

# Chapter 10

## Post–Conflict Justice in Cambodia:

### The Legacy of the Khmer Rouge Tribunal

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#### ABSTRACT

*This paper looks at the role that the Extraordinary Chambers in the Courts of Cambodia play in the context of post-conflict justice in Cambodia. The first trial against one of the main perpetrators was completed in 2010; the first phase of the second case against two high-ranking leaders of the Khmer Rouge has been completed in 2014. This study includes an analysis of how the Tribunal has influenced the legal and political culture in Cambodia, and the ways in which the work of the Tribunal has changed the perception of common people concerning the Khmer Rouge period. The paper also looks at the proceedings before the Tribunal and discusses whether the Tribunal has, in the eyes of all relevant stakeholders, lived up to expectations. The interaction between the Cambodian government and the international community is crucial in this context. Finally, the Tribunal's lasting legacy is scrutinized in regard to its effect on the Cambodian legal system and in regard to the ECCC's outreach, education and documentation activities.*

#### INTRODUCTION

The traumatic experiences of the 1960s and 1970s, especially the Vietnam War and the authoritarian regime of the Khmer Rouge, have deeply influenced Cambodian society. The Cambodian experience is in many ways unique and different from other countries' experiences, because of the multidimensionality of the conflict. It is particularly remarkable that while the Khmer Rouge have been removed from power over thirty-five years ago, only over the last decade modest progress

has been made in Cambodia towards sustainable social and economic development.

This paper looks at the role that the Extraordinary Chambers in the Courts of Cambodia play in the context of post-conflict justice in Cambodia. The Extraordinary Chambers in the Courts of Cambodia (also known as the Khmer Rouge Tribunal; hereinafter ECCC or Tribunal) were established in 2006 – more than 25 years after the crimes were committed. Their establishment marks an important step in Cambodia's attempt to come to terms with its past.

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The first trial (Case 001) against one of the main perpetrators was completed in 2010; the first part of the second trial against some of the high-ranking leaders of the Khmer Rouge was completed in 2014. It is unclear whether and how the Tribunal will proceed after the appeal judgment and the completion of the second phase of that trial (Case 02/002). Additional cases are under investigation. However, the Cambodian government is reluctant to support the work of the Tribunal for much longer.

This paper tackles important questions, including an analysis of the extent to which the Tribunal has influenced the legal and political culture in Cambodia, and in which ways the work of the Tribunal may have changed the perception of the Khmer Rouge regime in society. First, a brief historic overview including the process of establishing the ECCC will be given. The paper will then look at the proceedings before the Tribunal and discuss whether the Tribunal has, in the eyes of the stakeholders, lived up to the expectations. Especially important in this context is the interaction between the Cambodian government and the international community. Finally, some thoughts will be shared on the Tribunal's lasting legacy in regard to improvement of the Cambodian legal system and post-conflict justice in general.

## **BACKGROUND**

Cambodia had been a French protectorate since 1863 and King Norodom Sihanouk declared Cambodian independence in 1945 during Japanese occupation (at the request of the Japanese occupiers). However, the French were able to reimpose their colonial administration in October 1945. Cambodia finally became independent in 1953/54 in the context of the first Indochina War. Independence was followed by a period of Cambodian political non-alignment and neutrality in the 1950s and 1960s (for a detailed account of the Cambodian history after independence see Kamm, 2002). King Norodom Sihanouk, who had

abdicated in 1955 in favor of his father, became Head of State again in 1960. His policy successfully maneuvered Cambodia through the Cold War, when the superpowers fiercely fought over influence in the region. But ultimately Cambodia could not avoid being dragged into the Vietnam War. Genuine neutrality became impossible under pressure from various stakeholders, and, in 1965, Sihanouk made a pact with North Vietnam and allowed Chinese military supplies to reach North Vietnam via Cambodian territory. Increasingly, Cambodia's eastern provinces were serving as bases for the Viet Cong. Hence, the United States began a bombing campaign to weaken Vietnamese logistical lines running through Cambodia in 1969. Sihanouk feared that the Vietnamese conflict would spill over into Cambodia and therefore opposed the U.S. bombing campaign. At the same time, domestic opposition to Sihanouk grew (already since 1964 the government faced an underground insurgent movement - the Khmer Rouge).

In 1970, while he was on a state visit in China, Sihanouk was ousted in a military coup by Prime Minister Lon Nol. The Lon Nol government issued an ultimatum for North Vietnamese troops to leave Cambodian soil. Although the role of the United States during that time remains unclear, the Lon Nol government was ultimately supported by the United States in the civil war that raged from 1970 to 1975. Despite support from the United States, the Lon Nol government remained weak and lost rapidly territory to the advancing Khmer Rouge guerilla forces. The intense U.S. bombing campaign further helped the advancing Khmer Rouge forces, because it brought them support and sympathy of the common people. In addition, the Khmer Rouge insurgency could count on military support from North Vietnam. Eventually, American support for the Lon Nol government ceased in the context of broader geo-strategic considerations. The Cambodian government was unable to sustain itself any longer and broke down when in April 1975 the Khmer Rouge marched triumphantly into Phnom Penh.

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