

Why the Cambodia Tribunal Matters to the International Community

By

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After a decade of turbulent negotiations, which often appeared so futile and yet so vitally important to keep alive, the Extraordinary Chambers in the Courts of Cambodia (ECCC) are now a fact. Lawyers and judges are pursuing justice for the estimated 1.7 million Cambodians who perished during the rule of the Khmer Rouge from April 1975 to January 1979. But it has been thirty years since the killing fields of Cambodia were first littered with their corpses and tilled by the millions of other Cambodians forced into slave labor by the Pol Pot regime. Why should the international community care, especially when so many years have passed, the surviving senior Khmer Rouge leaders are few in number, and Cambodia is at peace? Why invest in a hybrid judicial process fraught with risk and so uncertain in its ultimate outcome? The answers lie in the relentless quest to defeat impunity for the atrocity crimes (genocide, crimes against humanity, and war crimes) that define our collective past and present and that must not shape the future.

My colleague in Phnom Penh, Youk Chhang, who is the Executive Director of the Documentation Center of Cambodia, has written a companion essay explaining why the ECCC matters so much to the Cambodian people. In this essay I briefly explore why the ECCC should matter to the international community. With so many other judicial challenges in the realm of atrocity crimes elsewhere in the world, and with so many other

war crimes tribunals requiring the financial and political support of nations, can the international community appreciate and sustain its initial support for the ECCC? Let me offer some answers to that question:

During the years of negotiations which began in 1997, I was often confronted with the cynical view that the pursuit of justice for the atrocity crimes of the Pol Pot regime was a hopelessly flawed endeavor. I reminded the cynics (and there were so many of them) that we have a supreme responsibility to those who perished in Cambodia to bring the leading perpetrators to justice. I could not in good conscience negotiate the creation of tribunals for the Balkans conflict of the early 1990's, the Rwandan genocide of 1994, the Sierra Leone atrocities of the late 1990's, or the permanent International Criminal Court and at the same time ignore what happened in Cambodia in the late 1970's. Nor should the international community abandon the judicial challenge arising from that horrific assault on the citizens of Cambodia while the world held itself aloof in the aftermath of the Vietnam War. For Americans in particular, the secret bombing of Cambodia during the Nixon presidency, which helped to destabilize that country as the Khmer Rouge were gaining power, leaves us no moral choice but to make every possible effort to achieve some measure of credible accountability for the slaughter that ensued.

If the futile message after World War II was "never again," the more hopeful lesson from Cambodia that the ECCC embodies is, "never forget." Perhaps the most fundamental purpose of the ECCC from an international perspective is that it demonstrates, provided it continues to function pursuant to its constitutional design, that impunity will not prevail in Cambodia for surviving senior Khmer Rouge leaders or others most responsible for the atrocity crimes of the Pol Pot regime. That fact alone

sends a powerful signal throughout the world that the international community is getting serious, indeed very serious, about accountability for atrocity crimes and that there is no stopwatch for justice. If the ECCC can administer fair trials, fully respectful of international standards of due process, the judgments of guilt or innocence that emerge will stand as beacons of hope for all victims of such assaults on humankind. They will know that if justice could be rendered in Cambodia—three decades after that nation’s apocalypse—then there must be hope that they too can build or find the courtroom that renders credible justice, if not immediately then within the lifetimes of the atrocity lords who must face their reckoning.

The ECCC is such a uniquely crafted court that the international community will focus on whether it fulfills its mandate with objectivity and integrity or whether it succumbs to political influence and manipulation. The ECCC is not an international criminal court. Rather, it is a special domestic Cambodian court that functions in partnership with the United Nations (pursuant to a treaty and a specially designed Cambodian law) and that embraces a great deal of international criminal law and international standards of due process. While the Special Court for Sierra Leone, which was created by treaty between the Government of Sierra Leone and the United Nations, is an international criminal court, the ECCC was designed somewhat differently as a national court of “extraordinary” international character. Many international observers will watch and monitor how the ECCC will go about its daily tasks of investigation, prosecution, adjudication, and sentencing without falling prey to political intrigues that seem to define every aspect of Cambodian society. There is no question that the ECCC is an experiment, but one for which there really was no viable alternative after years of

negotiations. If the ECCC succeeds in achieving credible justice within the Cambodian judiciary, it will demonstrate that *international justice* can be distributed among national and international courts with greater confidence that we could have imagined a decade or so ago.

Finally, the ECCC is an important test for the United Nations, which is partnered so closely with the Royal Government of Cambodia in the staffing, financing, and administration of the Chambers. The international community would expect nothing less than the high standards of performance for the ECCC and the Cambodian government that are required by U.N. officials. How the United Nations handles this delicate relationship, which at all times requires patience, perseverance, diplomatic tact, and the defense of the rule of law, will say a lot about the international organization and its ability to manage novel but essential mechanisms of domestic and international justice.

The Cambodia Tribunal Monitor web site (www.cambodiatribunal.org) is also a unique international venture. It will webcast the trial proceedings of the ECCC and interviews with Cambodian citizens reacting to the trials. By bringing the trials to the forefront of the international audience and to the growing number of Cambodians with access to the internet, the Cambodia Tribunal Monitor serves the larger purpose of ending impunity through education and awareness of the atrocities of the past. It will serve that purpose well if succeeding generations across the globe never forget what happened in Cambodia.

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