



# General Assembly

Distr.: General  
18 September 2020

Original: English

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## Seventy-fifth session

Agenda item 141

### Proposed programme budget for 2021

## 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/74/359), 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 2020.

By its resolution 74/263 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 2020, and requested the Secretary-General to report on the use of the commitment authority in the context of his 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 2020, presents information on the proposed budget of the Chambers for 2021 and seeks the approval by the Assembly of an appropriation for a subvention for the international component of the Chambers in the amount of \$8.5 million for 2021.



## 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](#) and [A/74/359](#)), 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 commenced. In case 004/02, the Supreme Court Chamber terminated proceedings against Ao An following the Pre-Trial Chamber's issuance of its considerations on appeals against the separate closing orders.

2. Case 001, against Kaing Guek Eav, alias "Duch", was the first case tried before the Extraordinary Chambers. His conviction became final, as varied, by the appeal decision of the Supreme Court Chamber of 3 February 2012. On 2 September 2020, Kaing Guek Eav died while serving a life sentence.

3. Case 002 has been severed into two trials. The first trial, case 002/01, against Nuon Chea and Khieu Samphan, concentrated on alleged crimes against humanity relating to the forced movement of the population from Phnom Penh and later from other regions and the alleged execution of former Khmer Republic soldiers at Tuol Po Chrey. On 23 November 2016, the Supreme Court Chamber delivered the judgment on appeals, confirming the convictions for the crimes against humanity of murder, persecution on political grounds and other inhumane acts, and upholding the sentence of life imprisonment imposed on both accused. The second trial, case 002/02, contains additional charges against Nuon Chea and Khieu Samphan related to the genocide against the Muslim Cham and Vietnamese minorities, forced marriage and rape, the treatment of Buddhists and Khmer Republic officials, as well as alleged crimes against humanity and grave breaches of the Geneva Conventions committed at four security centres, three worksites and a group of work cooperatives. The reasoned judgment was issued in the three working languages of the Extraordinary Chambers on 28 March 2019. In the judgment, both accused were found guilty of crimes against humanity, grave breaches of the Geneva Conventions and genocide against the Vietnamese ethnic, national and racial group, while Nuon Chea was found guilty of genocide against the Cham ethnic and religious group. Both accused were sentenced to life imprisonment. Case 002 was the last trial in relation to case 002. Nuon Chea died on 4 August 2019 and proceedings against him were subsequently terminated by the Supreme Court Chamber on 13 August 2019.

4. In case 003, Meas Muth was charged by the international co-investigating judge in March 2015, and additional charges were laid against him in December 2015. In case 004, Im Chaem and Ao An were formally charged by the international co-investigating judge in March 2015. Additional charges against Ao An, including genocide, were announced in March 2016. Yim Tith, the last suspect in case 004, was charged by the international co-investigating judge in December 2015. Case 004 has been severed into three cases, one for each charged person, to guarantee the right of the charged persons to be informed of the decision on the charges brought against them without undue delay.

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

6. On 16 August 2018, in case 004/02, the co-investigating judges issued two separate closing orders against Ao An. 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 was illegal” and that the Chamber had not assembled an affirmative vote of at least four judges for a decision based on common reasoning on the merits. The national and international judges attached their respective opinions to the considerations. On 10 August 2020, the Supreme Court Chamber terminated the case against Ao An, holding that the Pre-Trial Chamber’s unanimous finding meant that neither closing order was valid. The co-investigating judges sealed and archived the case file on 14 August 2020, This concluding the judicial proceedings in case 004/02.

7. 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. From 27 to 29 November 2019, the Pre-Trial Chamber held three days of hearings on the appeals against the closing orders. The Pre-Trial Chamber is expected to deliver judgment on any appeals against the closing orders by the third quarter of 2020.

8. On 28 June 2019, in case 004, the co-investigating judges issued two separate closing orders against Yim Tith. The international co-investigating judge had 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 and the international co-prosecutor. The Pre-Trial Chamber is expected to deliver judgment on any appeals against the closing orders by the first quarter of 2021.

9. Pursuant to the request for a completion strategy made by the General Assembly in its resolution [68/247 B](#), the Extraordinary Chambers prepared a completion plan in which it highlighted remaining procedural milestones and estimated the time required for judicial completion of the current caseload. The plan is updated on a quarterly basis.<sup>1</sup> As it is unknown whether cases 003 and 004 will go to trial, it would be premature to project an overall timeline for the judicial work of the Extraordinary Chambers. Nevertheless, according to the completion plan, 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.

10. The Extraordinary Chambers continue to face considerable financial challenges. It has proved difficult to attract the requisite voluntary funding to fully cover costs for 2020. 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 2020.

<sup>1</sup> Revision twenty-five, 30 June 2020.

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. However, a shortfall in the amount of \$810,300 remains for 2020 as at 30 June 2020. Given the hybrid structure of the Chambers, if the operation of either the national or the international component is jeopardized, the overall work of the Chambers is severely impeded.

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

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

11. On 2 September 2020, Kaing Guek Eav died after having been admitted to hospital. Prior to that, he had been serving a life sentence imposed by the Supreme Court Chamber, at Kandal provincial prison, Cambodia.

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

12. 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 for 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.

13. The charges in case 002 were severed into two separate cases, styled as cases 002/01 and 002/02, each with a separate trial and judgment. 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 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, treatment of Buddhists and 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. By order of the Supreme Court Chamber of 29 July 2014, further charges not encompassed in the two cases were provisionally stayed pending appropriate disposal by the Trial Chamber. On 27 February 2017, the Trial Chamber issued a decision terminating the proceedings with regard to all facts set out in the case 002 closing order that were not included in either case 002/01 or case 002/02. Consequently, case 002 will be completed upon the final adjudication of case 002/02.

14. 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, aided and abetted the aforementioned crimes during the first and second phases of 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.

15. 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.

16. The trial in case 002/02 opened on 17 October 2014, with the presentation of evidentiary hearings commencing on 8 January 2015. On 11 January 2017, the Trial Chamber concluded the evidentiary hearings, after hearing evidence on the topics of the Tram Kak cooperatives (including Kraing Ta Chan Security Centre and the treatment of Buddhists), the 1 January Dam worksite, the Kampong Chhnang Airfield construction site, the Trapeang Thma Dam worksite, the treatment of the Cham and the Vietnamese, the Au Kanseng, Phnom Kraol and S-21 security centres and internal purges, the regulation of marriage, the nature of the armed conflict and the roles of the accused. The Chamber sat for 274 hearing days during which it heard the testimony of 114 witnesses, 63 civil parties and 8 experts. The Chamber heard the parties' closing statements between 13 and 23 June 2017. On 16 November 2018, the Chamber pronounced its judgment together with a summary of its findings. 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 case 002/01 and 002/02 into a single life term. Following Nuon Chea's death, 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.

17. On 31 October 2019, Khieu Samphan filed a motion to disqualify six judges of the Supreme Court Chamber who adjudicated his appeal in case 002/01. Pursuant to internal rule 34 (6) of the Court, a separate panel of judges considered the disqualification motion, which was dismissed on 14 July 2020.

### **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 Extraordinary Chambers by five additional suspects. The crimes under investigation were genocide, crimes against humanity, grave breaches of the Geneva Conventions relating to the protection of victims of international armed conflicts and violations of the 1956 Penal Code of Cambodia. Of the five suspects, four were charged. One suspect in case 003 died in 2014. In total, 269 field missions and 1,411 witness interviews were completed with respect to these two cases.

19. 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. Under the internal rules, the co-investigating judges are legally obligated to investigate all crime scenarios of which they have been seized, although they have the authority, at the time of notification of the conclusion of a judicial investigation, to reduce the scope of a case, as long as its remaining facts are representative of the scope of the introductory submission and any supplementary submissions.

20. On 3 March 2015, the international co-investigating judge charged Meas Muth and Im Chaem in absentia 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.

21. 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 in the proceedings against Im Chaem in case 004/01. They dismissed the case on the grounds that, 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, concluding the judicial proceedings in the case. The decision of the co-investigating judges that the Extraordinary Chambers have no jurisdiction over Im Chaem therefore stands.

22. 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 was illegal and that the Chamber had not assembled an affirmative vote of at least four judges for a decision based on common reasoning on the merits. The national and international judges attached their respective opinions to the considerations. In their opinion, the national judges decided to uphold the closing order of the national co-investigating judge while annulling the closing order of the international co-investigating judge. The international judges found the national co-investigating judge's dismissal order to be *ultra vires*, approved that Ao An should be sent for trial and found that the Trial Chamber should be seized of case 004/02 on the basis of the closing order, as amended, issued by the international co-investigating judge. Further to filings made by the international co-prosecutor, the Trial Chamber, on 3 April 2020, issued a statement, 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 on the international co-prosecutor's appeal, finding it admissible for the clarification of

certain issues. In particular, the Chamber held 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 terminated the case against Ao An before the Extraordinary Chambers. Accordingly, and pursuant to a request by Ao An's co-lawyers filed in March 2020, the co-investigating judges sealed and archived case file 004/02 on 14 August 2020, concluding the judicial proceedings in case 004/02.

23. In the light of the above filing made by Ao An's co-lawyers before the co-investigating judges, Michael Bohlander was reinstated on 22 April 2020 to fill the vacant position of the international co-investigating judge.

24. 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. From 27 to 29 November 2019, the Pre-Trial Chamber held three days of hearings on the appeals against the closing orders.

25. In respect of case 004, on 13 June 2017, the co-investigating judges notified all parties in case 004 that they considered the judicial investigation against Yim Tith in case 004 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; 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.

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

26. Pursuant to the request of the General Assembly for a completion strategy with a clear road map, the Extraordinary Chambers prepared a completion plan that details the remaining work to be completed in the proceedings of which they are currently seized. As a clarifying note, the current proceedings represent the entire caseload of the Chambers. Based on an individual assessment of each case, 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.



27. In case 002, filings of the appeals against the case 002/02 trial judgment were made by the co-prosecutors and Khieu Samphan in the third quarter of 2019 and first quarter of 2020, respectively. On the basis of current projections, the delivery of the appeal judgment is expected by the fourth quarter of 2022. The delivery of an appeal judgment in case 002/02 will bring case 002 to a close.

28. In cases 003 and 004, a milestone was reached in 2019 with the issuance of considerations on appeals against closing orders by the Pre-Trial Chamber in case 004/02 against Ao An. In August 2020, case 004/02 was terminated by the Supreme Court Chamber and sealed and archived by the co-investigating judges. In 2020, it is expected that one milestone will be reached; namely, a decision of the Pre-Trial Chamber on the appeals against the closing orders in the case against Meas Muth by the third quarter of 2020. In 2021, it is expected that one milestone will be reached; namely, a decision of the Pre-Trial Chamber on the appeals against the closing orders in the case against Yim Tith by the first quarter of 2021. Projections for the 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.

29. 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 resolutions [73/279](#) 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 drawdown of activities, and to identify residual functions, if any, which would need to be performed following the completion of the mandate. Accordingly, the Office of Legal Affairs has undertaken consultations with representatives of the Chambers and the Government of Cambodia and provided its report to the steering committee for the United Nations Assistance to the Khmer Rouge Trials on 28 June 2019 on the consultations to date. Further consultations between the Office of Legal Affairs and the Government of Cambodia continue to take place, taking into account the feedback of the steering committee. In addition, representatives from certain Member States, including Cambodia, requested the inclusion of a new agenda item entitled "Extraordinary Chambers in the Courts of Cambodia – residual functions" in order for the General Assembly to consider and decide upon the provision of a further mandate to the Secretary-General to continue consultations with the Government of Cambodia, with a view to finalizing agreement on the residual functions requiring performance, as well as the framework for their performance. It would also allow the Assembly to request the Secretary-General to report on the matter, including in relation to progress in negotiations, in the light of which the Assembly could decide to take further action, potentially also during the seventy-fifth session, as reflected in paragraphs 13 and 14 of the letter dated 12 August 2020 from the representatives of Australia, Cambodia, France, Germany, Japan, Norway, the Republic of Korea, Sweden, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the Secretary-General containing a request for the inclusion of a supplementary item in the agenda of the seventy-fifth session Extraordinary Chambers in the Courts of Cambodia – residual functions ([A/75/193](#)).

#### **IV. Current financial position and fundraising efforts**

30. Previous reports of the Secretary-General have highlighted to Member States the financial challenges faced by the Extraordinary Chambers. These challenges have

continued throughout 2020. The COVID-19 pandemic has had an adverse impact on the rate at which the voluntary contributions have been secured during 2020 as compared with previous years. Some traditional donors to the international component of the Extraordinary Chambers are experiencing delays with 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. As a result of the 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 component 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.

31. Under the Agreement between the United Nations and the Government of Cambodia, the United Nations is responsible for financing the costs of 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 [74/263](#), 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.

32. **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 the United Nations Assistance to the Khmer Rouge Trials designated by the Secretary-General assisted in fundraising for the Chambers. Past fundraising activities have 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, focused on reaching out to potential new donor Governments. In 2018, further to a number of letters that were sent by the principal donors group, the Republic of Korea and Norway 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”, focused on topics related to the prosecution and prevention of genocide, the role of civil society and victim participation in the work of the Extraordinary Chambers, and the methods for assessing the impact and legacy of the Chambers. The vital importance of the continued financial support for the work of the Chambers from the international community was underlined at the event. In addition, the Assistant Secretary-General for Legal Affairs held meetings with representatives of several Member States in June 2019 to seek voluntary contributions for the international component of the Extraordinary Chambers.

33. **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 of Cambodia has increased significantly in recent years. For the last five 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 undertaken by the senior officials of the Extraordinary 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 raising sufficient funds for the national component in 2016, 2017, 2018 and 2019.

34. **Fundraising efforts in 2020.** Efforts continue to be undertaken to pursue the fundraising strategy developed during 2016 to broaden the donor base and to maintain the support of traditional donors. As the contract of the Special Expert ended in mid-October 2018, and there was no longer any funding available for this position, there has been no Special Expert in place since 2019 to assist with fundraising activities.

35. 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 the permanent missions of Member States in June 2020, seeking their financial support for the Extraordinary Chambers. In addition, the Coordinator for United Nations Assistance to the Khmer Rouge Trials held meetings with representatives of several Member States during 2019 and 2020 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.

36. Despite the ongoing fundraising efforts, voluntary contributions for the international component 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 further dropping to \$6.2 million in 2019 (39 per cent of the approved budget). In view of indications from the current donors, the levels of voluntary contributions for 2020 are estimated at \$4.9 million. This estimate consists of \$3.7 million received contributions, \$0.6 million in confirmed pledges and \$0.6 million in anticipated contributions from members of the principal donors group.

#### **Current financial position and use of the commitment authority**

37. 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 in full the international component's obligations 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 and \$7.0 million for 2020, thus ensuring that the salaries and expenses of personnel could be paid on time and without any disruption to the work of the Chambers.

38. By the end of 2018, \$6.9 million in expenditures had been incurred against \$8.0 million actually appropriated, resulting in a budget surplus of \$1.1 million. In 2019, an amount of \$7.4 million was projected as expenditures against the commitment authority of \$7.5 million. The budget surplus of \$0.1 million in 2019

and \$1.1 million from 2018 resulted in a request for an appropriation of \$6.3 million, against the full amount of the commitment authority of \$7.5 million, which was presented in the Secretary-General's second performance report for the biennium 2018–2019 (see [A/74/570](#), para. 45).

39. 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 2019, and in two steps so far in 2020, covering a six-month and a three-month period, in line with the approved staffing table. Further contract extensions, to cover the last quarter of 2020, are subject to the availability of funds.

40. The group of interested States approved a budget for 2020 amounting to \$13.5 million for the international component and \$5.0 million for the national component. As at 31 August 2020, voluntary contributions of \$3.7 million have been received for the international component for 2020, which, together with the drawdown of an amount of \$7 million from the commitment authority, was sufficient to cover the expenditures for the first 10 months of 2020. To meet the operational requirements of the international component for the last two months of 2020, additional voluntary contributions of \$1.0 million are required. Should the remaining expected contributions be formalized before the end of the year, it is expected that the contributions and the subvention from the regular budget, in combination with the implemented cost saving and cost avoidance measures, would be sufficient to secure the operations of the international component of the Extraordinary Chambers until the end of 2020. For the national component, as at 30 June 2020, contributions of \$3.8 million have been received from the Government of Cambodia. In addition, the remaining balance of \$260,000 was carried forward from 2019. The budgetary shortfall of \$810,300 has not been secured at the time of reporting. The Government of Cambodia is working closely with one international donor in order to secure sufficient funding for the national component, to cover the shortfall for 2020.

41. 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 continued during 2020, 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 positions unless hiring is absolutely necessary for the uninterrupted continuation of judicial proceedings, and curtailing measures in areas such as travel, operating expenses and contractual services. It should be noted that, although the above measures would yield savings, thus ensuring that the available funding is adequate to conduct the essential judicial operations, short-term extensions of staff contracts have impacted staff morale and contributed to higher staff turnover than would otherwise have been expected.

## **V. Funding requirements of the Extraordinary Chambers for 2021**

42. 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 revised budget proposal for 2021

is aligned with the resource requirements for the full year of operations in line with the judicial workplan, as reflected in revision 25 of the completion plan, dated 30 June 2020.

43. The revised budget proposal, which is subject to review by the principal donors group and the steering committee, and to review and 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/74/7/Add.16) and endorsed by the General Assembly in its resolution 74/263. Details of the recommendations and actions taken by the Extraordinary Chambers are provided in annex I to the present report.

44. The budget proposal for 2021, as indicated in tables 1 and 2 below, 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 Chambers are provided in annex II.

Table 1  
**Financial resources for the international component of the Extraordinary Chambers**

(Thousands of United States dollars)

<i>Component</i>	<i>Actual expenditure</i>		<i>Revised budget</i>	<i>Resource growth</i>		<i>Revised budget</i>	<i>Total revised budget<sup>a</sup></i>
	<i>2018</i>	<i>2019</i>	<i>2020</i>	<i>Amount</i>	<i>%</i>	<i>2021</i>	<i>2020–2021</i>
A. Judicial offices	5 706.4	4 670.4	4 421.6	511.0	11.6	4 932.6	9 354.2
B. Defence and Victims Support Sections	3 128.6	2 802.9	2 159.4	(1 108.8)	(51.3)	1 050.6	3 210.0
C. Office of Administration	6 533.3	5 765.1	5 100.6	(351.5)	(6.9)	4 749.1	9 849.7
D. Provision for cases 003 and 004	–	–	–	2 142.5	–	2 142.5	2 142.5
<b>Total</b>	<b>15 368.3</b>	<b>13 238.4</b>	<b>11 681.6</b>	<b>1 193.2</b>	<b>10.2</b>	<b>12 874.8</b>	<b>24 556.4</b>

<sup>a</sup> 2020–2021 revised budget figures are subject to review and approval by the group of interested States.

Table 2  
**Post resources for the international component of the Extraordinary Chambers**

Category	Approved		Revised <sup>a</sup>	
	2018	2019	2020	2021
<b>Professional and above</b>				
United Nations officials <sup>b</sup>	12	11	10	12
D-1	1	1	1	1
P-5	5	4	4	4
P-4	12	11	9	6
P-3	30	18	9	9
P-2	4	6	5	5
<b>Subtotal</b>	<b>64</b>	<b>51</b>	<b>38</b>	<b>37</b>
<b>Other levels</b>				
Field Service	12	11	9	6
National Officer	12	11	10	9
Local level	43	42	37	34
<b>Subtotal</b>	<b>67</b>	<b>64</b>	<b>56</b>	<b>49</b>
<b>Total</b>	<b>131</b>	<b>115</b>	<b>94</b>	<b>86</b>

<sup>a</sup> 2020–2021 revised budget figures are subject to review and approval by the group of interested States.

<sup>b</sup> Includes positions of the international judges and co-prosecutor of the Extraordinary Chambers in the Courts of Cambodia and was referred to as D-2 in previous reports for presentation purposes. As indicated in the terms and conditions applicable to their service, the international judges and co-prosecutor are not staff members of the United Nations, although they are deemed officials of the United Nations for the purposes of their terms and conditions of service. The change in presentation is a result of delinking their remuneration levels from the D-2 level during the process of revision of terms and conditions during 2019.

45. In 2021, resource requirements in the amount of \$12,874,800, reflecting an increase of \$1,193,200 as compared with the 2020 revised budget would provide for 86 positions (12 United Nations officials, 1 D-1, 4 P-5, 6 P-4, 9 P-3, 5 P-2, 6 Field Service, 9 National Professional Officer and 34 Local level) and non-post items, such as non-staff compensation, other staff costs, consultants and experts, travel of staff, travel of witnesses, contractual services, general operating expenses, supplies and furniture and equipment. The increase is attributable mainly to the provision of resources to support the trial in cases 003 or 004 which is anticipated to commence in 2021.

46. In 2021, the total funding requirements for both the national and international components are estimated at \$17,814,900 (\$12,874,800 for the international component and \$4,940,100 for the national component). For the international component, at the time of reporting, the Secretariat had not received pledges for 2021, while anticipated voluntary funding is projected to amount to \$4.4 million, based on indications from the traditional donors that their contributions would likely decrease or be discontinued. Based on the pattern of contributions in the period 2017–2020, it is expected that resources will be pledged in piecemeal and varied amounts, with insufficient fund balances available at any given time to ensure 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 given the terms applying to the use of the subvention from the regular budget since 2015, by 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 operational contingencies.

47. To address the situation, the Secretary-General is proposing a subvention of \$8.5 million for the international component for the year 2021. The level of the requested subvention takes into account the proposed budget for 2021 of \$12.9 million, the estimated voluntary contributions of \$4.4 million in 2021, 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 Chambers during 2021, with the assumption that the budget for 2021 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 will allow the continuation of the 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 Chambers, the Secretary-General proposes a subvention to be appropriated in order not to affect negatively the cash flow of the Organization and to enable the issuance of staff contracts of reasonable duration. 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 at the same time, the Secretary-General will continue his intensive fundraising efforts.

48. The Government of Cambodia has consistently 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 million in 2018, \$3.9 million in 2019 and \$3.8 million in 2020. 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 2021 and beyond. The Government of Cambodia has reiterated its strong commitment to the Extraordinary Chambers and to addressing their funding challenges. The United Nations will also continue to support the Government of Cambodia in seeking to obtain from the international community additional voluntary contributions 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**

49. The financial situation of the Extraordinary Chambers, including for the international component, remains precarious. At the time of reporting, staff contracts had been extended only until 30 September 2020 pending receipt of expected contributions to cover requirements for the remaining part of the year. The proposed 2021 budget is based on the assumption that the international component of the Chambers will continue to operate and provides for end-of-service payments due to staff and international judges who are expected to separate in 2021 in line with the approved staffing table to the extent that full funding is made available.

50. Should full funding not be available in 2021, the extension of contracts for continuing staff, judges and the co-prosecutor would not be possible. Existing contracts would be allowed to expire in accordance with their terms and conditions, which would result in additional liabilities not provided for in the proposed 2021 budget. Those liabilities would include entitlements and benefits payable upon separation, such as relocation travel and shipment and repatriation grants for judges, the international co-prosecutor and international staff and commutation of unused annual leave for international and locally recruited staff members. For the international component, these liabilities are currently estimated at \$1,698,600 (\$387,100 for judges and \$1,311,500 for staff members). That amount does not include any costs required for the proper and orderly closure of operations, should the need arise.

51. 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 applying to the use of the subvention have not allowed the rebuilding of any reserves to meet end-of-service liabilities. The Secretariat has taken the estimated end-of-service liabilities into account when considering the duration of contract extensions for personnel of the international component. This has resulted in contracts of shorter duration.

## VII. Conclusions

52. **The Secretary-General welcomes the progress made by the Extraordinary Chambers across all sets of current proceedings in the year since his previous report, in particular within 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 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.**

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 completion of case 004/02, the Extraordinary Chambers have made substantial progress in completion of their mandate. Cases 003 and 004 continue 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 challenging mandate of the Chambers.**

55. **The Secretary-General welcomes the provision of the majority of the funding of the national component by the Government of Cambodia in 2015, 2016, 2017, 2018, 2019 and 2020 and acknowledges the commitment to the success of the Extraordinary Chambers shown by the Government. At the same time, the Secretary-General is concerned that the Chambers face persisting financial challenges and that voluntary funds raised from Governments have continued to fall short of overall budgetary needs from 2015 to 2020. 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, within the scope of their mandate, full accountability 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 four decades for these efforts to reach belated fruition, and would constitute a serious setback to the international community's fight against impunity.

## VIII. Recommendations

57. The Secretary-General requests the General Assembly:

(a) To take note, on the basis of expenditure projections for 2020 to date, that an amount of \$6,789,900 is anticipated to be utilized from the commitment authority of \$7.0 million received in 2020, but that the final amount will be determined at the end of the budget period and the related appropriation sought in the context of the financial performance report on the programme budget for 2020;

(b) To take note of the resource requirements of the Extraordinary Chambers for the period 1 January to 31 December 2021, estimated at \$12,874,800 for the international component of the Chambers in the Courts of Cambodia to continue to fulfil its judicial mandate;

(c) To appropriate an amount of \$8,496,400 under section 8, Legal Affairs, by way of subvention for 2021 for the international component of the Extraordinary Chambers under the proposed programme budget for the year 2021;

(d) To take note of the end-of-service liabilities for judges, the prosecutor and staff of the Extraordinary Chambers, currently estimated at \$1,698,600;

## 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/74/7/Add.16)

The Advisory Committee notes the completion of investigations and issuance of closing orders in specific cases. The Committee emphasizes the importance of regular updates to 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 again reiterates its concern regarding the related potential financial implications (see also paras. 23–25 below). (para. 12)

The Extraordinary Chambers are taking all available measures to expedite the 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. In addition to the statutory framework, the work of the Chambers is directed by the substantive developments in the cases before them often initiated by legally independent parties to the cases.

The projection of a timeline is based on information available to the Chambers at a given time, what the known workload is and how it is to progress going forward. The projection will need adjustments when the work progresses in a manner different from that 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 Chambers assess their work progress quarterly and adjust the projections as required by the substantive developments in the respective cases. These revised projections are subsequently reflected in the quarterly updates of the Completion Plan of the Chambers.

Since the issuance of the previous report of the Secretary-General, the Extraordinary Chambers have continued to make progress in all remaining cases. In case 002, the parties filed appeals of the trial judgment. In case 004/02, the Pre-Trial Chamber issued its considerations on appeals against the closing order on 19 December 2019. On 10 August 2020 the Supreme Court Chamber terminated the case against Ao An and the case was subsequently archived and sealed by the Office of Co-Investigating Judges, concluding the proceedings in the case. In case 003, the Pre-Trial Chamber held three days of hearings in November 2019 on the appeals against the closing orders in Case 003. In case 004, the parties filed submissions on appeal to the Pre-Trial Chamber in relation to the closing orders. Decisions on appeals against closing orders in cases 003 and 004 are projected for the third quarter of 2020 and the first quarter of 2021, respectively. Refer to section III

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

The Advisory Committee recommends that the General Assembly request the Secretary-General to expedite the finalization of the framework for completion of the work of the Chambers and the identification of possible residual functions. (para. 14)

The Advisory Committee trusts that the unused amount of \$1,143,800 for 2018 will be returned to Member States as soon as possible in 2020. (para. 16)

The Advisory Committee notes the cost-saving measures taken by the Extraordinary Chambers and trusts that the impact of such measures will be kept under review to avoid any detrimental effect on the expeditious completion of cases. (para. 18)

The Advisory Committee notes with appreciation the sustained contributions made by the Government of Cambodia. (para. 20)

While welcoming the proposed reductions, the Advisory Committee reiterates its call for efficiency and expeditiousness in case completion, in full respect for the requirements of the judicial process. (para. 22)

(“Completion plan and road map: projected timelines”) of the main report for a more detailed description of the timelines.

The Secretary-General continues to undertake consultations with the Government of Cambodia and the Extraordinary Chambers to finalize the framework for the completion of the work and the identification of possible residual functions. In addition, representatives from certain Member States, including Cambodia, requested the inclusion of a new agenda item entitled “Extraordinary Chambers in the Courts of Cambodia – residual functions”. (see para. 29 of the main report).

Refer to paragraph 38 of the main report. The unused amount for 2018 was returned in the context of the second performance report for the biennium 2018–2019.

Taking into account that the voluntary contributions pledged and received were not sufficient to meet the budgetary requirements, measures put in place in previous years to avoid or defer incurring costs for the international component continued in 2020, including imposing a recruitment freeze against vacant positions unless they impact the judicial process and curtailing expenses in such areas as travel, operating costs and contractual services.

There was a recruitment freeze for positions that were not required to be filled immediately. For instance, the position of court security and witness and expert personnel were frozen since there are no ongoing trials and pending cases are at different stages of the judicial process. None of the positions critical to the uninterrupted continuation of judicial proceedings, such as those in the judicial chambers and offices, were frozen.

In keeping with prior practice, the Secretary-General intends to write to the Government of Cambodia seeking the support of the Government for both the subvention for 2021 and the funding of the national component of the Extraordinary Chambers in 2021.

Following the issuance of the trial judgment in case 002/02 on 28 March 2019, all staff positions in the Trial Chamber were abolished and the international reserve judge was de-installed. One international judge resigned with his replacement to be installed if and when the Chamber commences another trial. Further, following the issuance of closing orders in cases 003, 004 and 004/02 all staff positions in the Office of Co-Investigating Judges were abolished as of 30 June 2019. The international co-investigating judge

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. (para. 25)

Bearing in mind that the General Assembly decided to establish the Extraordinary Chambers on the basis of voluntary funding, the Advisory Committee considers that it would be for the Assembly to decide, as a matter of policy, the appropriate source and modality of funding for the end-of-service liabilities of the judges and staff members. (para. 27)

The Advisory Committee trusts that the Secretary-General will provide further justification for the remuneration level of the international judges and the international prosecutor and the differences with the remuneration levels of other senior level officials of the Organization to the General Assembly at the time of its consideration of the request for a subvention to the Extraordinary Chambers for 2020. (para. 29)

resigned, but was re-instated in April 2020 in light of filings made before the Office of the Co-Investigating Judges. In total, 21 positions under the international component that were no longer required for completion of the mandate of the Extraordinary Chambers were abolished in the 2020 budget. Following the reduced structure of the Chambers, for 2021, a further eight positions are proposed to be abolished.

Refer to paragraphs 34–36 of the main report for a detailed description of the fundraising efforts undertaken in 2020.

As indicated in the main report, the operational reserve was depleted in 2012 to meet payroll expenses at that time owing to shortfalls in voluntary contributions. The terms applying to the use of the subvention have not allowed the rebuilding of any reserves to meet end-of-service liabilities.

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 Government of Cambodia and were approved by the group of interested States.

Prior to the adoption of General-Assembly resolution [72/262](#), in which the Assembly endorsed the recommendation of the Advisory Committee on Administrative and Budgetary Questions that the General Assembly request the Secretary-General to discontinue as soon as possible the current practice of providing the international judges with a net remuneration in the amount of a gross remuneration, the amount of the net remuneration paid to the judges of the Extraordinary Chambers was benchmarked against the gross salary of a staff member at the D-2 level plus a post adjustment component applicable to Cambodia.

In revising the terms and conditions of service in accordance with the General Assembly decision, the Secretariat was mindful of the fact that the remuneration of the current international judges and the international co-prosecutor could not be unilaterally modified to their disadvantage in compliance with the Basic Principles on the Independence of the Judiciary (endorsed by General Assembly resolutions [40/32](#) of 29 November 1985 and [40/146](#) of 13 December 1985) referred to in section 2

of the terms and conditions of service applicable to the appointments of the international judges and the international co-prosecutor.

The net base salaries of the international judges and the international co-prosecutor were fixed in United States dollars at the level of the most recent revision in 2015, to which the adjustments approved by the General Assembly to the net base salaries of staff in the Professional and higher categories since January 2016 were applied, resulting in an annual net base salary of \$158,459 that would not be referenced to any salary level (grade and step) in the common system. The adjustment mechanism introduced to this net base salary is similar to that used for the members of the International Court of Justice (and the former judges of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the former Yugoslavia), whereby on the occasion of revisions to the net base salary scale applicable to staff in the Professional and higher categories (which are effected through the consolidation of post adjustment multiplier points into the net base salary with a corresponding readjustment in the post adjustment multipliers), the annual net base salary of the international judges is also adjusted by the same percentage and at the same time. The revised conditions of service of the international judges were approved by the group of interested States, effective 1 October 2019. Correspondingly, the 1.21 per cent adjustment approved by the General Assembly in its resolution [74/255](#) B for staff in the Professional and higher categories was applied to the net base salary of the international judges, effective 1 January 2020, resulting in the current amount of US\$160,376.

The Advisory Committee trusts that the status of implementation of the recommendations of the Office of Internal Oversight Services will be included in the next report of the Secretary-General. (para. 30)

Following the Advisory Committee's recommendation, the audit by the Office of Internal Oversight Services (OIOS) was conducted on the international component of the Extraordinary Chambers during the first half of 2019. It covered the activities for the period from January 2017 to March 2019. The results of the audit were published in the report of OIOS to the General Assembly ([A/74/281](#)), dated 5 August 2019.

OIOS made four audit recommendations: the international component should (1) liaise with the judicial chambers and offices to ensure that revised translation requirements are duly communicated and considered in the projection of completion timelines for the remaining cases; (2) establish mechanisms to monitor continued eligibility of foreign lawyers to serve as members of the defence teams of the Extraordinary Chambers; (3) review and establish

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	<p>whether the Economic and Social Commission for Asia and the Pacific (ESCAP) is providing all required services in accordance with the memorandum of understanding signed between the two parties and determine whether the reimbursement to ESCAP is commensurate with the services received and, if necessary, renegotiate the fee specified in the memorandum of understanding; and (4) ensure that supervisors and heads of offices follow up on the requirement for all staff to complete mandatory training and performance appraisals by the respective target dates.</p> <p>The four recommendations of OIOS had been fully implemented as at 1 April 2020.</p>
<p>The Advisory Committee trusts that further details about the cost-recovery mechanism in use by the United Nations Secretariat in relation to the work of the Extraordinary Chambers will be included in the next report of the Secretary-General. (para. 31)</p>	<p>The cost recovery carried out by the United Nations Secretariat in administering the Extraordinary Chambers is carried out in line with the instructions as promulgated by the United Nations Controller on cost recovery. The programme support costs are included in the budget documents of the international component, most recently the revised budget for 2020–2021. Accordingly, any amounts reported to the donors are also inclusive of the programme support costs recovered by the United Nations Secretariat for the administration of the trust fund of the United Nations Assistance to the Khmer Rouge Trials.</p>
<p>Furthermore, the Advisory Committee again notes that, after seven 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. 33)</p>	<p>Refer to paragraph 36 of the main report for details on the trend of voluntary contributions causing increased reliance on the regular budget.</p> <p>While the fundraising efforts continued in 2020 (refer to paragraphs 34–36 of the main report for details), in view of the trend referred to above and indications from the current donors, the level of voluntary contributions is anticipated to decline further, to approximately \$4.4 million in 2021.</p>

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## 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 2019

(Thousands of United States dollars)

<b>A. Income</b>	
Contributions received from 2005 to 2019	222 386.8
Interest earned from 2005 to 2019 and other adjustments	5 243.9
<b>Subtotal</b>	<b>227 630.7</b>
<b>B. Expenditure<sup>a</sup></b>	
	(272 972.8)
<b>Fund balance (shortfall)<sup>b</sup></b>	<b>(45 342.1)</b>

<sup>a</sup> 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.

<sup>b</sup> 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) and 2019 (\$6,780,900).

Table A.2

#### Financial status of the international component for 2020 and projection for 2021

(Thousands of United States dollars)

<b>A. Income for 2020</b>	
Contributions received for 2020	3 693.3
Outstanding pledges for 2020 <sup>a</sup>	628.7
Anticipated pledges for 2020	569.7
<b>Subtotal</b>	<b>4 891.7</b>
<b>B. Revised budget for 2020<sup>b</sup></b>	
	(11 681.6)
<b>C. Estimated shortfall for 2020</b>	
	(6 789.9)
<b>D. Income for 2021</b>	
Outstanding pledges for 2021	–
Anticipated pledges for 2021	4 378.4
<b>Subtotal</b>	<b>4 378.4</b>
<b>E. Revised budget for 2021<sup>b</sup></b>	
	(12 874.8)
<b>F. Estimated shortfall for 2021</b>	
	(8 496.4)

<sup>a</sup> Norway (3,000,000 kroner, revalued as at 31 August 2020), and the UK (GBP 225,000 revalued as at 31 August 2020).

<sup>b</sup> 2020–2021 revised budget figures are subject to review and approval by the group of interested States.

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

Table A.3.1

### Requirements by component and funding availability, international component

(Thousands of United States dollars)

Component	Actual expenditure		Revised budget 2020	Resource growth		Revised budget 2021	Total revised budget <sup>a</sup> 2020–2021
	2018	2019		Amount	%		
A. Judicial offices	5 706.4	4 670.4	4 421.6	511.0	11.6	4 932.6	9 354.2
B. Defence and Victims Support Sections	3 128.6	2 802.9	2 159.4	(1 108.8)	(51.4)	1 050.6	3 210.0
C. Office of Administration	6 533.3	5 765.1	5 100.6	(351.5)	(6.9)	4 749.1	9 849.7
D. Provision for cases 003 and 004	–	–	–	2 142.5	–	2 142.5	2 142.5
<b>Total</b>	<b>15 368.3</b>	<b>13 238.4</b>	<b>11 681.6</b>	<b>1 193.2</b>	<b>10.2</b>	<b>12 874.8</b>	<b>24 556.4</b>
Balance brought forward	–	–	–	–	–	–	–
Pledges and contributions	8 512.1	6 457.5	4 891.7	(513.3)	(10.5)	4 378.4	9 270.1
<b>Total income</b>	<b>8 512.1</b>	<b>6 457.5</b>	<b>4 891.7</b>	<b>(513.3)</b>	<b>(10.5)</b>	<b>4 378.4</b>	<b>9 270.1</b>
<b>Surplus/(shortfall)</b>	<b>(6 856.2)</b>	<b>(6 780.9)</b>	<b>(6 789.9)</b>	<b>(1 706.5)</b>	<b>25.1</b>	<b>(8 496.4)</b>	<b>(15 286.3)</b>

<sup>a</sup> 2020–2021 revised budget figures are subject to review and approval by the group of interested States.

Table A.3.2

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

(Thousands of United States dollars)

Object of expenditure	2018 expenditure	2019 expenditure	2020 revised budget	Resource change		2021 revised budget	Total 2020–2021 revised budget <sup>a</sup>
				Amount	%		
Posts	8 847.5	7 182.8	6 128.4	264.1	4.3	6 392.5	12 520.9
Non-staff compensation	1 939.6	1 805.7	1 692.6	557.7	33.0	2 250.3	3 942.9
Other staff costs	195.3	107.7	–	848.9	–	848.9	848.9
Consultants and experts	3 401.1	3 004.6	2 882.7	(507.5)	(17.6)	2 375.2	5 257.9
Travel of staff	40.1	17.2	22.0	–	–	22.0	44.0
Travel of witnesses	–	–	–	–	–	–	–
Contractual services	276.0	220.9	167.5	73.0	43.6	240.5	408.0
General operating expenses	548.9	620.5	601.6	4.5	0.7	606.1	1 207.7
Supplies	66.7	51.1	79.7	11.8	14.8	91.5	171.2
Furniture and equipment	53.1	227.9	107.1	(59.3)	(55.4)	47.8	154.9
<b>Total expenditure</b>	<b>15 368.3</b>	<b>13 238.4</b>	<b>11 681.6</b>	<b>1 193.2</b>	<b>10.2</b>	<b>12 874.8</b>	<b>24 556.4</b>
Balance brought forward	–	–	–	–	–	–	–
Pledges and contributions	8 512.1	6 457.5	4 891.7	(513.3)	(10.5)	4 378.4	9 270.1
<b>Total income</b>	<b>8 512.1</b>	<b>6 457.5</b>	<b>4 891.7</b>	<b>(513.3)</b>	<b>(10.5)</b>	<b>4 378.4</b>	<b>9 270.1</b>
<b>Surplus/(shortfall)</b>	<b>(6 856.2)</b>	<b>(6 780.9)</b>	<b>(6 789.9)</b>	<b>(1 706.5)</b>	<b>25.1</b>	<b>(8 496.4)</b>	<b>(15 286.30)</b>

<sup>a</sup> 2020–2021 revised budget figures are subject to review and approval by the group of interested States.



## National component: Cambodia

Table A.4

### Financial status of the national component as at 31 December 2019

(Thousands of United States dollars)

<b>A. Income</b>	
Contributions received from 2005 to 2019	85 000.2
<b>B. Expenditure</b>	
	(84 739.9)
<b>Fund balance</b>	<b>260.3</b>

Table A.5

### Financial status of the national component for 2020 and the projection for 2021

(Thousands of United States dollars)

<b>A. Income for 2020</b>	
Cash balance brought forward as at 1 January 2020	260.3
Contributions received for 2020	3 800.0
Outstanding pledges for 2020	–
Anticipated pledges for 2020	–
<b>Subtotal</b>	<b>4 060.3</b>
<b>B. Revised budget for 2020</b>	
	<b>(4 870.6)</b>
<b>C. Estimated shortfall for 2020</b>	
	<b>(810.3)</b>
<b>D. Income for 2021</b>	
Outstanding pledges for 2021	–
Anticipated pledges for 2021	–
<b>Subtotal</b>	<b>–</b>
<b>E. Estimated requirements for 2021</b>	
	<b>4 940.1</b>
<b>F. Estimated shortfall for 2021</b>	
	<b>(4 940.1)</b>

## Indicative resource requirements for the national component

Table A.6.1

### Requirements by component and funding availability

(Thousands of United States dollars)

Component	Actual expenditure		Revised budget 2020	Resource growth		Revised budget 2021	Total revised budget <sup>a</sup> 2020–2021
	2018	2019		Amount	Percentage		
A. Judicial offices	1 325.6	1 025.4	1 051.6	(129.1)	(12.3)	922.5	1 974.1
B. Defence and Victims Support Sections	276.1	254.3	333.1	–	–	333.1	666.2
C. Office of Administration	3 677.0	3 661.5	3 485.9	3.5	0.1	3 489.4	6 975.3
D. Provision for cases 003 and 004	–	–	–	195.1	–	195.1	195.1
<b>Total expenditure</b>	<b>5 278.7</b>	<b>4 941.2</b>	<b>4 870.6</b>	<b>69.5</b>	<b>1.4</b>	<b>4 940.1</b>	<b>9 810.7</b>
Balance brought forward	89.3	297.6	260.3	(260.3)	(100.0)	–	260.3

Component	Actual expenditure		Revised budget 2020	Resource growth		Revised budget 2021	Total revised budget <sup>a</sup> 2020–2021
	2018	2019		Amount	Percentage		
Pledges and contributions	5 487.0	4 903.9	3 800.0	(3 800.0)	(100.0)	–	3 800.0
<b>Total income</b>	<b>5 576.3</b>	<b>5 201.5</b>	<b>4 060.3</b>	<b>(4 060.3)</b>	<b>(100.0)</b>	<b>–</b>	<b>4 060.3</b>
<b>Surplus/(shortfall)</b>	<b>297.6</b>	<b>260.3</b>	<b>(810.3)</b>	<b>(4 129.8)</b>	<b>509.7</b>	<b>(4 940.1)</b>	<b>(5 750.4)</b>

<sup>a</sup> 2020–2021 revised budget figures are subject to review and approval by the group of interested States.

Table A.6.2  
**Post requirements**

Category	Approved		Revised <sup>a</sup>	
	2018	2019	2020	2021
<b>Professional and higher categories</b>				
D-1	12	13	13	14
P-5	1	1	1	1
NPO-D	20	19	16	15
NPO-C	16	11	8	8
NPO-B/NPO-A	16	16	12	12
<b>Subtotal</b>	<b>65</b>	<b>60</b>	<b>50</b>	<b>50</b>
<b>Other levels</b>				
Local level	90	85	79	79
<b>Subtotal</b>	<b>90</b>	<b>85</b>	<b>79</b>	<b>79</b>
<b>Total</b>	<b>155</b>	<b>145</b>	<b>129</b>	<b>129</b>

<sup>a</sup> 2020–2021 revised budget figures are subject to review and approval by the group of interested States.

Table A.6.3  
**Requirements by object of expenditure and funding availability**

Object of expenditure	2018 expenditure	2019 expenditure	2020 revised budget	Resource change		2021 revised budget	Total 2020–2021 revised budget <sup>a</sup>
				Amount	Percentage		
Posts	2 530.3	2 275.7	2 373.9	(43.1)	(1.8)	2 330.8	4 704.7
Non-staff compensation	678.0	556.8	636.5	25.5	4.0	662.0	1 298.5
Other staff costs	185.6	197.6	182.1	57.6	31.6	239.7	421.8
Consultants and experts	69.9	130.2	141.7	–	–	141.7	283.4
Travel of staff	1.1	1.5	17.4	(1.2)	(6.9)	16.2	33.6
Contractual services	1 263.5	1 334.5	1 043.5	14.2	1.4	1 057.7	2 101.2
General operating expenses	361.5	355.0	357.5	31.4	8.8	388.9	746.4
Hospitality	45.9	39.8	27.2	–	–	27.2	54.4
Premises alternation	69.4	50.1	55.5	(10.0)	(18.0)	45.5	101.0
Training and meeting	73.5	–	35.3	(4.9)	(13.9)	30.4	65.7
<b>Total expenditure</b>	<b>5 278.7</b>	<b>4 941.2</b>	<b>4 870.6</b>	<b>69.5</b>	<b>1.4</b>	<b>4 940.1</b>	<b>9 810.7</b>

<i>Object of expenditure</i>	<i>2018 expenditure</i>	<i>2019 expenditure</i>	<i>2020 revised budget</i>	<i>Resource change</i>		<i>2021 revised budget</i>	<i>Total 2020–2021 revised budget<sup>a</sup></i>
				<i>Amount</i>	<i>Percentage</i>		
Balance brought forward	89.3	297.6	260.3	(260.3)	(100.0)	–	260.3
Pledges and contributions	5 487.0	4 903.9	3 800.0	(3 800.0)	(100.0)	–	3 800.0
<b>Total income</b>	<b>5 576.3</b>	<b>5 201.5</b>	<b>4 060.3</b>	<b>(4 060.3)</b>	<b>(100.0)</b>	–	<b>4 060.3</b>
<b>Surplus/(shortfall)</b>	<b>297.6</b>	<b>260.3</b>	<b>( 810.3)</b>	<b>(4 129.8)</b>	<b>509.7</b>	<b>(4 940.1)</b>	<b>(5 750.4)</b>

<sup>a</sup> 2020–2021 revised budget figures are subject to review and approval by the group of interested States.