

**Presentation by Deputy Prime Minister Sok An to the National Assembly
on
Ratification of the Agreement between Cambodia and the United Nations and
Amendments to the 2001 Law concerning the establishment of Extraordinary
Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed
During the Period of Democratic Kampuchea**

His Royal Highness the President of the National Assembly
Samdech First Deputy President and Your Excellency Second Deputy President
Honourable Members of the National Assembly
Your Excellencies Diplomatic Representatives in Attendance

Today I have the honour to bring before the Third Legislature of the National Assembly one of the three top priority items identified during the first cabinet meeting of the new the Royal Cambodian government. We are at last in a position to finalise the legislative aspects of a matter of critical importance to the people of Cambodia -- a matter that has remained unresolved for a quarter of a century.

We bring to the floor of the National Assembly two Draft Laws that are integrally related:

Draft Law on Ratification 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

and

Draft Law on Amendments to the Law on the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea

In 2001 the Second Legislature of the National Assembly adopted the draft law that was promulgated on 10 August of that year by his Majesty King Norodom Sihanouk. The purpose of today's legislation remains as I outlined in my presentation to the National Assembly at that time. Consistently, since we sought the assistance of the United Nations in July 1997, and even before that time, our Government has held to the following principles as its guiding lights:

The first principle is to provide justice in the memory of the millions of Cambodians who lost their lives, and for those victims who survived that black chapter of Cambodia's history.

The second principle is to maintain peace, political stability and national unification, which Cambodia has achieved in recent years.

The third principle is respect for our national sovereignty – one of the fundamental principles in the Charter of the United Nations. Respect for the principle of national sovereignty has been embodied in the Law and Agreement as follows:

Appointment of judges: all the judges in the Extraordinary Chambers shall be appointed by the Cambodian Supreme Council of the Magistracy. The draft law stipulates that the Secretary-General of the United Nations shall nominate foreign judges to be appointed as trial judges by the Supreme Council of the Magistracy.

Composition of the trial chambers -- the trial chambers will be composed of Cambodian judges in the majority. If there are 5 judges, 3 will be Cambodian; if 7, 4 Cambodian. To balance this Cambodian majority decisions will be made based on a "Super Majority", which requires, for instance, 4 votes out of 5 to make a decision.

Initiation from within –the history of international criminal tribunals shows they were organized by foreign judges and initiated and imposed from without. But our mechanism, known as the Extraordinary Chambers, is organized within the structure of the Cambodian courts. We have invited the international community to join with us.

Inclusion of both international and domestic law – the Extraordinary Chambers has three crimes under domestic law (murder, torture and religious prosecution) as well as five crimes under international law (genocide, crimes against humanity, war crimes, crimes against cultural property and crimes against internationally protected persons).

These three principles are reflected in the Law adopted in 2001 and the Agreement between Cambodia and the United Nations, signed on 6 June 2003 at the Chaktomuk Theatre by myself and His Excellency Hans Corell, then Legal Counsel and Under Secretary-General of the United Nations.

The Council of Ministers approved this Agreement a week later and sent it to the previous National Assembly. Due to the political developments over the past year, it is only now that we once again have a National Assembly in session and are able to move forward to ratify this important Agreement.

This Agreement differs in certain respects from the Law we promulgated in 2001, and in order to harmonise the two documents we are therefore bringing before you at the same time as ratifying the Agreement a Draft Law proposing amendments to the 2001 Law.

Before outlining the details of the proposed amendments, allow me to bring to the attention of honourable members of the National Assembly developments that have occurred since the signing of the Agreement between the United Nations and the Royal Government of Cambodia just over a year ago.

Preparations for the establishment of the Extraordinary Chambers

Preparations for the establishment of the Extraordinary Chambers have continued apace with numerous meetings and discussions held in both New York and Phnom Penh between three parties:

- the United Nations, represented by a special unit established on 1 October 2003 known as United Nations Assistance to the Khmer Rouge Trials (UNAKRT) led by Mr Karsten Herrel;
- the Royal Government of Cambodia, represented by the Task Force for Cooperation with Foreign Legal Experts and Preparation of the Proceedings for the Trial of Senior Khmer Rouge Leaders and its Secretariat, supplemented by representatives of the Ministry of Economy and Finance, the Ministry of Interior and the Ministry of Land Management, Urban Planning and Construction;
- some twenty potential donor countries, organised into the Group of Interested States (GIS), of which the most active have been Japan, France, Australia, the United Kingdom and Sweden.

During this interim period the Task Force has received two United Nations technical delegations led by Mr Karsten Herrel, in December 2003 and March 2004. Preparations are under way to receive a third delegation within the coming weeks.

The Royal Government of Cambodia has designated two landmark buildings for the operations of the Extraordinary Chambers: Chaktomuk Theatre for the court room and the National Cultural Centre for the office accommodation.

Budget

The Royal Government of Cambodia has agreed that the share of the budget to come from our own resources will cover premises, national salaries and various other indirect and opportunity costs.

In addition to providing the premises (both Chaktomuk Theatre and National Cultural Centre), the Royal Government of Cambodia will provide the national salaries for the expected 200 Cambodian personnel and the utility costs for the premises, and will shoulder a number of indirect and opportunity costs, such as increased security

throughout the country, costs of detention and medical attention for accused and convicted persons. The total anticipated for these expenditures over the next three years is \$1.4 million from the national budget and a further \$6 million in indirect costs. This is equal to well over 10% of the budget as currently estimated.

In March 2004 agreement was reached on a three-year budget of \$53 million. This was raised to \$64 million by the UNAKRT after their return to New York. After considering various suggestions for reduction proposed by potential donors, the total was reduced to \$57 million, with some further reductions now being discussed.

The overall budget has been drawn up with two separate columns reflecting the responsibility to be taken by the United Nations on the one hand, and the Royal Government of Cambodia on the other. Donor countries therefore will have the choice of whether to make voluntary contributions to the United Nations Trust Fund or bilateral contributions to the Royal Government of Cambodia. From the start of the budget discussions, we have indicated that we will need to seek donor support to assist us to meet obligations assigned to us.

The balance between the two columns was set in March 2004 at approximately 75:25. However, donor countries, particularly Japan, suggested that some \$10 million be transferred from the United Nations side to the Cambodian side bringing the ratio closer to 60:40.

We have stated that we willing to be flexible as to whether items are allocated to the United Nations or to the Cambodian side of the overall budget provided that:

- a) any such changes are within the terms of the Agreement already signed between the two parties and do not require any amendment; and
- b) that in accepting items to be moved to its side of the budget the Royal Government of Cambodia does not thereby indicate it can accept financial responsibility for meeting more costs from its national budget.

It is hoped that the budget will soon be finalised and the Secretary-General will present a report and make an appeal for funds – hopefully by the end of this month. Already a number of countries have indicated that they have the intention to contribute to the costs of the Extraordinary Chambers, whether via the United Nations Trust Fund or via the Royal Government of Cambodia. So far only Australia has made a specific commitment (A\$3m), while other countries are waiting until the final figures are known until they announce what they wish to contribute either in cash or in kind.

Other planning activities

In addition to budgetary and operational planning, in recent months our Cambodian Government Task Force has forged ahead on other aspects of preparing for the Extraordinary Chambers.

Together with the Royal School for Judges and Prosecutors and with funding from UNDP, two-week training programs in international humanitarian law have been held for 30 judges and prosecutors and for 30 lawyers. An introductory booklet explaining the background, purpose and structure of the Extraordinary Chambers has been prepared in both Khmer and English, and a Legal Compendium of both Cambodian and international laws of relevance to the Extraordinary Chambers to be distributed to interested parties in CD format. These last two projects have been funded by the Australian Legal Resources Institute and AusAID.

In addition, members of the Task Force have participated in a 12-part radio program on the Extraordinary Chambers edited and broadcast by the Women's Media Centre and to be published also in newspaper format with funding from the Danish Institute for Human Rights.

In such ways we are working to keep the people of our country of developments towards the establishment of the Extraordinary Chambers in the coming months.

Explanation of the recommended amendments

I wish now to turn to the specific Draft Law proposing amendments to the Law on the Establishment of the Extraordinary Chambers, passed unanimously before it was promulgated on 10 August 2001.

In no way do the proposed amendments change the spirit or essential content of the Extraordinary Chambers Law as approved by the National Assembly, reviewed by the Senate and the Constitutional Council, and promulgated on 10 August 2001. The following amendments are solely for the purpose of harmonising the texts of the Agreement and the Law:

a) simplification of the structure

The major proposed amendment to the Law is to change the structure of the Extraordinary Chambers from three to two levels. This change was agreed to in a letter from the Prime Minister to the Secretary-General of the United Nations on 28 June 2002 in order to achieve financial and administrative simplification.

It has been agreed that the Extraordinary Chambers will now consist of only two chambers: as before it will have a Trial Court (consisting of 3 Cambodian judges and 2 foreign judges); the former Appeals Court and Supreme Court will be merged into a single Supreme Court Chamber (consisting of 4 Cambodian judges and 3 foreign judges). This Supreme Court Chamber will serve both as the appellate court and as the court of final instance.

As a result of this agreed change, amendments need to be made to all Articles in the Law that refer to the number of levels of the court, their functions, and also the numbers of judges to be appointed.
(Articles 2, 9, 11, 14, 17, 18, 36, 37)

b) affirming that the Agreement will have the force of law in Cambodia

During negotiations between the Royal Government of Cambodia and the United Nations it was agreed that once it has been ratified according to the normal procedures for ratification in the Kingdom of Cambodia, the Agreement should itself have the force of Law in Cambodia.

(Additional Article 47 bis)

c) assuring full rights for defendants and immunities for judicial officers and defence counsel

While the 2001 Law gave a number of such assurances, these have been spelled out more precisely in the Agreement, particularly to incorporate the exact wording of Articles 14 and 15 of the International Covenant on Civil and Political Rights.

(Articles 24, 33, 34, 35 and 42)

d) clarifying when international procedures may be utilised in the Extraordinary Chambers

The 2001 Law provided that the procedures to be followed in the Extraordinary Chambers should be those currently in force in Cambodia, adding that if necessary, and if there are lacunae in these existing procedures, guidance may be sought in procedural rules established at the international level.

The Agreement gives more precision on when such guidance may be sought, and so it is proposed to amend the Law to harmonise the two texts by adding the words “where Cambodian law does not deal with a particular matter, or where there is uncertainty regarding the interpretation or application of a relevant rule of Cambodian law, or where there is a question regarding the consistency of such a rule with international standards, guidance may also be sought in procedural rules established at the international level”.

(Articles 20, 23 and 33)

e) clarifying the situation regarding amnesty and pardon

The 2001 Law stated clearly that the Royal Government of Cambodia shall not request an amnesty or pardon for any persons who may be investigated for or convicted in the Extraordinary Chambers. The Agreement clarifies the situation, and it proposed to add the words: “the scope of any amnesty or pardon granted prior to the enactment of this Law is a matter to be decided by the Extraordinary Chambers”.

(Article 40)

f) certain other small amendments

adding that the judges to be appointed to the Extraordinary Chambers should have experience that includes international humanitarian law and human rights law (Article 10);

clarifying that foreign judges, investigating judges and prosecutors will be selected to replace any foreign investigating judges and prosecutors whose positions become vacant (Articles 11, 21 and 27) and that the Secretary-General of the United Nations may supplement the lists of candidates for these position (Article 46);

providing that the foreign Co-Prosecutor has the right to appoint his or her deputy foreign Co-Prosecutor/s (Article 22)

clarifying that the provisions of Article 33, 34 and 35 shall apply *mutatis mutandis* to the Supreme Court Chamber as well as the Trial Court (Article 37 bis);

clarifying the inviolability of any archives used by any part of the Extraordinary Chambers - including the co-investigating judges, the co-prosecutors, the Extraordinary Chambers, the Pre-Trial Chamber and the Office of Administration (Article 42);

removing the words "Trust Fund" to give more scope for the United Nations to provide funding through various mechanisms (Article 44);

removing the provision that salaries of foreign personnel "shall be borne by the countries that contribute them" (Article 44.3);

reducing the number of official working languages of the Extraordinary Chambers to three (Article 45);

In addition to those amendments mentioned above, which harmonise the Law and the Agreement, the Council of Ministers has recommended extension of the statute of limitations by a further 10 years. Under the 2001 Law this would begin to expire in 2005, but we wish to ensure that the Extraordinary Chambers will have the right to issue indictments throughout the period of their functioning, and so we propose a further 10 years' extension.

Conclusion

We are now coming to the end of a very, very long road. Over a quarter of a century ago, the Khmer Rouge leadership was ousted from its cruel control of our country.

As our Prime Minister, Samdech Hun Sen, has recently stated: "Not a single one of our people has been spared from the ravages brought upon our country during the three years, eight months and twenty days that the Khmer Rouge held power under the regime known as Democratic Kampuchea. Those born after 1979, who did not directly experience these crimes, nevertheless still bear a heavy burden. They see their parents and older brothers and sisters in pain and grief. They have shared in the difficulties of rebuilding our society from Year Zero without the benefit of the wisdom and experience of those who were lost. It

continues to be a long, hard struggle and we all know that Cambodia today lags far behind our neighbours in health, education and income levels.

Now the time has come for those responsible for planning and directing this horror to be held accountable for their crimes. Following years of negotiation with the United Nations, we are on the brink of establishing Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea.

These crimes were committed not just against the people of Cambodia but against humanity as a whole. It is therefore fitting that both Cambodian and international judges, prosecutors and lawyers will work together in the task of trying those most responsible and, in so doing, helping to build a culture that will prevent the recurrence of such crimes anywhere in the world.”

The arrangement we have crafted together with the United Nations has the support of the international community. Not a single country has spoken against the formula we have devised – sometimes referred to as the “Cambodian model” – which may stand as an example to others in the future, combining as it does both international and domestic input in terms of law, judges, prosecutors, lawyers, personnel and funding – a national court with international characteristics as agreed between Prime Minister Hun Sen and Secretary-General Kofi Annan.

I therefore commend to honourable members of the National Assembly these two Draft Laws – to ratify the Agreement between Cambodia and the United Nations and to amend the 2001 Law in order to achieve harmonisation of the two documents.

Thank you

WORDS OF THANKS FOLLOWING THE VOTE

We members of the National Assembly of the 3rd Legislature have just taken a significant step by amending the 2001 Law on the Establishment of the Extraordinary Chambers and by ratifying 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.

I wish to extend my thanks to all members who participated in our work today, especially those who made valuable comments and contributions to the debate, and to the Members of the Legislative and Foreign Affairs Committees, who examined and commented on the drafts.

I take this opportunity to pay special tribute to my colleagues in the Cabinet and in the Royal Government Task Force who deliberated on the drafts, and to those officials and staff of the Office of the Council of Ministers, especially in the Secretariat of the Task Force, who have supported this work through more than five years of negotiation and preparation for the Extraordinary Chambers.

I would like to present to each member of the National Assembly a copy of the information booklet prepared by our Secretariat, which I mentioned in my Presentation Speech this morning. We have produced *An Introduction to the Khmer Rouge Trials* in both Khmer and English, and aim to distribute it throughout the country. It is written in plain language and will hopefully answer people's questions about the background, objectives and structure of the Extraordinary Chambers, encouraging them to support and follow actively in the judicial accounting process that will take place over the coming years.

As we reflect on this historic step we have taken today in the process of finalising the legislative process of establishing the Extraordinary Chambers may I ask members to pause and consider the fact that we are now in the period of Pchhum Ben, a time when all Cambodians remember and pay homage to our family and friends who have passed away. As we leave this Chamber today, may we dedicate ourselves to finally discharging the task that has been left by history to our generation – to convert this legislation into reality, so that justice may be rendered to all those who lost their lives during the time of Democratic Kampuchea.

Thank you