



**STATEMENT BY THE CAMBODIAN DELEGATION TO THE UNITED NATIONS
REGARDING THE ESTABLISHMENT OF
EXTRAORDINARY CHAMBERS WITHIN THE COURTS OF CAMBODIA**

On 7 January this week Cambodia commemorated the 24th anniversary of the overthrow of the Khmer Rouge regime in which over a quarter of the population died. Cambodia takes seriously its obligations under the Genocide Convention to prosecute those responsible for the massive human rights violations committed by the Khmer Rouge between 1975 and 1979.

Towards this end, responding to the invitation of the Secretary-General, His Excellency Kofi Annan, a Cambodian delegation led by His Excellency Sok An Senior Minister in Charge of the Council of Ministers has come to New York and has engaged in seven meetings – one with the Secretary-General himself, and six with representatives of the United Nations Secretariat, led by His Excellency Hans Corell, Legal Counsel, preparing for a resumption of negotiations for Khmer Rouge Trials for these crimes, in accordance with the General Assembly Resolution 57/228 of 18 December 2002.

The Cambodian delegation wishes to take the opportunity of the conclusion of these talks to address some of the issues and concerns that have been raised in regard to this process.

1. We re-affirm emphatically that the Royal Government of Cambodia is committed to conducting the Khmer Rouge trials in compliance with international standards of justice, fairness and due process of the law. Since 1979, when we overthrew the Khmer Rouge regime, we have struggled for ways to address these crimes. We have sought to achieve truth, justice and reconciliation, a contradictory but necessary synthesis, without which our people cannot escape from the aftermath of the genocide and go on to build a peaceful society, developing and benefiting from our rich natural and human resources. For the first time in our contemporary history our entire country is now at peace and unified – an enormous achievement.

The June 1997 request by the then Co-Prime Ministers for UN help in carrying out this task marked the commencement of the latest stage in this long search for truth, justice and reconciliation. In 1979 we held the People's Revolutionary Tribunal – the world's first genocide trial -- in which we invited international jurists to participate. Unfortunately, due in part to weaknesses in that process but, above all, due to the political isolation of our government at the time, the testimony and the verdicts were simply ignored outside our country. The Khmer Rouge continued to be recognised and to be seated in the United Nations, and we ourselves were continue to find ways to address this problem. Now as we throw our efforts into this latest effort to seek justice, this time hopefully in partnership with the United Nations, we keep in our minds firmly that this must not damage the process of reconciliation.

The Paris Peace Agreements of 1991 accorded political legitimacy to the Khmer Rouge and, when UNTAC left Cambodia in 1993, the new coalition government was left to face the Khmer Rouge continuing policy of civil war and destabilisation. We then launched a multi-faceted strategy involving political, legal, economic and military campaigns, including the 1994 legislation to Outlaw the Khmer

Rouge, and efforts to encourage its members to defect and split as part of what Prime Minister Hun Sen has described as a “win-win” policy.

By the end of December 1998 we had managed to put an end to the Khmer Rouge political and military structure, and were faced with the twin tasks of national reconciliation and justice. Cambodia can perhaps offer to others the lessons of our experience in the long and complex process of reconciliation. Today former Khmer Rouge have put down their guns and have recommenced their lives within the general community, and the former factions have taken up the challenge of working together to develop the country.

When the Cambodian Co-Prime Ministers requested the United Nations for assistance in organising the process for Khmer Rouge trial, it was an appeal for assistance but not for substitution of our institutions, which have continued to pursue these efforts. Two significant Khmer Rouge perpetrators of serious crimes are now in custody awaiting the trials that we are trying to establish. In our normal domestic courts we have recently held trials of the three Khmer Rouge figures responsible for the 1994 train ambush and murder of at least 13 Cambodians and the detention and subsequent execution of three foreigners. All three have been sentenced to life imprisonment, the maximum penalty under the Cambodian Constitution, and the outcome has been welcomed by the families and governments of their countries.

The motivation we have shown domestically in grappling with the Khmer Rouge issue has also been applied to our engagement in negotiations with the UN since 1999, and have formed the bedrock for the historic compromises reached to establish a jurisdiction that will serve not only to meet the needs of the Cambodian people, but also can be a model for all humankind. Such a result could not be achieved without sustained and high-level serious commitment on our part.

2. We have been criticised for the time these negotiations have taken. We are more than mindful that justice delayed is justice denied, and that we continue to pay a high price for every day of the 24 years’ delay in bringing to justice the architects and perpetrators of the crimes. For our part, the Cambodian national law establishing Extraordinary Chambers to prosecute the Khmer Rouge crimes was promulgated on 10 August 2001, just two years after the first draft was put on the table when our negotiations with the UN commenced in August 1999. This is by no means an unusual length of time for a country to take to develop legislation, particularly of an unprecedented kind inviting foreign participation into the national courts, and on a matter of such sensitivity. The draft law was discussed by our Cabinet on three separate occasions, debated by legislative committees and the plenary sessions of both houses of our legislature, examined by our Constitutional Council, and finally promulgated by His Majesty the King and Head of State, according to the rule of law.

Some months’ delay was caused by the fact that the Constitutional Council ruled that the law was insufficiently clear that the maximum penalty was life imprisonment, and therefore could be in conflict with our Constitution, which explicitly outlaws the death penalty. As a result, the government amended the draft and re-submitted it for debate in the National Assembly and the Senate. It is important for us to recognise that our country is now undergoing a process of democratisation and that the Constitutional Council is one of the recently established institutions whose authority and decisions should be respected as part of this process.

Further, the justice we seek is restorative justice, contributing to the reconstruction and democratisation of our society as a whole. To embark on a process of prosecuting crimes for genocide and other crimes against humanity is not without risk, and so we have devoted enormous efforts to gaining the support of our people for this effort. The unanimous votes in the National Assembly and Senate for this legislation were

unprecedented, and testify to the results of this effort to reinforce and not jeopardise our fragile peace. Any estimation of time taken is of course subjective, but the past three years of negotiation must be viewed as part of this 24-year historic process, and can be compared with other countries which have taken more than years or even decades to attempt to deal with crimes of this nature.

3. We are acutely aware of the relative weakness of the Cambodian judiciary and legal system, resulting mainly from the blows inflicted on the entire Cambodian social fabric by the Khmer Rouge. Indeed, this was one of the principal reasons that we requested assistance from the UN in 1997. We wish, however, to refute the notion that our judiciary ought not to be conferred an active and significant role in the process of seeking justice regarding the most serious crimes in our nation's history.

We point to significant efforts that our government has taken towards legal and judicial reform, whose results are beginning to be seen. In the past year 40 new judges have been appointed, most with higher degrees in law, and the Royal School of Magistracy, which has been established in partnership with the French National School of Magistracy (ENM) of Bordeaux, one of the most highly respected legal educational institutions in Europe. We have taken measures from within our national budget to increase the salaries of our current judges 10 to 20 fold (1,000% and above), to help them resist pressures to seek a living wage outside the proper exercise of their judicial functions. The Supreme Council of the Magistracy has begun a process of inspection of all the courts and regulation and discipline of the judges and judicial officials. Judges, prosecutors and senior police officers have been able to participate in a series of seminars and workshops on various aspects of the law, including international standards. And recently the Cambodian Bar Association opened its training program which law graduates must attend before being admitted to the Bar as practising lawyers. These reforms give us confidence that we have sufficiently qualified and competent legal professionals to play the roles required in the forthcoming Khmer Rouge trials together with their international counterparts. Let us stress that we have requested not only international assistance but also international participation in the trials, and we have agreed to share with the international community the heavy task of judging the serious crimes committed in our own country by our own people. No decision will be taken without their full involvement and agreement.

As to our organisational capacity, Cambodia is this year taking its first turn as the Chair of Asean, and recently successfully hosted the Asean Summit and a series of associated meetings, including the Greater Mekong Subregion Summit attended by Heads of Government, Heads of State and Foreign Ministers from a number of countries. The extensive logistical and other demands of these meetings were capably handled by our security, protocol, press and other services, and we are confident we can likewise conduct the management of the Extraordinary Chambers efficiently and capably.

4. Some observers have questioned the credibility of the process prescribed in the Law to establish Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea. This Law, explicitly welcomed by the General Assembly in Resolution 57/228, provides for joint domestic and international participation at all stages of the prosecution, investigation and trial according to a carefully balanced formula that was developed since 1999 as a result of advice given during our negotiations from the United Nations Secretariat as well as by legal experts from a number of interested countries.

During this process we have engaged seriously in the negotiations, and have reached compromises along the way to arrive at a formula that truly reflects a joint enterprise in which one cannot speak of control by one side or the other, but rather an equilibrium giving full national and international participation in all stages of

the process, from prosecution, investigation and judgement. This process shall be conducted in full accordance with the most relevant international human rights instrument, namely Articles 14 and 15 of the International Covenant on Civil and Political Rights, of which Cambodia is a State Party. Our willingness to respond positively to reasonable proposals is shown in our recent acquiescence in the Secretary-General's proposal to reduce the number of chambers from three to two, in the interest of efficiency.

5. Several years of negotiations have formulated the personal, temporal and material jurisdiction for the Extraordinary Chambers. We should resist any proposal to change the nature of this jurisdiction by altering the balance in the relationship of the number of judges, prosecutors and investigating judges, the super-majority, or the Pre-Trial Chamber to settle any differences between them. When we commenced the negotiations in 1999 our two positions were far apart. It would be unthinkable now to return to these positions and abandon our hard-won gains in the jurisdiction.

We are confident that the "Cambodian model" is not only credible, but represents a historic milestone in international humanitarian law, now moving away from externally imposed and run International Criminal Tribunals as have been seen over half a century in Nuremberg and Tokyo and more recently The Hague and Arusha towards complementarity, encouraging each country to exercise justice at the national level in a manner that meets international standards, and accords with our responsibility under the principal instruments, especially the Genocide Convention.

In conclusion, the Cambodian delegation is pleased to have concluded these exploratory meetings, which have reached substantial understanding on large parts of the Agreement to be signed by both parties, designed to implement Resolution 57/228, adopted by the UNGA on 18 December 2002, which *welcomed the Law establishing the Extraordinary Chambers* and requested the Secretary-General *to conclude an agreement with the Government of Cambodia, based on previous negotiations on the establishment of the Extraordinary Chambers consistent with the provisions of the present resolution, so that the Extraordinary Chambers may begin to function promptly.*

In our discussions this week we have proposed that the Agreement should have the following character: providing the legal basis for international participation in the Extraordinary Chambers; setting out the principles for cooperation; establishing the modalities for this cooperation; and establishing the framework for implementation of the Law on the Extraordinary Chambers; according to the principle of complementarity between Cambodia and the United Nations.

Following these exploratory meetings held in New York, we have invited the Secretary-General to despatch a delegation to Phnom Penh in the near future to finalise the Agreement to be signed by both parties and to move on to the long-delayed task of bringing to account those most responsible for these most serious crimes.

We thank the 150 countries that voted for the General Assembly resolution and call on the international community to join with us in carrying out this historic task.

New York, 13 January 2003