the commitment authority was instrumental in enabling the Secretariat to issue contract extensions until 31 December 2014 for staff of the international component and to authorize recruitment for critical positions that had earlier been left vacant owing to the recruitment freeze instituted in July 2012. Those actions provided a level of heightened personal security for the staff, which allowed them to redirect their focus and energy from their contractual situation to fully supporting the programme of work of the Chambers and alleviated key staffing bottlenecks that had slowed activity. It also clearly demonstrated the strong and continuing commitment of all Member States to the Chambers and to the principles of justice and accountability for the most serious international crimes.

34. In an effort to resolve the matter of funding for the national component, a high-level delegation led by the Legal Counsel travelled to Phnom Penh to meet the then Deputy Prime Minister and Minister for Foreign Affairs and International Cooperation of Cambodia, Sok An, to discuss the need for the Government to meet its financial obligations under 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. As a result of that meeting, the Government agreed to contribute \$1.1 million, in addition to the \$1.8 million provided in October 2013, to pay national staff salaries for the first quarter of 2014. It also agreed that senior-level government officials would continue to participate in fundraising initiatives by the Special Expert to secure voluntary



funding for the remainder of the year. While such efforts have widened the donor base to include three new Member States, the national component continues to face a serious shortfall.

35. In 2014, the Special Expert stepped up fundraising efforts for both components, in line with the recommendation of the General Assembly to intensify efforts to obtain additional voluntary contributions, including by broadening the donor base. He travelled to capitals, engaged with permanent representatives of Member States to the United Nations and undertook continuous follow-up actions with 15 Member States and organizations. Although the contributions were modest, the international component remained solvent until August 2014. As at the time of writing, and based on the closing of the September 2014 accounts, however, the international component was in deficit by some \$1,199,200. A request to draw down on the commitment authority has not yet been initiated because two consistent donors have expressed an intention to provide funds to the international component for 2014. Efforts are now under way to secure funding approval from the respective capitals in order to initiate financing agreements with the Secretariat before 31 December 2014. Should those efforts not bear fruit, however, the Secretariat will be required to draw down on the commitment authority in an estimated amount of \$6,974,900.

36. To support the efforts of the national component, the Special Expert worked closely with senior-level representatives of the Government of Cambodia, including the Permanent Representative of Cambodia to the United Nations and the Secretary of State of the Council of Ministers, to reach out to 13 Member States. Joint letters from the Deputy Prime Minister and the Special Expert, together with individual letters from the Permanent Representative of Cambodia, were also sent to several States as a follow-up effort, representing formal requests from the Government for financial support. Three new Member States contributed to the national component and expressed their intention to do so in the future. In addition, the members of the principal donors group engaged in demarches to several of the countries approached for the national component to complement the joint efforts of the United Nations and the Government to expand the donor base.

37. Those sustained efforts notwithstanding, the national component received no voluntary contributions to cover its staff costs to supplement the \$1.1 million provided at the beginning of 2014 by the Government. Consequently, to avoid a staff walkout similar to that of 2013, and under the guidance of the principal donors group, a donor redirected its pledge of \$1 million to the national component to cover national staff salaries from April 2014, thereby ensuring continuity of staff services. The principal donors group has continued to provide further guidance on supporting the national component. Two loans were subsequently made from the voluntary resources of the international component to cover salaries for August and September 2014. At the time of writing, the national component had no funding to cover salaries for the final quarter of 2014, and the 2015 budget remained largely unfunded, except for a contribution in the amount of \$25,000, together with \$1.6 million from the Government for operational costs.

## V. Future financing of the Chambers

38. In its resolution 68/257 B, the General Assembly requested the Secretary-General to submit information on a comprehensive examination of the future financing of the Chambers for 2015 and beyond.

39. In paragraph 74 of his report of 31 March 2003 (A/57/769), the Secretary-General advised the General Assembly that an operation such as the Chambers, mandated by Member States, would constitute an expense of the Organization under Article 17 of the Charter of the United Nations and should be financed from assessed contributions. He stated that a financial mechanism based on voluntary contributions would not provide the assured and continuous source of funding that would be needed. Nevertheless, the Assembly, by its resolution 57/228 B, decided that the expenses of the Chambers to be defrayed by the United Nations in accordance with the relevant provisions of the draft agreement would be borne by voluntary contributions from the international community. A multi-donor trust fund, United Nations Assistance to the Khmer Rouge Trials, was established, from which the costs of the international component of the Chambers, funded by voluntary contributions, are met.

40. In accordance with the Agreement between the United Nations and the Government of Cambodia, the Government is fully responsible for the salaries of the Cambodian judges and Cambodian personnel, in addition to all costs associated with hosting and operating the premises of the Chambers. While the Government is expected to fully meet its obligations under the Agreement, it maintains that it can do so only through a combination of funding arrangements, which includes allocations from its national budget and voluntary funding from the donor community.

41. In his report of 2012 (A/67/380), the Secretary-General informed the General Assembly that the world economic crisis posed serious financial challenges for the Chambers, raising sustainability concerns. He noted that the financial uncertainty imperilled the future operations of the Chambers, asking the Assembly to urgently consider how to enable the United Nations to continue providing essential substantive and logistical support to them. By its decision 67/539, the Assembly took note of the report.

42. In his previous report (A/68/532), the Secretary-General requested a subvention of \$51.1 million covering both components of the Chambers for 2014-2015. In so doing, he also proposed to preserve the extrabudgetary funding basis of the Chambers. The General Assembly decided, in its resolution 68/247 B, to approve a commitment authority not to exceed \$15,540,000, for the international component only for 2014. As noted above, the commitment authority has stabilized the operations of the international component, acting as a line of credit while voluntary funding is being secured.

43. The Secretary-General was not, however, authorized by the General Assembly to draw on the commitment authority to support the national component. In the light of the Government's failure to meet the balance of costs of the national component from its internal budgetary resources, and in the absence of sufficient voluntary funding pledged to the national component, the Secretary-General has continued to provide loans from the voluntary resources of the international component in order not to disrupt the judicial processes. The loans, which have been endorsed by the

principal donors group, have become more frequent and are placing a considerable drain and burden on the resources of the international component. Furthermore, in 2013 the Government requested that the United Nations should write off those loans, given that there were insufficient funds mobilized for it to effect repayment.

44. The Secretary-General continues to maintain, as a position of principle, that an operation of the nature of the Chambers should not be left to the vagaries of voluntary contributions, but rather should be met from assessed contributions. As anticipated, and the major fundraising efforts notwithstanding, funding has remained insufficient to meet the needs of the Chambers. Furthermore, the funding received is provided by a limited number of Member States, meaning that the financial burden is not equitably shared among the international community as a whole. A key lesson confirmed by the operations of the Chambers is that a criminal tribunal that involves United Nations support should be funded from assessed contributions.

45. Currently, however, the Secretary-General would find it difficult to fundamentally change the resource base that has been in place for 10 years, given also the need to examine the application of any new mechanism to the national component in view of the experience acquired in the implementation of the Agreement. While the international component was stabilized in 2014 through the approval by the General Assembly of a commitment authority, funding for the national component has been a major concern of the Secretariat and the principal donors group throughout the year, in particular because any walkout of national staff would be likely to bring judicial operations to a standstill. An equitable solution must therefore be found to resolve the funding shortfalls in respect of both components of the Chambers in order to bring sufficient financial stability to permit their continuing operation.

46. Consequently, while preserving the extrabudgetary funding basis of the Chambers, and while calling for the Government of Cambodia to fully meet its financial obligations under the Agreement, the Secretary-General is proposing a subvention, as detailed below, in the full amount of the 2015 budget, less existing pledges, as a line of credit to secure staff contracts and to facilitate the expeditious discharge of the remaining mandate of the Chambers. On 29 September 2014, the Legal Counsel met the Deputy Prime Minister and Minister for Foreign Affairs and International Cooperation of Cambodia, Hor Namhong, on the margins of the sixty-ninth session of the General Assembly to convey the decision of the Secretary-General to seek a full subvention and to request the support of the Government. He also emphasized the need for the Government, consistent with its obligations under the Agreement, to continue to make the contributions to the national side of the budget necessary to ensure the smooth continued functioning of the Chambers and avoid disruption to the judicial process.

## **VI. Funding requirements for 2015**

47. On 14 March 2014, the group of interested States approved the proposed budget for 2014-2015 for the Chambers in the amount of \$57.1 million, less contingency, disaggregated as \$44.7 million for the international component and \$12.4 million for the national component. As in past bienniums, the Chambers submit revised estimates for the second year during the fourth quarter of the first

year, taking into account the judicial programme of work and updated requirements. In this regard, the Chambers submitted a revised proposal for 2015, which totals \$27,489,000 for the international component and \$6,653,800 for the national component, for a total of \$34,142,800. At the time of writing, the proposal had yet to be reviewed by the group, which is the existing approval authority for the budget for the Chambers.

48. In his previous report (A/68/532), the Secretary-General proposed that the General Assembly should consider a subvention of up to \$26.3 million for 2015, based on information to be provided in the present report. Given the proposed increase in the 2015 budget from \$27,343,800 to \$34,142,800, and taking into account the existing pledges for 2015, which total only \$3,534,600 for the international component and \$1,625,000 for the national component, the Secretary-General proposes that the Assembly approve a subvention up to the maximum of \$28,983,200, representing \$23,954,400 for the international component and \$5,028,800 for the national component.

49. The Secretary-General notes that the absence of any decision by the General Assembly to authorize reimbursable loans to the national component under the commitment authority has resulted in the need for the Secretariat to divert voluntary funding from the international component to the national component, under both direct transfer and loan arrangements, to avoid walkouts by the national staff. Given that resource mobilization efforts have shown that donors have previously been more inclined to contribute to the international component, the Secretary-General again requests the approval of the Assembly for the Secretariat to provide reimbursable loans to the Government under the subvention, in order to preserve the voluntary funding of the international component.

## VII. Conclusions

50. **The Secretary-General welcomes the impressive progress made by the Extraordinary Chambers since his previous report. The delivery of the judgement in case 002/01 was an historic and momentous achievement, with global and national resonance. The beginning of the next trial in case 002 and the heightened pace of investigations in cases 003 and 004 demonstrate that, the numerous obstacles and challenges notwithstanding, the Chambers can effectively deliver when accompanied by an assured and sufficient resourcing base. The Secretary-General commends the personnel of both components for their professionalism, commitment and dedication to the mission and mandate of the Chambers.**

51. **The Secretary-General welcomes the approval by the General Assembly of a commitment authority of up to \$15.54 million for the international component for 2014, which has not yet been utilized but has served to secure staff contracts up to December 2014, bringing contractual stability to the staff and facilitating the efficient discharge of the judicial mandate of the Chambers. In town hall meetings between the staff of the Chambers and senior officials of the Secretariat, together with town hall meetings with the principal donors group during its visit to the Chambers in June 2014, staff expressed appreciation for the efforts of the Assembly, donors and the Secretariat in**

addressing their contractual situation through the combination of means set out herein.

52. Nonetheless, the Secretary-General remains concerned that the voluntary funds are inadequate and pledged on a limited and piecemeal basis. While the commitment authority has provided the means for the United Nations to cope with such sporadic funding in respect of the international component, the same means do not exist for the national component. The obligations of the Government to meet its financial commitments under the Agreement notwithstanding, a similar operating reserve mechanism needs to be established to secure national staff contracts and salary payments pending the receipt of funds.

## VIII. Recommendations

53. At the time of writing, the international component had not required access to the funding of \$15,540,000 contained in the commitment authority authorized by the General Assembly for 2014. Should the anticipated pledges for the final quarter of 2014 not materialize, however, an estimated amount of \$6,974,900 will be required from the approved commitment authority to cover the shortfall in 2014. Accordingly, the Secretary-General requests the approval of the Assembly for an appropriation in the amount of \$6,974,900 for 2014 under section 29B, Office of Programme Planning, Budget and Accounts, of the programme budget for the biennium 2014-2015.

54. In the light of the shortfall in pledges for 2015, the Secretary-General seeks an appropriation of up to \$23,954,400 for the international component and \$5,028,800 for the national component, for a total of \$28,983,200, under section 29B, Office of Programme Planning, Budget and Accounts, of the programme budget for 2014-2015, to supplement the financial resources of the Chambers and to enable the Chambers to efficiently carry out their mandate, without the continuous threat of insufficient resources adversely affecting programme delivery.

55. The Secretary-General also seeks the approval of the General Assembly for the United Nations to use its discretion to provide reimbursable loans to the Government of Cambodia from the subvention of up to \$5,028,800 in 2015 to ensure the welfare of the national staff and their families. Such approval would ensure that voluntary funds contributed to the United Nations could be used for the international component, as intended by donors.

## Annex

## Financial status of the Extraordinary Chambers in the Courts of Cambodia

### International component: United Nations Assistance to the Khmer Rouge Trials

#### Financial status of the international component as at 31 December 2013

(United States dollars)

|   |                    |
|---|--------------------|
| A. Income   |                    |
| Contributions received from 2005 to 2013                | 150 694 813        |
| Interest earned from 2005 to 2013 and other adjustments | 4 918 424          |
| <b>Subtotal</b>   | <b>155 613 237</b> |
| B. Expenditure <sup>a</sup>                             |                    |
|   | (154 957 552)      |
| <b>Fund balance</b>                                     | <b>655 685</b>     |

<sup>a</sup> Figures include a grant of \$3,255,000 to the national component to cover salary costs. These costs are also reflected in the national component tables.

#### Financial status of the international component for 2014

(United States dollars)

|  |                     |
|--|---------------------|
| A. Income  |                     |
| Cash balance brought forward as at 1 January 2014                  | 655 685             |
| Contributions received from 1 January to 30 September 2014         | 15 396 112          |
| <b>Subtotal</b>  | <b>16 051 797</b>   |
| B. Expenditure as of 30 September 2014 <sup>a</sup>                |                     |
|  | (17 250 969)        |
| <b>Cash balance</b>  | <b>(1 199 172)</b>  |
| C. Outstanding pledges for 2014 <sup>b</sup>                       |                     |
|  | 395 257             |
| <b>Total funds available</b>                                       | <b>(803 915)</b>    |
| D. Estimated expenditure from October to December 2014             |                     |
|  | (6 170 946)         |
| <b>Projected cash shortfall as at 31 December 2014<sup>c</sup></b> | <b>(6 974 861)</b>  |
| E. Estimated requirements for 2015 <sup>d</sup>                    |                     |
|  | 27 488 944          |
| F. Outstanding pledges for 2015 <sup>e</sup>                       |                     |
|  | 3 534 564           |
| <b>Estimated shortfall for 2015<sup>f</sup></b>                    | <b>(23 954 380)</b> |

(Footnotes on following page)

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(Footnotes to Financial status of the international component for 2014)

<sup>a</sup> Figures include a loan of \$780,000 to the national component to cover salary costs. These costs are also reflected in the national component tables.

<sup>b</sup> European Union (300,000 euros revalued as at 30 September 2014).

<sup>c</sup> Anticipated shortfall will be addressed through a drawdown on the commitment authority (see paras. 35 and 53).

<sup>d</sup> 2015 revised budget figures are subject to change pending review and approval by the group of interested States.

<sup>e</sup> Sweden (15 million Swedish krona revalued as at 30 September 2014) and Japan (\$1,385,567).

<sup>f</sup> Anticipated shortfall is being addressed through the present request for a subvention (see paras. 48 and 54).

## Indicative resource requirements for the United Nations Assistance to the Khmer Rouge Trials

### Requirements by component and funding availability

(United States dollars)

| <i>Component</i>               | <i>Actual expenditure<br/>1 January-<br/>31 December 2012</i> | <i>Actual expenditure<br/>1 January-<br/>31 December 2013</i> | <i>Estimated expenditure<br/>1 January-<br/>31 December 2014</i> | <i>Estimated requirements<br/>1 January-<br/>31 December 2015</i> |
|--------------------------------|---|---|--|---|
| 1. Judicial Office             | 6 674 592   | 7 194 976   | 8 009 202  | 8 851 734   |
| 2. Defence and victims support | 3 140 435   | 2 792 835   | 3 165 535  | 4 565 901   |
| 3. Office of Administration    | 13 525 263  | 13 758 416  | 12 247 178   | 14 071 308  |
| <b>Total</b>                   | <b>23 340 289</b>   | <b>23 746 227<sup>a</sup></b>                                 | <b>23 421 915<sup>a</sup></b>                                    | <b>27 488 944</b>   |
| Balance brought forward        | 8 212 169   | 1 478 201   | 655 685  | –   |
| Pledges and contributions      | 16 576 128  | 22 903 350  | 15 791 369   | 3 534 564   |
| Interest                       | 30 193  | 20 359  | –  | –   |
| <b>Total</b>                   | <b>24 818 490</b>   | <b>24 401 911</b>   | <b>16 447 054</b>  | <b>3 534 564</b>  |
| <b>Surplus/(shortfall)</b>     | <b>1 478 201</b>  | <b>655 685</b>  | <b>(6 974 861)</b>   | <b>(23 954 380)</b>   |

<sup>a</sup> Includes 2013 grant to the national component for payment of local salaries in the amount of \$3.255 million and 2014 loan to the national component for payment of local salaries in the amount of \$780,000.

### Post requirements

| <i>Category</i>                           | <i>January-<br/>December 2012</i> | <i>January-<br/>December 2013</i> | <i>January-<br/>December 2014</i> | <i>January-<br/>December 2015</i> |
|---|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| <b>Professional and higher categories</b> |                                   |                                   |                                   |                                   |
| Judges (D-2)                              | 12                                | 12                                | 12                                | 12                                |
| D-1                                       | 1                                 | 1                                 | 1                                 | 1                                 |
| P-5                                       | 5                                 | 5                                 | 6                                 | 6                                 |
| P-4                                       | 23                                | 22                                | 18                                | 18                                |
| P-3                                       | 45                                | 42                                | 38                                | 41                                |
| P-2                                       | 7                                 | 8                                 | 5                                 | 5                                 |
| <b>Subtotal</b>                           | <b>93</b>                         | <b>90</b>                         | <b>80</b>                         | <b>83</b>                         |
| <b>General Service</b>                    |                                   |                                   |                                   |                                   |
| Principal level                           | 10                                | 10                                | 9                                 | 9                                 |
| Local level                               | 31                                | 26                                | 36                                | 36                                |
| Field Service                             | 44                                | 35                                | 25                                | 28                                |
| National Professional Officer             | 8                                 | 8                                 | 9                                 | 9                                 |
| <b>Subtotal</b>                           | <b>93</b>                         | <b>79</b>                         | <b>79</b>                         | <b>82</b>                         |
| <b>Total</b>                              | <b>186</b>                        | <b>169</b>                        | <b>159</b>                        | <b>165</b>                        |



**Requirements by object of expenditure and funding availability**

(United States dollars)

| <i>Object of expenditure</i>      | <i>Actual expenditure<br/>1 January-<br/>31 December 2012</i> | <i>Actual expenditure<br/>1 January-<br/>31 December 2013</i> | <i>Estimated expenditure<br/>1 January-<br/>31 December 2014</i> | <i>Estimated requirements<br/>1 January-<br/>31 December 2015</i> |
|-----------------------------------|---|---|--|---|
| Posts                             | 15 358 958  | 15 221 884  | 14 410 126   | 15 921 943  |
| Non-staff compensation            | 2 031 285   | 1 976 350   | 2 324 481  | 2 289 750   |
| Other staff costs                 | 112 459   | (3 437)   | –  | 107 500   |
| Consultants and experts           | 1 027 525   | 334 732   | 762 207  | 989 476   |
| Witness costs                     | 32 935  | 18 079  | 39 873   | 70 852  |
| Travel                            | 87 578  | 183 720   | 242 349  | 16 435  |
| Contractual services <sup>a</sup> | 1 108 454   | 3 219 783   | 1 803 411  | 3 004 114   |
| Defence support section           | 2 266 522   | 1 874 361   | 2 526 260  | 3 649 698   |
| Victims support                   | 345 724   | 331 680   | 225 505  | 414 090   |
| Judicial meetings                 | 33 470  | 2 988   | 8 658  | 61 490  |
| Training                          | 11 791  | (4 375)   | 17 833   | 15 446  |
| General operating expenses        | 422 836   | 307 791   | 474 594  | 539 650   |
| Supplies                          | 220 781   | 188 243   | 291 482  | 266 084   |
| Furniture and equipment           | 279 971   | 94 428  | 295 136  | 142 416   |
| <b>Subtotal</b>                   | <b>23 340 289</b>   | <b>23 746 227</b>   | <b>23 421 915</b>  | <b>27 488 944</b>   |
| Pledges and contributions         | 16 606 321  | 22 923 710  | 15 791 369   | 3 534 564   |
| Balance brought forward           | 8 212 169   | 1 478 201   | 655 685  | –   |
| <b>Total</b>                      | <b>24 818 490</b>   | <b>24 401 911</b>   | <b>16 447 054</b>  | <b>3 534 564</b>  |
| <b>Surplus/(shortfall)</b>        | <b>1 478 201</b>  | <b>655 685</b>  | <b>(6 974 861)</b>   | <b>(23 954 380)</b>   |

<sup>a</sup> Includes 2013 grant to the national component for payment of local salaries in the amount of \$3.255 million and 2014 loan to the national component for payment of local salaries in the amount of \$780,000.

## National component: Cambodia

### Financial status of the Chambers as at 31 December 2013

(United States dollars)

|  |                   |
|--|-------------------|
| A. Income                                |                   |
| Contributions received from 2005 to 2013 | 49 840 938        |
| <b>Subtotal</b>                          | <b>49 840 938</b> |
| B. Expenditure (49 613 568)              |                   |
| <b>Fund balance</b>                      | <b>227 370</b>    |

### Financial status of the Chambers

(United States dollars)

|  |                    |
|--|--------------------|
| A. Income  |                    |
| Cash balance brought forward as at 1 January 2014                        | 227 370            |
| Contributions received from 1 January to 30 September 2014 <sup>a</sup>  | 4 379 668          |
| <b>Subtotal</b>  | <b>4 607 038</b>   |
| B. Expenditure as at 30 September 2014 (4 460 069)                       |                    |
| <b>Cash balance<sup>b</sup></b>  | <b>146 969</b>     |
| C. Outstanding pledges for 2014 <sup>c</sup> 450 844                     |                    |
| <b>Total funds available</b>   | <b>597 813</b>     |
| D. Estimated expenditure from October to December 2014 (1 747 733)       |                    |
| <b>Projected cash shortfall as at 31 December 2014</b>                   | <b>(1 149 920)</b> |
| G. Estimated requirements for 2015 <sup>d</sup> 6 653 787                |                    |
| H. Contributions and outstanding pledges for 2015 <sup>e</sup> 1 625 000 |                    |
| <b>Estimated shortfall for 2015<sup>f</sup></b>                          | <b>(5 028 787)</b> |

<sup>a</sup> Includes loan from the international component of \$780,000.<sup>b</sup> \$109,716 earmarked for operational costs, \$9,117 earmarked for the Victims Support Section, \$5,258 earmarked for internship in the office of the co-prosecutors and \$22,878 balance from the loan of the United Nations Assistance to the Khmer Rouge Trials, Chile and personal contributions.<sup>c</sup> Cambodia (\$350,000) earmarked for operational costs and Germany (\$100,844) earmarked for the Victims Support Section.<sup>d</sup> 2015 revised budget figures are subject to change pending review and approval by the group of interested States.<sup>e</sup> Government of Cambodia (\$1,600,000) and Malaysia (\$25,000).<sup>f</sup> Anticipated shortfall is being addressed through the present request for a subvention (see paras. 48, 54 and 55).

## Indicative resource requirements for the national component

### Requirements by component and funding availability

(United States dollars)

| <i>Component</i>               | <i>Actual expenditure<br/>1 January-<br/>31 December 2012</i> | <i>Actual expenditure<br/>1 January-<br/>31 December 2013</i> | <i>Estimated expenditure<br/>1 January-<br/>31 December 2014</i> | <i>Estimated requirements<br/>1 January-<br/>31 December 2015</i> |
|--------------------------------|---|---|--|---|
| 1. Judicial Office             | 2 087 316   | 1 702 970   | 1 494 989  | 1 723 582   |
| 2. Defence and victims support | 330 768   | 288 115   | 464 736  | 537 012   |
| 3. Office of Administration    | 6 508 487   | 5 546 628   | 4 248 077  | 4 393 193   |
| <b>Total</b>                   | <b>8 926 571</b>  | <b>7 537 713</b>  | <b>6 207 802</b>   | <b>6 653 787</b>  |
| Balance brought forward        | (258 638)   | (316 555)   | 227 370  | –   |
| Pledges and contributions      | 8 868 654   | 8 081 638   | 4 830 512  | 1 625 000   |
| <b>Total</b>                   | <b>8 610 016</b>  | <b>7 765 083</b>  | <b>5 057 882</b>   | <b>1 625 000</b>  |
| <b>Surplus/(shortfall)</b>     | <b>(316 555)</b>  | <b>227 370</b>  | <b>(1 149 920)</b>   | <b>(5 028 787)</b>  |

### Post requirements

| <i>Category</i>                             | <i>January-<br/>December 2012</i> | <i>January-<br/>December 2013</i> | <i>January-<br/>December 2014</i> | <i>January-<br/>December 2015</i> |
|---|-----------------------------------|-----------------------------------|-----------------------------------|-----------------------------------|
| <b>Professional and higher categories</b>   |                                   |                                   |                                   |                                   |
| D-1 (Judges and Director of Administration) | 16                                | 15                                | 14                                | 15                                |
| P-5   | 4                                 | 4                                 | 1                                 | 1                                 |
| P-4   | 20                                | 20                                | 20                                | 21                                |
| P-3   | 41                                | 37                                | 19                                | 19                                |
| P-2   | 25                                | 24                                | 14                                | 17                                |
| P-1   | 6                                 | 6                                 | 2                                 | 2                                 |
| <b>Subtotal</b>                             | <b>112</b>                        | <b>106</b>                        | <b>70</b>                         | <b>75</b>                         |
| <b>General Service</b>                      |                                   |                                   |                                   |                                   |
| Principal level                             | 11                                | 10                                | 8                                 | 5                                 |
| Local level                                 | 169                               | 167                               | 103                               | 105                               |
| <b>Subtotal</b>                             | <b>180</b>                        | <b>177</b>                        | <b>111</b>                        | <b>110</b>                        |
| <b>Total</b>                                | <b>292</b>                        | <b>283</b>                        | <b>181</b>                        | <b>185</b>                        |

### Requirements by object of expenditure and funding availability, national component

(United States dollars)

| <i>Object of expenditure</i> | <i>Actual expenditure<br/>1 January-<br/>31 December 2012</i> | <i>Actual expenditure<br/>1 January-<br/>31 December 2013</i> | <i>Estimated expenditure<br/>1 January-<br/>31 December 2014</i> | <i>Estimated requirements<br/>1 January-<br/>31 December 2015</i> |
|------------------------------|---|---|--|---|
| Posts                        | 4 984 257   | 4 352 095   | 3 304 671  | 3 574 860   |
| Non-staff compensation       | 967 998   | 659 195   | 693 463  | 902 066   |
| Judicial meeting             | –   | –   | 14 754   | 17 076  |
| Resident judges              | 125 341   | 119 849   | –  | –   |
| Other staff costs            | 148 511   | 13 048  | 159 000  | 177 900   |
| Premises alteration          | 73 828  | 40 020  | 92 053   | 99 100  |
| Contractual services         | 1 582 996   | 1 420 688   | 1 139 509  | 1 030 314   |
| Travel                       | 47 813  | 66 475  | 55 444   | 64 972  |
| Training and meeting costs   | 246 763   | 219 600   | 122 524  | 142 560   |
| Operating expenses           | 528 729   | 432 321   | 473 587  | 490 099   |
| Hospitality costs            | 34 877  | 32 561  | 27 397   | 29 440  |
| Consultants and experts      | 185 458   | 181 861   | 125 400  | 125 400   |
| <b>Subtotal</b>              | <b>8 926 571</b>  | <b>7 537 713</b>  | <b>6 207 802</b>   | <b>6 653 787</b>  |
| Pledges and contributions    | 8 868 654   | (316 555)   | 227 370  | –   |
| Balance brought forward      | (258 638)   | 8 081 638   | 4 830 512  | 1 625 000   |
| <b>Total</b>                 | <b>8 610 016</b>  | <b>7 765 083</b>  | <b>5 057 882</b>   | <b>1 625 000</b>  |
| <b>Surplus/(shortfall)</b>   | <b>(316 555)</b>  | <b>227 370</b>  | <b>(1 149 920)</b>   | <b>(5 028 787)</b>  |

## Financing of the United Nations Assistance to the Khmer Rouge Trials, 2014-2015

(United States dollars)

### Commitment authority

|                                       |                  |
|---------------------------------------|------------------|
| Authorized amount                     | 15 540 000       |
| Expected deficit in 2014 <sup>a</sup> | (6 974 900)      |
| <b>Balance</b>                        | <b>8 565 100</b> |

### Requirements for 2014-2015

|   |                   |
|---|-------------------|
| A. Requirements — international component                     |                   |
| 1 January to 31 December 2014                                 | 6 974 900         |
| 1 January to 31 December 2015 <sup>b</sup>                    | 23 954 400        |
| <b>Total estimated requirements — international component</b> | <b>30 929 300</b> |
| B. Requirements — national component                          |                   |
| 1 January to 31 December 2014                                 | —                 |
| 1 January to 31 December 2015 <sup>b</sup>                    | 5 028 800         |
| <b>Total estimated requirements — national component</b>      | <b>5 028 800</b>  |
| C. Subvention   |                   |
| Maximum subvention for 2014                                   | 6 974 900         |
| Maximum subvention for 2015 <sup>b</sup>                      | 28 983 200        |
| <b>Maximum subvention to be effected at end of 2014-2015</b>  | <b>35 958 100</b> |

<sup>a</sup> See paras. 35 and 53.

<sup>b</sup> See paras. 48, 54 and 55.