

EDITORIAL:

WOMEN DESERVE A VOICE

During Democratic Kampuchea, women were forced to endure many bitter experiences, including extremes of physical and mental abuse. Many Cambodian women died because they could not endure the work they were forced to do. Although these crimes were committed more than two decades ago, the victims still suffer. The regime destroyed everything that many women had, not only their homes and property, but also their beloved family members. No amount of punishment for the perpetrators and no form of compensation can replace what these women lost. Worse still, many women have been forced to endure their losses in silence, since so many of the events in question are a source of great shame to the victims, particularly within the traditions of Cambodian culture and society.

DC-Cam researchers have been examining the roles of women as both victims and perpetrators under the Khmer Rouge. Based on the interviews with female survivors conducted to date, abuses included family separation, forcing women to work beyond their strength with inadequate food, and forcing pregnant women to work until they miscarried. What is more, many female Chams, Chinese, Vietnamese and members of other ethnic groups endured systemic rape, often in connection with imprisonment.

Recently, DC-Cam completed a documentary film, *The Khmer Rouge Rice Fields: The Story of Rape*



Rachana Phat and Tang Kim

Survivor Tang Kim, which tells of a woman struggling to survive after her rape by the Khmer Rouge. Tang Kim is representative of thousands of women who were raped, executed, or tortured during the regime. In the film, she first admits that nothing can compensate the loss of her dignity and reputation, except to bring the perpetrators to be executed, as they did to her and her husband, relatives, and friends. But Tang Kim has become a nun and has changed her mind. She now just wants her violators to come forward and confess their actions publicly. Then she can live in peace and overcome her past.

All Cambodians suffered immeasurably during Democratic Kampuchea, and the abuses women suffered deserve special attention. They must also be given a chance to share their stories of tremendous hardships to remind others that they are not alone in their sufferings. The younger generations of Cambodians must know the truth of what happened to the women who are now their mothers and grandmothers. Moreover, as it becomes more likely that the former Khmer Rouge leaders will be brought before the court, it is important to document their actions vis-à-vis women. Women have faced hardships and miseries, and yet have worked hard to develop a new and better society. Many Cambodian women were widowed during the regime and have borne the responsibility of bringing up their children alone. Others must support husbands who were disabled during the regime. And many have performed tasks they wouldn't have done in traditional society, such as hard physical labor, to feed their families. They were left to start their lives again with memories of sexual abuse, physical abuse, and rape forever in their minds. These survivors deserve a voice and a measure of justice.

Rachana Phat is the co-English editor-in-chief of the special English edition of Searching for the Truth.

SHOULD MONEY FOR THE TRIBUNAL BE USED TO DEVELOP CAMBODIA?

The Cambodian people have greeted the new government with a sense of relief: after waiting nearly a year, we could finally get on with the business of building our nation. And the new government gave us a positive sign that it is responding to the great majority of Cambodians by ratifying both the tribunal agreement and Khmer Rouge law. But now Prince Ranariddh has hinted at yet another delay in the trials, telling us that the monies intended for justice would be better spent on the poor.

While no one doubts that Cambodia needs economic development, it takes more than money to solve the problems that are making our poor grow poorer by the day. If money were the only obstacle, perhaps our officials might look to themselves first. Creating the largest per-capita government in the world doesn't come cheap. Should the millions of dollars our representatives spend on salaries, offices, staff, and other expenses each month be devoted instead to agriculture?

But what people need every bit as much as money is faith in their government—faith that they will be treated fairly, faith that they will see justice for everyone, and faith that all citizens will be treated equally under the law. The benefits of this faith may be invisible, but they are still very powerful. First, they will allow us to break free of the "survivor mentality." We already have ample evidence that we can survive; after all, we survived Democratic Kampuchea. But, if we are to develop, we must stop being mere survivors and start being active participants in our society. By holding the trials and demonstrating that no one in our society is above the law, the government will give Cambodians new confidence that their future lies in their hands and that they are empowered to act.

The Cambodia Daily reported Prince Ranariddh as saying that the US decision to withhold aid to Cambodia would hamper the tribunal process and might influence other countries to withhold funds for the trials. I would respectfully beg to differ on both points.

First, while the United States may not directly fund the Cambodian Government or United Nations for the tribunal, it is not withholding aid. The US is providing much-needed assistance to the Cambodian government for child trafficking, education, health, and women's issues. It is also supporting the tribunal in an indirect way through non-governmental organizations. Many Cambodian human rights NGOs are working to ensure that the public is informed and involved in the tribunal. No matter what the outcome of the trials, the RGC and UN must be accountable to the people who suffered during the Khmer Rouge regime and demonstrate that the trials are fair and transparent. No single truth will emerge, and not everyone will be happy with the decisions made at the trials. Nonetheless, their success will hinge on the Cambodian people's knowledge and understanding of the trial process, and their belief that their government is responsive to them.

Second, the reluctance of the US to fund the tribunal directly is not an indication that other countries will follow suit. Although the US was silent about the UN resolution supporting the tribunal, it was the only one of the 139 countries that abstained from voting. We hope that the resolution's sponsors (Japan and France) will provide generous funding for these important trials and encourage other nations and private foundations (mainly in the US) to do the same.

Youk Chhang
Editor-in-Chief and Publisher



the Khmer Rouge stored at Ou Ronoung Kroam. However, Sok's associates could not totally destroy the storehouse since villagers had arrived on time to fight the fire Sok's men had set.

In early 1974 a meeting was held in which Hang promoted Sok to group leader of the security office. Sok, Hang, and Lan proposed a plan to investigate former public servants who provoked people, especially when the Khmer Rouge sent them to the front lines. As members of the CIA, the people at the meeting had no right to make their own decisions. A while later, three more people present were introduced as CIA members. Sok and his members began discussing a plan to destroy an arsenal in the North Zone: how to burn it down and when. This arsenal was totally destroyed. Later in the same year, Sok proposed another plan to select Gnor, Sot, and Neak to be his spies, as these three people liked enjoyment. When the Khmer Rouge were sending people to the battlefield, Hang told Sok to work with Heang at the Speu district office and convince people to return to their villages. Later, Sok's member convinced Sim, second assistant to the commune officer in Svay sub-district, to investigate people's actions and then move to Chamka Leu district and live with other CIA members.

In August 1974, Angkar sent Hang to fight and assigned Sok to work in security office 42. Before he left, Hang told Sok to continue working with CIA members. Five days later, Keam met Sok and suggested that they and Lan form a connection with Khem (the head of security office 42).

Sok, Khem, Chhon, and Mean arranged a meeting at Khem's office. There, they proposed a plan to convince more people to join them, destroy Angkar's property, lobby former public servants, and provoke villagers to turn against Angkar. At the same time, Khem introduced 11 people who became members of the CIA.

By the end of 1974, Khem assigned three more people, who were free and did not support the revolution, to investigate those working at the security office and provoke protest among young people against Angkar. From January to April 1975 Sok met

Khatt, the chief of Chamka Andong district, to discuss a plan to break the dam in Ta Chey village so that people would not be able to transplant rice. The CIA members' accomplishments were destroying armories and many granaries, persuading people not to join the army, and leading both individuals and groups to protest against Angkar's collectivism.

After liberation in 1975, Angkar started to eliminate those they believed were traitors. Sok and his friends made several plans: 1) try to release prisoners, especially those who were high-ranking officers working for the pro-Lon Nol faction, so they could work for the CIA and mingle with villagers, 2) provoke people through publicly showing Khmer Rouge harm, and 3) keep weapons after they were taken from people. As a result, Sok's friends found two pistols and shot out car tires, causing transportation to stop. They also hid eight high-ranking officials, two of which escaped Khmer Rouge arrest.

In September 1975, Khem introduced Sok to deputy Hor. Later, both of them tried to cause problems with electronic products. In October, Khem, Chhon, Heang, and Sok held a meeting at the Speu district office to discuss on how to destroy rice (at that time there was a rice shortage). Heang led an action to burn rice, but Angkar sent people to put out the fire on time. In November, Khem ordered Sok, Chhon, and Chen to spy on the Khmer Rouge arsenal, but the Khmer Rouge found out. Luckily, all of them escaped.

In February 1976 Sok and other four members attended a meeting at the Zone 42 headquarters led by Boun. They discussed the pressures the Khmer Rouge put on Cambodians, and the state's confiscation of property. They planned to work against the Khmer Rouge to get their properties and freedom back. The points suggested were: 1) recruit people to the CIA, 2) destroy Khmer Rouge arsenals and storehouses, and 3) provoke people to protest the Khmer Rouge revolution. During March, Khem and Sok met Vorn at a fishery, where they poisoned and released many fish raised by the Khmer Rouge. They next planned to destroy a rubber plantation and hinder the growth of rubber trees.



In early May 1976, Heang was promoted to head of the Ministry of Commerce in Chamka Leu district. Khem, Sok and Chhon then came to ask Heang for help by not giving people enough equipment or to give unequal amounts to the sub-districts, thus creating resentment towards Angkar. In August, the three men suggested a plan to distract people from growing rice by convincing villagers to return home.

Sok reeducated Thon, a member of security office 42, to work for the CIA by telling him about the disadvantages of the Khmer Rouge revolution, which would control freedom. To satisfy Thon, Sok promoted him to CIA messenger.

In September 1976, Sok, Sim (the head of the Ministry of Commerce in Zone 42), and other CIA members organized a meeting to discuss: 1) difficulties people had faced since the Khmer Rouge liberation, 2) provoke people to protest the Khmer Rouge due to the lack of rations, forced labor, and reeducation, 3) explain the plan of action, and 4) help members from different offices work cooperatively. Later, Sok called for another meeting to tell his members of the rebellion planned for September 1976. Khem assigned Sok and Chhon to work with Hok at the Bos Khnol sub-district office to ensure the safety and preparation of rice during the rebellion. Sok reported that 1,000 containers of rice (110-120,000 pounds) had been prepared to supply the rebels.

In November, Sok secretly released two former public servants from security office 42 and sent them out to work as CIA spies in Chamka Leu district. However, they both were under Hok's observation.

Later, Khem was sent to work in the region while Chhon became head of security office 42. Chhon told Sok to ask Khorn about villagers' living conditions and rice production. According to Khorn, living conditions were good. Also Khorn informed Sok about the plan to provide Sok and his agent with a thousand containers of rice.

In January 1977, Sok met nine friends at the zone office, where he explained that it was not possible to begin the rebellion because the army was keeping

too close a watch on them. They also discussed encouraging their members to prepare weapons, food supplies and arms, and set a new plan for the rebellion in April during the Khmer New Year.

However, in February 1977, it became apparent that the plan could not succeed because the Khmer Rouge had already arrested most of the CIA agents. Chhon tried to stabilize the situation by promoting Tieng to secretary of Chamka Leu district. Tieng reported to Chhon that members in each office were working to prepare for the next revolt.

A month later, Chhon, Tieng, and Thorn (the secretary of Zone 43 at 1 Makara dam) began to firm up their plan and informed their members to be ready to start a new revolt against the Khmer Rouge in September 1977. Sok and Chhon convincingly told youths working in their office not to travel and that weapons had been prepared so the internal traitors could fight. The CIA mission was never carried out because most of its agents were caught by the Khmer Rouge.

Sok was arrested and sent to S-21 prison in October 1977. His confession was written by S-21 interrogator Chun Chhay.

Farina So is a staffwriter for Searching for the Truth.

SEARCHING FOR THE TRUTH RADIO BROADCAST ON FM 102

DC-Cam has partnered with the Women's Media Center to produce *Searching for the Truth*, a local radio program on FM 102. We cordially invite you to tune in to FM 102 every Wednesday and Thursday afternoon from 3:30-45, as Ms. Rachana Phat and Ms. Sophal Ly broadcast selected articles from the DC-Cam magazine, *Searching for the Truth*. To reach broader audiences, DC-Cam has extended its Radio Program on FM 93.25, Kampot Province, daily from 7:00-30 am and pm and on FM 99, Preah Vihear, daily from 7:00-30 am and 6:30-7 pm.

my son liked, and offer them to the monks."

Although Yen strongly believes in karma, she does not believe the death of her son and millions of other Cambodians during the Khmer Rouge regime were the result of karma. "That regime was an atheistic Tamil regime, a regime that took people's lives. This was not karma from their previous lives." Yen wants the Khmer Rouge to receive the results of their actions, however: "If this was immediately after the event, it would be a matter of spontaneous anger. If the Khmer Rouge killed my son,

I would kill them in retaliation. And if they beat my son, I would beat them back. However, in this age we cannot act that way because this regime is not like the Khmer Rouge regime." According Yen, the Khmer Rouge will receive the results of their actions. "The masterminds must receive the fruit of their atrocious conduct such as being tried by the court," she said.

Ratana Oeur is a DC-Cam staff member working for the Publication Project.

A KHMER ROUGE SOLDIER'S STORY

Veng Chheng



Long Tong (also called Long Tang) was born in Krauch village, Krauch sub-district, Prey Chhar district, Kampong Cham province. He joined the revolution in 1972 after a soldier named Van recruited him into the liberation army.

Because Tong was just 16 years old at the time, his parents were not happy. But they did not dare protest Angkar's decision.

Tong became an artilleryman in Independent Unit 502 led by Peou, a commander from North Vietnam. Because Tong was young, Peou assigned him to help cook and tend horses at the base camp. In January 1973 Tong was sent for medical training in Siem Reap for a year. There, he and 30 other male and female students learned how to treat general illnesses and wounds, and give emergency aid. In the evenings the students learned theory, and during the day practiced cleaning, suturing, and bandaging wounds.

After completing his training, Tong worked at the Zone 304 military hospital in Siem Reap (it was later moved to Kampong Thom province) and then moved to various battlefronts. In 1975, when the Khmer Rouge liberated Phnom Penh, Tong's unit was ordered to attack through Prek Kdam. After the city was taken, Angkar assigned Tong's unit to stay near Wat Phnom. There, they

received military training in the morning, cleaned up garbage in the city at noon, and patrolled in the evenings. The soldiers were instructed to be cautious and alert, as a small number of Lon Nol soldiers were still hiding in the city, trying to cause turmoil by throwing bombs. One by one, all of the Lon Nol soldiers were captured, but no one knew where they were sent.

Tong stated that he once attended an assembly at the Olympic stadium, where security was tight. The assembly was held to discuss the policies of Democratic Kampuchea, including digging irrigation canals and arresting enemies. He noted, "Two top Khmer Rouge leaders participated: Pol Pot and Son Sen. At that time Son Sen was a senior military commander. He used to visit the soldiers occasionally. Many aides-de-camp accompanied him, and he only paid short visits."

After three months at Wat Phnom, Tong was promoted to platoon chief and had 30 men under him. In 1977 Angkar ordered his unit to cultivate rice and dig canals at Boeung Bayab, Anlong Kngan, Ang Krapeu, and Kob Srov. There was not enough food at these locations, and the soldiers had to eat porridge instead of rice. There were no vegetables other than water lily and convolvulus. Tong recalled, "First we picked water lily flowers for cooking. After they were used up, we began to eat their stems. And eating bindweeds often made the soldiers' teeth turn black from the sap."



Khieu Samphan consistently paints the CPK as a nationalist, anti-Vietnamese force, rather than one seeking to establish, at break-neck speed and at enormous human cost, a Marxist-Leninist paradise on earth. He plays down the alliance between the CPK and Vietnam that began in the 1950s and lasted until 1973. For several years, the task of fighting the Vietnamese and their allies to protect Khmer sovereignty (supposedly the central role of the Khmer Rouge) fell to Lon Nol's hapless anti-Communist army—an irony that goes unmentioned in the book.

Samphan writes that he knew nothing of the decision to evacuate Cambodia's cities in 1975. The surprising news made me "heavy hearted... Powerless, I could only distil my regrets and desperation in silence." His regrets and desperation, even if genuine, have taken twenty-seven years and the threat of a tribunal to reach the surface.

From 1971 onwards, Samphan was a member of the CPK's central committee. He claims that the committee played no role in governing the country. Its meetings, he tell us, were cozy and fraternal, with "nothing resembling fear" affecting their proceedings. In a footnote, he writes that only "recently" (!) he learned that many Party members had feared to their lives throughout the Pol Pot era. Perhaps he wasn't paying attention when one colleague after another was purged and disappeared from view.

In a chapter entitled "Reflection on the Causes of Confrontation between DK and Vietnam," Samphan claims that it was only in 1998, i.e., *nineteen years after the collapse of DK*, that he learned from "books written by foreign authors" that DK forces had committed atrocities inside Vietnam in 1976-1977. In all those years, it seems, he never read any books, asked any questions or overheard any bad news. For page after disingenuous page, Khieu Samphan would have us believe that he lacked courage, curiosity and a capacity for dissidence. These shortcomings served him admirably as a cats' paw for the CPK leaders, and, to be fair, enabled him to survive.

On page 128, Samphan poses a hypothetical

question: "Based on the facts that *have recently come to light* [my italics] how can the increasingly brutal and repressive character of the [DK] regime be understood?"

The phrase "recently come to light" in French is "*viennent d'être rapportés.*" It's unclear what "facts" are meant and who has been kept in the dark. His persuasive answer is that Pol Pot saw violence as visited on Cambodia from abroad, and that the horrors of the regime, such as they were, stemmed from Pol Pot's insistence on presiding over a revolution that kept Vietnam at bay and was totally different from the revolution taking place next door. On page 128, this helpful admission comes much later than it should.

In a closing chapter Samphan claims that he has never sought promotion and always followed his conscience. Given the trajectory of his career, his conscience seems to have been synchronized since the 1950s with Party discipline, and until very recently it has served him relatively well. He now admits that "most the militants" of his generation were "fundamentally mistaken" (about what?), but quickly adds that he has no intention of explaining his errors to his children.

The last paragraph of the memoir argues that most Cambodians (like most people everywhere) prefer anti-heroic behavior, and this preference in turn can lead them to accept an unjust, hierarchical system. "In other words," he writes, "this attitude can often lead to servility, the abandonment of professional pride, to more generally, of all ambition." The oblique suggestion that he was a *victim* of DK is probably as close to an admission of guilt as Khieu Samphan will ever come. Whether the admission will convince a tribunal (or Samphan's own children, for that matter) is impossible to say.

David Chandler is Professor Emeritus of History at Monash University, Melbourne, Australia. He is the author of A History of Cambodia (1996), Facing the Cambodian Past: Selected Essays, 1971-1994 (1996), and Brother Number One: A Political Biography of Pol Pot (1992).



once been officially recognized by many countries (including the US) as part of a government-in-exile after the 1979 Vietnamese invasion were to be tried as war criminals by their former international friends.

Most of the judges in the Extraordinary Chambers will be Cambodian, but decisions will require a super-majority vote with at least one international judge consenting. There will be two co-prosecutors—one Cambodian and one international—and two co-investigating judges—one Cambodian, one international. Disputes between them will be settled by a super-majority vote of the judges, but the process is designed to favor aggressive investigations and prosecutions.

Although it will contribute judicial officers, funding and administrative expertise, the UN will have no formal legal power over the court. But the work of UN-appointed judges, prosecutors and staff, as well as the right of the UN to withdraw if the court succumbs to political influence, should go a long way to ensuring discipline and integrity. All the same, it is vital that the Cambodian government resist the temptation to politicize the question of who should staff the court or to interfere in its decision-making.

The big problem, as always, will be how to fund the several years of investigations and trials that await the Extraordinary Chambers. The UN's estimate for three years—about \$60 million—far exceeds what the main donor governments (Japan, France, Australia and the US) appear willing to provide. Cambodia must bear its share of the burden, but its other social needs tug hard on the national budget. Meanwhile, the Bush administration has waded through the tens of millions of dollars in start-up costs for the nascent Iraqi Special Tribunal on Crimes Against Humanity—a court that, while impressive on paper, promises little of the international participation, monitoring and transparency mandated for the Extraordinary Chambers.

The Cambodian atrocity crimes are so grave—almost every family in the country lost members in a killing machine with few parallels in history—and the evidentiary requirements so demanding that it is clear justice will not come cheap. But it should be possible

to compromise in some peripheral areas—such as the quality of facilities—without falling short of international standards of due process.

Donor government must not delay. If they do, there is a real danger that the ageing architects of Cambodia's genocide will never be brought to justice.

David Scheffer is visiting professor of international law at the George Washington University Law School and was US ambassador at large for war crime issues, 1977-2001.

Announcement

Khmer Rouge History Preservation Forum Essay Contest

On April 2, 2004 DC-Cam and the Khmer Writers' Association (KWA) announced the four winners of an essay competition for survivors of Democratic Kampuchea. Contestants submitted narrative essays on their lives during the regime or their thoughts on issues related to the Khmer Rouge.

Because of the important role this contest can play in preserving the history of the Khmer Rouge period for future generations and in giving a voice to its survivors, DC-Cam and KWA are holding another essay contest. It is open to students, survivors of Democratic Kampuchea, and other Cambodians, both those living in Cambodia and abroad. The winning essays will be announced in April 2005. The winners will be given cash awards. The winning essays will be published in *Searching for the Truth* and in a forthcoming DC-Cam book on the experiences of victims of the Khmer Rouge.

Please submit your narrative essays by mail to P.O. Box 1110, Phnom Penh, Cambodia or email: dccam@online.com.kh. The deadline for submissions is February 28, 2005. For details please contact Mr. Sophearith Chuong at (855) 23 211 875 or by email: truthsophearith@dccam.org.

Thanks!

BOOK REVIEW: SUZANNAH LINTON'S RECONCILIATION IN CAMBODIA

Andrew Rigby

During 2002 the Documentation Center of Cambodia (DC-Cam) conducted a survey of the Cambodian readers of its monthly magazine, *Searching for the Truth*, to elicit views on issues of justice, accountability, and reconciliation in relation to the abuses committed under the Khmer Rouge regime of Democratic Kampuchea (DK) during the 1970s. Suzannah Linton has used the results of this survey to produce a fascinating review of the many challenges facing Cambodians as they seek to come to terms with the personal and collective horrors of their genocidal past.

As someone with a background in comparative peace and reconciliation studies and a personal, although very "amateur," interest in Cambodia, I was impressed by the comprehensive scholarship of Linton—evidenced by the range of sources she draws upon in seeking to locate the Cambodian experience within the broader field of transitional justice studies. Whilst the responses to the DC-Cam survey serve as the cue for her reflections, she draws upon a variety of analyses of how different successor regimes have attempted to deal with the legacy of gross human rights abuse, division and collective trauma for the sake of peaceful co-existence and reconciliation.

In most cases the legal and quasi-legal processes and other institutional procedures associated with transitional justice programs have followed closely upon the collapse of the old regime. It is one of the "peculiarities" of the Cambodian case that such a study should be published a quarter of a century after the displacement of the DK regime, reflecting the lack of substantive progress made in bringing perpetrators of abuse to justice and making appropriate reparations to their victims.

Studies have shown that most state-directed efforts to deal with the legacy of past abuses are variants of three standard approaches: amnesties and official amnesia, purges and prosecutions, and truth

commissions. To a significant degree the approach adopted reflects the interests and the balance of power of relevant state and non-state actors during the process of transition. Amnesties and amnesia—an official policy of "forgive and forget"—is typically pursued by those regimes that have come to power by means of a process of negotiation between competing elites in a situation where the representatives of the old regime can exercise a credible challenge to the new political order if threatened by legal or other sanctions. By contrast, the purging and prosecution of those deemed responsible for past abuses is generally pursued when the new regime feels confident of its power and ability to pursue justice without risking political and social stability, and is driven by an overwhelming public demand for such sanctions. Typically such conditions prevail when the new regime has come to power as a result of a popular comprehensive victory over those who are the potential targets of such a purge.

Whereas trials and purges are aimed at punishing the perpetrators of crimes against their fellow citizens, the prime concern of the truth commission approach to addressing the pains of the past is with the victims. The aim is to identify them, to acknowledge them and the wrongs done to them, and to arrive at appropriate compensation. The best known examples of this approach include the transition to democratic rule following the military juntas in Argentina and Chile, and the establishment of the post-apartheid regime in South Africa. In general it would seem that the truth commission approach is favoured by regimes that lack either the will or the means to prosecute the perpetrators of political crimes, because of the relative resources controlled by those who would be its chief targets, but where the policy of "forgive and forget" is not viable because of the depth of division and level of bitterness in society. Such conditions are likely to prevail when the old regime has been displaced by means of



a negotiated transfer of power, driven by overwhelming public resentment and disaffection that undermined the capacity of the old state to impose its will.

Whatever variant is pursued, the dominant concern of new regimes is to promote the necessary degree of social order to ensure regime security and legitimacy. Hence, in the case of Cambodia the lack of significant progress towards a coherent programme for transitional justice and reconciliation can be attributed to the interests of the political elites. The main policy thrust has been aimed at bringing an end to the threat of violence from the Khmer Rouge by various means, including the cooptation of senior figures into significant positions in the new regime. In the words of Linton, "Reconciliation in Cambodia has been used by the elites as a convenient label for power sharing as a solution to ongoing political struggles." (16)

Bringing an end to the threat of a resumption of violence is a necessary component of any national reconciliation project. It is unfortunate that this priority can leave many victims of abuse angry at what they see as the impunity enjoyed by those responsible for their suffering and resentful at the lack of appropriate reparations. The evidence from South Africa would seem to indicate that too many victims experienced the truth and reconciliation process almost as a piece of theatre taking place on a public stage far removed from their own lives and experiences. This is the challenge that continues to face Cambodians—how to develop a coherent transitional justice programme that will promote reconciliation not just at the national level of competing political elites, but at the grassroots levels of the villages, neighbourhoods and families where the pain of the Khmer Rouge years was experienced most directly and most traumatically.

Linton's study, based on the observations of the respondents to the survey, is an exploration of how this process might progress. She works with a simple and straightforward definition:

"Reconciliation involves the process of learning how to co-exist and work together with people one does not like or is not liked by and coming to terms with

personal negativity about one's experiences, whether one be victim or perpetrator. Reconciliation as a process may be simply about assisting people and through that, wider society, to get things back into perspective so that all may lead as normal lives as possible." (15)

She continues in this grounded fashion, observing that there is no magical elixir that can bring about the minimum basis of mutual trust necessary for Cambodians to cooperate together for the sake of a common future. The actual vision of such a future, as sketched out by the respondents and interpreted by the author, embraces a fair and democratic society, free from corruption and violence, where peace and justice are nurtured and protected by the rule of law.

One of the main observations Linton draws from the survey is that in designing a comprehensive transitional justice strategy that will sow the seeds of future harmony, Cambodia's leaders need to involve and engage in open dialogue with people from all walks of life in the formation of a holistic approach that will go beyond a few show trials of elderly Khmer Rouge leaders. She identifies four basic objectives that should inform such a process:

"to do justice, to grant victims the right to know the truth, to grant reparations to victims in a way that recognises their worth and dignity as human beings, and to purge those associated with the repressive regime from public office. It should also aim to prevent the recurrence of such abuses and, to the extent possible, repair the damage they have caused." (31)

How can one "do justice" in a post-genocide society? For most people in the West justice is understood to have something to do with compensation or "making right" and holding people to account for their actions—restitution and retribution. But the painful reality in a society like Cambodia is that there can never be anything like a full form of restitution. What has been lost can never be regained. Moreover, there is no way that accounts can be settled with those involved in the torture and unnecessary deaths of their fellow Cambodians—there are far too many of them. Mass trials and prosecutions would destroy the social fabric

of the society, even if it were possible to implement such a process. Moreover, studies have shown that in so many cases there can be no clear-cut distinction between the perpetrators of barbaric acts and victims—many of the torturers and killers were themselves separated from their families, brutalised and conditioned to believe absolutely in the power of the regime, and faced certain death if they refused to carry out their orders. The survey revealed that Cambodians themselves are capable of distinguishing between those with greatest culpability and the rank-and-file who were invariably the direct perpetrators of atrocities. As a consequence, a majority of respondents saw one element of "doing justice" as involving the prosecution of the surviving leadership of the Khmer Rouge, preferably with international involvement because of a lack of faith in the integrity and the capacities of Cambodian jurists.

However, this focus on senior personnel being held to account in a court of law is construed by Linton as representing more than a desire for retribution. She focuses on the "symbolic justice" of such trials, observing that amongst the respondents:

"There were many who pointed to the deterrent effect of trials as a moral lesson, which is linked to the great importance that respondents placed on attaining generational changes in conduct. Trials are seen as having the potential to break the cycle of violence and impunity. This is the use of the judicial process as educational, a deterrent in that what would emerge would be so shocking as to serve as a warning of blind obedience to doctrine, the extreme dangers of authoritarian leadership, and the punishment that would be meted to individuals for their role in the horrors." (pp. 229-230)

Linton has a background as a specialist in international law and human rights, and she emphasises that one of the main symbolic and educational functions of criminal trials would lie in their representing the importance of procedural justice and the rule of law in Cambodia. Respondents repeatedly pointed out that they sought an end to the ongoing cycle of impunity

and lawlessness in Cambodian society. What they sought was a society governed by the rule of law with courts as the most appropriate forum for dealing with suspected criminals, and in this context rejected ideas of taking personal revenge against those who had harmed them.

The Buddhist teaching that vindictiveness is ended by not being vindictive was also evident in people's approach, and Linton emphasizes throughout the book the importance of Cambodia's Buddhist culture in shaping the reconciliation process. One of the basic tenets of Buddhism is that people have to face the consequences of their actions, but it also teaches compassion—the injunction to help wrongdoers abandon their old ways and gain release from the destructive delusions that drive greed and hatred. In the words of one senior Cambodian Buddhist who was interviewed by staff of DC-Cam in 2002, "Revenge will never end if people solve conflicts through passion, greed, anger and insanity. The most important things are truth and accountability in order to set an example for other people not to do the same things." (145) It is clear that for many Buddhists in Cambodia the best way to reveal the truth and establish accountability is by means of properly conducted trials. As one respondent phrased it, "In the law, those who commit crimes must be punished. In Buddhist law, those who commit sinful acts are destined to receive unfortunate results. We suppress vindictiveness by not being vindictive. There must be justice and proper prosecution if we are to live in peace and prosperity." (23)

One of the surprising results of the survey is that there was little support amongst respondents for a Cambodian truth commission as a means of revealing the truth and establishing accountability. One possible reason for this might be a lack of awareness of such an institutional process, because there was support for a comprehensive commission of inquiry that would help people begin to understand just how and why ordinary people turned into torturers and killers. Respondents made it clear that there was a need for Cambodians to develop an understanding of the root causes of their



auto-genocide, so that they can begin to explain what for so many remains inexplicable. As Linton concludes, "all Cambodians of whatever faith and political perspective, need to be part of an effort to create their own record of their own past, in order to reconcile with what happened." (242)

The third pillar in the overall transitional justice program that Linton attempts to sketch out relates to the issue of reparations for the victims of the past horrors. Here she goes little beyond emphasizing the importance of comprehensive mental health and rehabilitation programmes at the grass-roots. It is clear that she sees these primarily as a necessary complement to the kind of wide-ranging commission of inquiry she advocates, and certainly there is evidence from South Africa and elsewhere that the experience of many witnesses to the formal truth commissions was extremely distressing and far from therapeutic, as they were called upon to recount and relive past traumas without appropriate support services. But the victims of the Khmer Rouge years stretch far beyond the bereaved and the survivors of torture. A whole generation suffered direct loss and violence of one form or another during those years, and subsequent generations have been damaged by the ongoing legacy of a culture of violence and impunity, division and poverty. In such a context the most important foundation upon which to build national reconciliation must be a sustained effort to advance social justice. As one respondent expressed it:

"National reconciliation is a way leading to stability and peace to develop a society which was abused with wars, and national reconciliation has to be on social justice grounds. A social justice exists only if we promote a culture of respecting human rights, understanding social morality, and carrying out legal obligations. National reconciliation is based on transparency, equality and justice." (194)

The fourth guiding objective for a comprehensive transitional justice programme for Cambodia identified by Linton is the purging from public office of those associated with the repressive regime. However, she is forced to accept, however reluctantly, that too many

former Khmer Rouge cadres are now in positions of authority within the Cambodian state structures for this to be feasible. She does cling to the hope, however, that alternative forms of accountability might be implemented—that former perpetrators be encouraged to try to make amends in some manner for the wrongs of the past.

Who are to be the key agents in the implementation of such a far-reaching programme of transitional justice? Linton identifies three. The Cambodian government's role should go beyond the administration of criminal trials and other institutional developments to the encouragement of an open political environment and a sustained effort to promote social justice. An important role for the non-governmental organisations and movements of the civil society sector will be to encourage, pressure and assist the state in the fulfilment of its obligations, not least by helping survivors and their families to articulate and express their demands of the government. Linton also suggests that civil society agencies have a particular aptitude and responsibility for working at the grass-roots level, in the space created by processes of accountability to work directly on reconciliation and social repair. The third key agency is the Cambodian people themselves. Again and again respondents emphasised the importance of changes in personal attitudes and behaviour as one of the central elements of any reconciliation process, recognising the need for people to come to terms with the demons from the past and learn to live alongside each other, working towards a common future. In relation to this, Linton engages at various points in the book with the issue of forgiveness as a constituent part of any reconciliation process. Like other authors she concludes that no-one has the right to expect or to require survivors to extend the hand of forgiveness to their persecutors, and that reconciliation in the form of co-existence can take place without forgiveness.

Like any published work, this book has its flaws. It is repetitive and would have benefited from a firmer editorial hand. At times I felt that the author could not quite decide whether she was writing a research report

or a book for a wider lay-readership. Some might question the appropriateness of devoting such a large section of the book to a comprehensive overview of the survey, with details of how the data was collected and processed—and then the responses presented with statistics to two decimal points, graphs and pie-charts. All this might be of interest to the professional social scientist and public opinion pollster—but I could not help think that at least part of the motivation was to present the findings as "scientific" with "hard facts" to support the observations and conclusions of the author. I cannot help feel also that Linton places too great a faith in the healing power of the rule of law that reflects her own legal background. Moreover, whilst not an expert on contemporary Cambodian history, I felt she was too dismissive of the serious threats to national peace and security faced by the government over the past decade. I also found it somewhat contradictory that she affirms the need for a purge of public officials who had been part of the Khmer Rouge apparatus, but then acknowledges that such a cleansing operation would not be feasible. I was also disappointed that she failed to give consideration to some of the more innovative proposals for establishing accountability that have been suggested by scholars such as Craig Etcheson.

But setting these reservations aside, there is a

rigor and a level of integrity to this work that means it will become one of the indispensable resources to be consulted by those charged with directing the path of national reconciliation in Cambodia. The survey on which it is based was a significant attempt to engage with Cambodians on issues relating to reconciliation in their country. And therein lies the significance of the research, as an indication of the range of views and the issues that many Cambodians believe need to be addressed as their country progresses along the path of reconciliation. As such, this is a valuable and stimulating book. It is perhaps inevitable that it will now enter the political minefield of national and international debate about how to deal with Cambodia's traumatic past. The real challenge is how to take these issues and debates back to the people themselves, to continue and extend the engagement and the dialogue that brought about the research in the first place, so that whatever the features of the overall transitional justice programme that emerges, the Cambodian people themselves will feel the degree of ownership necessary for the vision of a shared future to become a reality.

Andrew Rigby is Professor of Peace Studies & Director of the Centre for the Study of Forgiveness and Reconciliation at Coventry University.



PRESENTATION BY DEPUTY PRIME MINISTER SOK AN TO THE NATIONAL ASSEMBLY ON THE 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
 Honorable Members of the National Assembly
 Your Excellencies Diplomatic Representatives in Attendance

Today I have the honor 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 Royal Cambodian Government. We are at last in a position to finalize 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 August 10 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 to 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 unity, 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 will be 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 June 6, 2003 at the Chaktomuk Theater 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 harmonize 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 honorable 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 among three parties:

- ◆ the United Nations, represented by a special unit established on October 1, 2003 known as United Nations Assistance to the Khmer Rouge Trial (UNAKRT) led by Mr. Karsten Harrel;
- ◆ 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 Secretaries, supplemented by representatives of the Ministry of Economy and Finance, the Ministry of Interior, and the Ministry of Land Management, Urban Planning and Construction;
- ◆ the potential donor countries, organized into the Group of Interested States.

During this interim period the Task Force has received two United Nations technical delegations led by Mr. Karsten Harrel, in December 2003 and March 2004. Presentations 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 courtroom and the National Cultural Center for the office accommodations.

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 Theater and National Cultural Center), the Royal Government will provide the national salaries for the expected 200 Cambodian personnel, and will shoulder a number of indirect and opportunity costs, such as increased security throughout the country, and the costs of detention and medical attention for accused and convicted persons. The total anticipated for these expenditures over the next three years is \$6 million.

Discussions regarding the overall budget are ongoing. 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 the 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 are 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 finalized 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); other countries are waiting until the final figures are known before 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 will 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 Center and to be published also in newspaper format with funding from the Danish Institute for Human Rights.

In such ways the people of our country are being kept informed of developments towards the establishment of the Extraordinary Chambers in the coming months.

Explanation of the Recommended Amendments

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 August 10, 2001. The following amendments are solely for the purpose of harmonizing 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 June 28, 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 and 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)

c) *Assuring full rights for defendants and immunities for judicial officers and defense 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 utilized 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 harmonize 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 relevant rules of Cambodian law, or where there is a question regarding the consistency of such rule with international standards, guidance may also sought in procedural rules established at the international level." (Articles 22, 23 and 33)

Members of the National Assembly should understand that in order for the Extraordinary Chambers to implement such guidance in their operations, the judges of the Extraordinary Chambers shall have the authority to create, adopt and amend such internal legislation as they deem necessary or desirable for the optimum functioning of all phases of the operations of the Extraordinary Chambers, including prosecution, investigation, trial and appeal.

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 positions (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 Articles 33, 34 and 35 shall apply *mutatis mutandis* to the Supreme Court Chambers as well as the Trial Court (Article 37);

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 harmonize the Law and the Agreement, the Council of Ministers has recommended an 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-year 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 neighbors 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. After many years of negotiations 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, help 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 the honorable members of the National Assembly these two Draft Laws – to ratify the Agreement between Cambodia and the United Nations and to amend the 2001 Laws in order to achieve harmonization of the two documents. Thank you!

The translation of this speech was provided by Mr. Nau Soursdey, Administrative Assistant, Secretariat of the Task Force, Office of the Council of Ministers.



THE FIRST SESSION OF THE THIRD TERM OF THE CAMBODIAN NATIONAL ASSEMBLY

OCTOBER 4-5, 2004

DEBATE AND APPROVAL OF THE AGREEMENT BETWEEN THE UNITED NATIONS AND THE ROYAL GOVERNMENT OF CAMBODIA AND DEBATE AND APPROVAL OF AMENDMENTS TO THE LAW ON TRYING KHMER ROUGE LEADERS

Because of the length of this session, speeches pertaining to matters other than the tribunal have not been included in this article. Omissions in the Assembly proceedings are denoted by an ⊗

October 4, 2004

⊗ **Samdech Krom Preah Norodom Ranariddh:** This morning I have the honor to announce the beginning of the parliament meeting. According to the decision of the Standing Committee of the National Assembly on September 22, we have three items on the agenda to examine and endorse: the 6th agenda on the nomination of H.E. Khlok Buthdy as Vice President of the National Election Committee to replace H.E. Nge Chayleang who resigned. 7th agenda on the discussion and adoption of the draft on: **a. 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** [hereafter, the *Agreement*]; **b. Amendments to Articles 2, 3, 9, 10, 11, 14, 17, 18, 20, 21, 22, 23, 24, 27, 29, 31, 33, 34, 35, 36, 37, 39, 40, 42, 43, 44, 45, 46, and 47 of the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea** [hereafter, the *Amendments*]. 8th agenda on the discussion and adoption of the draft on *National Budget Management for the Year 2004*. I have the honor to invite the assembly to approve the agenda.

Secretary of the session: May it please the Assembly, 101 out of 103 approved the agenda.

⊗ 7th agenda: Discussion and Adoption of the draft *Agreement*. 7th-A agenda: we will discuss and adopt the 7th-B agenda later. According to the decision of the Permanent Committee of the National Assembly on Wednesday afternoon September 22, 2004, I'd like to invite H.E. Ek Sam Ol, Chairman of the Legislative Committee, to report on the examination, discussion of, and research into the draft *Agreement*. Please.

H.E. Ek Sam Ol: Your Honor. On behalf of the Legislative Committee and Committee on Foreign Affairs, International Cooperation, and Information of the National Assembly, I would like to report on the decisions of the two committees, and on the examination and study of the draft *Agreement* and draft *Amendments*.

1. Form: The Royal Government of Cambodia, in letter number 119 L.S.K.Ch.B, dated August 9, 2004, sent the National Assembly the draft *Agreement* and the draft *Amendments*. Along with the drafts was letter number 12

S.Ch.N.K.B.Ch dated August 9, 2004 and 123 copies of the drafts which have been delivered to all members of the National Assembly. After the examination and discussion on August 17, 2004, the Standing Committee, with letter number 131 R.S dated August 18, 2004, sent the two drafts to the Legislative Committee of the National Assembly. Accordingly the Legislative Committee arranged a meeting on August 18, 2004 in order to study the draft. On August 24, 2004, the Standing Committee with the cooperation of Committee on Foreign Affairs, International Cooperation, and Information of the National Assembly arranged an official meeting with a group of government officials headed by H.E. Sok An, Deputy Prime Minister and Minister of the Cabinet Council. We have come to a decision that the draft on the *Agreement* and *Amendments* have been drafted correctly in accordance with Article 21 of the Internal Regulations of the National Assembly.

2. Legal Concepts: According to the study of the Legislative Committee and Committee on Foreign Affairs, International Cooperation, and Information of the National Assembly, we decided that:

A. *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*. This agreement, in general, is parallel to the opinion stated in the *Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea* promulgated by Royal Decree number 080112 N.S.R.T.M dated August 10, 2001. The agreement only verifies some meanings already found in the statute, adjusts the structure of the courts and some administration. The following are the most important clarifications.

A-1. This agreement will have equal status to the domestic law of Cambodia after its ratification.

A-2. The government reasserted that it shall not request any amnesty or pardon. The government and the United Nations agreed that the scope of existing pardons is a matter to be decided by the Extraordinary Chambers.

A-3. The composition of the Chambers has two levels: the Trial Chamber consists of 2 international judges and 3 Cambodian judges, and the Supreme Court Chamber, which shall serve as both appellate chamber and final instance, consists of 4 Cambodian judges and 3 international judges.

A-4. The procedure shall be in accordance with Cambodian law. Where Cambodian law does not deal with a particular matter, guidance may also be sought in procedural rules established at the international level.

A-5. The Extraordinary Chambers shall exercise their jurisdiction in accordance with international standards of justice, fairness and due process of law, as set out in Articles 14 and 15 of the 1966 International Covenant on Civil and Political Rights, to which Cambodia is a party.

B. In the interest of consistency between the statute and *Agreement*, it is necessary to amend some articles of the *Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea* [hereafter, *Law on the Establishment of Extraordinary Chambers*]. All meanings in the draft on the Amendments to the 29 Articles of the *Law* were extracted from the *Agreement*.

B-1. Change in the statute of limitations. To ensure that the Chambers have the right to prosecute suspects during their tenure, the statute of limitations shall be extended from 20 to 30 years because the statute of limitations set forth in the *Law on the Establishment of Extraordinary Chambers* is going to expire in year 2005.

B-2. Restructuring the court. The 3-level court structure shall be reduced to a 2-level structure in order to avoid administrative complications and large expenses. The Trial Chamber comprises 3 Cambodian judges, one of them will be the President of Chamber, and 2 international judges. The Supreme Court Chamber comprises 4 Cambodian judges, one of them will be the President of the Chamber, and 3 international judges, who shall serve as both the appellate chamber and final instance.

B-3. Adding more provisions to rights of the accused, and immunities for court officers and counsels in



accordance with the International Covenant on Civil and Political Rights of 1966.

B-4. Procedure 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.

B-5. Granting amnesty and pardon. The scope of a pardon granted before the adoption of this statute is a matter to be decided by the Extraordinary Chambers.

Aside from amendments to the above articles, there are some supplementary amendments such as: adding more conditions to the nomination of judges, and that experience including the awareness of international humanitarian law and international human rights law is needed to work for the Extraordinary Chambers. The second point is the nomination of international Judges, international Co-Prosecutors, and international Co-Investigating Judges to fill vacancies; the United Nations Secretary General can submit more lists of applicants. The third point is that the international Co-Prosecutor has the right to appoint the international Vice Co-Prosecutor. The fourth point is the interpretation of new Articles 33, 34, and 35; they shall be implemented like the prosecution process in the Supreme Court Chamber. The fifth point is the inviolability of the archives used by any part of the Extraordinary Chambers including the Co-Investigating Judges and Co-Prosecutors of the Extraordinary Chambers, the pre-trial chamber and the Office of Administration. The sixth point is the reduction in the use of languages to 3, namely Khmer, English and French. The seventh point is the removal of the Trust Fund, and the salaries of the foreign administrative officials and staff, foreign judges, the Co-Investigating Judges, and Co-Prosecutor, which shall be borne by the countries that contribute them at the request of the UN Secretary-General. During the examination and study on the draft *Amendments*, the Legislative Committee and Committee on Foreign Affairs, International Cooperation, and Information of the Parliament have agreed with the government representatives on amending 2 more articles, namely 29 and 39, because these articles' definitions are based upon Article 3 which has been amended. Therefore, they shall be adjusted in accordance with the new Article 3. After examining and studying the *Agreement* and the draft *Amendments* to 29 Articles of the *Law on the Establishment of Extraordinary Chambers*, the Legislative Committee and Committee on Foreign Affairs, International Cooperation, and Information of the Parliament have the honor to present these two drafts to the session to be discussed and approved. We would like the session to discuss and pass the following drafts: A. *Agreement* and B. *Amendments*. Thank you.

Samdech Krom Preah Norodom Ranariddh: Thank you. Pursuant to new Article 29 of Internal Regulations of the National Assembly, I would like to ask the session: should we take these drafts to discuss?

Secretary of the session: Your Honor. 110 out of 110 vote in favor. Thank you.

Samdech Krom Preah Norodom Ranariddh: Thank you. Before inviting H.E. Sok An, Deputy Prime Minister, and Minister of the Cabinet Council, to defend the drafts, I would like to give an opportunity to H.E. Sam Rainsy to speak.

H.E. Sam Rainsy: Your Honor. I have wanted to share some ideas since the start of the meeting. What I want to say is to praise today's process of the Parliament. Internal Regulations of the National Assembly and democracy have been well respected. There is an election when appointing someone; in particular, today there is an election of the Vice-President of the National Election Committee. We will also vote for the adoption of the *Agreement*. A moment ago, we respected the Internal Regulation of the National Assembly and democracy by holding a secret ballot. Generally we have to respect such principles because everybody bears dignity, and should bear virtue in



holding a position elected by the parliament. Such an individual bears virtue to hold his position because he respects the dignity, rights and conscience of the members of parliament. Those who hold a position gained by forcing everybody to raise their hands do not bear high morals because someone sits and notes the names of those who are not raising their hands, who will be given trouble and threatened. Therefore, they are not worthy of holding their position. Back to the adoption of the *Agreement*, all parliamentarians from the Sam Rainsy Party support the act of discussing and passing the *Agreement* because this is an urgent matter. This issue is 7 years old. In 1997, the Royal Government of Cambodia proposed that the United Nations bring to justice the Khmer Rouge leaders who killed millions of Cambodians. Cambodian people are waiting to see justice for themselves, for the souls of the victims, for their family, and their friends who are still alive. Therefore, there is nothing more important than justice for the victims. This justice is not only for retaliation. It is also our duty to bring to justice those who killed millions of innocent people. It is necessary for our country to move forward to the rule of law, to end terrible practices in which the powerful, the wealthy, and the high-ranking can kill people, and commit all kind of crimes as they like without fear of conviction. Such practices are so terrible that they lead to anarchy, suppression, violation of law, and poverty. In addition, our country will never become a developed one because the most important factor leading a country to development is respect for the law; the modification of the so-called impunity that makes our country poor and our people live in fear, and undermines our democracy. Consequently, the main priority to be implemented is to ensure respect for the law. The most significant respect for the law is to bring criminals to justice and prosecute them, especially those who kill millions of people. No matter how long ago – 10 years, 20 years, 25 years – we have to bring them to justice. If we let them get away with their crimes, this will set an example for the next leaders. They may be able to kill one person, 10 people, 1000 people without being convicted because they are powerful. So we have to end such horrible practices, and to end such practices we have to establish a court, a special court with the participation of the United Nations and international community in order to ensure independence. This special court to try those Khmer Rouge leaders must become operational soon. At this moment, I would like to request the government to be honest, to say something clearly, and not make excuses for delaying the creation of the special court. In reality, the government, without any intention to establish the court, had stepped backward for 7 years. Now the time is ripe to step forward; no more delay.

I would like the government to prepare the budget for the creation of the court because the budget is the last excuse the government can use to further delay the court's formation. Regardless of the high expenses for the court, the government should contribute more than just symbolically. We said that "If the international community wants to form the courts, the international community must put up the money," when we want to see justice. It is not wise to say this because we seek help from the international community. Before we expect assistance from them, we have to help ourselves. We have to make a contribution to show them that we have tried our best to do it. With an estimated cost of \$50 to 60 million, we shall be able to make a satisfactory contribution in comparison to the \$700 to 800 million of national budget spent each year, \$500 to 600 million of which is foreign aid. Given the scope of corruption in Cambodia, a World Bank report revealed that the state loses \$110 million in national interest every year in two industries: garments and tourism. I mention only two kinds of industries. What about other kinds of economic industries? This corruption also has an impact on small businessmen, retailers and peasants. If we total the amount of corruption, it rises to \$1,000 million. Therefore, we have to encourage the government to take this issue into deep consideration. Money is never a problem for matters that are useless or of little importance and benefit only the leaders and their cronies. Millions of dollars were spent on the preparation of the useless AIPO summit. The construction of the new Parliament costs \$26 to 27 million, while experts estimated that the cost of the building is only \$13 million. Government can always afford unimportant spending, but cannot afford the cost of the court, which is considered significant for the future of the nation. I would like all

members of parliament from all political parties who are the representatives of the people to encourage the government to contribute enough funds so that the United Nations can establish the court to try the Khmer Rouge leaders. Although there are some Khmer Rouge leaders within today's government, this is not a reason for further postponing the formation of this special court. Thank you.

⊗ **H.E. Cheam Yeip:** I think that today the victims are waiting to see the ratification of the *Agreement* and the *Amendments* to some articles of statute. Some say the government has not been willing to establish the court for 7 years, whereas in fact they themselves caused delays. The government has been trying to solve the problems preventing the formation of the court. First, trying the Khmer Rouge leaders involves the United Nations. It needs to be discussed because it is not solely a Cambodian issue, but also one for the international community. Mr. Sam Rainsy has recognized the fact that Cambodia is poor. The fact that we say we don't have the money is not a reason to delay the trial. We have to examine a disease from the beginning, because a good doctor must clearly identify the disease. It is our issue and we have to examine what principles we have adopted for rule of law. I think that Deputy Prime Minister Sok An, advised by Prime Minister Hun Sen, did his best until the United Nations withdrew for a period of time. I don't want to mention more about the political deadlock, because this is the main principle. I learned that the word *international* is composed of *national* and *international*. National and international communities must play their parts. We all know that the participation of the international community is mainly financial aid. It does not mean that Prime Minister Hun Sen goes abroad and brings the money back to Cambodia. The donor countries have to look deeply into the issue before they make their donation. They, together with their donations, will bring their citizens to work in Cambodia. The financial contribution of the government is necessary, and I understand what the government has done so far, as I am the Chairman of the Financial Committee of the National Assembly. The GIS [a group of donor countries] that helps Cambodia looks deeply into the policies of the government before giving us donations. Cambodia herself does not manage the donated money. There is a technical team who decides how money will be spent. For instance, on the construction of Kizuna Bridge in Kampong Cham, the donor managed the spending. Samdech Hun Sen only chaired the inauguration ceremony. Like other things such as roads and streets, Samdech Hun Sen only chairs the inauguration ceremony. We have to understand each other; we cannot just talk without thinking. We should not take advantage of the political situation. We have to work hand in hand to develop our country. I'd like to support the ratification of this law. Thank you.

Samdech Krom Preah Norodom Ranariddh: Thank you. Please, His Excellency Ly Thuch.

H.E. Ly Thuch: Your Honor. Today is an historic day on which the Parliament is preparing to ratify the *Agreement* relating to the prosecution of the Khmer Rouge leaders, voting for justice for the nation and people, and voting to end the bitter past. It has been 29 years since the collapse of the Khmer Rouge regime. The 3 year, 8 month, and 20-day regime left us a terrible heritage: millions of people dead, hundreds of thousands of widows, orphans and disabled people separated from their families. National virtue, the symbol and soul of the nation, was made to disappear by the genocidal regime. The national economy and infrastructure were also destroyed by the regime. Today as a parliamentarian and an orphan, as my parents were killed when I was 9, I would like to express my deep thanks to our Majesty who succeeded in integrating and reconciling policies leading to peace in the country. Also I'd like to express my deep thanks to Samdech Krom Preah and Prime Minister Hun Sen, who pursued the integrating and reconciling policies leading Cambodia to become a country composed of only one nation and government. This is an historic and huge victory for the whole nation. Therefore, I, without any hesitation, support and praise H.E. Sok An and his colleagues under the leadership of Prime Minister Hun Sen for their achievement. I'd like to express my deep thanks to Deputy Prime Minister Hor Nam Hong who visited the United Nations and



enjoyed its support. The UN has promised to call for financial contributions to helping the Government of Cambodia run the Khmer Rouge tribunal. Therefore, I support the ratification without any hesitation. At the end, I'd like H.E. Sok An to give a little explanation of new Article 2, the second sentence stating that, "...to prosecute the senior Khmer Rouge leaders and those most responsible." Regarding this point, our people and civil society want to ask H.E. to clarify who are the senior leaders and those most responsible? Do they include also the chairmen of units of the organization? Thank you.

Samdech Krom Preah Norodom Ranariddh: Thank you. I'd like to invite H.E. Sok An and his colleagues Ang Vong Prathna, Om Yin Tieng, Ouk Vithun, Heng Vong Bunchat and Sean Visoth to come to the front. Please defend the law. Thank you.

H.E. Sok An: Your honor. I have two main points to clarify, namely *the Agreement* and *Amendments* to the law in force. ☉ Now we have come to the end of an issue which we have not overcome for one quarter of a century. I have the honor to present to the session two related drafts. In English, we call it "the two sides of the same coin." These are the draft on the *Agreement*. We all know that three years ago in 2001, the second term of the National Assembly passed the latter draft, promulgated by King Norodom Sihanouk on August 10, 2001. After it called for help from the United Nations in July 1997, the government has adopted three important principles, as follows. The first principle is to provide justice to the souls of millions of victims; the second is to preserve peace, political stability and national unification which Cambodia has just reached in the past several years; and the third is to respect our own sovereignty which is one of the fundamental principles set forth in the United Nations Charter. Respect for national sovereignty is found in the *Law and Agreement*. Based on these three principles, we have had tough talks about the issue for 7 years. For example, the UN Under Secretary-General for Legal Affairs had agreed on some points we have mentioned. Regarding the third principle, respect for national sovereignty, we have to take a strong and clear position as we are the owner of the house and the subject of the case. But we invited the United Nations to join us and help us. We have to make it clear that we are the owner of the house, and should have a clear opinion on this historic event. With reference to the respect for national sovereignty, what have we put in the law about national sovereignty? I now have the honor of clarifying this issue as follows.

There are principles regarding the nomination of judges. The Supreme Council of the Magistracy nominates all judges, both national and international, working for the Extraordinary Chambers. The draft states that the UN Secretary-General shall provide a list of foreign judges who will be assigned by the Supreme Council of the Magistracy. In addition, what we should be proud of after a long struggle is the composition of judges. The number of Cambodian judges is more than that of the international judges. This court structure never existed elsewhere. This is an outstanding outcome of our struggle. Amongst 5 judges, 3 are Cambodians. Among 7 judges, 4 are Cambodians. However, we cannot do anything we wish. After long and tough talks, we have come to a formula that is called a super majority. For example, a decision by the Extraordinary Chamber of the trial court shall require an affirmative vote of at least 4 judges; and a decision by the Extraordinary Chamber of the appeals court shall require an affirmative vote of at least 5 judges. The Extraordinary Chambers shall be established in the courts of Cambodia, and we request help from the international community, which is to take part in the court. There are 3 crimes under the domestic law: homicide, torture and religious persecution. And there are 5 crimes under international law: Genocide, crimes against humanity, war crimes, crimes against cultural property, and crimes against internationally protected persons. The 3 principles are found in the *Agreement* passed in 2001 and signed by H.E. Hans Corell [Under Secretary-General for Legal Affairs] and I on June 6, 2003. The Cabinet Council approved and submitted this agreement to the National Assembly a week after it was signed. We have been waiting for the ratification for one year. The delay was caused by the political deadlock.



Before moving on to the details of the amendments, I have the honor to tell the session about the development of the signing process between the United Nations and RGC. The preparation for the establishment of the Extraordinary Chambers took place through meetings and talks between the United Nations, RG Cambodia, and Group of Interested States (GIS). The GIS wants to contribute funding for the courts. Initially, the GIS consisted of 27 countries and is now down to about 20 countries. A number of countries also want to fund the court, namely Japan, France, Australia, Sweden, England, India, Russia, USA, and Germany. So far the RGC Task Force has talked to the UN delegation headed by Mr. Karsten Harell two times: the first was in December 2003 and the second in March 2004. What was said by the previous members of parliament that the government has done everything to delay the establishment of the court is 100% untrue. We have done everything to enable the process of establishing the courts. Despite the fact that the parliament has not approved the *Agreement* yet, we have initiated talks with the United Nations. We suggested that the UN send its delegation to Cambodia. The former Assistant Secretary-General retired. Karsten Herell took over his position. Karsten Herell headed to Cambodia in December 2003 and came back again in March 2004 for the purposes of discussing some technical problems. One of the problems is funding. How to raise funds? How to spend funds? Will it be a security problem to ensure international standards? These are questions we discussed.

I'd like the session to take into consideration the words *International Standards* because these two words have clear definitions regarding the court. We have discussed these words several times because there is an international convention on this issue. For instance, in 1966 the International Covenant on Civil and Political Rights was signed in New York. This is a foundation of the process of jurisdiction of the courts. That's why we have to clearly determine the standards for prosecuting someone; how shall the court try someone? How to arrange the institution? What kind of institution is a court? When can we bring someone to trial? When can we prosecute someone? What are the rights of the accused? These standards are set forth in international law: the International Covenant on Civil and Political Rights of 1966. The RGC has also talked with the UN about the venue of the courts. We have decided to use Chaktomouk Hall, which is a symbol of Phnom Penh, as the court venue and the exhibition hall nearby as an office for administrative officers and judges. We have also talked about administrative machinery and how we can organize it. How can we assign those administrative officers work?

We have come to a decision that the spending for the venues, salaries of the national officers, and other practical expenses shall be borne by the RGC. Aside from spending on the venues of Chaktomouk and the National Cultural Center, the government is also responsible for some daily expenses such as water, electricity, and salaries for national officials, and detention and medical treatment for the suspects and convicted. The estimated cost is approximately \$1.4 million, to be taken from the national budget and another \$6 million for indirect costs. Cambodia shall spend \$7.4 million, while the international community shall spend approximately \$57 million. As a whole, we shall contribute 10% of the total expense. I want to mention that \$1.4 million out of \$7.4 million shall be borrowed from the national budget. With regard to the talk about the cost of the courts, in March 2004 we had agreed on a cost of \$53 million for three years of proceedings with the UN delegation on its second visit to Cambodia. After talks between the GIS and the UN team, the amount of money rose to \$64 million. But after their return to New York, the UN delegation met with the GIS. After receiving some suggestions from donor countries, the estimated cost was reduced. After tough talks, we came to a decision in which the cost of the court is \$57 million.

The UN delegation will arrange a meeting with the government Task Force and donor countries to seek ways, if possible, to cut down the cost. The talks have always been three-party talks: the UN delegation, government Task Force and the GIS delegation. Once we finalize our judicial issues, we will arrange another talk with the UN delegation about the cost of the Extraordinary Chambers. The majority of the GIS advised that the total spending shall be divided into two packages: the UN Trust Fund and direct funding to the RGC. If they provide all the money



directly to the UN, it will cost some amount of money (this amount has different names and is sometimes called a service fee). At first, the United Nations was going to take 1% of the whole amount, which we call a commission, but now it charges 13% as a service fee. To bring down the service fee charges, a number of countries shall fund the RGC directly. Hence, the money will be taken from two packages: the United Nations' package and the government's package. This way, the donating countries can choose either funding through the UN Trust Fund or funding directly to the RGC. Since the beginning, we have sought funding for the part which shall be born by the government.

Therefore, we will talk with the UN about the percentages of funds to be put into the UN Trust Fund and into the hands of Cambodia. We will call for more funding from the GIS countries to the government of Cambodia. We have also talked about the service fee. This fee has fallen from 13 to 10% or possibly to 6%. In March 2004, the ratio of spending between the UN and RGC was 75:25. Later the donor countries suggested transferring approximately \$10 million from the UN to the RGC. Now we have a new ratio, which is about 60:40. We have already announced that our position is flexible on loading any item of spending onto the packages of the RGC or UN Trust Fund, according to two conditions, either: a) such a change is in accordance with the terms set forth in the *Agreement* signed by the two parties and shall not make any difference to the judicial foundation of the *Agreement*; or b) when accepting loads transferred to us, the government will not present itself as guaranteeing this spending as part of the national budget. We hope that we soon will finalize the funding issues, and the Secretary-General of the UN will report to and call for financial contributions from the state members. So far a number of countries have attempted to contribute funding to the Extraordinary Chambers through the UN Trust Fund or UN voluntary fund or RGC.

To date, only Australia has contributed funds (\$3 million Australian). Other countries say they will contribute funds and materials when the court exists. Apart from planning the national budget and operating the Extraordinary Chambers, the government Task Force has other tasks in cooperation with the Royal School of Administration with financial support from the UNDP. We have arranged two weeks of training on international humanitarian law for 30 judges and prosecutors and 30 lawyers. The Secretariat of the Task Force has prepared a booklet on the history, purpose and structure of the Extraordinary Chambers in English and Khmer. We have also prepared a CD on Cambodian and international law concerning the Extraordinary Chambers. These last two projects are funded by the Australian Legal Resources Institute and AusAID.

Now I'd like to talk about the *Amendments* to the law passed in 2001. These amendments do not affect the meaning and fundamental purpose of establishing the Extraordinary Chambers, which were passed by the National Assembly, reviewed by the Senate and Constitutional Council, and promulgated on August 10, 2001. We will make changes to the statute just to bring it in line with the *Agreement*. A moment ago, H.E. Ek Sam Ol, the Chairman of the Committee, mentioned the main points relating to the suggestion to amend the statute. I won't mention them again.

Briefly, the respected government and National Assembly have reached the end of a road we have walked on for a quarter of a century after the collapse of the Khmer Rouge's atrocious regime. As Prime Minister Hun Sen said, no one could escape from the destruction in our motherland during the 3-year, 8-month, 20-day regime widely known as "Democratic Kampuchea" led by Pol Pot. Those born after 1979 and who did not witness the crimes have also been affected. They still see the trauma of their parents, sisters and brothers. They have also shared the difficulties of rehabilitating the nation with their bare hands from Year Zero while they did not inherit ideals and benefits from their relatives, who died during the regime. It is a difficult and long-term struggle because we all know that Cambodia is relatively poor and developing slowly in the areas of health, education and income. Now the time has come to bring to justice those who planned and ordered the atrocity. After talks lasting for years, we have come to the establishment of the Extraordinary Chambers to try those who committed these crimes



against the Cambodian people and humanity. It is reasonable to have Cambodian and international judges, prosecutors, and legal experts work together to try those most responsible. This will lead to the creation of a culture deterring the reemergence of such atrocities in other parts of the world.

The model for this court enjoys the international community's support. No country opposes the court model we have agreed to establish, and sometimes it is mentioned that this is a Cambodian model that will set an example for future courts. It is a national court with an international character. Some call it a national-international court, as agreed by Samdech Hun Sen and UN Secretary-General Kofi Annan. I have the honor to present the National Assembly with two drafts for the ratification of the *Agreement between the Royal Government of Cambodia and the United Nations* and the adoption of the draft *Amendments*. The *Amendments* were made so that the two documents will conform and be compatible. Thank you.

Samdech Krom Preah Norodom Ranariddh: ☒ Now we are examining the budget issue. If we can receive financial aid from a number of donors to relieve the burden on the national budget, why don't we do this? But we have to make more contributions to demonstrate our will. A number of donors are waiting for the ratification of the *Agreement*, adoption of the *Amendments*, and the estimation of the cost by the UN; then they will contribute money. I am very happy because the Assembly perhaps does not face any problems in approving the *Agreement* and passing the *Amendments*. I can still remember in 1994 when we were examining the law on Outlawing Democratic Kampuchea and H.E. Sam Rainsy was a member of FUNCINPEC. He convinced a number of FUNCINPEC Party members that the society makes laws that are against the law itself, so how can we outlaw the Khmer Rouge? Before 2001, we unified and reconciled the nation. Now the Assembly is unified. Now I'd like to invite H.E. Ek Sam Ol to read Article 1.

H.E. Ek Sam Ol: Your Honor. The following is the content of the draft law on the approval of the *Agreement*. Article 1: Approve the *Agreement* signed in Phnom Penh on June 6, 2003. Enclosed is the text of the agreement. Thank you.

Samdech Krom Preah Norodom Ranariddh: Thank you. Deputy Prime Minister, please let us have your comments.

Samdech Krom Khun Norodom Sereyvuth: Your Honor. I have a small technical problem to share. The secretariat of the National Assembly perhaps has sent all of you the text of the *Agreement*. But today we have the English version, and maybe some of you do not have it yet. Thank you.

Samdech Krom Preah Norodom Ranariddh: Thank you. Deputy Prime Minister Hor Nam Hong, please let us have your comments.

H.E. Hor Nam Hong: Your Honor. I have a response to H.E. Sam Rainsy. I also talked with the UN Secretary-General on the issue of delaying the establishment of the courts. Does the government want to delay the establishment or form the courts immediately? I remember clearly that, on the Union Peace Day when I talked to journalists and again on the day I met Kofi Annan, I clearly stated that the government wants to try those Khmer Rouge leaders as soon as possible. The second issue concerns the budget. We do not demand that we try those leaders unless the international community pays money. The international community wants to pay because the crimes are genocide and crimes against the nation. Take, for example, the Rwanda Tribunal, Sierra Leone Courts, and Yugoslavia Tribunal, which prosecute crimes of genocide. Among all the three courts, the host countries have not paid any money because the international community is paying for everything. In comparison, the Khmer Rouge killed around 3 million people; unlike the genocides in Rwanda, Bosnia and Sierra Leone, which killed only several



hundred thousand people. That's why the GIS is willing to help us pay for the court processes. Secretary-General Kofi Annan requested that the government send him a letter when the Assembly ratifies the *Agreement* so he can ask countries to make voluntary contributions. Why are we willing to pay to establish the courts and not pay for the construction of hospitals and schools for the people? I only want the Assembly to understand this issue. Thank you.

Samdech Krom Preah Norodom Ranariddh: H.E. Keo Remy, please comment.

H.E. Keo Remy: ☒ Regarding the draft, I'd like to share my comments as follows. First, the *Agreement* on the draft statute to try the Khmer Rouge leaders aims to seek justice for the people of Cambodia. This law is so vital that it has to be determined clearly. On the subject of justice, who are the senior leaders? I can still remember that during the Khmer Rouge regime, village chiefs could also decide to kill people. The decentralization of power to kill people existed that time. Will the zone chiefs be prosecuted? Or is this law only meant to try 4 or 5 leaders? Who else will be prosecuted? It is unfair if we try only 3 or 4 people. The third issue concerns the statute of limitations. This law extends the statute to 30 years. 30 years is too short. The genocidal regime was so atrocious that it should not be extended for only 30 years. We found that foreign countries were involved, but we don't know which ones were behind Pol Pot so an investigation is needed, and thus the statute of limitations should not be limited. According to research and some scholars, the statute of limitations is not limited as in the cases of Hitler and Milosevic. This is a positive development showing the leaders that they cannot kill people as they wish. If they do, they will not be able to get away with their crimes for the rest of their lives. Can this 30-year limitation ensure justice for the victims? I suggest changing this point. The statute of limitations should be unlimited.

I saw a letter from the Ministry of Interior number 998 dated September 16, 2004. The letter was sent to the Ministry of Justice and was about the irregularity of 274 cases in relation to the release of convicted persons that occurred in city and provincial courts and the appellate court. To put it bluntly, our judges and prosecutors have problems. I would also like to comment on the competence of judges and prosecutors. I received a list of a large number of judges who are ill-educated and never went to law school, and most of them are over 60 years old. One of the 73 points in the policies for this third term of the government addresses the matter of getting those judges and prosecutors who are over 60 to retire. This policy has yet to be implemented. If the policy is implemented, it will create more chances for the younger generation to work for the nation. Although a large number of judges and prosecutors have little education (old 2nd grade, old 3rd grade, and some old 9th grade), some are highly-educated such as H.E. Dit Muntly and H.E. Ouk Vithun. This is both positive and negative points. Consequently, the government (in particular the Ministry of Justice) should pay more attention to reforming the courts' abilities.

Pursuant to new Article 11, Kofi Annan shall choose and send foreign judges, and the Supreme Council of Magistracy shall appoint them. What about our Khmer judges: who will nominate them? Will the Supreme Council nominate and appoint them by itself? According to my investigations, some of the judges who will work for the Extraordinary Chambers are members of the Supreme Council of Magistracy. This is not good. I'd like to suggest that the composition of judges be transparent and let the public know. We are concerned about those judges who are infamous and corrupt. With reference to the pre-trial chamber, if there is no majority required for a decision, the prosecution shall proceed. How many stages will the pre-trial chamber have? I am afraid that this will be time-consuming because there is one stage at the level of Co-Prosecutors, another stage at the level of Co-Investigating Judges, and another at the level of the trial chamber. On the topic of the suggestion from the Sam Rainsy party to make amendments, we suggested amending the Internal Regulations because we wanted to stay away from package voting and a violation of the Constitution. Thank you.

Samdech Krom Preah Norodom Ranariddh: Thank you. I'd like to mention again the letter I received from

H.E. Sam Rainsy. It only talked about Article 40 of the Internal Regulations. I'd like to inform the Assembly that we are discussing the ratification of the *Agreement*, and not the *Amendments*. See 6th agenda, 7th agenda. I perceived that H.E. Keo Remy supports the ratification.

Secretary of the session: Your Honor. Now we have the result. 105 out of 107 vote for Article 1.

Samdech Krom Preah Norodom Ranariddh: Thank you. The Assembly has endorsed Article 1 of the *Agreement*. H.E. Ek Sam Ol, please read Article 2.

H.E. Ek Sam Ol: The Royal Government of Cambodia shall by all procedures continue to execute this *Agreement*. Thank you.

Samdech Krom Preah Norodom Ranariddh: Thank you. May the Assembly approve it.

Secretary of the session: Your Honor. 105 out of 107 vote for Article 2. Thank you.

Samdech Krom Preah Norodom Ranariddh: The National Assembly has approved Article 2. Please read Article 3.

H.E. Ek Sam Ol: Article 3: This law shall be proclaimed as urgent.

Samdech Krom Preah Norodom Ranariddh: May the Parliament approve it.

Secretary of the session: Your Honor. 107 out of 107 vote for Article 3. Thank you.

Samdech Krom Preah Norodom Ranariddh: Thanks very much. All 107 vote for this urgent article. The Parliament has approved the *Agreement*. I announce the closure of the session.

October 5, 2004

Samdech Krom Preah Norodom Ranariddh: Your Excellency, please check the quorum.

Secretary of the session: Dear respected Samdech Krom Preah, President of the National Assembly, First Vice President, Samdech, His/Her Royal Highnesses, and His/Her Excellencies, members of the National Assembly. 94 members of the National Assembly are present. Thanks.

Samdech Krom Preah Norodom Ranariddh: Thanks, Your Excellency. Respected Samdech First Vice President of the National Assembly. Respected His/Her Royal Highnesses, His/Her Excellencies and all members of the National Assembly. Respected Deputy Prime Minister, Special Representative of the Government and all associates. Yesterday, the National Assembly discussed and approved the draft law on the *Agreement*. I would like to request all members of the National Assembly to examine and adopt the 7th agenda and begin discussing and adopting the draft of the *Amendments* to some articles of the *Law on the Establishment of Extraordinary Chambers*. Yesterday, some put questions to His Excellency Sok An. They were His Excellency Ly Thuch and Keo Remy. So, if His Excellency Deputy Prime Minister doesn't mind, I would like you to respond to those questions. Thank you.

H.E. Sok An: Dear respected Samdech President and Samdech Vice President. Dear respected members of the National Assembly. I, having been granted permission by Samdech President, would like to share my comments on the following points that some speakers have raised. The first is related to Article 2 of the draft law and concerns the prime suspects for the prosecution; these suspects are the objective of the Extraordinary Chambers. In this



sense, there are two main points: First, the prosecution of *senior leaders* of Democratic Kampuchea and second, the prosecution of *those most responsible* for crimes and serious violations of Cambodian law, international humanitarian law and customs, and the violations of the International Covenant to which Cambodia is a party, which were committed in the period April 17, 1975 to January 6, 1979.

The first point to be confirmed is about *senior leaders* of Democratic Kampuchea. This point contains clear words, *senior leaders*. We have talked to various delegations about the establishment of the Extraordinary Chambers (EC). We determined that the courts shall prosecute those who are linked to the crimes. The prosecution of those holding ordinary positions is not a difficulty, for such people could also be held responsible before Cambodian courts. However, what we are concerned with and will consider as an important matter is the prosecution of senior leaders. That is why Article 2 has been prepared with full attention and clearly defined targets, which refer to senior leaders. However, there is another point of view concerning those who were not the senior leaders, but who committed crimes as serious as those of the senior ones and will also be the targets of the EC. With regard to this matter, I would like to reconfirm, as His Excellency Ly Thuch mentioned yesterday, that there are two types of targets: senior leaders who are the most important targets of the EC and some others who might not be senior leaders but their actions were much more serious, and there is enough evidence to prove that they really committed much more serious crimes than others. However, we have already considered that there would not be too many, as in the case of Sierra Leone's tribunal. According to the news, Sierra Leone's court has prosecuted 9 criminals. In the case I have mentioned, there was joint agreement when we determined the targets to be included in Article 2.

Another point relates to the statute of limitations. Article 3 deals with this statute, which in this amendment shall be extended from 20 to 30 years. Yesterday, a speaker asked why we need to talk about the statute of limitations if some tribunals determine that there is no statute of limitations for crimes of genocide and crimes against humanity. For genocide and crimes against humanity, there is no statute of limitations. It means that we don't need to write down the word "statute of limitations" if we use only this law. As I said, however, the National Assembly yesterday addressed that in the EC we have both Cambodian and foreign judges. We use both Cambodian and foreign law, so with regard to our law, as I have mentioned, we are ready to produce a CD in order that we can let the public know all judicial issues that we shall use in this court, which consist of both Cambodian and international laws. In the framework of the Cambodian Penal Code, especially the 1956 code, there are some provisions that we can use as a source of law in the EC, and crimes provided for in those provisions have a statute of limitations. Therefore, the purpose of Article 3 is to cover all sources of law that we shall use as judicial bases in the EC. This is the reason why we put the statute of limitations in the EC statute. At first, we stated 20 years. For the 20-year period from 1995, the statute of limitations will expire in 2005. However, because this period of time is too short for the trial, we request a 30-year limitation, which means the statute will expire in 2015. The continuance of the limitation is for Cambodian law. We do not want to continue without an end to the statute of limitations; that's why we want to extend it to 30 years so it will expire in 2015.

Another point concerns the pre-trial chamber. In our courts and foreign courts, there is no pre-trial chamber, but in our Extraordinary Chambers we have created this formula because we have co-prosecutors. In our case, the basis of law that we have created is a compromise between our government and the UN. There will be more Cambodian than foreign judges, but the decision has to be in accordance with the formulation of the super majority. The formulation requires consensus and agreement from both Cambodian and foreign judges, and both Cambodian and foreign prosecutors. Therefore, indictments can be brought in when both prosecutors agree. If the foreign co-prosecutor wants to indict Mr. A but the Cambodian co-prosecutor does not agree, the indictment cannot be made. If this problem occurs, the place to solve the problem is at the pre-trial chamber. It has the right to decide



when there is no agreement between the two co-prosecutors in issuing the indictment. The pre-trial chamber will invite the co-prosecutors under the coordination of the Office of Administration. It can decide whether or not to indict Mr. A. This is a special formulation for the Extraordinary Chambers. How many levels are there? There are none in the pre-trial chamber. When the decision of whether or not to indict someone is made, the chamber's job is finished. Therefore, it has to decide within the framework of the super majority. As I have told all of you previously, if there is no agreement between the Cambodian and foreign judges and co-prosecutors, there is no indictment or prosecution. This can be said to be the fundamental principle of the Extraordinary Chambers. Thank you.

Samdech Krom Preah Norodom Ranariddh: Thank Your Excellency Deputy Prime Minister. I would like His Excellency Ek Sam Ol to read Article 1 to the parliament, please.

H.E. Ek Sam Ol: Dear respected Samdech Krom Preah, President of the National Assembly. Dear respected Samdech Vice President. Dear respected His/Her Royal Highnesses and His/Her Excellencies, members of Parliament. I would like to read the draft law as follows: Law on the amendments to articles 2, 3, 9, 10, 11, 14, 17, 18, 20, 21, 22, 23, 24, 27, 29, 31, 33, 34, 35, 36, 37, 39, 40, 42, 43, 44, 45, 46 and 47 of the *Law on the Establishment of Extraordinary Chambers*.

Articles 2, 3, 9, 10, 11, 14, 17, 18, 21, 22, 23, 24, 27, 29, 31, 33, 34, 35, 36, 37, 39, 40, 42, 43, 44, 46, 46, and 47 of the *Law on the Establishment of the Extraordinary Chambers* promulgated by Royal Decree No. NS/RKM/0801 dated October 12, 2001 are to be amended as follows:

New Article 2: The EC shall be established in the existing court structure, namely, the trial court and the supreme court, to bring to trial senior leaders of Democratic Kampuchea and those who were most responsible for crimes and serious violations of Cambodian laws related to crimes, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from April 17, 1975 to January 6, 1979. Senior leaders of Democratic Kampuchea and those who were most responsible for the above acts are hereinafter designated as "Suspects."

New Article 3: The EC shall have the power to bring to trial all suspects who committed crimes set forth in the 1956 Cambodian Penal Code and which were committed during period from April 17, 1975 to January 6, 1979:

- ◆ Homicide (articles 501, 503, 504, 505, 506, 507 and 508)
- ◆ Torture (article 500)
- ◆ Religious persecution (articles 209 and 210).

The statute of limitations set forth in the 1956 Penal Code shall be extended for an additional 30 years over the statute of limitations of the crimes enumerated above, which are within the jurisdiction of the Extraordinary Chambers.

The penalty under articles 209, 500, 506 and 507 of the 1956 Penal Code shall be limited to a maximum of life imprisonment, in accordance with Article 32 of the Constitution of the Kingdom of Cambodia, and as further stipulated in new Articles 38 and 39 of this law.

New Article 9: The trial court shall be an Extraordinary Chamber composed of five professional judges of whom three are Cambodian judges, with one as President and two foreign judges. The President shall appoint one or more clerks to participate, and the Co-prosecutors shall present their cases before the Trial Court.

The Supreme Court, which shall be the place for receiving the appeals complaint and shall serve as final instance, shall be an Extraordinary Chamber composed of seven judges of whom four are Cambodian judges, with one as President, and three foreign judges. The President shall appoint one or more clerks as necessary to participate, and Co-prosecutors shall present their cases before this Supreme Court.

New Article 10: Judges of the EC shall be appointed from among the currently practicing judges and from



judges who are additionally appointed in accordance with the existing procedures for the appointment of judges. Those judges shall have high moral character, a spirit of impartiality and integrity, and shall have related experience, especially experience in international humanitarian law and international human rights law. Judges shall be independent in performing their functions and shall not try to seek any instructions from any government or other sources.

New Article 11: The Supreme Council of Magistracy shall appoint at least 7 Cambodian judges to act as judges of the EC and shall appoint some reserve judges as needed and the President of the EC from among the above Cambodian judges, in accordance with the existing procedures for the appointment of judges. The reserve Cambodian judges shall replace the appointed Cambodian judges in case of their absence. These reserve judges may continue to perform their regular duties in their respective courts. The Supreme Council of Magistracy shall assign at least five persons of foreign nationality to act as foreign judges of the Extraordinary Chambers after having been appointed by the UN Secretary-General. The UN Secretary-General shall submit a list of at least 7 candidates for foreign judges to the RGC, and the Supreme Council of Magistracy shall appoint 5 sitting judges and at least 2 reserve judges from the list. In addition to the foreign judges sitting in the EC and present at every stage of proceedings, the President of each EC, on a case-by-case basis, shall designate one or more reserve judges already assigned by the Supreme Council of Magistracy to present at each stage of the trial and to replace a foreign judge if that judge is unable to continue sitting.

New Article 14: 1. The judges shall attempt to achieve unanimity in their decisions. If this is not possible, the following shall apply:

- a) a decision by the EC of the trial court shall require the affirmative vote of at least four judges.
- b) a decision by the EC of the Supreme Court shall require the affirmative vote of at least five judges.

2. When there is no unanimity, the decision of the EC shall contain the *opinions* of the majority and the minority.

New Article 17: The Co-Prosecutors in trial court shall have the right to appeal the verdict of the EC of the trial court.

New Article 18: The Supreme Council of the Magistracy shall appoint Cambodian prosecutors and Cambodian reserve prosecutors as necessary from among the Cambodian professional judges. The reserve prosecutors shall replace the appointed prosecutors in case of their absence. These prosecutors may continue to perform their regular duties in their respective trial court. One foreign prosecutor with the competence to appear in both ECs shall be appointed by the Supreme Council of the Magistracy upon nomination of the UN Secretary-General. The Secretary-General shall submit a list of at least two candidates for foreign Co-Prosecutor to the RGC, from which the Supreme Council of the Magistracy shall appoint one prosecutor and one reserve prosecutor.

New Article 20: The Co-Prosecutors shall prosecute in accordance with existing procedures in force. If necessary, and if there are lacunae in these existing procedures or if there is a question concerning consistency with international standards, the Co-Prosecutors may seek guidance on procedural rules established at the international level. In the event of disagreement amongst the Co-Prosecutors, the following shall apply:

The prosecution shall proceed unless the Co-Prosecutors or one of them requests within thirty days that the difference shall be settled in accordance with the following provisions:

The Co-Prosecutors shall submit written statements of facts and the reasons for their different positions to the Director of the Office of Administration.

The difference shall be settled forthwith by the pre-trial chamber of five judges, three Cambodian judges appointed by the Supreme Council of the Magistracy, one of whom shall be President, and two foreign judges appointed by the Supreme Council of the Magistracy upon nomination by the UN Secretary-General. The



appointment of the above judges shall follow the provisions of the new Article 10 of this law.

Upon receipt of the statements referred to in the third paragraph, the Director of the Office of Administration shall immediately convene the pre-trial chamber and communicate the statements to its members.

A decision of the pre-trial chamber, against which there is no appeal, requires the affirmative vote of at least four judges. The decision shall be communicated to the Director of the Office of Administration, who shall publish it and communicate it to the Co-Prosecutors. They shall immediately proceed in accordance with the decision of the chamber. If there is no majority as required for a decision, the prosecution shall proceed.

In carrying out the prosecution, the Co-Prosecutors may seek the assistance of the Royal Government of Cambodia if such assistance would be useful to the prosecution, and such assistance shall be provided.

New Article 21: The Co-Prosecutors under this law shall enjoy equal status and work conditions according to each level of the Extraordinary Chambers.

Each Prosecutor shall be appointed for the period of these proceedings. In the event of the absence of the foreign Prosecutor, he or she shall be replaced by the reserve foreign Prosecutor.

New Article 22: Each Co-Prosecutor shall have the right to choose one or more deputy prosecutors to assist him or her with prosecution before the chambers. Deputy foreign Prosecutors shall be appointed by the foreign Co-Prosecutor from a list provided by the Secretary-General.

The Co-Prosecutors shall be assisted by Cambodian and international staff as needed in their offices. In choosing staff to serve as assistants, the Director of the Office of Administration shall interview, if necessary, and with the approval of the Cambodian Co-Prosecutor, hire staff who shall be appointed by the Royal Government of Cambodia. The Deputy Director of the Office of Administration shall be responsible for the recruitment and administration of all foreign staff. The number of assistants shall be chosen in proportion to the Cambodian prosecutors and foreign prosecutors.

Cambodian staffs shall be selected from Cambodian civil servants and, if necessary, other qualified nationals of Cambodia.

New Article 23: All investigations shall be the joint responsibility of two judges, one Cambodian and another foreign, referred to as Co-Investigating Judges, and shall follow existing procedures in force. If necessary, and if there are lacunae in these existing procedures, the Co-Investigating judges may seek guidance in procedural rules established at the international level.

In the event of disagreement between the Co-Investigating judges the following shall apply:

The investigation shall proceed unless the Co-Investigating Judges or one of them requests within thirty days that the difference shall be settled in accordance with the following provisions.

The Co-Investigating Judges shall submit written statements of facts and the reasons for their different positions to the Director of the Office of Administration.

The difference shall be settled forthwith by the pre-trial chambers referred to in new Article 20.

Upon receipt of the statements referred to in the third paragraph, the Director of the Office of Administration shall immediately convene the pre-trial chamber and communicate the statements to its members.

A decision of the pre-trial chambers, against which there is no appeal, requires the affirmative vote of at least four judges. The decision shall be communicated to the Director of the Office of Administration, who shall publish it and communicate it to the Co-Investigating Judges. They shall immediately proceed in accordance with the decision of the pre-trial chamber. If there is no majority as required for a decision, the investigation shall proceed.

The Co-Investigating Judges shall conduct investigations on the basis of information obtained from any institution, including the Government, United Nations organs, or non-government organizations.

The Co-Investigating Judges shall have power to question suspects and victims *or* to hear witness, and to



guidance may be sought in procedural rules established at the international level.

The Extraordinary Chamber of the trial court shall perform its jurisdiction in accordance with the procedures of international justice, fairness, and due process of law as referred to in Articles 14 and 15 of the International Covenant on Civil and Political Rights.

Suspects who have been indicted and arrested shall be brought to trial court according to existing procedure in force. The Royal Government shall guarantee the security of the suspects who appear voluntarily before the court, and is responsible for taking measures for the arrest of the suspects prosecuted under this law. Justice police shall be assisted by other law enforcement elements of the Royal Government of Cambodia, including the armed forces, in order to ensure that accused persons are brought to custody immediately.

The conditions for the arrest and custody of the accused shall conform to existing law in force.

The Court shall provide for the protection of victims and witnesses. Such protection measures shall include, but not be limited to, the conduct of *in camera* proceedings and the protection of the victim's identity.

New Article 34: Trials shall be public and opened to foreign state representatives, the representative of the Secretary-General of the United Nations, the representatives of media, and the representatives of international and national non-governmental organizations, unless in exceptional circumstances the Extraordinary Chambers decide to close the proceedings for good cause in accordance with existing procedures in force.

New Article 35: The accused shall be presumed innocent as long as the court has not given its definitive judgment.

In determining charges against the accused, the accused shall be equally entitled to the following minimum guarantees as referred to in Article 14 of the 1966 International Covenant on Civil and Political Rights:

- a) to be informed promptly and in detail in a language that they understand of the nature and cause of the charge against them;
- b) to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
- c) to be tried without delay;
- d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right and to have legal assistance assigned to him without payment if he does not have sufficient means to pay for it;
- e) to examine the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- f) to have free assistance of an interpreter if the accused cannot understand or does not speak the language used in court;
- g) not to be compelled to testify against themselves or to confess guilt.

New Article 36: The Extraordinary Chambers of the Supreme Court shall decide appeals from the accused, the victims, or by the Co-Prosecutors. In this case, the Supreme Court shall make the final decision on both errors of fact and of law, and shall not return the dossier back to the trial court of the Extraordinary Chambers.

New Article 37: The provisions set forth in new Articles 43, 44, and 45 shall be implemented identically in the proceedings of the Extraordinary Chamber of the Supreme Court.

New Article 39: Those who have committed any crime as provided in new Articles 3, 4, 5, 6, 7, and 8 shall be sentenced to prison terms from five years to life imprisonment.

In addition to imprisonment, the Extraordinary Chamber of the trial court may order the confiscation of personal property, money, and real property acquired unlawfully or by criminal conduct. The confiscated property shall be returned to the State.



New Article 40: The Royal Government of Cambodia shall not request an amnesty or pardon for any of those who may be investigated or convicted of crimes referred to in new Articles 3, 4, 5, 6, 7 and 8 of this law. The scope of pardon or amnesty granted before the adoption of this law is a matter to be decided by the Extraordinary Chambers.

New Article 42: 1. Cambodian Judges, Co-Investigating Judges, Co-Prosecutors, and staff shall be accorded immunity from the legal process in respect of words spoken or written and all acts performed by them in their official capacity. The immunity shall carry on ahead with them after they complete their duties with the Extraordinary Chambers, pre-trial chamber, and the Office of Administration.

2. Foreign staff shall be accorded in addition:

a. immunity from legal process in respect of words spoken or written and all acts they performed in their official capacity. The immunity shall carry on ahead with them after they complete the duties with the Co-Investigating Judges, Co-Prosecutors, Extraordinary Chambers, pre-trial chamber, and the Office of Administration.

b. Immunity from taxation on salaries, allowances, and emoluments paid to them by the United Nations.

c. Immunity from immigration restrictions.

d. the right to import free of duties and taxes, except for payment for services, their furniture and effects at the time of first taking up their official duties in Cambodia.

3. The counsel of a suspect or an accused who has been admitted as such by the Extraordinary Chambers shall not be subjected by the Government to any measure that may affect the free and independent exercise of his or her functions under the *Law on the Establishment of the Extraordinary Chambers*.

In particular, the counsel shall be accorded:

a. immunity from personal arrest or detention and from seizure of personal baggage relating to his or her functions in the proceedings;

b. inviolability of all documents relating to the exercise of his or her functions as a counsel of a suspect or accused;

c. immunity from civil and criminal jurisdiction in respect of words spoken or written and acts performed in his or her capacity as counsel. Such immunities shall carry on ahead with the counsel after he or she finishes his or her functions as a counsel of a suspect or an accused.

4. The archives of co-investigating judges, co-prosecutors, Extraordinary Chambers, pre-trial chamber and the Office of Administration and in general all documents and materials made available, belonging to, or used by them, wherever located in the Kingdom of Cambodia and by whomsoever held, shall be inviolable for the duration of the proceedings.

New Article 43: The Extraordinary Chambers established in the trial court and the Supreme Court shall be located in Phnom Penh.

New Article 44: The expenses and salaries of the Extraordinary Chambers shall be as follow:

1. The expenses and salaries of the Cambodian administrative officials and staff, the Cambodian judges and reserve judges, investigating judges and reserve investigating judges, and prosecutors and reserve prosecutors shall be borne by the Cambodian national budget;

2. The expenses of the foreign administrative officials and staff, the foreign judges, co-prosecutor, and co-investigating judge sent by the Secretary General of the United Nations shall be borne by the United Nations;

3. The defense counsel may receive fees for mounting the defense;

4. The Extraordinary Chambers may receive additional assistance for their expenses from other voluntary funds contributed by foreign governments, international institutions, non-governmental organizations,



and other persons wishing to assist the proceedings.

New Article 45: The official working languages of the Extraordinary Chambers shall be Khmer, English and French.

New Article 46: In order to ensure timely and smooth implementation of this law, in the event any foreign judges or foreign investigating judges or prosecutors fail or refuse to participate in the Extraordinary Chambers, the Supreme Council of the Magistracy shall appoint other judges or investigating judges or prosecutors to fill any vacancies from the lists of foreign candidates provided for in new Article 11, new Article 18 and Article 26 of this law. In the event those lists are exhausted and the Secretary General of the United Nations does not provide lists of new candidates or in the case the United Nations withdraws from the Extraordinary Chambers, any such vacancies shall be filled by the Supreme Council of the Magistracy from candidates recommended by the Governments of Member States of the United Nations or from among other foreign legal personalities.

If, following such procedures, there are still no foreign judges or foreign investigating judges or foreign prosecutors participating in the work of the Extraordinary Chambers and no foreign candidates have been identified to occupy the vacant positions, then the Supreme Council of the Magistracy may choose the replacement Cambodian judges or investigating judges or prosecutors.

Article 47 bis: After the ratification in accordance with the provisions of the Law of the Kingdom of Cambodia relevant to the authority of the signing of the *Agreement*, which was stricken in Phnom Penh on June 6, 2003, the *Agreement* shall be enforced as a law of the Kingdom of Cambodia. Thanks.

Samdech Heng Samrin: Please, go ahead with the discussion of these articles. His Excellency Pen Panha.

H.E. Pen Panha: Respected Samdech President, Samdech, Prince, Excellency, ladies and gentlemen. It is a great pleasure for me to share with sensible parliamentarians an examination of the two crucial drafts, one of which was unanimously approved yesterday. Today, we will discuss and adopt the point of the draft law relating to the amendments to 29 articles of the *Law on the Establishment of the Extraordinary Chambers*. The adoption of these two drafts is the adoption of the core drafts designed to close the dark pages of our nation's history. The closure, however, of such pages will never be made easily because it relates to the spirit of millions of people killed under the notorious and tragic regime. The law is concerned with the crime of genocide, crimes against humanity, war crimes and the International Covenant on Civil and Political Rights. Therefore, it is necessary for us to set up a tribunal combining international and domestic law to ensure the sovereignty of our country and to retain international standards. Our effort aims to deliver justice to the victims. This will serve as a valuable lesson for Cambodia and the world to help people stay away from the tragedy the Cambodians experienced. Hence, it is necessary to take more time and discussion. I would like to take this opportunity to express my profound thanks to the Royal Government, national institutions, international community, United Nations, relevant partner organizations and those who make every effort to enable us to close the dark pages with dignity and justice.

⊗ I would like to lend full support to the 29 articles that His Excellency Chief of the Legislative Committee read and His Excellency Deputy Prime Minister defended in the morning: the law on the essential content to be amended to make the statute conform to the treaty the Assembly unanimously adopted yesterday. I don't have any comments but to give my full support to the *Amendments* to these 29 articles to become law. In so doing, the law will be in parallel with the *Agreement* passed yesterday. I am confident that His or Her Excellency, parliamentarians have the same common sense and think of the life-and-death and historic issues of our country, and do everything possible to demonstrate our work by implementing democracy in a way that the next generation does not fall into confusion and anarchy, and politicians do not lose their ways. If [you] have anything to say and want to exercise your freedoms, please do not defame and speak badly. Doing so shows contempt for organized societal bodies.



There is a notion of Sreihettoa Pates which says that “contempt is the root of devastation.” Thanks.

Samdech Heng Samrin: Thanks His Excellency. Please His Excellency Khieu Sorn.

H.E. Khiev Sorn: Respected Parliament, Samdech, Prince, Princes, His Excellency, and noble members of the National Assembly. Today, I would like to tell you that I was a prisoner of the Khmer Rouge. The Khmer Rouge incarcerated me in Region 33 called Mlou Mountain. I now am a survivor of that regime. To pay back that regime, today it is my turn to try them. Why? Because the Extraordinary Chambers will bring about justice. The victims of the regime can learn more of the principle of justice. The principle of justice is a source of Cambodian judicial reform and serves as a warning to all dictators in the world. The Cambodian people and people of the world will know the truth of why the leaders killed their own people. It was different from the so-called Nazi Hitler regime, which did not kill German nationals. The regime killed those who were enemies. I admire yesterday’s National Assembly, the United Nations and the new government for endeavoring to reform the judicial system. I cite F3: (1) Fair, (2) Fast, (3) Fund. Regarding funds, Article 41 is clearly written. There will be some national funds to support this body, and Mr. Kofi Annan recently informed the Deputy Prime Minister for the Ministry of Foreign Affairs that he will help us. We, therefore, no longer worry and shall not mention the word *dangerous*. To sum up, we shall not be derailed from today’s subject. We will try the Khmer Rouge who killed millions of people. We will build complete confidence. The point is that the government should encourage the quick formation of this tribunal. Judges should be trustworthy, transparent and independent in issuing judgments. This may bring new hope to our society in order to liberate us from past events and move forward to the future. As a member of Parliament and a number of civil society organizations, I appeal for justice as follows: These 29 articles of the amendments are legitimate. I’d like to express my thanks to the Legislative Committee for its detailed, sincere and judiciousness discussions in working out this law.

However, I have a question. Article 11 in the English version contains some errors in translation because *appointing* is written, but its meaning is confused with *selecting*. I have some special recommendations to put forward in advance for your Excellency to respond to. The Human Right Association wants an elucidation of the points in Articles 12 and 13, so can you clarify the points to them again. Article 12 says that if any judges see a conflict between Cambodian law and international law, they shall seek international procedural rules. Obviously, there will be a debate, but how can such a debate be avoided? With regard to Article 33, they intend to eliminate the Extraordinary Chamber of the appeals court. Considering the standard of justice, they intend that judges of the Extraordinary Chambers shall organize procedures for the extraordinary prosecution – that is, the rules of procedure and evidence for the function of the pre-trial chamber, trial chamber and the supreme chamber, and the rules of procedure for the protection of victims and witnesses and other matters concerning the organization and procedure of the Extraordinary Chambers – judges may seek guidance and standards for procedural rules established at the international level. The judges of the Extraordinary Chambers may change an approved measure if it is not written or written with some lacunae, according to tangible circumstances. They have a view that the approval of these procedures for the Extraordinary Chambers shall be determined by unanimous vote, or if a unanimous vote does not occur, by a two-thirds majority vote of all judges of the Extraordinary Chambers. The EC shall perform its jurisdiction according to international standards of justice and due process of law, as written in Articles 14 and 15 of the International Covenant of 1966 on Civil and Political Rights..

May your Excellency let me make a recommendation. We want to establish a court. Our courts get used to corruption; therefore, in accordance with my recommendation, the candidates for the EC judges should be persons who are fair, honest, sincere, expert, and capable. The candidates should not be members of the Supreme Council of the Magistracy. The Council is the one that shall appoint the judges and if they appoint themselves as judges,



there will be a problem simply known as “blowing a whistle and playing football at the same time.” The candidates must be qualified to work in the court. We should not recruit persons without any legal education. In addition, the candidates shall be required to bear special credentials. The candidates must have experience in international criminal law, international humanitarian law, and international law. They should not be members of a particular party. The candidates chosen to handle the extra work shall have knowledge of law. They must have at least a bachelor of law degree or an equivalent certificate; moreover, the candidates must have three to seven years of experience in the field of law. The international community compliments us on Article 31 of the constitutional law and thinks Cambodia is amazing. They came to establish the rule of law; so we have to learn from them. I would like to close this aside and continue my speech.

The candidates shall be selected using open and proper methods. The notice of candidate selection shall be posted publicly. Nowadays I have noticed there is a certificate market. Those holding such certificates can type on a computer with a single finger for a whole night, yet without having one page finished. This is a problem of buying certificates. The job applications must be thoroughly examined. The international community is observing us. We should not act as if we are *riding a horse without using our hands* [do as one pleases]. Democracy and autocracy are completely different. If the system is “I can say and do whatever I want,” it is not democracy. Democracy considers citizens as the most important subject. We should adopt democratic doctrine. That’s what I suggest. As far as I am concerned, the Ministry of Justice shall perform in the aforementioned way and be cautious, and not appoint persons of bad character. To be precise, I would like to ask his Excellency the Deputy Prime Minister, the representatives of the government, whether it is *appointing* or *electing by vote* when appointing a judge. Is it a selection on the basis of political parties, by the Supreme Council of Magistracy, or of someone’s cronies? Please respond.

Samdech Heng Samrin: Next, his Excellency Eng Chhay Eang.

H.E. Eng Chhay Eang: Thanks. First of all, I would like to salute the whole assembly. I am impressed by three points in the law. First, I request government representatives to clarify new Article 2. The Deputy Prime Minister has explicated this already; however, there’s still some doubt about the point *in order to try senior Khmer Rouge leaders, those most responsible for the crimes*. I would like to make a little clarification: the phrase *senior leaders* is too broad in terms of meaning. Strictly speaking, how is it applied, given the fact that in the structure of the Khmer Rouge, there was a Standing Committee of the central party, which may be presumed as having senior positions, and a Central Committee, which may also be presumed as having senior positions. May your Excellency, the representative, clarify whether it’s the Central Committee or the Standing Committee of the central party? Referring only to *senior positions* is quite broad. Please clarify, and if possible, incorporate this point into the new article of the law.

I am also not clear about *those most responsible*. Which levels are considered to be *those most responsible*? In the Democratic Kampuchea, they divided the country into the Central Committee, the zones, regions, districts, sub-districts and cooperatives. Furthermore, as we know, there were security guards at every level. There were security guards at the national level at Tuol Sleng prison, and some of them bear great responsibility. Zones also had security guards whose job was to kill people; so some of them should bear great responsibility, too. It is the same case with regional, district, sub-district and cooperative sections. That’s why I want the representatives of the government to clarify at which levels are *those most responsible*. If we mean only the national level, then justice cannot be brought to the victims because it was mostly the guards or militiamen at the district level who killed the victims. In my view, the high class normally commanded the subordinates to kill enemies; however, the militiamen are those who defined the enemies. I would like to remind people not to be vague. If we emphasize only the



highest class, we mean Pol Pot, who has already died.

Another point is in new Article 23, which contains the phrase “one is Cambodian.” I request we say “one is Khmer” because we normally say Khmer to mean Cambodian. About new Article 33, the assembly members must have received a request from civil society asking the assembly to give authority to the judges in order to ensure smooth procedures. I think this issue is fairly essential for Article 33. We have clarified already that the Extraordinary Chambers shall perform accurately and promptly in accordance with the procedures in force, but this Article clearly states that in elaborating and performing the procedures, guidance shall be sought in procedural rules established at the international level. This issue is vague, for we do not know the scope, and it can cause delay. For instance, if we disagree on a procedure, who decides? How can we respond to the assembly if this process takes much time? Therefore, civil society has asked for power for the judges to establish another distinct set of procedures. Hence, I ask the Assembly to examine and consider this request. ☒ I would like to support the content of this law and we would like to have it endorsed soon in order to facilitate the process of the Extraordinary Chambers and bring justice to all Khmer people. Thank you.

Samdech Heng Samrin: Please, His Excellency Sok An.

H.E. Sok An: I would like to salute his Excellency, the First Deputy Chief and the whole assembly. I would like to make some comments on some points raised by his Excellency Khiev Sorn and other speakers. His Excellency Khiev Sorn has raised two points after a great evaluation and support of this tribunal. His Excellency first asked about the procedures that will be put into effect in the process of the Chambers and second about the nomination of judges. The two points are essential to this procedure. These have been profoundly discussed for so long with the United Nations because we want to ensure a *standard of justice*. Everything is organized following what the parliament assumed to be international procedures. We have mentioned the principles regarding justice, providing justice, retaining national unification, and national sovereignty. Thus, since the beginning we have mentioned how the Extraordinary Chambers are established in the courts of Cambodia. Thus, the phrase *Cambodian judges* demonstrates the real elements and substance of the Chambers. At the talks with the United Nations, we agreed to use the national procedures in force in our courts today. As long as there is a balance, we can work out a compromise. This is an acceptable rule. So in this compromise it is clearly stated that the Chambers shall use the existing procedures in force in Cambodia. The use of this procedure has some partiality because Cambodia follows the Roman-German legal system, which we adopted from France. In conclusion, we have come to a compromise on the issue, as stated clearly in Article 33.

But where there is uncertainty or where there is a question regarding the consistency of such rules with international standards, a compromise on making domestic procedure compatible with international procedures shall be reached. There shall be a combination of Cambodian procedures in force with international procedures, mainly extracted from the Common Law system. That’s why we put in Article 33 that the trial chamber of the Extraordinary Chambers shall function smoothly. We shall respect the rights of the accused and provide protection for witnesses and victims, and if Cambodian procedures do 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 be sought in procedural rules established at the international level. The Extraordinary Chambers shall exercise their jurisdiction in accordance with the international standards set forth in Articles 14 and 15 of the International Covenant on Civil and Political Rights of 1966. The international standards for prosecution are clearly stated in the Covenant. Therefore, we shall combine national standards with international standards. I also received suggestions from a number of NGOs. They suggested providing clear terms regarding this issue. After tough talks in New York, we have



a new Article 33.

If we had accepted suggestions from NGOs, we would have amended this law as well as the *Agreement* with the United Nations again. This would be so complicated that it would further delay the establishment of the courts, because we once again would have to talk many times with the UN. This should not be implemented because each talk with the UN takes a long time before reaching agreement on the combination of national with international procedures. Before coming to an agreement with us, they examined and studied our existing procedures in force many times. This final text of the draft is the result of a long and thorough talk with in-depth research into our court system and the 1966 International Covenant on Civil and Political Rights. I suggest keeping the whole of Articles 12 and 33 as found in the text.

In relation to the nomination of judges, we shall engage carefully in this task. We have provided for these points clearly in the text of the draft or amendments. Judges who are appointed to work with international judges shall be mature and knowledgeable; they need to be competent and cooperative to be able to work with international judges. The judges chosen will have experience in the execution of national law whose source is international law. It has also been requested that we add to the draft that judges also have knowledge of international human rights law and international humanitarian law. We have given the competence of judges much thought. We have also arranged training courses to equip them with a better understanding in the areas of law to be used in the Extraordinary Chambers. So far we have arranged two training courses. We will try our best to nominate competent judges to work for the courts. The appointment of judges is also an important task because the special courts are composed of national and international judges. The appointment is extraordinary since judges are chosen from various states and organizations through diverse stages. First states shall select the names and send the list to the United Nations. Then the UN will select some of them and submit their list to Cambodia. The Supreme Council of Magistracy will appoint them at the final stage. There are different uses of terms regarding appointment. In English, there are three terms, *Nominate, Appoint and Assign*. First international judges shall be *nominated* by the UN Secretary-General, then *appointed* by the Supreme Council of the Magistracy. After a long talk, the UN law experts have come up with the term *Assigned*. They demanded that we should use the term *assign* instead of the term *appoint* because the UN will *appoint* international judges. Now we have come to a final agreement in which first UN shall *appoint* international judges, then the Supreme Council of Magistracy shall *assign* them to work.

Article 2 deals with the terms *senior leaders* and *those most responsible*. According to the terms, we identified two targets. The first target is *leaders*. According to the judicial foundations, the co-prosecutors, comprising a Cambodian and an international, are the ones bearing the right to identify who shall be indicted. If we ask the question "who shall be indicted?," neither the UN nor the RGC Task Force can give a response because this is the task of the courts: the Extraordinary Chambers. If we list the names of people for the prosecution instead of the courts, we violate the power of the courts. Therefore, we cannot identify A, B, C, or D as the ones to be indicted. As a solution, we have identified two targets: *senior leaders* and *those most responsible*. Considering *senior leaders*, we refer to no more than 10 people, but we don't specify that they be members of the Standing Committee. This is the task of the Co-Prosecutors. Why did we decide to identify such a small number of people? Because experts in the arrangement of international courts acknowledge that the prosecution of dozens or thousands of suspects is not a task that produces good results. That's why we have agreed that no more than 10 people will be designated as senior leaders. However, there is still the second target. They are not the leaders, but they committed atrocious crimes. That's why we use the term *those most responsible*. There is no specific amount of people to be indicted from the second group. Those committing atrocious crimes will possibly be indicted.

Another issue concerns the use of the words *Khmer* and *Cambodia*. These two words do not make any



changes to the purpose of the law.

On the subject of internal procedures, as I have mentioned, we had thorough talks before we agreed on this point. If we change the procedure, for instance, if we provide that judges write the procedure of internal regulations or the Extraordinary Chambers, I think this will lead to amendments to the statute and *Agreement* again. What has been stated in the draft is the result of thorough talks. Thank you.

Samdech Heng Samrin: The Chairman of the Legislative Committee, please comment.

H.E. Ek Sam Ol: Your Honor. I'd like to make some clarifications in addition to those of Deputy Prime Minister Sok An. I have the honor to inform you that the *Agreement* signed on June 6, 2003 was ratified by the Assembly yesterday. Therefore, we cannot step back to make changes to it. Yesterday I also informed the Parliament that the *Amendments* are based on the *Agreement*. In addition, after its ratification, this *Agreement* will enjoy equal status with the law in Cambodia. What we are discussing this morning is making the 2001 statute conform to the *Agreement*. For example, in the 2001 statute the EC had three chambers, but now we will eliminate the appellate chamber. Therefore, the EC will consist of two chambers, the trial chamber and the supreme chamber. In order to restructure the courts, we have to amend eight articles: 2, 9, 11, 14, 17, 18, 36 and 37. Regarding the extension of the statute of limitations, we have to amend three articles: 3, 29 and 36. On the matter of the International Covenant on Civil and Political Rights, we have to amend Articles 24, 33, 34, 35 and 43.

There are still a number of articles to be amended. For instance, to ensure that judges must have experience and knowledge of international humanitarian law and human rights law, we have to amend Article 10. With respect to the clarification of the appointment of foreign judges, co-investigating judges, and co-prosecutors to fill vacancies, we have to amend Articles 11, 21 and 27. Concerning the point that the UN Secretary-General can submit additional names of applicants, we have to amend Article 46. Respecting Co-Prosecutors' rights to appoint deputy prosecutors, we make changes to Article 22. The clarification of Articles 33, 34 and 35 regarding consistent application of procedures in the trial and supreme chambers means we have to change Article 37. There are other points, but they were mentioned yesterday. Since the *Agreement* was ratified yesterday, it is difficult to change any words in the statute because these two have been made to conform with each other. Some lawmakers suggested adding *those who were members of the central committee, or those who were held political office, or those who were zone chiefs*; we cannot do that because the *Agreement* has already been ratified. And Article 1 of the *Agreement* states clearly that its purpose is "to try senior Khmer Rouge leaders and those most responsible." Therefore we cannot add or change any words. During discussions in January 2001, the Assembly's second term, we had a tough talk on this issue. Some suggested trying chiefs of cooperatives, while some suggested trying village leaders upward. When it comes to trauma, all members of the Parliament and government are victims of the Khmer Rouge regime. We cannot try all Khmer Rouge. The EC will prosecute only the senior leaders and those most responsible. Since the statute is based upon the *Agreement*, we cannot make any changes to its wording because the *Agreement* is already in force. 29 Articles of the statute are amended to make it conform to the *Agreement*. I can still see spelling errors, but this is not a big problem. I suggest correcting these small spelling mistakes based on the dictionary of Samdech Sangkreach Choun Nat.

Samdech Krom Pheah Norodom Ranariddh: Thank you. All members of the three parties have come to a consensus on examining and passing the *Agreement* and *Amendments*. 107 out of 107 members of the Parliament voted for the ratification of the *Agreement*. In my opinion, the senate cannot make any proposal to correct any spelling errors. If any of you have questions, please raise them. I think we cannot make any changes to the *Amendments* because the pact is already in force. Please His Excellency Mounh Saphan.



H.E. Mounh Saphan: Your Honor. I understood that we all put all of our efforts into ensuring justice for the Cambodian people. Those committing crimes must reap the results of their actions and they must be held responsible for what happened under their regime. This statute, once endorsed, will serve as a tool for the Extraordinary Chambers to try those Khmer Rouge. After I listened to the explanation of H.E. Deputy Prime Minister concerning the small number of suspects, I feel that the suspects have already been identified. This is contradictory because you first say the number of suspects is small; then you say it is the task of the courts to decide who to prosecute. We cannot determine small or large or no more than 10 suspects because it is the responsibility of the courts. This is totally wrong.

Another problem concerns *those most responsible*. H.E. the Deputy Prime Minister also said that there are not too many of those most responsible. I'd like to inform the session that in Region 5 where I lived, those most responsible included region, cooperative, and militia chiefs. These three suspects in my area alone were among those most responsible. Therefore, we cannot determine how many suspects there are before the courts are established. This shall be the task of the courts.

I also want to share my recommendation on the nomination of Khmer judges for the Extraordinary Chambers. Most of the Khmer judges are victims of the Khmer Rouge regime, and thus the court may not be able to ensure justice for not only the victims but also the perpetrators. The third issue is the use of the term *Cambodian judge*. We should not use this term because the Constitution uses the term *Khmer people*. Hence the term used in the statute should be consistent with that of the Constitution.

Another point concerns the content of the *Amendments*. It is true that restructuring the courts requires amending a number of articles. Regarding Article 23 providing that *Co-Investigating judges shall have the power to question suspects and victims, to hear witnesses,*" before the Assembly you read it as "*suspects and victims or to hear witnesses.*" This word changes the meaning of the article somehow. I want you to make this clear. Article 33, line 4 says *"...guidance may be sought in procedural rules established at the international level."* Who shall seek guidance? *Who* may refer to judges of the Extraordinary Chambers. "*Guidance may be sought*" What guidance? I think that we'd better state clearly that "*Judges of the Extraordinary Chambers shall discuss and issue a decision to seek procedural rules.*" With respect to new Article 34, the phrase *".. in exceptional circumstances"* is not clear. In exceptional circumstances, the court shall decide to close the proceedings for good cause; what are circumstances? When is a circumstance exceptional? Why can't it be open to the public? Also Article 34 states that: "*Trials shall be public and open to foreign states' representatives.*" Please make clear who are the representatives. Representatives of foreign judges or states' representatives? Then Article 36, line 2 about Sal Deika of the Trial Chamber, we have to use Sal Krom for the Trial Chamber and Sal Deika for the Supreme Court of the EC [Sal Deika means the rulings of the appellate court or supreme court; Sal Krom means the rulings of the trial court]. Article 40 relates to the matter of pardon. As I read the *Agreement*, it states that "the scope of the pardon that can be granted and the pardon granted before the adoption of this law is the matter to be decided by the Extraordinary Chambers." Therefore, I think that after the establishment of the tribunal, the EC will decide whether to grant amnesty or pardon. But this decision runs counter to the Constitution, which states that the King has the right to reduce guilt or grant amnesty. For example, Mr. A was granted amnesty. When the EC exists, it can accuse him of other crimes. There are lots of cases to indict. Previously, we accused Mr. A of crimes A and B, but we can bring complaints on cases C and D, which are different from the previous ones. This way we can bring Mr. A to trial without affecting our Constitution stating that the King has the right to grant pardons.

I would like to end my statement on Article 40. As His Excellency Ek Sam Ol has mentioned, I understand that after ratification the *Agreement* will become law. But, I just generally want to paraphrase that: *After giving ratification in accordance with the procedures of Cambodian law, concerning the authority of signing the treaties...*



then the agreement between the government to prosecute what follows...shall be enforced as a law of Cambodia. I think this phrase is difficult to understand. We want to state that when the *Agreement* is ratified, it will become law in Cambodia, but it relates to the authority of signing treaties; that is hard to understand. I would like His Excellency to give a detailed explanation on this point. Thank you.

Samdech Krom Preah Norodom Ranariddh: Thanks to His Excellency. I would like either His Excellency Ek Sam Ol or His Excellency Deputy Prime Minister Sok An to give their opinion. I would like His Excellency Sok An, please.

H.E. Sok An: Dear respected Samdech President and all members of the Parliament. As His Excellency Mounh Saphan has raised many points, I would like to comment as follows. First is the number of targets and number to be prosecuted by the EC. This point, as I have mentioned before, seems clear, but His Excellency Mounh Saphan still thinks that it is not. On this point, the law states that it is the authority of the EC judges, who shall have the power to decide the targets and consider who shall be indicted or prosecuted. But, the EC, which has the competence and right make such decisions, must perform its functions in accordance with the law: the *Agreement* and law we are discussing. Before we worked out this law, we had thorough talks with experts. It took so long (6 to 7 years) because many main principles needed to be discussed. So, the number I have raised is just the point of view of lawyers. I also have already stated that the rights to decide on this matter are the rights of co-prosecutors and the EC. I think that this point is clear enough.

The second point concerns the appointment of judges. As His Excellency Mounh Saphan put it, the incumbent judges who were involved in the 3-year, 8-month, 20-day regime should not be appointed as judges of the EC. We haven't clearly decided on this matter yet, whether to choose His Excellency A, B or C. Concerning the idea that those who experienced the Pol Pot regime should not be appointed to perform this work, I also understand that in the framework of our law, if a judge is linked to the targets to be prosecuted, that judge cannot do that work, for the accused will counterclaim against that judge. According to the law, that person shall not be appointed to act as judge for the case because the judgment might be partial. However, this case is considered to be special. In trying to establish this law, we also considered this point. Those who came to talk to us about this law are not stupid; they are very clever. During the discussion, we also noticed that judges from foreign countries don't know about Pol Pot. They have never known the [regime's] crimes, and they never experienced the 3-year, 8-month, 20-day regime. But, Cambodian judges have experienced the pain of this regime and were angry with it, so the trial, according to our law, might be unfair and partial, and they should not be involved in this job. However, there is another point of view: foreign lawyers don't know this regime or its nature. Thus, the Cambodian judges' awareness of the regime is a positive point because those who were its victims can understand the nature of the crimes. So, there are both positive and negative points. What I have said doesn't mean that we have to appoint those judges who lived during the regime, but as we see it, there are both positive and negative points.

Concerning the words written in the article stating they could seek guidance on procedural rules from international sources. His Excellency raised the point that we don't know to whom the "they" refers. For this matter, there is a connection between the English and Khmer texts because we discuss in English and then translate into Khmer. We think our translations from English are weak. However, in the current situation of globalization and international cooperation, we sometimes have to translate from English to Khmer and sometimes from Khmer to English. Nowadays, after we have been working in the government for a long time, some texts are written in Khmer and then translated into English to be considered by the international community. Because those lawyers discussed things with us in English, not in Khmer, the writing and the preparation of this text were also in English. Therefore, the phrase "they can seek guidance" is very clear. In the EC framework, if there is no unanimity in the national

procedures or if foreign judges and prosecutors say that the national procedures are against international procedures, they can seek guidance in procedural rules established at the international level. I think they can understand this matter clearly. And, if we have read this text from the beginning, we can also understand.

The fourth point concerns public trials. Sometimes, we show things to the public and sometimes we arrange for meetings behind closed doors. We cannot determine this point either: only the judges can. Whether they announce in camera or not in order to secure witnesses or others is the EC's decision. If we consider that it is the task of the EC, we should not clarify more than this. We cannot determine matters in advance, whether this case shall be this or that. They will decide as each case arises.

In regard to Article 39, I would like to go on to another word: "foreign states." This point means that during the hearings, representatives of various countries and foreign countries can listen. In using this term, we just want to point out that such countries are eligible to participate. All representatives of foreign states can get access to the hearings by just saying they represent a particular state.

The terms "verdict" and "ruling" have different aspects. The lawyers say that the current tendency in international circles seems to be not to differentiate the term "verdict" from "ruling." Sometimes, the term "verdict" is used and, sometimes, the term "ruling" is used in a trial court, court of appeals, or supreme court. But our tendency is to think in terms of Cambodian law and procedure, where the term "ruling" is issued by the trial court and "verdict" by the court of appeals or any upper chambers. With regard to this, it is not a major issue. We can adjust it. So, we will have no more problems with the term to be used. If we have in mind the term "ruling," we use that. If we have in mind the term "verdict," we use that. In so doing, we have to adjust to the international trend, in which the terms are no longer different.

Concerning pardons, this point was the subject of tense, challenging and frequent discussion in Phnom Penh until 2001, when agreement was reached. However, as we continued discussing the *Agreement* in New York, they insisted that there should not be any pardon. We have a clear stance, and could not do anything contrary to our Constitution. There is no need for us to make any amendments to our Constitution. Finally, there was unanimity that Cambodia doesn't need to amend its Constitution, but we write in a reliable way that we would not ask for any amnesty after the trial. At the start of the discussion, the UN said that there would not be any amnesty, but we explained to them that we could not say *no amnesty* because our Constitution states that our King has the right to grant an amnesty. If we say that no amnesties will be granted, it is against our Constitution; we cannot write this. However, to get their consent, we could write that the RGC shall not request any amnesty. We wanted them to understand that the previous amnesty happened because the Government requested support from the National Assembly, and then the King granted amnesty. Therefore, we explained to them that if the government doesn't request and the National Assembly doesn't approve, there will not be any amnesty. But they still had some doubts in their mind and still argued on this matter. Therefore, we had to make another compromise. At first, they raised the formula that amnesty shall not be a barrier to the indictment of any suspects. We also did not agree with this sentence because it also means *there is no amnesty*. Finally, we proposed that the matter of pardon be decided by the EC. The phrase "to be decided by the Extraordinary Chambers" does not mean that there is another separate EC to decide on this matter. The ECs have the power to decide this matter. And we think that it is not against the Constitution or its spirit. It can also be said that our judges will fully understand the spirit of our Constitution and will not make any decision that is against it. This is the solution that both sides agreed on. We think that we should maintain this formula because it is the only one that can help us stay within the confines of our Constitution, be acceptable to the UN, and that is parallel to what we have done so far. I would like to end. Thank you.

Samdech Krom Preah Norodom Ranariddh: Thanks to His Excellency. Please His Excellency Ek Sam Ol.



H.E. Ek Sam Ol: Dear respected Samdech Krom Preah, President of the National Assembly. Respected Samdech Vice President and all members of the Parliament. I would like to share with His Excellency Deputy Prime Minister the clarification of some points that His Excellency Mounh Saphan raised. Regarding new Article 23, the point His Excellency Mounh Saphan has raised is in paragraph 2: co-investigating judges shall have the power to question suspects and victims, to hear witnesses and to collect evidence. I might have made mistakes in my reading, for it is a long text. The text is right but I read wrongly. I am so sorry. His Excellency Mounh Saphan talked about new Article 33, raising the matter related to the word “they.” “They” refers to whom? The word “they” is not a new amendment. I have read the 2001 Khmer Rouge Law, which also contains the word “they,” so that is all right.

I would like to return to new Article 23 because he is still in doubt about the “Cambodian Judges.” This one is also not changed; it is not changed from Khmer to Kampuchea because old Article 23 stated that all investigations shall be the joint responsibility of two investigating judges, one Cambodian. So, this word has been used since 2001. We can use either Cambodia or Khmer. Please use either one. If now he wants to use the word “Khmer,” I won’t disagree. Department of Procedures, please remember this point, “Khmer.”

Considering new Article 34, His Excellency Mounh Saphan is curious about the words “exceptional circumstances.” These words are also used in the 2001 Khmer Rouge Law. In the new Article 34, we added a little bit. We state that the EC proceedings shall be open for representatives of foreign states, the UN Secretary-General, the media, and NGOs, both local and international. These are new words: “except in exceptional circumstances the Extraordinary Chambers may decide to.” Therefore, with regard to the phrase “exceptional circumstances,” if the Chambers thinks that there are exceptional circumstances, they can have a secret meeting.

With reference to new Article 36: What His Excellency Mounh Saphan has mentioned is considerable because we wholly changed this article. The old article talks about the EC of the appeals court, so it keeps the word Sal Deika (ruling of the Appeals and Supreme Courts). According to the existing law on penal procedure, the decision of the trial court or municipal/provincial court is called Sal Kram (the ruling of the trial court). So, please change to the word Sal Kram because His Excellency Sok An gives two alternatives, so I suggest the Department of Procedures remembers that there should be a change from Sal Deika to Sal Kram so it is in conformity with the law on penal procedures.

Article 47: I think that the meaning of this article is sufficient because it is taken from Article 31 of the *Agreement*. His Excellency Mounh Saphan mentioned he agrees to the writing in the draft of the amendment law. Thank you. Please adopt the law.

Samdech Krom Preah Norodom Ranariddh: Thanks to His Excellency. The matter is that His Excellency Mounh Saphan is the former President of the Legislative Committee. That is the important point. Please adopt Article 1. Thanks.

Secretary of the session: Respected Samdech President. The supporting vote is 97 of 98. Thanks.

Samdech Krom Preah Norodom Ranariddh: 97 of 98. Now the National Assembly has adopted Article 1. His Excellency Ek Sam Ol read Article 2, please.

H.E. Ek Sam Ol: Article 2: This law shall be proclaimed as urgent. Thank you.

Samdech Krom Preah Norodom Ranariddh: Please adopt Article 2.

Secretary of the session: The vote in support is 96 of 98. Thanks.

Samdech Krom Preah Norodom Ranariddh: The National Assembly has passed the draft law on the





Crown Prince Haakon Magnus of Norway visited Tuol Sleng Genocide Museum on October 5, 2004
(Norway is the first country that supported the Documentation Center of Cambodia to publish *Searching for the Truth*)

special unit from Phnom Penh. When he came back at dawn, the village chief and militiamen asked him why he had been questioned. He told them that Angkar confused him with his brother who was an ambassador, and thought he was in the military. They asked him about it several times, but my father always replied that he was a coach. Tiring of the same questions, he asked them: “What if I am a civilian?” and “What if I am a military?” “Angkar wants to be sure, and will give you the same position,” they replied. They released him because he kept giving the same answers. After hearing his story, my mother again demanded that he move the family out of this village. But my father angrily replied: “No one kills their own citizens; at most they are taken to study.”

The village chief then told my father to prepare clothing. “Angkar summons him to study,” the chief told my mother. My father kept saying, “Don’t worry, Angkar does not kill its own citizens.” The next day, my mother used her jewelry to bribe the village chief into letting my brother meet my father. When my brother returned, he said: “Father is at the district office with other 50 people such as soldiers, teachers, and doctors.” My mother was relieved because she thought they would never kill teachers and doctors. My brother asked my mother’s permission to accompany my father. The chief got the approval of the district committee for him to go. We have had no further information on my father and oldest brother since then. Also, my grandfather passed away in the village because he was sick and had no medicine.

Three weeks later, four large boats came to bring New People back home. My mother was very happy; she had waited a long time to leave the village. But the village chief’s wife whispered that we should not leave because Angkar would not bring us home. Thinking she would die whether she stayed or left, my mother decided to leave.

We left on the boats, which were so full that people had to sit on the roofs. One of the boats sank when they panicked at the heavy rains and strong wind. Many children were swept into the river as their helpless

mothers watched. After we landed, we wrung out our wet clothes because we had nothing else to wear.

After two days and one night we reached Kampong Chhnang. The next morning we were transferred to Pursat by car and waited near the railway for two nights until the train took us to Battambang. My second brother and I were almost separated from my mother because I had diarrhea and my brother was cleaning me up when the train left. Fortunately, someone helped us onto the train. In Battambang, my family went by bull cart to Char village, Anlung Run commune, Ta Pon district. We lived there with six other families, which included New People, Base People, and militiamen, in a house with a tile roof.

Angkar took all of my brothers and sisters to work sites, leaving my mother and me at home. I went to school and my mother was assigned to transplant rice seedlings. She did not know how, so the unit chief often reduced her food ration, accusing her of pretending not to recognize the seedlings. Later, after she bribed the chief with jewels and because one of her legs was disabled, she was assigned to care for young children near the dining hall.

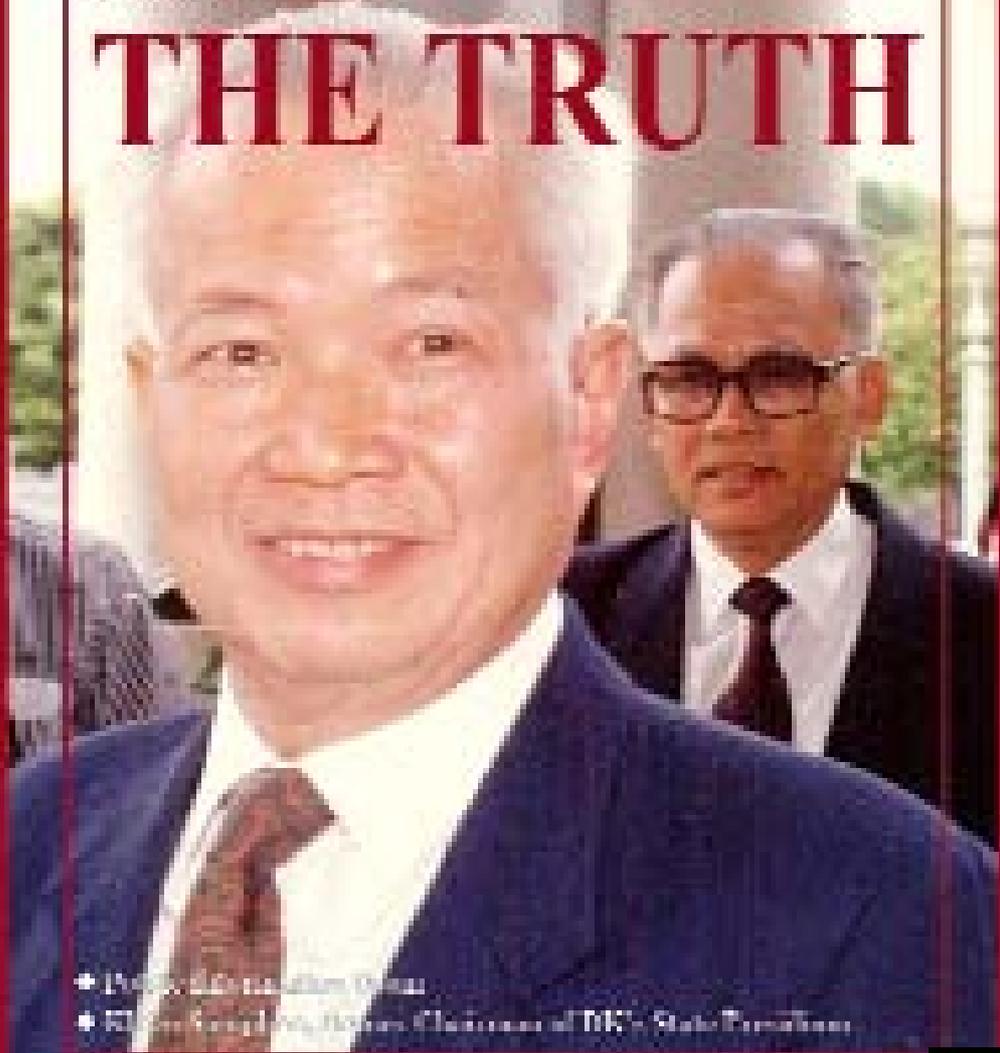
Soon after this, Angkar put me in a children’s unit. I often ran away to see my mother, but was caught and beaten by the unit chief. Many of the children in the unit were indoctrinated and reported their own parents to Angkar.

In 1977 I was allowed to go to the village to collect cow dung and cut *tontrean khet* weeds. There, I saw my sister lying down because she was weak from diarrhea. She kept saying she wanted to eat eggs fried with *saam* vegetable until she died. My second brother was sent back to the village; his legs had been amputated because he had yaws. Later, he died.

In 1977 and 1978 the whole village was flooded. At that time, Angkar sent my five remaining brothers back home, and all of them were in critical condition, swollen from dysentery. All five died in the same month. This put my mother in the same situation as Bandacha (a girl who, in Cambodian legend, lost all of her family members). She was emotionally unstable because my

SEARCHING FOR THE TRUTH

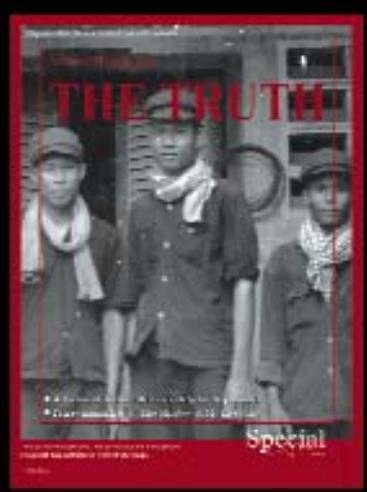
THE TRUTH



- Pol Pot, the man who killed
- Hun Sen, the man who killed

“In this magazine, we want to present you with the truth about the Khmer Rouge. What did they do? Why did they do it? How did they do it?”

Special



The Documentation Center of Cambodia would like to appeal to governments, foundations and individuals for support for the publication, *Searching for the Truth*. To contribute, please contact (855) 23 211 875 or (855) 12 905 595 or email: dccam@online.com.kh. Thank you.

A magazine of the Documentation Center of Cambodia: *Searching for the Truth*. Special English Edition, Third Quarter 2004.
Funded by the Swedish International Development Cooperation Agency (Sida).