

TRANSCRIPT: THE FIRST SESSION OF THE THIRD TERM  
OF 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 Law  
on Trying Khmer Rouge Leaders**

**Transcript and Translated by Documentation Center of Cambodia (DC-Cam)**

**Unofficial translation by Terith of DC-Cam**

**Edited by Steve Heder**

**Oct. 4, 2004**

**Samdech Krom Preah Norodom Ranariddh:** Respected Prime Minister, Samdech, Princesses, Her and His Excellencies; I'd like to express my deep thanks for your presence. I'd like to invite secretaries of the session, H.E Ly Narong, H.E Pou Sothirak, and H.E Chea Pauch, to check the quorum.

**Secretary of the session:** Your Honor! I'd like to thank to 101 lawmakers who are present here.

**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 in September 22, we have three agendas to examine and endorse: 6<sup>th</sup> agenda on the nomination of H.E Khlok Buthdy as Vice President of the National Election Committee in substitution of H.E Nge Chayleang who resigned. 7<sup>th</sup> 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*; **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 Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of crimes Committed during the Period of Democratic Kampuchea.* 8<sup>th</sup> agenda on the discussion and adoption of the draft on the *National Budget Management for the year 2004*. I have the honor to invite the assembly to approve the agendas.

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

**Samdech Krom Preah Norodom Ranariddh:** Thanks for approving the agendas. 6<sup>th</sup> agenda on the nomination of H.E Khlok Buthdy as Vice President of the National Election Committee in substitution of H.E Nge Chayleang who resigned; I would like to invite H.E Khlok Buthdy to come before the assembly. According to the decision of the summit of the Standing Committee of the National Assembly on Wednesday afternoon September 22, 2004, and the government's proposal to nominate H.E Khlok Buthdy as Vice President of the National Election Committee in substitution of H.E Nge Chayleang who resigned. I have the honor to invite Deputy-Prime Minister who is the representative of the government

to inform the Assembly on the above matter concerning the nomination of H.E Khlok Buthdy.

**Samdech Krom Khun Norodom Sereyvuth:** Your Honor! With the approval of the Deputy Prime Minister and Co-Minister of Ministry of Interior, and of the Prime Minister Hun Sen-head of the Royal Government of Cambodia, I have the honor to request for the nomination of H.E Khlok Buthdy as Vice President of the National Election Committee pursuant to the law on the *Election of Lawmakers* passed by the National Assembly in December 19, 1997, and on the *Amendments to Election of Lawmakers* passed by the National Assembly in August 21, 2002 as stipulated in sub-section 5, 6, and 7 of article 15. H.E Khlok Buthdy is a government official who is highly educated, competent at policymaking, full of working experience at national and international level, and will lead the National Election Committee toward perfection, neutrality, and transparency. I would like to read the biography of H.E Khlok Buthdy as follow. He was born in February 14, 1945. His nationality is Khmer. He was born in Phsar Krom village, Bakan district, Pursat province. His current address is in Kilometer No. 18, National Road No.5. From 1963-1965 he was a student at The Royal School of Administration, Phnom Penh. From 1967-1971 he was pursuing Bachelor of Criminology at Montreal University, Canada. From 1975-1978 he was pursuing master's degree in Management at Montreal University, School of Business, Canada. From 1981-1986 he was pursuing a diploma in International Law and Human Rights at International Institute of Human Rights, Strasbourg University, France. In 1994 he was held a certificate at Public International Institute of Paris. In 1997 he was given another certificate in Election Media from International Center of Hiroshima, Japan. Working experiences: 1978-1981 Human Rights Committee, Quebec of Canada. 1981-1992 French-Language department, Quebec Council of Ministers, Canada, President of Documentation Center and Assistant Deputy-Secretary of State. 1992-1993 he was the with the United Nations Transitional Authority of Cambodia (UNTAC) as a civil administrative officer whose job was to draft the Transitional Penal Law of Cambodia, Ministry of Interior. 1994-1998 he worked for the Ministry of Interior as an advisor to Co-Minister of Interior and as a chief of cabinet; he also worked as a professor at Faculty of Law and Economics. 1998-2003, he was a member of parliament and secretary of Legislative Committee of the National Assembly. His referees are Mr. Men Bunleng working for Canada Embassy in Phnom Penh, and H.E Than Sina who is now a member of the National Assembly and was a secretary of the National Assembly. Thank you. The Ministry of Interior has the honor to request for the approval of the nomination of H.E Khlok Buthdy from the President and First Vice President of the National Assembly, Princesses, Princes, and His and Her Excellency.

**Samdech Krom Preah Norodom Ranariddh:** Thank you. According to article 40-1 of the internal regulation of the Parliament states that secret ballot is used in gaining confidence from the parliament and in issuing motion of censure, and new article 13-3 of the Law on the Amendments to Law on the Election of Lawmakers provided that President, Vice-President and members of National Election Committee must be appointed by the Royal decree at least 7 months before the election day with the request from the Cabinet Council and after gaining support of super majority from the parliament; I would like the Secretary of the Assembly to choose 5 representatives. Please! H.E Mao Monivan, H.E Sin Pinsen, Her Excellency Ke Sovannaroath, H.E Bou Thang, H.E Yim Sovan (absent), H.E Oeng Bunhau. Regarding the participation, I have the honor to inform the parliament that Princes, Princesses, His and Her excellency have to write me a letter asking for permission if you want to take leave. Thank you. First I would like to invite all the 5 representatives to come to the front. The committee composed of the 5 representatives has the following tasks: 1.

Checking attendance of the lawmakers 2. Counting the ballots before delivering to voters 3. Delivering ballots to the lawmakers 4. Verifying the number of ballots received 5. Showing and guiding how to cast the ballots 6. Inviting voters to vote 7. Verifying whether a voters vote 8. Counting the ballots voted 9. Reporting the result of the vote to the chairman of the session.

**Election Commission:** Your Honor! The number of members participating in the session is 110 out of 123.

**Samdech Krom Preah Norodom Ranariddh:** Please count the ballots and deliver them to all 110 members.

**Election Commission:** Your honor, now we have 110 ballots amounting to 110 voters.

**Samdech Krom Preah Norodom Ranariddh:** I'd like to tell that the two voters up here have not received the ballots yet.

**Election Commission:** The ballots have been delivered to all voters.

**Samdech Krom Preah Norodom Ranariddh:** His Excellencies! Please give guidance on how to cast the vote.

**Election Commission:** Do all voters receive the ballots? If not, please raise your hands! Each voter gets the ballot, your honor. I would like to inform that, in the ballot, there are three points: *Yes, No, Abstain*. Please tick on the point you decided.

**Samdech Krom Preah Norodom Ranariddh:** Please start to vote.

**Election Commission:** This way, your honor!

**Samdech Krom Preah Norodom Ranariddh:** H.E Sam Rainsy, who is raising hand, wants to have comments. But I'd like to inform that, after presenting the application of H.E Khlok Buthdy, I did not receive any request to have comments on this application. But I received H.E Sam Rainsy's request to have comments when the vote has already processed because he came late. Thank you.

**Election Commission:** Please, third row your honor!

**Samdech Krom Preah Norodom Ranariddh:** May I announce the 1<sup>st</sup> session of the 3<sup>rd</sup> term in October 04, 2004; the attendance on a party basis is as the following: Cambodian People's Party 66, FUNCINPEC 22, Sam Rainsy Party 22. Altogether 110 members turned up. Absent on a party basis are: Cambodian People's Party 7, FUNSINPEC 4, Sam Riansy Party 2; total 13.

**Election Commission:** Now we have the result of the vote: 90 vote in favor, 16 vote against, 2 abstain, 2 ballots void.

**Samdech Krom Preah Norodom Ranariddh:** According to the announced result, the result of the election of H.E Khlok Buthdy is: 90 *Yes*, 16 *No*, 2 *Abstain*, and 2 void. I'd like to inform the session that H.E Khlok Buthdy has been nominated as Vice-President of the National Election Committee by the National Assembly in September 04, 2004, 1<sup>st</sup> session, 3<sup>rd</sup> term. Thank you.

7<sup>th</sup> agenda: Discussion and Adoption of the draft on the *Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea*. 7<sup>th</sup>-A agenda; we will later discuss and adopt 7<sup>th</sup>-B agenda. According to the decision of 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 of discussion of, and research into the draft on the *Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea*. 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 on the *Agreement between the United Nation and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea* and the draft on the *Amendments to article 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.*

1. **Form:** The Royal Government of Cambodia, with a letter numbered 119 L.S.K.Ch.B, dated 09 August 2004, sent the National Assembly the draft on the *Agreement between the United Nation and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea* and the draft on the *Amendments to article 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.* Along with the drafts, there were an additional letter numbered 12 S.Ch.N.K.B.Ch dated 09 August 2004 and 123 copies of the drafts which have been delivered to all members of the National Assembly. After the examination and discussion on 17 August 2004, the Standing Committee with a letter numbered 131 R.S dated 18 August 2004, sent the two drafts to the Legislative Committee of the National Assembly. Accordingly the Legislative Committee arranged a meeting on 18 August 2004 in order to study the draft. In 24 August 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 Cabinet Council. We have come to a decision that the draft on the *Agreement between the United Nation and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea* and the draft on the *Amendment to article 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* have been drafted correctly as provided in Article 21 of the Internal Regulation 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 Nation 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 a royal decree numbered 080112 N.S.R.T.M dated 10 August 2001. The agreement only verifies some meanings already found in the statute, adjusts the structure of the courts and some administration. The following is the most important clarifications.

A-1. This agreement bears equal status as the domestic law of Cambodia after its ratification.

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

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

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

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

B. In the interest of consistency between the statute and the 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*. All meanings in the draft on the Amendments to 29 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* were extracted from the *Agreement between the United Nation and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea*.

B-1. Change in the statute of limitations. To ensure that the Chambers have the rights to prosecute suspects during their function, 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 the coming year 2005.

B-2. Restructuring the court. The 3-level court structure shall be reduced to 2-level court structure in order to avoid administration complication and high expenses. The Trial Chamber composes of 3 Cambodian judges, one of them is the President of Chamber, and 2 international judges. The Supreme Court Chamber composed of 4 Cambodian judges, one of them is the President of the Chamber, and 3 international judges shall serve as both appellate chamber and final instance.

B-3. The rights of the accused, and immunities for the court officers and counsels in accordance with the International Covenant on Civil and Political Rights in 1966.

B-4. Procedure where Cambodian law does not deal with a particular matter, or where there is uncertainty regarding the interpretation or application of a relevant rule of Cambodian law, or where there is a question regarding the consistency of such a rule with international standards, guidance may also be sought in procedural rules established at the international level.

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

Aside from amendments to the above articles, there are some supplementary amendments such as: adding more conditions to nomination of judges; experience including the awareness of the International Humanitarian Law and International Human Rights Law is needed to work for the Extraordinary Chambers. The second point is about: nomination of International Judges, International Co-Prosecutors, and International Co-Investigating Judges to fill the vacancies; the United Nations Secretary General can submit more lists of applicants. The third point: International Co-Prosecutor has the rights to appoint the International Vice Co-Prosecutor. The fourth point is about: the interpretation of new Articles 33, 34, and 35; they shall be implemented the same in the prosecution process in the Supreme Court Chamber. The fifth point is about: 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 languages namely Khmer, English and French. The seventh point is: the removal of Trust Fund, and the salaries of the foreign administrative officials and staff, foreign judges, Co-Investigating Judge, Co-Prosecutor, shall be borne by the countries that contribute them at the request of the Secretary-General of the United Nations. During the examination and

study on the draft on 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 on the *Agreement between the United Nation and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea* and the draft on Amendments to 29 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*; 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 between the United Nation and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea*; B. draft on Amendments to article 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 *Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea*. Thank you.

**Samdech Krom Preah Norodom Ranarith:** Thank you. Pursuant to new Article 29 of Internal Regulation 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 Ranarith:** Thank you. Before inviting H.E Sok An, Deputy-Prime Minister, Minister of Cabinet Council, to defend the drafts, I would like to hand give H.E Sam Rainsy an opportunity to speak.

**H.E Sam Rainsy:** Your Honor! I have wanted to share some ideas since the beginning of the session. What I want to say is to praise the today's process of the Parliament. Internal Regulation of the National Assembly and the will of the democracy have been well respected. There is an election when appointing someone; in particular, today there is an election of Vice-President of the National Election Committee. We will also vote for the adoption of the *Agreement between the United Nation and the Royal Government of Cambodia*. A moment ago, we respected the Internal Regulation of the National Assembly and the will of the democracy by performing 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 names of those who are not raising hands, who will make trouble with and threaten them. Therefore, they are not worthy of holding their position. Back to the adoption of the *Agreement between the United Nation and the Royal Government of Cambodia*, all lawmakers from Samrainsy 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 the United Nations to 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 victims. This justice is not only for retaliation. It is 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 practice in which the powerful, the wealthy, and the high-ranking can kill people, commit all kind of crimes as their wishes without any conviction. Such practice is so terrible that it leads to anarchy, suppression, violation of law, and poverty. In addition, our country will never become a developed country because the most important factor leading a country to development is the respect for the law, modification of the so-called impunity which makes our country poor, our people live in fear, our Democracy weak. Consequently, the main priority to be implemented is to ensure the 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- 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 as example for the next leaders. They may be able to kill one person, 10 people, 1000 people without any conviction because they are powerful. So we have to end such horrible practice, and to end such practice 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 has to be soon operational to try those Khmer Rouge leaders. At this moment, I would like to request the government to be honest, to say something clearly, and to not excuse for the delay of 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 budget for the creation of the court because budget is the last excuse that the government makes in order to further delay the formation of the court. Regardless of the

high expenses spending 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 pay 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 contribution to show to them that we have tried our best to do it. With an estimated cost of 50 to 60 million dollars, we shall be able to make satisfactory contribution in comparison to the 700 to 800 million dollars of national budget spent each year, 500 to 600 million dollars of foreign aid yearly. Given the scope of corruption in Cambodia, World Bank revealed that the state loses its national interest by 110 million dollars every year, according to the report of World Bank estimating two industries, namely garment 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 up to 1,000 million dollars. Therefore, we have to encourage the government to take this issue into deep consideration. Money is never a problem for useless or little-interest matters which 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 dollars, while experts estimated that the cost of the building is only 13 millions. Government can always afford the unimportant spending, but cannot afford the cost of the court 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 urgently establish the court to try the Khmer Rouge leaders. Although there are some Khmer Rouge leaders within today’s government, it is not a reason for further postponing the formation of this special court. Thank you.

**Samdech Krom Preah:** Please turn off your microphone. Thank you. Please, have your comment, Prime-Minister.

**Samdech Hun Sen:** Your honor. Concerning my health, I should not speak because I have not taken a nap yet within this 20 to 30 hour period. But I am willing to take part in the election of H.E Khlok Buthdy, and in the discussion of the law. I will not say anything with regard to my health. What I really want to do is to focus on discussing and soon endorsing the agreement and the amendments. But what I really wonder is that, if someone does not criticize and verbally attack others, will lightning strike him down? Is it the business at hand? Is it imperative to criticize others including AIPO? If he does not criticize others, will lightning strike him down when leaving the Assembly? We have to respect the rights of others. Do not only cherish you and your party the nation, but also others. He attacked AIPO and the government just moment ago. It is not strange for the opposition party to oppose, but it is strange if the opposition party does not oppose. What I am curious is that every more than 10 words he has to criticize and blast others for something, even if it is not the subject of the discussion. I would like to ask: from these days forward will the lightning strike him down if he has not insulted and criticized others? Or is it a matter of genetics? Must this regime have the son in opposition? Now we assume it is a matter of genetics. In early 1959, a man opposed Sangkum Reas Nyum [the regime headed by Sihanouk from 1955 to 1970], and now we another one [a son of the one opposed Sihanouk in Sangkum Reas Nyum]. This is what I am curious about. He has the right to criticize, and I also have the rights to speak as a parliamentarian – as well as the head of the government. After we have begun the forum, we should ask him a question: Will the lightning strike him down or will he meet with a car accident when leaving the session if he has not made trouble? Or is it because of that gene? Like father, like son? He keeps talking about 1 million, 1000 million, 100 million, saying even AIPO is corrupt and useless. During the ASEAN summit, he led a demonstration and slept in front of Onnalom pagoda. He criticized the heads of government, heads of ASEAN nations and the ASEAN+3 as useless. Now he also criticized AIPO for its uselessness. I am sorry if this is offensive. I come up here to teach people and to make it clear. Thank you.

**Samdech Krom Preah Norodom Ranarith:** Samdech, I will not say anything regarding AIPO because it is not the subject of the discussion. I would like to invite the 2<sup>nd</sup> Deputy-President of the National Assembly Cheam Yiep to explain again. I don’t know how many times we have explained to the session about the approval from the government for spending the national budget in preparing the AIPO summit, but this is our duty concerning the image and influence of the National Assembly of Cambodia. This was the first time that Cambodia hosted the summit, 24 years after the establishment of AIPO. We have the honor to host this summit. Every country does the same. As the president of the National Assembly, with regard to the idea that it is useless to have a new Parliament, I would like to ask H.E Cheam Yiep to form a committee on the preparation of bidding the construction of the new premises of the National Assembly. Concerning the use of national budget, I have written two letters to the Prime Minister asking him to provide some money to the company constructing the premises. With reference to corruption, I have estimated that the company has spent 7 millions from its own pocket, and, since the government is in short of money, it has just given more than a

million dollars to the company. Therefore, there is no money for corruption. This does not mention about the spending of the company's own money. I'd like to tell the session about regimes since 1947 and that this building was built by France. The construction was finalized in 1922 when our Majesty was engaging in fighting World War I. He granted us a democratic constitution in 1947. This compound has been used as the venue of the National Assembly ever since. This is a huge contribution from the Prime Minister, who thinks of building new premises of the Parliament for the nation, when it comes to democracy. The new whole premises are being built in a Khmer fashion with an office room for each lawmaker and with a meeting hall for each party in the Parliament. Each committee has its own working office. Concerning the bid, I'd like H.E Cheam Yiep to tell the session about it later, not today. I'd like to inform the whole Parliament that I clearly told H.E Cheam Yiep not to get me involved in the bid, but I had to sign on the agreement as I am the president of the Assembly. If I did not sign, we cannot use the national budget. I want to finish my speech now. Regarding the opposition party, I have the honor to inform you that according to the agreement between Cambodian People's Party and FUNCINPEC Party, we have clearly stated that we will make amendments to the law on Political Parties in order to recognize a legitimate opposition party, even though it will not be called Le Opposition de Sa Majesté, as in England. But the two parties, CPP and FUNCINPEC, have agreed on amending the law on Political Parties. I talked to Secretary of the highest body of Parliament IPU, and sought help from them in amending this law discussing the opposition party. They demanded that this opposition party shall oppose with constructive concepts, not slandering. Without evidence means slandering. An opposition party shall criticize with constructive thoughts, not with than defamation, in order to gain dignity and influence. Thank you. I have the honor to invite H.E Cheam Yiep to have comments on the law or ratification, and please leave aside the issue of useless AIPO and possibly useless Parliament. Please focus on the subject of the discussion. Thank you.

**H.E Cheam Yiep:** Your Honor! After listening to the speech of the President of the Parliament and the speech of the Prime-Minister, I'd like to open a small bracket supporting the ideas of Prime-Minister Hun Sen and Samdech Krom Preah. I'd like to tell H.E Sam Rainsy that those who are working are trying to implement their jobs for the sake of the whole nation, while those who are not working are trying to slander others in many ways. On behalf of the one responsible before the Parliament, I would like to express my thanks to Samdech Krom Preah, head of Cambodian AIPO who trusted and assigned me to prepare the summit. The summit was very successful under the leadership of Samdech Krom Preah, with the permission from the Prime-Minister. We are not putting ourselves up on the air when estimating the success of AIPO summit. Eight members of AIPO, other countries and international organizations have faxed and sent us telegrams expressing their great appreciation of the first and well preparation of the 25<sup>th</sup> summit chaired by the President Samdech Krom Preah, the First Deputy President Samdech Heng Samrin, and the Second Deputy President of the National Assembly H.E Nguon Gnail with the help of the Royal Government of Cambodia. For more information on the benefit of the summit, I'd like to invite H.E Sam Rainsy to see the 25<sup>th</sup> official announcement of AIPO. Samdech Krom Preah as the chairman of AIPO and other countries have provided their signatures as an indication of acknowledging what Cambodia has done for its own nation, region, and the world. The second issue is that I'd like to explain the matter of construction of the new Parliament to the session. With the trust from Samdech Krom Preah, head of FUNCINPEC Party, and as I am a member of Cambodian People's Party, I lead a committee composed of 2 permanent members and two other parliamentarians, of whom one of them was Vice-Chairman of Administrative Committee and the other was Vice-Chairman of Technical Committee. These two Vice-Chairmen are also staff of the Committee on Construction. As I am a politician, I need to recruit a doctor of architecture as Vice-Chairmen of the Technical Committee and a number of engineers, because this is the historic building of the nation. I'd like to express my appreciation and thanks to Prime Minister Hun Sen who, after receiving the a letter signed by Samdech Krom Preah asking for a place to build the premises, agreed 5 times, but the issue cannot be solved. The reason why we cannot solve it is because we need more budget to compensate people living in the site. And we cannot afford it. I have the honor to tell that this old Parliament has an area of 43.17 hectares. This place had been built from 1917 to 1922 where our Majesty King Sisowath chaired the inauguration ceremony. I am sorry the area is 0.4317 hectare. The new place is 5 times larger than the old place. It has an area of more than 2 hectares. We have scattered the premises all over the area. The new Parliament allows each parliament member to have his or her own office and sitting room. We have also prepared offices for up to members of 7 parties. We have thought of increase the number of Committees up to 12. The office of the President of the Parliament can contain up to 60 people. The current office of Samdech Krom Preah can contain no more than 10 people. H.E Sam Rainsy can challenge me any time. When he opens his eyes he cries: what an irrigation!. Please see the works and achievements of Prime Minister Hun Sen around Phnom Penh and throughout the country. What have you seen? Soon there will be a discussion on the National Budget Management 2004, please come and

challenge. You raise the same points time and time again to win over us politically, while you yourself haven't done anything for the nation. You have the right to speak, I have the right to speak, too. We have been trying to work for the nation; you can challenge us anytime. I'd like to end this issue now. Talking about this ratification, 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 make for delay. The government has been trying to solve the problems preventing the formation of court. First, trying the Khmer Rouge leaders involves the United Nations. It needs to be discussed because it is not solely the issue of Cambodia, but also of 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 in the preparation of rule of law. I think that Deputy Prime-Minister Sok An, advised by Prime Minister Hun Sen, has done 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* 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 donation, they 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 CG [a group of donor countries] that helps Cambodia looks deeply into the policies that government planned before giving us donations. Cambodia herself does not manage the donated money. There is a technical team who decides on the spending of money. For instance, the construction of Kizuna Bridge in Kampong Cham, the donor itself managed the spending. Samdech Hun Sen only chaired the inauguration ceremony. Like other things such as roads, 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 a historic day on which the Parliament is preparing to ratify the agreement relating to the trying of the Khmer Rouge leaders, voting for justice for the nation and people, and voting to end the bitter past. Now, it is 29 years after 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 separated from their families. National virtue, symbol and soul of the nation were made to disappear by the genocidal regime. National economy and infrastructure had also been 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 with 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 a country composed of one nation and government. This is a 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 his achievement. I'd like to express my deep thanks to Deputy Prime-Minister Hor Nam Hong who made his visit to the United Nations and enjoyed the support from the United Nations. The United Nations has promised to call for financial contribution to helping the government of Cambodia run the Khmer Rouge Tribunal. Therefore, I support the ratification without any hesitation. As the end, I'd like H.E Sok An to make a little explanation to 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 make it clear that who are the senior leaders and those most responsible? Do they include also chairmen of units of 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 between the United Nations and the Royal Government of Cambodia* and *Amendments to the law in force*. Before I go to the points, I'd like to take 5 minutes to have some comments on the issue of *secret ballot* and *the ballot that is not secret is not valuable*. This is an act of looking down on the government officials taking their office for this two-month period. In reality, everything is in line with democracy. Election is the most important evidence to show the exercise of democracy. The elections in 1993, 1998, and 2003 were all recognized as a free, fair and nonviolent elections.

The national and international community recognized the results of the elections although there is still some discussion of positive and negative points. What important is that the public has acknowledged the results. Therefore, we have exercised the real democracy because we have elected members of parliament and government officials. The main principle of the democracy is to make the government process smoothly. However we met deadlock after the election with the result 73, 26, and 24 seats. We encountered deadlock because we could not make up two-thirds majority. Such situation does not exist only in Cambodia, it happens in many countries. But other countries do not have political deadlock as our country did. Take India as an example, as I have studied the case. The Congress Party won the election but did not have enough seats to lead the country. The total seats were 272. To be able to run a government at least the party must obtain or attain up 200 seats. But the Congress Party did not gain enough seats. So the situation in India at that time is the same as that of Cambodia. Did she meet the political deadlock? The answer is No. This is because the opposition party clearly understood their tasks as an opposition party. If they had done as did the opposition party in Cambodia, they would have met the same deadlock. There are other countries which meet such a situation. Japan also pursues 50+1 principle in taking control of the government. They could not even make up 50+1 to run the government, so she met the same problem as Cambodia did. However, they did not encounter the deadlock because the opposition party clearly understood their duty and the principles of democracy. As in the case of India, immediately after the election, the opposition party announced that they would not take part in the government but they supported the establishment of the government. They clearly understood that their nation needed a government to take charge. Therefore, the deadlock may take place if the opposition party did not understand the principles of democracy. Mouth is talking about democracy, but the action is undermining the democracy as called by the Cambodian people that *cat hides its claws* [say one thing but do the other thing]. I can make more clarification next time. I would like to assume that virtue of politicians and leaders is seen when they do everything for the interest of the nation. And that's why we passed the *additions to the constitution* in order to seek breakthroughs. During the period of deadlock, there was nothing against the democracy and no violence happened. We had to take action because we could not let the country be stalled by such deadlock. There were two measures to be chosen: force or law. We chose the right measure, that is, law. We made additions to the constitution in order to solve the problem. This is the virtue of the government. This is the reason why Cambodian People's Party and FUNCINPEC Party joined hands together in forming a new government, for the sake of national interest. We sought solution based on the rule of law and concept of democracy. As a result, we won over the *cat hides its claws* position of the opposition party. Now I would like to end this issue and I can make longer description on this issue later.

Let's go back to our subject. Now we have come to an end of an issue which we have not overcome for one quarter of a century. I have the honor to present to the session 2 drafts relating to each other. In English, we call it: The two sides of the same coin. These are the draft on *the Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea* and on *the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea*. We all know that 3 years ago-in 2001, the 2<sup>nd</sup> term of the National Assembly passed the latter draft, promulgated by King Norodom Sihanouk in August 10, 2001. After the call for help from the United Nations in July 1997, the government has adopted three important principles, as follow: the first principle is to provide justice to souls of millions of victims; the second principle is to preserve peace, political stability and national unification which Cambodia has just overcome the last several years; the third principle 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 3 principles, we have had tough talks about the issue for 7 years. For example, Under Secretary-General of the United Nations for Legal Affairs had agreed on some points we have mentioned. Regarding the third principle, respect for national sovereignty, we have to take 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 with and help us. We have to make it clear that we are the owner of the house, and should have clear opinion on this historic event. With reference to the respect of national sovereignty, what have we put in the law about this national sovereignty? I now have the honor to clarify 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 Secretary-General of the United Nations 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 struggling is the composition of judges. The number of Cambodian judges is more than that of the international judges. This structure of a court 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 as we wish. After a long and tough talk, we have come to a formula which is called *Super*

*Majority.* For example, a decision by the Extraordinary Chamber of the trial court shall require the affirmative vote of at least 4 judges; and a decision by the Extraordinary Chamber of the appeals court shall require the affirmative vote of at least five judges. The Extraordinary Chambers shall be established in the court 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 namely Homicide, Torture and Religious Persecution. And there are 5 crimes under international law namely Genocide, Crimes against Humanity, War Crimes, Crimes against Cultural Property, and Crimes against Internationally Protected Persons. The 3 principles have been found in the *Agreement between the United Nations and the Royal Government of Cambodia* which have been passed in 2001 and signed by H.E Hans Corell [Under Secretary-General for Legal Affairs] and I in June 6, 2003. The Cabinet Council approved and submitted this agreement to the National Assembly a week after signing. 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 the Royal Government of Cambodia. The preparation of the establishment of the Extraordinary Chambers have been functioned together with meetings and talks between the three parties, the United Nations, Royal Government of Cambodia and a group of interested countries (GIS). The group of interested countries wants to contribute funding the process of the courts. These countries are called GIS which at the beginning consisted of 27 countries and 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 Task Force of the Royal Government of Cambodia have 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 member of parliament, that government has done everything to delay the establishment of the court, is 100 percent 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 the United Nations to send its delegation to Cambodia. The former Assistant Secretary-General retired. Kasten 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 the international standards? These are questions we discussed. I'd like the session to take into consideration of the words *International Standards* because these two words have clear definitions in the process of the court. We have discussed these words several times because there is an international convention discussing this issue. For instance, in 1966 the International Covenant on Civil and Political Rights was signed in New York. This is a fundamental foundation on 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 set forth in a source of international law-International Covenant on Civil and Political Rights in 1966. The Royal Government of Cambodia has also talked with the United Nations about venue of the courts. We have decided to use Chaktomouk hall which is a symbol of Phnom Penh as venue of the courts and the exhibition hall nearby as an office for administrative officers and judges. We have also talked about administrative machinery, how can we organize a mixed machinery? How can we assign those administrative officers to work? We have come to a decision that the spending of venues, salaries of the national officers, and other practical expenses shall be borne by the government of Cambodia. Aside from spending on the venues of Chaktomouk and National Cultural Center, the government of Cambodia is also responsible for some daily expenses such as water, electricity, preservation and salaries for national officials, detention and medical treatment for the suspects and convicted. The estimated cost for this spending is approximately 1.4 million taken from the National Budget and another 6 millions for indirect cost. Cambodia shall spend 7.4 millions while the international community shall spend approximately 57 millions. As a whole, we shall contribute 10 percent of the total expense. I want to mention that 1.4 million out of 7.4 millions shall be borrowed from the national budget. With regard to the talk on the cost of the courts, in March 2004 we had agreed on the cost of 53 millions for three-year proceeding with the United Nations delegation on its 2<sup>nd</sup> visit to Cambodia. After the talk between GIS and the United Nations team, the amount of money rose up to 64 million. But after the return to New York, the United Nations delegation met with the GIS. After receiving some suggestions from donation countries, the estimated cost was reduced. After tough talks, we come to a decision in which the cost of the court is 57 million. The United Nations delegation will arrange a meeting with the government Task Force and donation countries to seek ways, if possible, to cut down the cost. The talks have always been three-party talks, United Nations delegation, government Task Force and the GIS delegation. Once we finalized our judicial issues, we will arrange another talk with the United Nations delegation about the cost of the Extraordinary Chambers. The majority of the

GIS advised that the total spending shall be divided into two packages, one is United Nations' Trust Fund and the other is the direct funding to the government of Cambodia. If they fund all the money directly to the United Nations, they will cost some amount of money which has different names and is sometimes called a service fee. At first, United Nation was going to take 1 percent of the whole amount, which we call a commission, but now it charges 13 percent as service fee. To bring down the charges on service fee, a number of countries shall fund directly to the government of Cambodia. Hence, the money will be taken to spend from two packages, the United Nations' package and the government's package. This way, the donation countries can choose either funding through the United Nations' Trust Fund or funding directly to the Cambodian government. Since the beginning, we seek fund to fill the part which shall be born by the government. Therefore, we will talk with the United Nations on how many percent of the fund shall be put at the United Nations' Trust Fund and how many percent shall be put at the hand of Cambodia. We will call for more funding from the GIS countries to the government of Cambodia. We have also talked about service fee. This service fee has fallen from 13 percent to 10 percent or possibly to 6 percent. In March 2004, the comparison of spending between the United Nation and the Cambodian government is 75:25. Later the donation countries suggested transferring approximately 10 million from the United Nations to the government of Cambodia. Now we have a new formula of comparison which is about 60:40. We have already announced that our position is flexible on loading any item of spending onto the package of the government of Cambodia or onto the package of the United Nations' Trust Fund, according to the 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 differences 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 United Nations will report to and call for financial contributions from the state members of the organization. So far there are a number of countries attempting to contribute funding the Extraordinary Chambers through the UN Trust Fund or UN voluntary fund or Royal Government of Cambodia. Up to now, only Australia has promised to fund 3 millions Australian dollars. 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 prepared other tasks in cooperation with the Royal School of Administration and with financial support from UNDP. We have arranged a two-week training on International Humanitarian Law for 30 judges and prosecutors and 30 lawyers. Secretariat of the government Task Force has prepared publication of a book about information on history, purpose and structure of the Extraordinary Chambers in two versions English and Khmer. We have also prepared a CD compiling Cambodian and International Law concerning the Extraordinary Chambers. These last two plans are funded by the Australian Law Resource called ALRI and international program of Australia AUSAID.

Now I'd like to talk about the amendments to law on the Extraordinary Chambers passed in 2001. These amendments do not affect the meaning and fundamental purpose of the establishment of the Extraordinary Chambers, passed by the National Assembly and reviewed by the Senate and the Constitutional Council, promulgated in August 10, 2001. We make changes to the statute just to make it be in line with the agreement and easy to be implemented. Restructuring of the courts; A moment ago, H.E Ek Sam Ol, the chairman of the Committee mentioned the main points relating to the suggestion to make amendments to the statute. So I don't mention it again. Conclusively, the respected government and National Assembly come to an end of a long way we have walked on for a quarter of a century after the collapse of the Khmer Rouge's atrocious regime. As what was said recently by the Prime-Minister Hun Sen, no one could escape from the destruction made on our motherland during the 3 year-8 month-20 day regime widely known as the "*Democratic Kampuchea*" led by Pol Pot. Those born after 1979 and 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 difficulty in rehabilitating the nation with bare hands from year zero while they did not inherit ideals and benefit left over from their passed-away relatives. It is a difficult and long-term struggling because we all know that Cambodia is relatively poor and slow-developed in the areas of health, education and national interest. 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 in the courts of Cambodia for Prosecution of Crimes Committed during the Period of Democratic Kampuchea. Not only committed these crimes against the Cambodian people but also against the humanity. It is reasonable to have Cambodian judges, prosecutors, law experts, and international judges, prosecutors, law experts work together for purpose of trying those most responsible. This will lead to the creation of a culture deterring the reemergence of such atrocity wherever in the world. This model of court enjoys the support from the international community. There is no country against the court model we have agreed to establish, and sometimes it is mentioned that this is a Cambodian pattern, which will

set as example for the future courts and with which international and national law, judges, prosecutors, staffs, and also budget are mixed up. It is a national court of international character. Some call it a National-International Court, a national court of international character as agreed by Samdech Hun Sen and the Secretary-General of the United Nations Kofi Annan. According to what I have mentioned above, I have the honor to present to the National Assembly with the two drafts: ratification of the *Agreement between the Royal Government of Cambodia and the United Nations* and adoption of draft on *Amendments to the statute*. The amendments to the statute are made in order to make the two documents conformity and compatibility with each other. Thank you.

**Samdech Krom Preah Norodom Ranariddh:** Thank you. I don't want to have any comments, but, since H.E Deputy-Prime Minister commented on the fact that H.E Sam Rainsy said the election by show-of-hand procedure does not give any virtue to a number of our Khmer dignitaries, I'd like to share something. I regret that H.E Sam Rainsy didn't join the session that day. I'd like to inform the national and international communities that in July 7, 2004, one day ahead of the day that the National Assembly passed the Additional Package Law, I received an official letter from H.E Sam Rainsy asking me to amend Article 40 of the Internal Regulation of the National Assembly. On behalf of the party, H.E Sam Rainsy asked me to change the secret ballot procedure. The secret ballot procedure should be proposed by nomination, vote of confidence, and adoption. This burden, this secret ballot; he asked me to make amendments, but I cannot remember all of his words. I will make myself ready to answer this point. H.E Sam Rainsy suggested that, for urgent circumstance after the 3<sup>rd</sup> national election, the election procedure should be done by secret ballot or showing of hands. Now he says this procedure does not bear high morality. I have his official letter asking to make changes to Article 40. The constitution did not address that issue too. New Article 40 stating: "The assembly shall pass a vote of confidence in the Royal Government by a 2/3 majority of all members" does not specify secret ballot or showing of hands, and thus H.E Sam Rainsy himself acknowledged that, under some pressing circumstances, we have to do the vote of nomination by secret ballot or by showing of hands. Democracy is represented by members of the parliament, and 96 members of the parliament voted that day. I had talked to Prime Minister on July 7 after my return from Manila. I told him that "Samdech! I receive a letter dated the 7th from H.E Samrainsy. He asks to amend Article 40. What do you think?" He agreed, and asked the lawmakers to make changes to Article 40 according to the suggestion from Sam Rainsy Party. Prime-Minister and I had agreed to vote for this Additional Law. This law is passed by the consensus of 96/96 members of the parliament. 96/96, this is democracy and this has become the constitution. How can we say it is unconstitutional? Who will have the final say? We have to wait and see in 2008. If the 96 of us do the wrong thing, let the people prove it in the 2008 election. This is democracy.

Now we are examining the issue of budget. If we are capable of receiving financial aid from a number of donations to relieve the burden of national budget, why don't we do this? We have to make more contribution to show off our will. A number of donors are waiting for the ratification of the agreement, adoption of the amendments to the statute, and the estimation of the cost by the United Nations, then they will contribute funding. I am very happy because the Assembly perhaps does not face any problems in approving the agreement and passing the amendments to the statute which we already have them. I can still remember in 1994 when we were examining the law on Outlawing Democratic Kampuchea, H.E Sam Rainsy was a member of FUNCINPEC Party. He convinced a number of FUNCINPEC Party's members to believe that the society makes law which is against the law itself, how can we outlaw the Khmer Rouge? Before 2001, we unified and reconciled the nation. Now the Assembly has already 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 *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*. Article 1: Approve the *Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian law of Crimes Committed during the Period of Democratic Kampuchea* signed in Phnom Penh in June 06, 2003. Enclosed is the text of the agreement. Thank you.

**Samdech Krom Preah:** Thank you. Deputy-Prime Minister, please have your comment.

**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 have your comment.

**H.E Hor Nam Hong:** Your Honor! I have some responses to H.E Sam Rainsy. I also talked with the Secretary-General of the United Nations on the issue of delaying the establishment of the courts. Does the

government attempt to delay the establishment of the courts or to form the courts immediately? I remember clearly that, on the Union Peace Day when I talked to the journalists and again on the day I met Kofi Annan, I addressed clearly that the government wants to try those Khmer Rouge leaders as soon as possible. The 2<sup>nd</sup> issue concern with the budget. We do not demand that we try those leaders unless the international community pays the money. The international communities themselves want to pay because the crimes is genocide and against the nation. Take for example, Rwanda Tribunal, Sierra Leone Courts, and Yugoslavia Tribunal, which prosecute the crimes of genocide. Amongst all the three courts, the host countries do not pay any money because the international communities pay for the whole processes. In comparison to the Khmer Rouge, as we know the genocide committed in our county killed around 3 million people; unlike the genocide in Rwanda, Bosnia and Sierra Leone, which killed only several hundreds of thousands of people. That's why the group of interested countries is willing to help us contribute paying for the process of the courts. The Secretary-General Kofi Annan requested that the government shall send him a letter when the Assembly has ratified the agreement so that he can gather the voluntary countries to make their contribution. Why are we willing to pay our money to establish the courts and not pay that money 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 have your comments.

**H.E Keo Remy:** Thanks for letting me to share my ideas. Your Honor! Concerning the draft on the approval of the *Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian law of Crimes Committed during the Period of Democratic Kampuchea*. This is a historic day, a history that I think differently from H.E Ly Thuch because today we have the participation of the Prime Minister. This is a democratic culture but the Prime Minister seem to be a little angry. However, I'd like to inform the Parliament that what has been mentioned by Sam Rainsy Party aims to reconstruct the nation. If the Prime Minister succeeded the policy of poverty reduction, judicial reform, this is the honor the government headed by the Prime Minister achieved. That we say those things is because we want to assist you, and what is really the problem is those officials who are surrounding you and always currying the favor with you. If you think negatively, criticism is a bad thing; and if you think positively, criticism helps fill the incomplete parts of the government.

Regarding the draft, I'd like to share my comments as follow: arrangement of the draft on the 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 Kmer 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 this law only be made to try 4 or 5 leaders. Who else will be prosecuted? It is unfair if we try only 3 or 4 people. The 3<sup>rd</sup> issue is concerning the issue of statute of limitations. The statute of limitations in this law is extended to 30 years. 30 years is too short. The genocidal regime is so atrocious that it should not only be extended to 30 years. When the court proceeds and we found that there was involvement of foreign countries, which we don't know which one, staying behind Pol Pot. Therefore, investigation is needed, and thus the statute of limitations should not be limited. According to the research and talks with some scholars, the statute of limitations is not limited as in the case of Hitler and Melosevic. This is a positive point shown to the leaders that they cannot kill people as they wish. If kill, they shall not be able to get away with the crimes for their whole lives. Can this 30 year limitations ensure justice for the victims? There must be some motives behind the problem. I suggest changing to this point. The statute of limitations shall be unlimited. Considering the letter, I saw a letter of the Ministry of Interior numbered 998 dated September 16, 2004. The letter sent to the Ministry of Justice was about the irregularity of 274 cases in relation to the release of the convicted occurred in city and provincial courts and the court of appellate. 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 consisted of a large number of judges who are low-educated and never go to law school, and most of them are over 60 years old. One of 73 points in the policies for this 3<sup>rd</sup> term of the government addresses the matter of getting those judges and prosecutors who are over 60 to retire. Until now, this policy is yet to be implemented. If the policy is implemented, this will create more chances for young generation to work for the nation. Although a large number of judges and prosecutors are low-educated-old 2<sup>nd</sup> grade, old 3<sup>rd</sup> grade, and some old 9<sup>th</sup> grade-some are highly-educated such as H.E Dit Munty, and H.E Ouk Vithun. This is both positive and negative points. Consequently, the government in particular the Ministry of Justice should pay more concentration on the reform of the courts' proficiency. 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 shall nominate them? Will the Supreme Council nominate and appoint them by itself? As I have investigated, some of the judges who shall 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 shall be transparent and let the public know mainly lawmakers. We are concerning about those judges who are infamous and corrupt. With reference to the Pre-Trial-Chamber, if there is no majority as required for a decision, the prosecution shall proceed. How many stages are there for the Pre-Trial-Chamber? I am afraid that this will be time-consuming because there is a stage at the level of Co-Prosecutors, another stage at the level of Co-Investigating Judges, and another one at the level of the Trial-Chamber. On the topic of the suggestion from SamRainsy party to make amendments, we suggested amending the Internal Regulation because we wanted to stay away from Package Voting and violation of the Constitution. Thank you.

**Samdech Krom Preah Norodom Ranariddh:** Thank you. I'd like to mention again the letter I received from H.E Sam Rainsy. It only talked about Article 40 of the Internal Regulation. I'd like to inform the Assembly that we are discussing the ratification of the *Agreement between the United Nations and the Royal Government of Cambodia*, and not the amendments. See 6<sup>th</sup> agenda, 7<sup>th</sup> agenda? I perceived that H.E Keo Remy supports the ratification.

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

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

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

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

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

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

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

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

**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 the urgent.

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

**Samdech Krom Preah Norodom Ranariddh:** The Parliament has approved the *Agreement between the United Nations and the Royal Government of Cambodia Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea*. I may announce the closure of the session.  
*Concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea*. I may announce the closure of the session.

**Oct. 5, 2004**

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

**Secretary of the session:** Dear respected Samdech Krom Preah, President of National Assembly, First Vice President, Samdech, His/her Royal Highness, and His/her Excellency, members of the National Assembly, 94 members of the National Assembly are present. Thanks!

**Samdech Krom Preah Norodom Ranariddh:** Thank Your Excellency! Respected Samdech First Vice President of the National Assembly! Respected His/her Royal Highness, His/her Excellency and all members of the National Assembly! Respected Deputy Prime Minister, Special Representative of the Government and all associates! Yesterday, National Assembly debated and approved the draft law on the Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea. I would like to request all members of National Assembly to start to examine and adopt 7<sup>th</sup> agenda on discussing and adopting the draft of the amendment of some articles of the law on the establishment of Extraordinary Chamber in the Cambodian Court for the prosecution of crimes committed during the period of Democratic Kampuchea. Yesterday, some orators 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 National Assembly! I, having been granted permission by Samdech President, would like to share my comments on the following points that some orators have

raised. The first point related to article 2 of the draft law is about the target suspects for the prosecution, the targets who are the objective of the Extraordinary Chamber. In this sense, there are two main points: First, the prosecution of senior leaders of Democratic Kampuchea and second, the prosecution of those who were most responsible for crimes and serious violation on Cambodian law, international humanitarian law and customs and the violations on the International Covenant to which Cambodia is a party, which were committed in the period of 17 April 1975 to 6 January 1979. The first confirmation 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 prosecution of those linked to the crimes and who were in the ordinary positions is not a difficulty, for such people could also be held responsible before Cambodian courts. However, what we concern and consider as important matter is the prosecution of senior leaders. That is why article 2 has been prepared with full attention and clearly defined the 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 the senior ones and will also be the targets of the Extraordinary Chamber. Therefore, in this point, I would like to confirm, as His Excellency Ly Thuch mentioned yesterday, again that there are two types of targets: senior leaders who are 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 did much more seriously than others. However, we have already considered that there would not be too many, as is also the case in Sierra Leone's tribunal. According to the information, 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 written down in article 2.

Another point relates to the statute of limitation. Article 3 deals with the statute of limitations, which in this amendment shall be changed from 20 to 30 years. An orator yesterday raised that why we need to talk about the statute of limitations if some tribunals determine that there is no statute of limitations for crime of genocide and crimes against humanity. For genocide and crime against humanity, there is no statute of limitation. It means that we don't need to write down the word "statute of limitations" if we use only these laws. As I told, however, National Assembly yesterday addressed that in this EC we have both Cambodian and foreign judges. We use both Cambodian and foreign law, so in 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 law and International law. In the framework of Cambodian penal code especially in 1956 code, there are stated crimes that we use as a source law in the EC, and these crimes have statute of limitations. Therefore, the purpose of article 3 is to cover all source of law that we shall use as judicial bases in the Extraordinary Chamber. This is the reason why we put of statute of limitation in the EC statute. At first, we stated 20 years. For the period of 20 years from 1975, the statute of limitations will expire in the coming year 2005. However, the time is too short for the process of the trial, we therefore request for 30 years of limitations, which means the expire of statute of limitations will be in the year 2015. The continuance of the limitations is for the Cambodian law. We do not want to continue without an end to the statute of limitations; that's why we extend it to period of 30 years so that the statute of limitations will expire by the year 2015.

Another point concerns with the Pre-Trial Chamber. In our courts or in other foreign courts, simply there is no Pre-Trial Chamber, but in our Extraordinary Chamber we create this formula because we have co-prosecutors. In our case, the basis of law that we have

created is the compromise between our government and the United Nations. The number of our Cambodian judges is more than that of foreign judges, but the decision has to be in accordance with the formulation of super majority. The formulation requires the consensus and agreement from both Cambodian and foreign judges, and both Cambodian and Foreign prosecutors. Therefore, indictments can be made in case there is an agreement from both prosecutors. If foreign Co-Prosecutor want to indict Mr. A but Cambodian Co-Prosecutor does not agree, the indictment cannot be made. If this problem happens, the place to solve the problem is at the Pre-Trial Chamber that 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 administrative office. The Pre-Trial Chamber has to decide whether or not to indict Mr. A. This is the special formulation for special process of the Extraordinary Chambers. How many levels are there? There is no level in the Pre-Trial Chamber. When the decision of whether or not to indict someone is made, the job of the Pre-Trial Chamber is over. Therefore, the Pre-Trial Chamber has to decide within the framework of super majority. As I have told all of you previously, if there is no agreement between the Cambodian judges and Co-Prosecutor and the foreign judges and Co-Prosecutor, there is no indictment and prosecution. This can be said to be the fundamental principle of the Extraordinary Chambers. I would like to finish my ideas now. 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 Highness and His/Her Excellency, members of Parliament! I would like to read the draft law as follows: Law on the amendments to article 2, article 3, article 9, article 10, article 11, article 14, article 17, article 18, article 20, article 21, article 22, article 23, article 24, article 27, article 29, article 31, article 33, article 34, article 35, article 36, article 37, article 39, article 40, article 42, article 43, article 44, article 45, article 46 and article 47 of the law on the Establishment of Extraordinary Chamber in the Cambodian Court for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea. Article 1, article 2, article 3, article 9, article 10, article 11, article 14, article 17, article 18, article 21, article 22, article 23, article 24, article 27, article 29, article 31, article 33, article 34, article 35, article 36, article 37, article 39, article 40, article 42, article 43, article 44, article 45, article 46 and article 47 of the Law on the Establishment of the Extraordinary Chamber in the Cambodian Court for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea promulgated by Royal Decree No. NS/ RKM/0801 dated 12 October 2001 are to be amended as follows: New article 2: Establish Extraordinary Chamber in the existing structure of the court of Cambodia, namely the trial court and the supreme court, for prosecuting senior leaders of Democratic Kampuchea and those who were most responsible for crimes and serious violations of related Cambodian laws, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979. Senior leaders of Democratic Kampuchea and those who were most responsible for crimes mentioned above are called "Suspects".

**New article 3:** Extraordinary Chamber 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 17 April 1975 to 6 January 1979:

- Homicide (article 501, 503, 504, 505, 506, 507 and 508)

- Torture (article 500)
- Religious persecution (article 209 and 201)

The statute of limitation set forth in 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 Chamber. The conviction set forth in article 209, article 500, article 506 and article 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 article 38 and article 39 of this law.

***New article 9:*** Trial Court shall be a 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 is the place for receiving the appeal complaint and deciding the final decision, shall be the 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 Extraordinary Chambers shall be appointed from among the currently practicing judges and judges who are additionally appointed in accordance with the existing procedures for the appointment of judges. Those judges shall have high moral character, spirit of impartiality and integrity and shall have experience in related career, especially experience in international humanitarian law and international human right law. Judges have to be independent in performing their functions and shall not try to seek any instructions from any governments or other sources.

***New article 11:*** The Supreme Council of Magistracy shall appoint 7 Cambodian judges to act as judges of Extraordinary Chambers and shall appoint some reserve judges as needed and shall as well appoint the Presidents of each Extraordinary Chamber 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 judges in case of their absence. These reserve judges can continue to perform the daily work in the court that they are performing. Supreme Council of Magistracy shall appoint at least five persons of foreign nationality to act as foreign judges of the Extraordinary Chambers after having been appointed by the United Nations Secretary-General. The Secretary-General of the United Nations shall submit list of at least 7 candidates for foreign judges to the Royal Government of Cambodia, and the Supreme Council of Magistracy shall appoint five sitting judges and 2 reserve judges from the list. In addition to the sitting judges sitting in the Extraordinary Chamber and present at every stage of proceedings, the President of the Extraordinary Chamber may, on a case-by-case basis, designate one or more reserve judges already appointed 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 Extraordinary Chamber of the trial court shall require the affirmative vote of at least four judges.
  - b) a decision by the Extraordinary Chamber of the Supreme Court shall require the affirmative vote of at least five judges.

2. When there is no unanimity, the decision of the Extraordinary Chambers shall contain the *opinion* 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 Extraordinary Chamber 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 all three Extraordinary Chambers shall be appointed by the Supreme Council of the Magistracy upon nomination of the Secretary-General of the United Nations. The Secretary-General of the United Nations shall submit a list of at least two candidates for foreign Co-Prosecutor to the Royal Government of Cambodia, 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 the consistency with the international standards, the Co-Prosecutors may seek guidance in 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 Secretary-General of the United Nations. The appointment of the above judges shall follow the provisions of the 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 Offices 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 condition according to each level of the Extraordinary Chambers.

Each Prosecutor shall be appointed for the period of these proceedings.

In the events of the absence of the foreign Prosecutor, he or she shall be replaced by the reserve 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 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 investigating judges, one Cambodia and another foreign, referred as Co-Investigating Judges, and shall follow existing procedures in force. If necessary, and if the existing procedures contain lacunae in these existing procedures, the Co-Prosecuting 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 the 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 Article 20.

Upon receipt of the statements referred to the third paragraph, the Director of the Office of Administration shall immediately convene the Pre-trial Chamber and communicated 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, 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 questing 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 council free of charge chosen by the suspects themselves 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 article 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 Article 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 Administration Office must be appointed by the Royal Government of Cambodia within two years' term, and may be appointed again to continue this status.

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

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

The foreign deputy of Administration Office 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 the required by foreign components of the Extraordinary Chambers, Co-Investigating Judges, Co-Prosecutors' office, and the office of administration. The Deputy of Administration Office shall administer the resources provided by the United Nations Trust Fund.

The Office of Administration shall be assisted by Cambodian and international staff as needed. All Cambodian staff of the Administration Office 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 for the 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 Chambers 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 Article 14 and 15 of the International Covenant on Civil and Political Right.

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 the international and national non-governmental organization, unless in exceptional circumstances the Extraordinary Chambers decide to close the proceedings for good cause in accordance with existing procedure in force.

***New Article 35:***

The accused shall be presumed innocent as long as the court has not given its definitive judgement.

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 to be prepared and contact their 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 have free assistance of an interpreter if the accused cannot understand or does not speak the language used in court;
- f) 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 Extraordinary Chambers.

**New Article 37:** Provisions written in New Article 43, 44, and 45 shall be implemented the same in the trial of the Extraordinary Chambers of the Supreme Court.

**New Article 39:**

Those who have committed any crime as provided in new Article 3, 4, 5, 6, 7, and 8 shall be sentenced to prison term 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 New Article 3,4,5,6,7 and 8 of this law.

**New Article 42:**

1. Cambodian Judges, Co-Investigating Judges, Co-Prosecutors, and staff shall be accorded immunity from 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 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 Office of Administration.

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

c. Immunity for immigration restriction.

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 finish 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 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 Chamber 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 judges 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 organization, and other persons wishing to assist the proceedings.

**New Article 45:** The official working language of the Extraordinary Chambers shall be in Khmer, with translation into 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 new Article 26. In the event those lists are exhausted and the Secretary General of the United Nations do not provide lists of new candidates or in the case the United Nations withdraw 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 replacement Cambodian judges or investigating judges or prosecutors.

**Article 47 bis:** After the ratification in conformity with the provision of the Law of Kingdom of Cambodia relevant to the authority of the signing on the agreement between the United Nations and Royal Government of Cambodia in respect of the trial under the Cambodian Law of Crimes committed during the period of Democratic Kampuchea, that 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 on this article, please! His Excellency Pen Pannha.

**H.E Pen Panha:** Respected Samdech President, Samdech, Prince, Excellency, ladies and gentlemen. It is a great pleasure for me to share with sensible lawmakers the examination on the two crucial drafts, which the first draft was unanimously approved yesterday. Today, we will discuss and adopt *Kb* point of the draft law relating to the amendments to Article 29 of the Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea. The adoption of these two drafts is the adoption of the core drafts designed to close the page of dark history of the nation. The closure, however, of the history page will never be made easily because it relates to the spirit of millions of people killed under the notorious and tragic regime. The law concerns with crime of genocide, crimes against humanity, war crimes and 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 sovereignty of our country and retain international standards. Focusing mainly on the international law, there needed to be coordinated and examined thoroughly, including the effort to mobilize both national and international resources intended to deliver justice to 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 good opportunity to express my profound thanks to the Royal Government, national institutions, international community, United Nations, relevant partner organization and those who make every effort to enable us to close the page of the history with dignity and justice. From this, we will decide what lessons we shall remember and forget. I'd like to take this opportunity to express my regret at the thoughts of our member yesterday. I don't mean to give advice to anyone but as a member of the Parliament elected by the people, I have to defend the truth, in particular I cannot keep quiet by not responding to any individuals who blacken the reputation and prestige of our Assembly. The National Assembly is the top legislative body that represents the power of our people, but the Assembly has repeatedly been looked down on by calling it that chicken-buttock-like or puppet or useless Assembly. As said yesterday, the contempt cannot be tolerated. I would like to inform you that article 62 of the Internal Regulation stipulated that no one can slander someone else. The ban is just referred to individual. How can the Assembly, a body of all the people representatives, be defamed? The point of view shall be constructively criticized. If we are to talk of democracy, we have to understand about the short and simple definition of the term *democracy* which respects the majority. Moreover, a politician has to understand and set a precedent for the application of democracy. We said election is a type of democracy. Implementing the fundamental principle of democracy, we have to refrain from using gun barrels and staging violent revolution to take control of power. We make every effort to comply with the principle of democracy through election in which people cast their votes. Yesterday, His Excellency Deputy-Prime Minister Sok An emphasized the term *democracy*. In fact, the three general elections have been internationally recognized. Once again, commune council election was accepted both nationally and internationally. This demonstrates the commitment of the Cambodian people to exercising their rights to democracy. 90 percent of the people registered to vote and 80 percent went to the polling station to express their will and to choose who they like and support. Accordingly, it does not only show the process of democracy but also make it clear that democracy takes deep root among the public and throughout Cambodia. There is no doubt because the number of seats in the Parliament was already determined. Furthermore, politicians and political leaders have to be brave to acknowledge the truth. Thus, we have a proper right to come up with democracy. The people have decided. We have to obey the people's decision, if you want to do anything else, please wait until 2008. The two big political parties have cooperated with each other in implementing and complying with the democratic rights of the people. Any party that pulls itself out from the footsteps of democracy should not accuse others of not obeying democracy. I just suggest that political leaders should set a precedent for applying democracy, not for subversion in a tricky way. Democracy is not anarchy. It is so exciting for Cambodia to have many prominent ancestors who have turned Cambodia's history into a glorious past. It is a great honor, pleasure and admiration for the fact that our incumbent elite, top politicians, i.e. Our Majesty Samdech Preah Norodom Sihanouk, who always think of the national interest in respect of democracy and the right of the people. In other words, many elites make all-out efforts to keep Cambodia stable, stern, and moving forward along the democratic track and strengthening the rule of law. It is, nonetheless, regrettable and unlucky for some countries and also the outside world to realize that Cambodia has so-called "Genetic Defect". A country from where a genetic defect emerges may lead her to destruction, misery, crisis and war. We still remember those who committed crimes of war in the world and is widely known. As far as Cambodia is concerned, we have the same unluckiness to have such a genetic defect. The genetic defect exists in those, i.e. Pol Pot and

a number of people, whom there is no need to mention and, possibly, the Cambodians have known, causing Cambodia to disintegrate, be terrified, destroyed, and descend into the war. So, in the implementation of the democracy, we have to adopt a just and brave principle. Undesirable and anarchic grass should not be allowed to grow on the good seed bed of Cambodian democracy. I would like to lend full support to article 29 that His Excellency Chief of 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 law be in conformity with the treaty the Assembly unanimously adopted yesterday. So, the five contents also specify the statutes of limitations and the appointment, as written in the report of His Excellency Chief of Legislative Committee. I don't have any comments but to give a full-blown support to the amendment to article 29 to become law. In so doing, the law will be in parallel with the passed agreement yesterday. I am confident that many His or Her Excellency, lawmakers, have the same common sense and think of life-and-death and historic issues of our country, and do everything possible to demonstrate our works in the course of this generation by not doing democracy in a way that the next generation get into confusion and anarchy and the politicians lose their ways. If [you] have anything to say and want to express your freedoms, please do not affect something in common, which means to defame, speak badly and extort. By doing so, it is contempt of organized societal body. I just bring up with a notion of Sreihettoa Pates reading that "contempt is the root of devastation". Thanks.

**Samdech Heng Samrin:** Thanks His Excellency. Please His Excellency Khieu San.

**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? That is that the Extraordinary Chambers will bring about justice. The victims of the regime can learn more of the principle of justice for the Cambodians. The principle of justice is a source of Cambodian judicial reform and serves as a warning to all the 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 and the United Nations for endeavoring with the new government in accordance with the new political program of Cambodian People's Party and FUNCINPEC Party in reforming judicial system and dealing with the law we have established. I found F3: (1) Fair, (2) Fast, (3) Fund, fund. This 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, are no longer worry. 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 shall build up confidence entirely. The point is that the government should encourage the formation of this tribunal to appear soon. Judges should be trustworthy, transparent and independent in issuing judgments. This may bring a new hope to our society in order to liberate us from the past events and move forward to the future. I myself as a member of the Parliament and a number of civil society organizations are appealing for justice as the following: These 29 articles of the amendments are legitimate. Thanks to the Legislative Committee for a detailed discussion, I think, according to sincerity and judiciousness, as I have mentioned. However, I have another doubt, your Excellency. In Article 11 in English version contains some errors in translation because it is written

*appointing*, but its meaning is confused with *selecting*. I have some special recommendations to put forward in advance, for your Excellency to respond to. This Legislative Committee is a civil organization. The Human Right Association wants an elucidation of the points in Articles 12 and 13, so can you clarify the point to them again. Article 12 says that if any judges raise conflict between Cambodian law and international law, they shall seek international procedural rules. Obviously, there will be a debate, but how to avoid such debate? As actual examples, there are the recent cases in Rwanda, Sierra Leone, and Yugoslavia. Why do I raise this? I found the quality of making these laws very legitimate. First, aspects of this lawmaking of which I approve as proper are transparency and international standards of lawmaking. We accept also Article 31, which states the original purpose of a judge is justice, as has been said at workshops on political cases that I have attended. This means that having prepared the draft law, all are getting ready to work for the whole Cambodia. Thanks very much to the Task Force for this well-prepared law. The broadcasting of drafting law on television has revealed sincerity. Examining and observing the performance, we all are civil society; and at the moment human rights organizations in Cambodia have asked for clarification of Articles 12 and 33, and the raised Article 33: They intend to eliminate the Extraordinary Chamber of the appeal court, and establish that the judges of the whole Extraordinary Chamber shall organize the approval of the procedures for the Extraordinary Chamber, making arrangements for methods and evidence from the pre-trial process to the stage of making appeals, methods for protecting the victims and witnesses, and other issues. In organizing and approving the procedures of the Extraordinary Chambers, judges may seek guidance and standards for procedural rules established at international level. The judges of the Extraordinary Chambers may change the measures approved by them and the order in this article, if it is not written or written with some lacunae, according to actual circumstances. They have a view that the approval of these procedures for the Extraordinary Chambers shall be determined in a meeting by unanimous vote, or if a unanimous vote cannot be found, by a two thirds majority vote of all judges of the Extraordinary Chambers. The Extraordinary Chambers shall perform its jurisdiction according to international standards of justice and proper process, as written in Articles 14 and 15 in the International Covenant in 1966 on Civil and Political Rights. This is the same as in the original law. May your Excellency let me give a recommendation. We want to establish a court. Our courts are used to applying corruption; therefore, in accordance with my recommendation, as regards the character of the judges, the candidates should be the persons with fair consciousness, honesty, sincerity, expertise, and capability, The candidates should not be the members of the Supreme Council of Magistracy. The Supreme Council of Magistracy 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 have qualifications to be appointed to work in the court. It should not recruit persons without any law education, which is a problem which these days is a *cancer*. In addition, the candidates for the Extraordinary Chambers shall be required to bear special qualifications. The candidates must have experience of international criminal law, international humanitarian law, and international law. They should be members of particular party. The candidates chosen to handle the extra work shall have the knowledge of law. They must have at least bachelor degree of law or the equal certificate; moreover, the candidates must have experience in the field of law from 3 up to 7 years. 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 learn from them. I would like to close the bracket here and continue my speech. The candidates shall be selected by open and

proper methods. The notice of selecting candidates will be posted publicly. Nowadays I have noticed there be a certificate market. Those holding such certificates type on a computer with a single finger for 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 *riding a horse without using hands*.

Democracy and autocracy are completely different. If the system is 'I can say and do whatever I want,' this is not democracy, which applies *demo* and *cracy* and law, considering 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 not to appoint persons of bad composition. Also, I would like to raise another point. To be precise, I would like to ask his Excellency the deputy prime minister, the representative of the government, whether it is *appointing* or *nominating*. 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 for letting me make an intervention. First of all, I would like to salute the whole assembly. I am here, impressed by three points in the law. However, I request Government representative to clarify New Article 2. The Deputy Prime Minister has explicated this already; however, there's still some doubt about the point that in order to try senior Khmer Rouge leaders, several individuals shall be held responsible for the crimes. I would like to make a little clarification: the phrase *senior leaders* is too broad in term of meaning. Strictly speaking, how is it applied, given the that in the structure of Khmer Rouge, there was a Standing Committee of the party, which may be presumed a senior position, and a Central Committee, which may also be presumed a senior position. May your Excellency, the representative, clarify whether it's the Central Committee or the Standing Committee of the party. Referring only to *senior position* 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*. For how much will those people have to be responsible? Because in the Democratic Cambodia, things were divided into the Central Committee, the zones, regions, districts, sub-districts and cooperatives. Furthermore, as we known, there were security guards in every level. There were security guards at the national level at Toul Sleng prison, and some them bear great responsibility. But the zones also had security guards, departments of security whose job was to kill people; so some of them should bear great responsibility, too. It the the same case with regional, district, sub-district and cooperative sections. That's why I want the representative of the government to clarify for how much greatest responsibility those people must hold. If we mean only national level, the justice cannot be brought to the victims because it was mostly the guards or militiamen at the district 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 on the highest class, we meant Pol Pot, who died already.

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 already asking the assembly to give authority to the judges in order to ensure smoothness of the 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 stated that in elaborating and performing the

procedures, it is suggested that guidance be sought in procedures established at 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 to respond to the assembly if this process takes much time? Therefore, civil society asked for power for the judges: to establish another distinct set of procedures. Hence, I ask the assembly to examine and consider this request. In addition, I would like to thank his Excellency Sok An for his speech yesterday in which he said that the process of government formation being an 11 month-deadlock was because of the adverseness of my party. My opposition party shall be very proud because 24 seats could obstruct the other 99 Parliament members. However, reconsidering this issue, my party never pursued such policy, and this is thus far distant from the facts. I would like to remind that in this situation we tried to find political breakthroughs, and in this regard the Sam Rainsy Party has already shown its stance. Moreover, my party always wanted a government to be created. We declared that the government could be composed of single, two, or three parties; but the Sam Rainsy Party requested the government leader obey ruling principles and other principles according to the 5 points put forward by Sam Rainsy Party. I believe that the government has put those principals into effect already, yet the results are ineffective. Sam Rainsy Party, therefore, wants the party winning the election--Cambodian People's Party--to take particular measure to fight corruption; solve the territorial problem and illegal immigration; to effect judicial reform and a stance on independence. If the Cambodian People's Party is able to fulfill these demands, the Sam Rainsy Party will vote for CPP to form a government alone. The Sam Rainsy Party has always held this position. This means that if CPP has real determination, the Sam Rainsy Party will always support it. That's the stance and goodwill of Sam Rainsy Party. In addition, given its goodwill and intentions to have the government formed promptly without constitutional reform, the Sam Rainsy Party requested his Excellency Chea Sim and his Excellency Hun Sen, the leaders of CPP, and Samdech Krom Preah not to make any changes into the state constitution, but instead in article 40 of the internal regulations, about the procedure of voting. The Sam Rainsy Party thought that if we display trust to request show-of-hand procedure, we shall request an agreement on this issue from 123 members of the National Assembly. We asked the 123 members to give consent because we have defined the right to vote in the internal legislation of the parliament already. Therefore, if we compel someone to vote by showing of hands, it means that revoking their right or taking away their right, unless we all agree to reduce our rights from secret ballot to a show-of-hands vote procedure. Furthermore, this right does not depend on 69 parliamentarians deciding because it is an individual right requiring all the members of the Parliament to agree. Some orators describe democracy as an act of respecting the decision of the majority. I may raise the case of Hitler; he obtained a lot of votes when deciding to kill the Jews. Is that called democracy? This is about individuals rights. I just remind you that the goodwill of Sam Rainsy Party was to have a government formed soon. What Sam Rainsy Party brings up does not intend to destroy any party. May all public opinion understand this. If Sam Rainsy Party wanted to refused the government's request for adoption of this law, it could create a deadlock by walking out. However, Sam Rainsy Party didn't take such revenge, even though the two major political parties intended to forbid it from participating in any committees of the National Assembly. This is our goodwill. Sam Rainsy Party supports the adoption of the law on the accession of Cambodia into WTO and the adoption of Khmer Rouge law, but what Sam Rainsy Party criticized is the slow process. There was a delay after the request of government in 1997 asking for the establishment of Khmer Rouge tribunal. The Sam Rainsy Party usually criticized the slow process, not the request raised by the government. That is an issue we all should understand.

Anyway, I would like to thank his Excellency Cheam Yiep who yesterday mentioned that he wants to have debates with His Excellency Sam Rainsy and the others on the issue of construction plan of the assembly's new premises and other issues. We shall provoke debate and discussion between members of the Parliament and people, between government's representatives and people, through the national assembly. This is already provided in the constitution, but we have never put it into effect for 11 years. Thus, we cannot make it possible. Now if we all have goodwill, I would like to encourage the assembly to enact a law on the arrangement of the national congress process in order to give the opportunity to the people and public who are the owners of the votes so that they can have opportunities to raise their question about a particular matter. Returning back to this law, I would like to support the content of this law and we would like to have it enacted 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 point raised by his Excellency Khiev Sorn and other orators in sequence. His Excellency Khiev Sorn has raised 2 points after a great evaluation and support of this tribunal. The first point his Excellency asked about the procedures that will be put into effect in the process of the Chambers and the second point is 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 three 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 came to an agreement in to use existing national procedure 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 Roman-Germany 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 procedure shall be reached. There shall be a combination of procedures in force of Cambodia with international procedures, mainly extracted from 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 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 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 Article 14 and 15 of International Covenant on Civil and Political Rights in 1966. The international standards for prosecution are clearly stated in the Covenant. Therefore, we shall combine national standards with international standards. I also received suggestion from a number of NGOs. They suggested

providing clear terms regarding this issue. After tough talks in New York, we have come to 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 we would have to talk many times with the United Nations. This should not be implemented because each talk with the United Nations 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 meaning of Article 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 shall be appointed to work with international judges are all mature and will have high knowledge, because to be able to work with international judges, they need to be competent and cooperative. Judges to be chosen shall be equipped with experience in the execution of national procedure law whose source is from international law. It has also been asked to add to the draft that judges shall in addition have knowledge of International Human Rights Law and International Humanitarian Law. We have made deep thought about the competence of judges. We have also arranged training courses to equip them with more 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. Appointment of judges is also our special 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 to the United Nations. Then the United Nations shall select some of them and submit the name list to Cambodia. The Supreme Council of Magistracy shall 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 United Nations shall *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.

With regard to Article 2, it deals with the terms of *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 United Nations nor the Task Force of the Royal Government of Cambodia are able to 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 clearly state that they are the members of the Standing Committee. This is the task of the Co-Prosecutors to decide who are the senior leaders. Why did we decide to identify such small amount of people? Because experts in the arrangement of international courts

acknowledge that it is not easy to try leaders. That's why we have agreed senior leaders shall be no more than 10 people. 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 in the second group to be indicted. Those committing odd and atrocious crimes shall be possibly 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 Procedure, as I have mentioned, we had thorough talks before we agreed on this point. If we change the procedure, for instance, if we provided that Judges shall write the procedure of internal regulation or internal procedure of 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 make your comment.

**H.E Ek Sam Ol:** Your Honor! I'd like to make some clarifications in addition to those of the Deputy Prime Minister Sok An. I have the honor to inform that the *Agreement between the United Nations and the Royal Government of Cambodia* signed in June 6, 2003 was ratified by the Assembly yesterday. Therefore, we cannot step back to make changes to the agreement. Yesterday I also informed the Parliament that the amendments to the *Statute on the Establishment of the Extraordinary Chambers 2001* are based on the agreement. In addition, this agreement enjoys equal status as the law in Cambodia after the ratification. What we are discussing this morning is making the 2001 statute conform with the agreement. For example, in the 2001 statute the Extraordinary Chambers had three Chambers, but now we eliminate the Appellate Chamber. Therefore, the Extraordinary Chambers now consist of two Chambers, the Trial Chamber and the Supreme Chamber. In order to restructure the courts, we have to amend 8 Articles namely Article 2, 9, 11, 14, 17, 18, 36 and 37. Regarding the extension of the statute of limitations, we have to amend 3 Articles namely Article 3, 29 and 36. On the matter of International Covenant on Civil and Political Rights in 1966, we have to amend Article 24, 33, 34, 35 and 43. Still, there are a number of Articles to be amended. For instance, to determine that judges have to be equipped with 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 the vacancies, we have to amend Articles 11, 21 and 27. Concerning the point that the UN Secretary-General can submit additional list of applicants, we have to amend Article 46. Respecting Co-Prosecutors' rights to appoint deputy prosecutors, we make changes to Article 22. Clarification of Articles 33, 34 and 35 regarding consistent application of procedure in the Trial Chamber and Supreme Chamber, means we have to repeat Article 37. There remain other points to mention, but those points were already mentioned yesterday. Since the agreement was ratified yesterday, it is difficult to change any words in the statute because these two have been made in conformity with each other. Some lawmakers suggested adding *those who were members of the party centre*, or *those who were members of 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 the purpose of the agreement 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 2<sup>nd</sup> term, we had a tough talk on this issue. Some suggested trying chiefs of cooperative 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 Extraordinary Chambers shall prosecute only the senior leaders and those most responsible. Since the statute is based upon the agreement, we cannot make any changes to words of the statute because the agreement is already in force. 29 Articles of the statute are amended to make it in conformity with 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 up with a consensus on examining and passing the *Agreement between the United Nations and the Royal Government of Cambodia*, and *amendments to the statute*. 107 out of 107 members of the Parliament voted for the ratification of the agreement. According to 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 to the statute because it is already in force.

**H.E Moug Saphan:** Your Honor! I understood that we all put all of our efforts into ensure justice for Cambodian people. Those committing crimes must reap the results of their action, 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 amount of suspects is small; then you say it is the task of the courts to decide who to be prosecuted. We cannot determine small or large or no more than 10 suspects because it is the tasks 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 only in Region 5 where I lived, those most responsible included the chief of the region, chief of cooperative, and chief of militiamen. These three suspects in my place alone were amongst those most responsible. Therefore, we cannot determine how many suspects there are before establishment of the courts. This shall be the task of the courts. I have also wanted 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-justice not only for the victims but also for the perpetrators. The 3<sup>rd</sup> 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 shall be consistent with that of the constitution. Another point concerns the content of the amendments. It is true that restructuring of 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 or victims*. These two words change the meaning a little bit somehow. I want you make this clear. Article 33, line 4 says *"...guidance may be sought in procedural rules establish at the international level"* Who shall seek these rules? *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"*. Article 34, line uses the phrase *"... in exceptional circumstance"*. In exceptional circumstances, the court shall decide to close the proceedings for good cause; what are consequences of the circumstances? When is the circumstance exceptional? Why can't it be opened to the public? Also in Article 34 goes *"Trial 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 Supreme Court of the Extraordinary Chamber [in Cambodia the word Sal Deika means the rulings of the appellate court and supreme court; and Sal Krom means the rulings of the trial court]. Article 40 relates to the matter of pardon. As I read the agreement, the agreement forces us to put the last sentence which 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 Chamber". Therefore, I think that after the establishment of the tribunal, the Extraordinary Chamber will decide whether to grant amnesty or pardon or not. But this decision is against the meaning of the constitution, which states that the King has the rights to reduce the guilt or grant amnesty; it is against the meaning of the constitution. It is not difficult. For example, Mr. A was granted amnesty. When the Extraordinary Chamber exists, they can accuse him on other crimes. There are lots of cases to indict. Previously, we accused Mr. A of crimes "A, B"; but we can bring complaint on cases "C, D" which are different from the previous ones. This way we can bring "A" to trial without affecting our constitution stating that the King has the rights to reduce guilt and grant pardon. I would like to end my opinion on article 40. **Article 47 bis:** As His Excellency Ek Sam Ol has mentioned, I understand that after the ratification the agreement will become law. But, I just generally want to paraphrase that: *After giving ratification in accordance with the procedure of Cambodian law, Cambodia concerning the competence of signing the treaties..... then the agreement between the government to prosecute what as follows.....has to be used as Cambodian law.* I think this phrase is difficult to understand. We want to state that when the agreement is already ratified, it will become the law used in the Kingdom of Cambodia, but it relates to the competence of signing the treaty, that is hard to understand. I would like His Excellency to give a detailed explanation on this point.

Thank you!

**Samdech Norodom Rannariddh:** Thank His Excellency! I would like either His Excellency Ek Sam Ol or His Excellency Deputy Prime Minister Sok An to give opinion. I would like His Excellency Sok An, please.

**H.E Sok An:** Dear respected Samdech President and all members of the Parliament again! As His Excellency Monh Saphan has raised lots of points one after another, I would like to comment as follows: The first point is about the numbers of targets and numbers to be prosecuted by the Extraordinary Chamber. This point as I have mentioned before seems to be clear, but His Excellency Monh Saphan still thinks that it is not clear. For this point, the law states that it is the competence of the judges of the Extraordinary Chamber, who shall have to power to choose the targets and consider who shall be indicted or prosecuted. But, the Extraordinary Chamber, which has competence and rights to fulfill this job, has to perform their functions in accordance with the law, the agreement and the law we are discussing. Therefore, in discussing and preparing this law, which is the framework for judges and prosecutors, basically lawyers always consider the main principles to agree upon, and then they start to write down the law. That is why it took so long time -- 5 to 6 years -- because there were a lot of main principles needed to be discussed. So, the numbers I have raised so far are 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 Extraordinary Chambers. I think that this point is clear enough, for we have discussed in the framework of law. Those who are concerned about this law just show their ideas as I have mentioned, but it is stated very clear that it is the rights of the co-prosecutors and the Extraordinary Chamber. The second point is about the appointment of judges. As His Excellency Monh Saphan put it, the incumbent judges who were involved in the 3 years-8 months-20 days regime, should not be appointed as judges of the Extraordinary Chambers. We haven't clearly decided on

this matter yet, whether to choose His Excellency A, B or C. Concerning the phrase, those who experienced the Pol Pot regime shall 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 this case because the judgment might be partial. However, this case is considered as a special case. 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 are international judges; they don't know about Pol Pot. They have never known that crimes, and they never experienced the 3 years-8 months-20 days regime. But, Cambodian judges used to experience the pain of this regime and used to be angry with this regime, 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: that foreign lawyers don't know this regime. They don't know the regime of 3 years, 8 months and 20 days. They don't know the nature of this regime. Therefore, the awareness of the regime on the part of Cambodian judges is a positive point because those who used to be victims of this regime and used to live in this regime are able to know the reality that was the result 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 used to live in the regime of 3 years, 8 months and 20 days, but as we see it, there are both positive and negative points.

Concerning the words written in the article stating they could seek guidance from the procedural ruled in international sources. It as raised that we don't know to whom the "they" refers. For this matter, there is connection between text in English and text in Khmer because we discuss in English, and then translate it into Khmer. We think that we are weak to translate from English. 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 in some work. 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. These kinds of texts are also in relation between Khmer and English. 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 framework of the Extraordinary Chamber, 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 international level. I think for this point they clearly understand. And, if we have read this text from the beginning, we can also understand.

**The fourth point** concerns public trial. 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 themselves can. Whether they shall announce in camera or shall not in order to make secure witnesses or other people concerned is a decision of the Extraordinary Chambers. If we consider that it is the task of the Extraordinary Chambers, we should not write more clearly than this. We cannot determine matters in advance, whether this case shall be this or that. They will decide as each case arises.

This point concerns with article 39. I would like to go on to another word "foreign state". 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 belong to a 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 the trial court or court of appeal or supreme court. But our tendency, as said, is we still think that under the Cambodian law and procedure, the term “ruling” is issued by the trial court and “verdict” by the court of appeal or any upper chambers. With regard to this, it is not a major issue. We can adapt to it. According to the tendency, we can write either “verdict” or “ruling”. So, we will more have no problem 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 tendency, in which the terms are no longer different.

Concerning pardon, this point has been 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, the very same problem was still focused on insisting that the pardon may be lifted. The agreement was that we could not do anything contrary to our constitution. There is no need for us to make any amendments to our constitution on an able-to-compromised point. 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 amnesty after the trial. At the starting point 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 there would not be amnesty granted, it is against our constitution; we cannot write in this way. However, to get their consent, we could write that the Royal Government of Cambodia shall not request an amnesty. We wanted them to understand that the previous amnesty happened because the Royal Government of Cambodia 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. At last 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 barrier to the indictment against any suspects. We also did not agree on this sentence because it also means *there is no amnesty*. Finally, we proposed that the matter of pardon is a matter to be decided by the Extraordinary Chamber. The phrase "to be decided by the Extraordinary Chamber" does not mean that there is another separate Extraordinary Chamber to decide on this matter. It is the previously mentioned Extraordinary Chambers that have the power to decide on this matter. And we think that it is not against the constitution or the spirit of our constitution. 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 the constitution. This is the final solution, which both sides have agreed upon and have compromised. We think that we should maintain this formula because it is the only formula that can help us stay within the confines of our constitution, that can be acceptable for UN side, and that is parallel to what we have done so far. I would like to finish my talk. Thank you!

**Samdech Krom Preah Norodom Ranariddh:** Thank His Excellency! Please His Excellency Ek Sam Ol!

**H.E Ek Sam Ol:** Dear again respected Samdech Krom Preh, 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 Monh Saphan has raised. **For the new article 23**, the point that His Excellency Monh 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 mistake in reading for it is a long text. The text is right but I read wrongly. I am so sorry. It is "and" not "or". After that His Excellency Monh Saphan talked about **new article 33**, by raising the matter related to the word "they". "They" refers to whom? The word "they" is not a new amendment. I have read 2001 Khmer Rouge Law, which was the word "they", so that is all right. I would like to return to new article 23 because he is still 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. Then His Excellency the ex-President of Legislative Committee raised this point. 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". **For new article 34**, His Excellency Monh Saphan is curious about the word "exceptional circumstances". This word is also used in 2001 Khmer Rouge law. In the new article 34, we add a little bit. We keep that the proceedings of the Extraordinary Chamber shall be open for representatives of foreign states, representatives of the Secretary-General of the United Nations, representatives of the media, and representatives of non-governmental organization both local and international. These are new words: "except in exceptional circumstances the Extraordinary Chamber may decide to". Therefore, with regard to the phrase "exceptional circumstances", if the Chamber thinks that it is exceptional circumstances, they can have a secret meeting. **New article 36**: What His Excellency Monh Saphan has mentioned is considerable because we wholly changed this article. The old article 36 talks about the Extraordinary Chamber of the appeal court, so it keeps the word **Sal Deika** (ruling of the Appeal and Supreme Court). According to the law on the penal procedure with the existing 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 Department of Procedure remember that a change from **Sal Deika** to **Sal Kram** should be in accordance with the law on the penal procedure. **Article 42 bis**: I think that the meaning of this article is sufficient because it is taken from article 31 of the agreement. His Excellency Monh Saphan, as I mentioned agree to the writing in the draft of the amendment law. Thank you! Please adopt the law.

**Samdech Krom Preah Norodom Ranariddh**: Thank His Excellency! The matter is that His Excellency Monh 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 over 98. Thank!

**Samdech Krom Preah Norodom Ranariddh**: 97 over 98! Now National Assembly has already adopted article 1. His Excellency Ek Sam Ol reads 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 support is 96 over 98. Thanks!

**Samdech Krom Preah Norodom Ranariddh**: National Assembly has passed the draft law on the amendments to Article 2, article 3, article 9, etc. of the Law on the Establishment of the Extraordinary Chamber in the Cambodian Court for the Prosecution of Crimes

Committed during the period of Democratic Kampuchea. 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 requested 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 process in order to establish the judicial basis for the Extraordinary Chamber. Secondly, I would like to take this auspicious occasion to inform the National Assembly about these two manual books entitled "Instruction on the Khmer Rouge Trial," one in Khmer and another in English. These two small manuals have been prepared under the sponsorship of two Australian organizations and aim to elaborate the process of the establishment of this Extraordinary Chamber, its structure, the trial process and the implementation of this Extraordinary Chamber. They are in the form of about 40 questions and answers. I feel that by reading these books, the readers will understand more about the process and the function of the Extraordinary Chambers and the prime objective of establishing this Extraordinary Chamber. Thank you!

**Samdech Krom Preah Norodom Ranariddh:** Thanks to His Excellency! I would like to announce the suspension of the meeting. Tomorrow, the National Assembly will continue to discuss and adopt the draft law on National Budget Management for the year 2004, which is the 8<sup>th</sup> agenda. Thank you! Ends.