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Agenda item 92

Extraordinary Chambers in the Courts of Cambodia – residual functions

**Australia, Belgium, Cambodia, France, Japan, Norway, Republic of Korea,
Sweden, United Kingdom of Great Britain and Northern Ireland and United
States of America: draft resolution**

Extraordinary Chambers in the Courts of Cambodia – residual functions

The General Assembly,

Recalling its resolution [75/257](#) of 31 December 2020,

Recalling also that the expenses of the Extraordinary Chambers in the Courts of Cambodia shall be defrayed in accordance with the relevant provisions 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 (the Agreement)¹ and that the expenses to be defrayed by the United Nations in accordance with those provisions shall be borne by voluntary contributions from the international community, in accordance with resolution [57/228](#) B of 13 May 2003,

Welcoming the efforts of the Secretary-General and the Royal Government of Cambodia to conclude a 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,

Taking note of the report of the Secretary-General,²

1. *Approves* the draft Addendum to the Agreement on the Transitional Arrangements and the Completion of Work of the Extraordinary Chambers contained in the annex to the present resolution;
2. *Urges* the Secretary-General and the Royal Government of Cambodia to take all the measures necessary to allow the draft Addendum referred to in paragraph 1 to enter into force in a timely manner, and to implement it fully after its entry into force;
3. *Requests* the Secretary-General to report to the General Assembly at its seventy-seventh session on the implementation of the present resolution.

¹ United Nations, *Treaty Series*, vol. 2329, No. 41723.

² [A/75/809](#).



Annex

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
on
the Transitional Arrangements and the Completion of Work of the
Extraordinary Chambers

Recalling 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, done on 6 June 2003 at Phnom Penh (hereinafter the “Agreement”);

Whereas the parties to the Agreement agree that upon the completion of all judicial proceedings under Article 1 of the Agreement, the Extraordinary Chambers will need to carry out a number of essential residual functions identified in this Addendum;

Whereas the parties to the Agreement are convinced that in view of the substantially reduced nature of the residual functions, the Extraordinary Chambers should be comprised of such number of staff that is commensurate with its reduced functions;

Whereas the parties to the Agreement have engaged in consultations on transitional arrangements for the completion of the work of the Extraordinary Chambers and on the performance of residual functions;

Now therefore the United Nations and the Royal Government of Cambodia have agreed as follows:

Article 1

Transitional Arrangements

Upon the completion of proceedings before any chamber of the Extraordinary Chambers, all judges of that Chamber shall be de-installed from the Extraordinary Chambers. Following their de-installation, the judges shall be remunerated on a pro-rata basis for any work performed, and they shall work remotely except when required to be present at the Extraordinary Chambers at the request of the President of the Chamber.

Article 2

Residual Functions

1. Upon the completion of the proceedings under Article 1 of the Agreement, including any appeals related thereto before the Supreme Court Chamber, the Extraordinary Chambers shall continue to carry out the following functions for an initial period of three years: 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 its archives, including the declassification of documents and materials; respond to requests for access to documents; disseminate information to the public regarding the Extraordinary Chambers; and monitor the enforcement of reparations awarded to Civil Parties, as required.

2. The United Nations and the Royal Government of Cambodia shall review the progress of these functions after the initial three-year period, following which the Extraordinary Chambers will continue to perform these functions, or some part thereof, for a further period to be determined between the parties.
3. An application for revision of final judgment may only be filed during the lifetime of the convicted person by the convicted person or the co-prosecutors.
4. If a convicted person is eligible for commutation of sentence, early release, or parole, the Royal Government of Cambodia shall notify the Extraordinary Chambers accordingly. There shall only be a commutation of sentence, early release, or parole if the Supreme Court Chamber so decides on the basis of the interests of justice and general principles of law.
5. Judges, co-prosecutors, defence counsels and Civil Party Lead Co-Lawyers shall be remunerated on a pro-rata basis when required to perform the functions identified in paragraph 1 of this article, and they shall work remotely except when their functions require their attendance in person at the Extraordinary Chambers. In the case of the judges, this would be at the request of the President of their respective chambers. Any judicial plenary sessions shall be conducted remotely and amendments of the Internal Rules shall be decided remotely by written procedure.
6. Upon the commencement of the functions identified in paragraph 1 of this article, the Secretary-General shall undertake to provide a list of nominees for international judges further to paragraph 5 of Article 3 of the Agreement to ensure that there are a sufficient number of international judges available to carry out the functions under paragraph 1 of this article should any appointed international judge be unavailable to serve when required. The Royal Government of Cambodia shall similarly ensure the availability of Cambodian judges should any appointed Cambodian judge be unavailable to serve when required.

Article 3

Archives

1. The United Nations and the Royal Government of Cambodia agree that it is vital to ensure that the archives of the Extraordinary Chambers are preserved in accordance with international standards and that they are as broadly accessible as possible.
2. For the purpose of preserving and promoting the legacy of the Extraordinary Chambers, as part of its residual functions, the Extraordinary Chambers shall provide electronic access to, and printed copies of, the public archives to the public.

3. The United Nations and the Royal Government of Cambodia shall each have a complete set of the archives of the Extraordinary Chambers, including all documents and materials. Upon the completion of the proceedings under Article 1 of the Agreement, the United Nations and the Royal Government of Cambodia shall each receive a complete set of the public archives. Upon the completion of the residual functions under Article 2 of this Addendum, the United Nations and the Royal Government of Cambodia shall each receive any additional public documents and materials, as well as a complete set of classified documents and materials.

Article 4 **Approval**

To be binding on the parties, the present Addendum must be approved by the General Assembly of the United Nations and ratified by the Kingdom of Cambodia. The Royal Government of Cambodia will make its best endeavors to obtain this ratification by the earliest possible date.

Article 5 **Application within Cambodia**

The present Addendum shall apply as law within the Kingdom of Cambodia following its ratification in accordance with the relevant provisions of the internal law of the Kingdom of Cambodia regarding competence to conclude treaties.

Article 6 **Entry into force**

The present Addendum shall enter into force on the day after both parties have notified each other in writing that the legal requirements for the entry into force have been complied with.

Done at [place] on [day, month] 2021 in two originals in both the Khmer and English languages. In a case of divergence, the English text shall prevail.

For the Royal Government of Cambodia

For the United Nations
