

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 'an '

October 4, 2004

' **Samdech Krom Preah:** 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.
 - 1. This agreement will have equal status to the domestic law of Cambodia after its ratification.
 - 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.
 - 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.
 - 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.
 - 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.

- 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.
- 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.
- 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.
- 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.
- 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 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 Herell 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: 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 Muntty 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 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.

B: 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. 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 collect evidence, in accordance with existing procedures in force. In the event the Co-Investigating Judges consider it necessary to do so, they may issue an order requesting the Co-Prosecutors also to interrogate the witnesses.

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

New Article 24: During the investigation, suspects shall be unconditionally entitled to assistance of counsel chosen by the suspects themselves and free of charge if they cannot afford it, as well as the right to interpretation, as necessary, into and from a language they speak and understand.

New Article 27: All Investigating Judges under this law have equal status and work conditions. Each Investigating Judge shall be appointed for the period of the investigation.

In the event of the absence of the foreign Co-Investigating Judge, he or she shall be replaced by the reserve foreign Investigating Judge.

New Article 29: Any suspect who planned, instigated, ordered, aided and abetted or committed the crimes referred to in new articles 3, 4, 5, 6, 7 and 8 of this law shall be individually responsible for the crime.

The position or rank of any suspect shall not relieve such person of criminal responsibility or mitigate punishment.

The fact that any of the acts referred to in new articles 3, 4, 5, 6, 7 and 8 of this law were committed by a subordinate does not relieve the superior of personal criminal responsibility if the superior had effective command and control or authority and control over the subordinate, and the superior knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators.

The fact that a suspect acted pursuant to an order of the Government of Democratic Kampuchea or of a superior shall not relieve the suspect of individual criminal responsibility.

New Article 31: The Director of the Office of Administration shall be appointed by the Royal Government of Cambodia for a two-year term and shall be eligible for reappointment.

The Director of the Office of Administration is responsible for overall management in the office, except the work under the control and procedural rules of the United Nations.

The Director of the Office of Administration shall be appointed from those with significant experience in court administration and fluency in one of the foreign languages used in the Extraordinary Chambers, and shall be a person of high moral character and integrity.

The foreign deputy of the Office of Administration shall be appointed by the Secretary-General of the United Nations and assigned by the Royal Government of Cambodia, and shall be responsible for the recruitment and administration of all foreign staff as required by foreign components of the Extraordinary Chambers, Co-Investigating Judges, Co-Prosecutors' Office, and the Office of Administration. The Deputy of the Office of Administration shall administer the resources provided through the United Nations Trust Fund.

The Office of Administration shall be assisted by Cambodian and international staff as needed. All Cambodian staff of the Office of Administration shall be appointed by the Royal Government of Cambodia at the request of the Director. Foreign staff shall be appointed by the Deputy Director.

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

New Article 33: The Extraordinary Chambers of the trial court shall ensure that trials are fair and expeditious and are conducted in accordance with existing procedure in force, with full respect for the rights of the accused and for the protection of victims and witnesses. If necessary, and if there are lacunae in these existing procedures, 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 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 amendments to Articles 2, 3, 9, etc. of the Law on the Establishment of the Extraordinary Chambers. Oh! His Excellency Deputy Prime Minister, please give your impression.

H.E. Sok An: Dear respected Samdech President and all members of the National Assembly. The purpose of my talk is two-fold. First, I would like to thank Samdech Krom Preah, President, and all members of the National Assembly for passing this law to end the very long road we have taken to establish the judicial basis for the Extraordinary Chambers. Second, I would like to take this auspicious occasion to inform the National Assembly about two books entitled Instruction on the Khmer Rouge Trial, one in Khmer and another in English. These small manuals have been prepared under the sponsorship of two Australian organizations and aim to elaborate the process of the ECs' establishment, structure, the trial process and the ECs' implementation. They are in the form of about 40 questions and answers. I feel that by reading these books, readers will understand more about the process and the function of the EC, and the prime objective of the establishment of these courts. Thank you.

Samdech Krom Preah Norodom Ranariddh: Thanks to His Excellency. I would like to announce the suspension of the meeting. ' Thank you.

The translation of this speech was provided by Terith Chy, who was one of the DC-Cam Legal Training participants and began working as a volunteer at DC-Cam in September 2004. He recently graduated from the Royal University of Law and Economics.