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Extraordinary Chambers in the Courts of Cambodia – residual functions

Report of the Secretary-General

I. Introduction

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

2. In its resolution [75/257](#) A, the General Assembly requested the Secretary-General to continue consultations with the Government of Cambodia, while keeping relevant stakeholders informed, in order to finalize, for consideration by the Assembly, a proposed framework for the completion of the work of the Extraordinary Chambers, including with regard to the drawdown of activities and the residual functions requiring performance. In the same resolution, the Assembly requested the Secretary-General to report to it, at its resumed seventy-fifth session and by 15 May 2021, on the implementation of that resolution. In the report of the Secretary-General of 19 March 2021 ([A/75/809](#)), he provided, for approval by the Assembly, a draft addendum to the Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea, signed in 2003, which would govern the transitional and residual phases of the Extraordinary Chambers. In its resolution [75/257](#) B of 7 July 2021, the Assembly approved the draft Addendum; urged the Secretary-General and the Royal Government of Cambodia to take all the measures necessary to allow the Addendum to enter into force in a timely manner and to implement it fully after its entry into force; and requested the Secretary-General to report to it at its seventy-seventh session on the implementation of that resolution. The present report is submitted in response to that request.

3. In this report, five main points are addressed. Section II provides information on the entry into force of the Addendum. Section III presents a summary of the judicial proceedings of the Extraordinary Chambers. Section IV describes the



transitional measures undertaken in line with the Addendum. Section V outlines the implementation of the residual functions of the Extraordinary Chambers and section VI provides an overview of the various logistic, administrative and legal steps that have been or are being taken to implement the Addendum.

II. Entry into force of the Addendum

4. On 7 July 2021, as noted above, the General Assembly approved the draft Addendum to the Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea, signed in 2003. The Addendum was signed by the United Nations on 11 August 2021 and the Royal Government of Cambodia on 26 August 2021.

5. In accordance with article 6 of the Addendum, the Addendum entered into force on 22 December 2021, the day after both parties had notified each other in writing that the legal requirements for the entry into force had been complied with.

III. Judicial proceedings

6. The Extraordinary Chambers completed their judicial proceedings under article 1 of the Agreement at the end of 2022 and moved into their residual phase as of 1 January 2023. Below is a summary of the outcomes of the cases before the Chambers.

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

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

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

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

9. Owing to its complexity and size, case 002 was severed into two trials. The first trial, case 002/01, focused 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, Nuon Chea and Khieu Samphan.

10. The second trial, case 002/02, focused on additional charges against Nuon Chea and Khieu Samphan related to the genocide against the Cham and Vietnamese minorities, forced marriage and rape, the treatment of Buddhists and the targeting of former Khmer Republic officials, as well as alleged crimes against humanity and grave breaches of the Geneva Conventions of 1949 committed at four security centres, three worksites and a group of work cooperatives. On 16 November 2018, the Trial Chamber pronounced its judgment in case 002/02, together with a summary of its findings, and issued its reasoned judgment on 28 March 2019. In the judgment, both accused were found guilty of crimes against humanity, grave breaches of the Geneva Conventions of 1949 and genocide against the Vietnamese ethnic, national and racial group, while Nuon Chea was found guilty also of genocide against the Cham ethnic and religious group. Both accused were sentenced to life imprisonment. Following the death of Nuon Chea on 4 August 2019, the Supreme Court Chamber terminated the appellate proceedings against him and subsequently confirmed that no further proceedings were possible in the case against him. On 22 September 2022, the Supreme Court Chamber delivered its judgment on appeals in case 002/02 against Khieu Samphan, together with a summary of its findings, and issued its full written judgment thereafter, on 23 December 2022. The Supreme Court Chamber upheld all Trial Chamber findings and convictions, including for genocide, except for two murders (crimes against humanity) at Phnom Kraol security centre and persecution on political grounds (a crime against humanity) against “new people” at the 1 January Dam construction site. Notably, the Supreme Court Chamber entered an additional conviction for crimes against humanity for conduct characterized as forced marriage and forced sexual intercourse with regard to male victims who had been forced to commit such acts. The sentence of life imprisonment imposed on Khieu Samphan in cases 002/01 and 002/02 was the maximum sentence allowed by law. The issuance of the full written judgment in case 002/02 brought that case to a close.

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

11. In case 003, the former Commander of Division 164, Meas Muth, was charged by the international co-investigating judge in March 2015 and additional charges were laid against him in December 2015. In case 004, the former Preah Net Preah District Secretary and member of the Sector 5 Committee, Im Chaem, and the former Sector 41 Secretary, Ao An, were formally charged by the international co-investigating judge in March 2015. Additional charges against Ao An were announced in March 2016. The former Secretary of Sectors 1, 3, 4 and 13, Yim Tith, the last suspect in case 004, was charged by the international co-investigating judge in December 2015. Case 004 was 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.

12. 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.

13. In cases 003, 004 and 004/02, the two co-investigating judges issued separate closing orders. While the international co-investigating judge indicted the three accused (Meas Muth and Yim Tith for genocide, crimes against humanity, war crimes and domestic crimes; and Ao An for genocide, crimes against humanity and domestic crimes), the national co-investigating judge dismissed the three cases for lack of personal jurisdiction. Submissions on appeal against the closing orders were filed in all three cases.

14. On 19 December 2019, the Pre-Trial Chamber issued its considerations on the appeals against the closing orders in case 004/02 against Ao An, unanimously declaring that the issuance by the co-investigating judges of the two conflicting closing orders had been 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. Following submissions made by the parties, the Supreme Court Chamber terminated the case against Ao An on 10 August 2020, holding that the unanimous finding by the Pre-Trial Chamber meant that neither closing order was valid. The co-investigating judges sealed and archived the case file on 14 August 2020, which concluded the judicial proceedings in case 004/02.

15. In respect of case 003 against Meas Muth, on 7 April 2021, the Pre-Trial Chamber issued its considerations on the appeals against the closing orders, unanimously declaring that issuance of the two conflicting closing orders by the co-investigating judges had been illegal and that the Chamber had not attained the required majority of four affirmative votes to reach a decision based on common reasoning on the merits. Following submissions made by the parties, the Supreme Court Chamber determined on 17 December 2021 that, in the absence of a definitive and enforceable indictment, case 003 was terminated. On 20 December 2021, the co-investigating judges sealed and archived case 003, concluding judicial proceedings in the case.

16. In respect of case 004 against Yim Tith, on 17 September 2021, the Pre-Trial Chamber issued its considerations on the appeals against the closing orders, unanimously declaring that the issuance of the two conflicting closing orders by the co-investigating judges had been illegal and that the Chamber had not attained the required majority of four affirmative votes to reach a decision based on common reasoning on the merits. Following submissions made by the parties, the Supreme Court Chamber determined on 20 October 2021 that, in the absence of a definitive and enforceable indictment, proceedings in the case were terminated. On 29 December 2021, the co-investigating judges sealed and archived case 004, concluding judicial proceedings in the case.

IV. Transitional measures

17. In accordance with article 1 of the Addendum, following the completion of the proceedings in case 004 on 29 December 2021, all judges of the Pre-Trial Chamber, Trial Chamber and Office of the Co-Investigating Judges have been de-installed from the Extraordinary Chambers. Since their de-installation, those judges have been working remotely and renumarated on a pro rata basis, as required.

18. Steps were taken in parallel to continue contouring personnel requirements to the reduced operational requirements throughout the Extraordinary Chambers, including all chambers, the Office of the Co-Investigating Judges, the Office of the Co-Prosecutors and the Office of Administration, resulting in a reduction of personnel throughout all offices in line with the judicial workload at any given time.

19. In anticipation of the commencement of the residual phase, the United Nations and the Royal Government of Cambodia entered into discussions regarding the relocation of the Extraordinary Chambers to new premises which would accord with the substantially reduced residual functions, as well as discussions on the issue of potential revisions with respect to supplementary agreements related to the provision of utilities and facilities and security matters, in line with the Addendum. In March 2022, a facilities assessment and a security assessment of the potential new premises were undertaken. In July 2022, members of the Principal Donors Group and a representative of the Office of Legal Affairs visited the Extraordinary Chambers to engage in discussions regarding the residual phase of the Chambers as well as to view the premises proposed by the Government. In August 2022, the United Nations agreed to accept the premises offered by the Royal Government of Cambodia and work was undertaken to ensure that the new premises would meet the requirements under the residual phase of the Extraordinary Chambers, including with respect to their archive repository.

20. The residual premises are located in central Phnom Penh. Compared with the previous location of the premises, that central location permits easier and wider public access to the Extraordinary Chambers, where their archives can be searched and inquiries can be made. The residual premises will serve as a prominent base for the dissemination of information to the public regarding the Chambers and the conducting of outreach work. In addition, the Chambers are co-located with the Legal Documentation Centre of Cambodia, which serves as the repository of the country's set of the archives of the Extraordinary Chambers.

V. Implementation of residual functions

21. In accordance with article 2, paragraph 1, of the Addendum, the Extraordinary Chambers commenced their residual functions as of 1 January 2023, following the issuance by the Supreme Court Chamber of the full written judgment in case 002/02.

22. As reflected in the Addendum, during the residual phase, the Extraordinary Chambers will carry out the following essential residual functions: review applications and conduct proceedings for revision of final judgments; provide for the protection of victims and witnesses; sanction or refer to the appropriate authorities any wilful interference with the administration of justice or provision of false testimony; supervise the enforcement of sentences as well as monitor the treatment of convicted prisoners; maintain, preserve and manage their archives, including the declassification of documents and materials; respond to requests for access to documents; disseminate information to the public regarding the Chambers; and monitor the enforcement of reparations awarded to civil parties, as required.

23. Under the Addendum, the initial period of residual functions is three years. The United Nations and the Royal Government of Cambodia have agreed to subsequently review the progress of the residual functions and thereafter determine whether the Extraordinary Chambers will continue to perform those functions, or some part thereof, and for how long, after that initial period.

24. On 30 January 2023, the convicted person, Khieu Samphan, was transferred to Kandal Provincial Prison under the custody of the national authorities in accordance with the Internal Rules of the Extraordinary Chambers. As part of their residual functions, the Extraordinary Chambers will supervise the enforcement of the life sentence of Khieu Samphan and monitor his treatment.

25. Further to the issuance of the full written judgment in case 002/02, defence and civil party representatives will inform their clients of the outcomes of the case. The

civil party lead co-lawyers, civil party lawyers and the Victims Support Section have begun reaching out to 3,869 judicially recognized civil parties or their legal successors to inform them about their individual civil claims before the Extraordinary Chambers. Victims whose applications were not successful, such as those related to cases 003 and 004, are also being contacted as part of wider information dissemination initiatives during the period of residual functions. This work will continue throughout 2023.

26. Within the first quarter of 2023, the Supreme Court Chamber will complete its review of case file documents for declassification in accordance with practice directions, an essential step in ensuring that the archives of the Extraordinary Chambers are accessible by the public as broadly as possible. Upon completion of this review, parties may continue to make ad hoc requests for declassification throughout the residual period. The Witness and Expert Support Unit continues to monitor all protective measures ordered by the Chambers and is participating in the notification and information initiatives described in paragraph 25 above.

27. The Records and Archive Unit is currently focusing on permanently archiving case file documents in line with international standards as well as the creation of a permanent repository for the archives of the Extraordinary Chambers in conformity with relevant international standards. A resource centre, which is to serve as the public's point of access to the Extraordinary Chambers, including their archives, will be outfitted and opened in 2023 at the residual premises. The centre will be managed by Records and Archives Unit personnel, in collaboration with local partners, and will provide on-site access to the public archives of the Chambers, as well as collections and resources such as legal texts and databases and in-person trainings and consultations with resource personnel on access to these materials. Work will also commence on the production of a new legacy website to permanently host information about the Chambers and access to all public documents produced during the 16 years of judicial operation in a user-friendly format in the three official languages of the Chambers.

28. Further to article 3 of the Addendum, both the United Nations and the Royal Government of Cambodia are to receive a complete set of the public archives of the Extraordinary Chambers upon completion of proceedings under article 1 of the Agreement. Discussions are under way between the United Nations and the Chambers on how to organize the transfer of those archives to the United Nations in the most cost-efficient manner.

29. Dissemination activities in 2023 will focus on the core work of the Extraordinary Chambers as a judicial institution, victims and outreach. The activities will be sequenced throughout the period of residual functions and will include (a) production and publication of factual guides on the inception of the Chambers, their operations and their non-judicial outputs and on legal terminology to enhance the general population's understanding of the vocabulary used in the judicial documents; (b) informational materials for dissemination to victims; (c) publication of statements made in court by individual victims; (d) arrangements in cooperation with local partners for participation of the rural population in study tours of the Extraordinary Chambers, the Tuol Sleng museum and the Choeung Ek "killing fields"; (e) continuation of the ongoing dialogue with victims organizations on cooperation on residual initiatives; (f) production of audiovisual material to be disseminated through digital platforms so as to reach the younger population and those residing outside Phnom Penh; and (g) mobile exhibitions for the dissemination of information on the Chambers, which will be accessible online and displayed outside Phnom Penh through partner organizations.

VI. Logistic, administrative and legal steps undertaken to implement the Addendum

30. Further to article 2, paragraph 5, of the Addendum, with the exception of the judges of the Supreme Court Chamber, all of the judges, co-prosecutors, defence counsels and civil party lead co-lawyers are working on a remote basis except when their functions require their attendance in person at the Extraordinary Chambers and are being remunerated on a pro rata basis when required to perform residual functions.

31. The Secretary-General issued new terms and conditions of service for the residual period for the international judges and international co-prosecutors to reflect the provisions set out in article 2, paragraph 5, of the Addendum.

32. In line with the reduced functions and operations of the Extraordinary Chambers, the staffing tables have been revised to ensure that only staff who are essential to the performance of the functions envisaged are retained at any given time. For 2023, there are 11 positions remaining in the international component of the Chambers and 30 positions in the national component, representing a reduction of 132 staff since 2022. It is envisaged that a level of staffing similar to that in 2023 will be required in 2024 and 2025.

33. On 29 December 2022, the Extraordinary Chambers were relocated to their residual premises, which are provided by the Royal Government of Cambodia, following the handover of the former judicial compound to the national authorities. Together with the transfer of the convicted person Khieu Samphan to Kandal Provincial Prison, the detention facility of the Chambers was returned to the national authorities. As of 1 February 2023, the Extraordinary Chambers no longer occupy any part of their former premises. Work is being undertaken to make the residual premises fit for the establishment of the archives repository and the public resource centre, including structural changes to support the weight and tropical climate requirements of archiving infrastructure.

34. The United Nations and the Royal Government of Cambodia continue to undertake negotiations regarding the revision of two supplementary agreements related to the provision of utilities and facilities and security matters in line with the Addendum. It is expected that these revisions will be concluded in the first half of 2023.