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The Khmer Rouge Tribunal in Cambodia

Internationalized prosecution of the
mass murder

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The Khmer Rouge Tribunal in Cambodia

Internationalized prosecution of the mass murder

Introduction

Cambodia is finally trying the remaining Khmer Rouge leaders for the mass murder after three decades of impunity. The Kingdom of Cambodia with its capital Phnom Penh, is situated at the Gulf of Thailand in Southeast Asia, and constitutes half of the German territory. The fourteen million Cambodians speak Khmer. Buddhism is State religion. After decades of the brutal Khmer Rouge reign and civil war Cambodia consolidates being sovereign in 1993. The economic and social situation is improving step by step with a declining illiteracy rate of 85 percent in 1993 to fourteen percent in 2008. Two third of school children are attending school till the sixth grade in 2005.

Addressing past crimes is also labeled transitional justice.¹ The notion ‘transitional justice’ comprises the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation.² Postconflict societies must seek to encompass broadly the various dimensions of justice in order to renew social relationships and to transform into a democratic State. The countries are in transition from armed conflict and mass violence, to peace and reconciliation.

In the last thirty years, a number of transitional justice mechanisms have been established with differing levels of international involvement. They comprise national and international tribunals, reparations, truth-seeking, vetting, institutional reform and community reconciliation mechanisms. While the investigation and punishment of human rights violators is essential victims also regard reparation as an integral part of restorative justice.³

¹ See Miriam Aukerman: “Extraordinary Evil, Ordinary Crime: A Framework for Understanding Transitional Justice”, *Harvard Human Rights Journal*, 15 (2002), at 39-97; Cherif Bassiouni (Ed.): “Post-Conflict Justice”, 2002; Laurel Fletcher/Harvey Weinstein: „Violence and social repair: Rethinking the Contribution of Justice to Reconciliation“, *Human Rights Quarterly*, 24 (2002), at 573-639; Pierre Hazan: “Measuring the impact of punishment and forgiveness: a framework for evaluating transitional justice”, *IRRC* 88 (2006), at 19-47; Neil Kritz (Ed.): “Transitional Justice. How Emerging Democracies Reckon with former Regimes”, 3 volumes, 1995, Vol. I: General Considerations; Vol. II: Country Studies; Vol. III: Laws, Rulings and Reports; Rama Mani: „Beyond Retribution. Seeking Justice in the Shadows of War“, 2002; Martha Minow: „Between Vengeance and Forgiveness. Facing History after Genocide and Mass Violence“; Naomie Roth-Arriaza/ Javier Mariezcurrena (Ed.): “Transitional Justice in the Twenty-First Century”, 2006; Ruti Teitel: „Transitional Justice Genealogy“, *Harvard Human Rights Journal* 16 (2003), at 69-94.

² See Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies, S/2004/616, 23.08.2004, para 8.

³ This Article is part of the author’s research for a PhD thesis which examined the new international law-concept of transitional justice and the hybrid courts to prosecute those responsible for international crimes, special case:

The crimes

The Khmer Rouge under their leader *Pol Pot* forcibly moved all Cambodians from cities and towns into the countryside.⁴ In the rural regions they were forced to work under hard conditions (work twelve hours a day, little food) for the rice production according to the agricultural plan of the Khmer Rouge. The Khmer Rouge abolished culture and education, hospitals, currency, markets, media, religion and closed Cambodia's borders to the outside world. All over the country they established detention and torture centers. The main detention center named Tuol Sleng in the capital Phnom Penh was converted into a genocide memorial. The Khmer Rouge imprisoned, photographed, tortured and forced Cambodians to make confessions that they were agents of the CIA or the KGB. Those who survived the torture were executed in the countryside of Choueng Ek fifteen kilometers of Tuol Sleng and their bodies thrown into the mass graves. During their four years in power (1975-1979) nearly two million Cambodians perished as a result of the forced labour, starvation, medical neglect, torture and executions. The whole intelligentsia was killed. Speaking french or wearing eyeglasses was sufficient being assumed as an intellectual and therefore being executed.

After Vietnamese forces secured control of Phnom Penh on January 7, 1979, the pro-vietnamese government conducted a trial of *Pol Pot* and *Ieng Sary* -the deputy prime minister for foreign affairs of the Khmer Rouge- in August 1979 in Phnom Penh.⁵ Both were tried in absentia, found guilty of the offence of genocide and sentenced to death by a five days process before the 'People's Revolutionary Tribunal'. In this show trial the length, course and verdict were predetermined. The death penalty had not been carried out because *Pol Pot* and *Ieng Sary* had taken sanctuary in Thailand. Neither of them served any sentence. Till the beginning of the nineties *Pol Pot* controlled the nordwest of Cambodia where he died under mysterious circumstances over ten years ago.⁶ In 1996 the King granted a pardon to *Ieng Sary* with regard to the conviction on the charge of genocide in exchange for acknowledging the coalition government of *Hun Sen* and *Prince Ranariddh*.

The Cambodian Extraordinary Chambers. The PhD thesis will be published in Summer in the LIT-Verlag: "Transitional justice und hybride Gerichte zur strafrechtlichen Verfolgung von völkerstrafrechtlichen Verbrechen unter besonderer Berücksichtigung des kambodschanischen Sondergerichts (Extraordinary Chambers)". Current Post-Doc research on the trials in Cambodia.

⁴ See David Chandler: *Voices from S-21, Terror and History in Pol Pot's secret Prison*, 1999; David Chandler: *A history of Cambodia*, 4. Ed. 2008; John Tully: *A Short History of Cambodia*, 2006; Alexander Hinton: *Why did they kill? Cambodia in the Shadow of Genocide*, 2005; Ben Kiernan: *The Pol Pot Regime-Race, Power and Genocide*, 2002.

⁵ See Howard de Nike/John Quigley/Kenneth Robinson: *Genocide in Cambodia, Documents from the Trial of Pol Pot and Ieng Sary*, 2000.

⁶ See <http://www.nytimes.com/1998/04/18/world/death-pol-pot-questions-khmer-rouge-rush-cremate-pol-pots-body-without-autopsy.html>.

With the exception of the show trial against *Pol Pot* and *Ieng Sary*, no one has been held accountable for the widespread and systematic human rights abuses by the Khmer Rouge, either internationally or domestically. Instead the U.N. General Assembly voted to seat the Khmer Rouge faction (which formed in 1982 a new Coalition Government of Democratic Kampuchea consisting of the Khmer Rouge, royalist and republican factions) at the U.N.⁷ Regarding the Khmer Rouge as the continuing member of the United Nations until 1990 was a clear reflection of the international priorities of the times and the Cold War politics.⁸

Pol Pot and those loyal to him were ousted from Phnom Penh and regrouped along the Thai-Cambodian border in the North of Cambodia. The 1979 Vietnamese invasion and installation of the new “People’s Republic of Kampuchea” led to a decade of civil conflict. Till 1991 far more 300.000 Cambodians died and nearly two million Cambodians faced death because of an overwhelming humanitarian crisis.

The Cambodian government under Prime Minister *Hun Sen* is pursuing the policy of national reconciliation which is characterized by forgiving and forgetting. When in late 1998 the two remaining leaders of the Khmer Rouge, *Nuon Chea* and *Khieu Samphan*, surrendered to the government, *Hun Sen* declared: “If we bring them to trial it will not benefit the nation, it will only mean a return to civil war. We should dig a hole and bury the past.”⁹ Also in 1998, soldiers of the Khmer Rouge defected to the government and were integrated into the Cambodian forces in exchange for amnesty. Such amnesties have already been granted in 1994 by “The Law on the Outlawing of the “Democratic Kampuchea” Group”.¹⁰ The concept of national reconciliation by forgetting neglects accountability and led to a cultur of impunity in Cambodia.

The Khmer Rouge Tribunal

In mid-February Cambodia’s first Khmer Rouge trial started against one leader of the Khmer Rouge. *Duch* (66) is the first Khmer Rouge key member to face the Court –with four more of the regime’s senior members in custody and awaiting trial. *Duch*, the former director of the notorious detention and torture center Tuol Sleng in the capital Phnom Penh where more than 15.000 people lost their lives, is charged with crimes against humanity, war crimes, premeditated murder and

⁷ GA Res. 34/2, 21.09.1979; 35/4, 13.10.1980; 36/2A, 18.09.1981; 37/5A, 26.10.1982. See Christian Koenig, ArchVR, Nr. 28 (1990), at 266 et seq.

⁸ David Chandler: “A history of Cambodia”, 1996, at 231 et seq.

⁹ See Tom Fawthrop/Helen Jarvis, Getting Away With Genocide? Elusive Justice and the Khmer Rouge Tribunal, at 135.

¹⁰ The law is available at <http://www.eccc.gov.kh>.

torture. After three decades of impunity the top surviving leadership is being held criminally accountable for their mass atrocities committed during the four year Khmer Rouge reign.

The Court is called 'Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea' (the Court). The four other indicted senior Khmer Rouge figures are in their eighties (the former State President, the former Foreign Minister, the chief ideologue of the Khmer Rouge and the former Minister of Social Action).¹¹ So far no date has been set for their trials but they are likely to be tried in the next year or two. *Duch* is the only defendant to acknowledge responsibility for his actions while the other four aging and sick senior cadres have denied any wrongdoing. *Duch* told the Court: "May I be permitted to apologise to the survivors of the regime, and also the loved ones of those who died brutally during the regime. I ask not that you forgive me now, but hope you will later".¹² *Duch* faces life in jail at the Court which does not have the power to impose the death penalty. His defense lawyer requested the release of his client because he has been detained for more than ten years violating his human rights.¹³

Legal Basis and Structure of the Court

The constitutive instrument for the Khmer Rouge Tribunal is the Cambodian 'Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes committed during the Period of Democratic Kampuchea'¹⁴ (Extraordinary Chambers Law). The United Nations are backing the court. The cooperation between the United Nations and Cambodia is regulated by an agreement reached in 2003 after nearly a decade of contentious negotiations, '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'.¹⁵ With the appointments of the national and international judges and prosecutors being made in 2006 the Court commenced its operations.

¹¹ Introductory submissions and final submissions of the co-prosecutors, closing orders (indictment) of the co-investigating judges and the provisional detention orders and other decisions of the Court are available at <http://www.eccc.gov.kh>.

¹² See BBC NEWS 31.03.2009, Khmer Rouge leader admits crimes, <http://news.bbc.co.uk/go/pr/fr/-/2/hi/asia-pacific/7973463.stm> (31.03.2009)

¹³ On 15 June, the Court denied the request for release, ordered that the Accused shall remain in provisional detention for the duration of the trial, found that the detention of the Accused by the Military Court in 1999 was an error of application of procedural law, a violation of his rights, and that therefore the detention was unlawful, 001/18-B7-2007/ECCC/TC, E39/5, decision available at <http://www.eccc.gov.kh>.

¹⁴ The Law is available at <http://www.eccc.gov.kh> and <http://www.derechos.org/human-rights/seasia/doc/krlaw.html>. It is printed in Ambos/Othman, International Criminal Justice, pp. 267 et seq.

¹⁵ The agreement is also available at <http://www.eccc.gov.kh>.

The Court comprises a Trial Chamber and a Supreme Court Chamber, the prosecutors, the investigating judges, a Pre-Trial Chamber and the Office of Administration. The Court is a national tribunal with Cambodian judges representing the majority (Trial Chamber: three Cambodians and two international judges from New Zealand and France; Supreme Court Chamber: four Cambodian judges and three international judges from Japan, Poland and Sri Lanka). The Cambodian government rejected the majority of international judges proposed by the United Nations. The majority of Cambodian judges leads to significant concerns regarding the vulnerability of the Cambodian judiciary to political interference. Furthermore the Cambodian judiciary is lacking training and a respect for due process. The Report of the Group of Experts for a Khmer Rouge Tribunal states that ‘the level of corruption in the court system and the routine subjection of judicial decisions to political influence would make it nearly impossible for prosecutors, investigators and judges to be immune from such pressure in the course of what would undoubtedly be very politically charged trials.’¹⁶ The Government exerts overt and covert influence over the decisions of investigating judges and trial courts.¹⁷ These include threats and physical attacks on judges or simply the realization among judges that their tenure, and often their prospect of future livelihood, depends upon the approval of political elements.¹⁸ This interference helped to erode public confidence in the justice system. In order to ensure that a judgement cannot be taken without the support of at least one international judge the famous ‘supermajority formula’ was adopted requiring the affirmative vote of a majority of the judges in each chamber plus one.

There is one Cambodian prosecutor and one international prosecutor, serving as co-prosecutors. The co-prosecutors shall cooperate with a view to arrive at a common approach to the prosecution. The Cambodian prosecutor *Chea Leang* who studied law in the former GDR is supported by a legal assistant, the German prosecutor of Hamburg *Jürgen Assmann*. The international prosecutor *Robert Petit* (Canada) has significant experience in international criminal law serving as a prose-

¹⁶ Report of the Group of Experts for Cambodia Established Pursuant to General Assembly Resolution 52/135 dated February 18, 1999, Identical letters dated 15 March 1999 from the Secretary-General to the President of the General Assembly and the President of the Security Council, UN Doc A/53/850 und S/1999/231 vom 15.03.1999, annex, para 133.

¹⁷ Human Rights Watch: Serious Flaws: Why the U.N. General Assembly Should Require Changes to the Draft Khmer Rouge Trial Agreement, at 4, available at <http://www.hrw.org>. See also Tom Fawthrop/Helen Jarvis, Getting Away with Genocide? at 149.

¹⁸ Report of the Group of Experts, at para 129; Situation of Human Rights in Cambodia, Report of the Special Representative of the Secretary-General for human rights in Cambodia, Peter Leuprecht, E/CN.4/2005/116, 20.12.2004, at para 21: „The past decade has seen the continuation of executive control over the judiciary and other key legal institutions... A principle obstacle to establishing judicial independence is that the courts have continued to function as an arm of the executive, a practice that characterized the administration of justice in Cambodia in the 1980s, and has become deeply entrenched ...” Also the concerns of political interference of Amnesty International available at <http://www.amnesty.org>; Report of the Secretary-General on Khmer Rouge trials, 31.03.2003, UN GA A/57/769, at para 13. Human Rights Watch: „The judicial system remains extremely weak and generally unable to deliver justice to those whose human rights are violated“, World Report 2003, at para 208.

ctor at the International Criminal Courts for Rwanda (ICTR), the Special Panels in East Timor, the Special Court for Sierra Leone and as Legal Advisor to the United Nations Mission in Kosovo.

Salaries and emoluments of the international personnel including the remuneration of defense counsel are defrayed by the United Nations. The United Nations contributions to the Court are funded by voluntary contributions. Japan has donated 50 percent of the international share, with other major donations from France, Germany, the United Kingdom and Australia.

Subject Matter Jurisdiction

The subject matter jurisdiction of the Court comprises both crimes under international law and Cambodian criminal law. International crimes are genocide, crimes against humanity, grave breaches of the 1949 Geneva Conventions, the destruction of cultural property during armed conflict pursuant to the 1954 Hague Convention for Protection of Cultural Property and crimes against internationally protected persons pursuant to the Vienna Convention of 1961 on Diplomatic Relations. The Court has the power to bring to trial suspects who committed homicide, torture and religious persecution set forth in the 1956 Penal Code of Cambodia which was the current Cambodian criminal law during the relevant period.

Concerning the crime of genocide it has to be ascertained that the large amount of acts do not fall under the genocide definition. The majority of individuals was targeted by the Khmer Rouge for their political opinion, social or economic status. The Khmer Rouge's crimes were aimed at destroying political or social groups. However, the genocide definition under the Genocide Convention incorporated into the Extraordinary Chambers Law only protects those targeted for their national, ethnic, racial or religious characteristics which occurred in Cambodia for the Cham muslims, Buddhist Monks, Vietnamese, Thai and Lao minorities. Therefore the Khmer Rouge committed genocide against these particular groups.

Personal Jurisdiction

Due to the strategy of the Cambodian government and the limited resources available to the Court the personal jurisdiction comprises only senior leaders of Democratic Kampuchea and those who were most responsible for the crimes. This selective prosecution reflects the tendency in international criminal law to bring to justice persons for the most serious crimes. Also the Special Court for Sierra Leone is mandated to try 'those who bear the greatest responsibility'

for war crimes, crimes against humanity and crimes under Sierra Leonean Law.¹⁹ According to the completion strategies the focus of the International Criminal Courts for the former Yugoslavia (ICTY) and Rwanda (ICTR) is on the most senior leaders suspected of being most responsible for crimes.²⁰

To date five suspects have been arrested and charged. The Court plans to try as many as eight suspects. *Duch*, the head of Tuol Sleng was already arrested in 1999 and is indicted for crimes against humanity, grave breaches of the Geneva Conventions and violations of the 1956 Penal Code (Premeditated Murder and Torture). *Nuon Chea* is charged with crimes against humanity and grave breaches of the Geneva Conventions of 1949 in his capacity as the Chairman of the Democratic Kampuchea People's Assembly and former Khmer Rouge ideologue. He was called Brother Number two. Together with *Khieu Samphan* he defected to the government in December 1998. The Prime Minister *Hun Sen* treated them like high officials and granted amnesties which are not valid before the Court.

Khieu Samphan was Head of State and Chairman of the State Presidium. He is accused of crimes against humanity and grave breaches of the Geneva Conventions of 1949. In the early sixties he studied in Paris at the Sorbonne and wrote his PhD thesis in economics about the industrialization of Cambodia and a doctrine of new Cambodians he aimed to create under the Khmer Rouge. His international defense lawyer is the famous French attorney *Jacques Vergès*. The former Minister of Foreign Affairs *Ieng Sary* is charged with crimes against humanity and war crimes and was arrested in November 2007. He was called Brother Number three. His wife, *Ieng Thirith*, is being prosecuted for crimes against humanity in her capacity as the Minister of Social Action and is being placed in provisional detention in November 2007. Till the arrest the couple lived in a fancy house in Phnom Penh and were treated with respect and were addressed by diplomatic titles.

Territorial and temporal Jurisdiction, Procedural Law, Legal Status

The Court has territorial jurisdiction and temporal jurisdiction for crimes committed in Cambodia within the period from 17 April 1975 (takeover) to 6 January 1979 (Vietnam's invasion of Cambodia) thus, atrocities of the Khmer Rouge committed either before or after that date are excluded. In June 2007 judges of the Court adopted 'Internal Rules', the purpose of which is to

¹⁹ Art. 1 I Statute of the Special Court Sierra Leone.

consolidate applicable Cambodian procedure for proceedings before the Court. Also in 2007, the National Assembly agreed on the new Criminal Procedure Code (CPC) of Cambodia which directly incorporates French criminal procedure.²¹

The Cambodian Court is qualified as a hybrid (internationalized or mixed) tribunal comprising both domestic and international personnel and having jurisdiction over crimes committed under national and international law.²² The hybrid tribunal as a newly emerging form of accountability mechanism has been created since the year 2000 starting in Kosovo (2000), East Timor (2000), Sierra Leone (2002), Cambodia (2003), Bosnia and Herzegovina (2005) and Lebanon (2007).²³ Hybrid tribunals are located in the territory where the atrocities were committed. Only the Special Tribunal for Lebanon has its seat in The Hague as well as the trial of Charles Taylor indicted by the Special Court for Sierra Leone which is staging in The Hague because of reasons of security and expediency. The physical proximity guarantees a close work to the affected population. They can see justice been done. Victims are able to witness personally due process in action. Forming part of the national court system or being affiliated by bilateral agreements the enforceability of arrest warrants or other decisions issued by a hybrid court is much easier. In comparison to the international courts ICTY and ICTR the financial resources of the hybrid tribunals are much smaller which led to the allegation of a 'justice on the cheap'.²⁴

Victim Participation -Civil Parties

Purported victims of the alleged crime are entitled to participate in the criminal proceedings as civil parties. Being joined as a civil party has the effect that the victim becomes a party to the criminal proceedings by supporting the prosecution. He has the right to be represented by a national or foreign lawyer and he is allowed to seek reparation. The Court may award only collective

²⁰ S/2009/252, 18.05.2009 latest report on the completion strategy ICTY; S/2009/247, 14.05.2009 latest report on completion strategy ICTR.

²¹ The French government was the former colonial power in Cambodia. Together with Laos and Vietnam, Cambodia formed the "Union Indochinoise Française".

²² See Hervé Ascensio: *Les juridictions pénales internationalisées: Cambodge, Kosovo, Sierra Leone, Timor-Leste*, 2006; Michael Bohlander/Renate Winter: *Internationalisierte Strafgerichte auf nationaler Ebene-Kosovo, Kambodscha, Sierra Leone und Timor-Leste*, in Stefan Kirsch, *Internationale Strafgerichtshöfe*, 2004; Leonie von Braun: *Internationalisierte Strafgerichte: Eine Analyse der Strafverfolgung schwerer Menschenrechtsverletzungen in Osttimor, Sierra Leone und Bosnien-Herzegowina*, 2007; Cesare Romano/André Nollkaemper/Kleffner: *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia*, 2004.

²³ The Iraqi Special Tribunal established in December 2003 is not a hybrid court because there is no non-Iraqi personnel. Trials began in October 2005 with charges of genocide, crimes against humanity, war crimes and crimes under the Iraqi Criminal Code committed by Iraqi nationals or residents in Iraq between 1968 and 2003.

²⁴ See Fredrick Egonda-Ntende, *Justice after Conflict: "Challenges Facing 'Hybrid' Courts: National Tribunals with International Participation"* HuV 1 (2005), p. 24.

or moral reparations to civil parties which are borne by the convicted persons.²⁵ This civil party status is without precedent in international criminal law. Under the Rome Statute of the International Criminal Court (ICC) victims are permitted that their views and concerns to be presented and considered at stages of the proceedings in the ICC where the personal interests of the victim are affected and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.²⁶ This representation of victims is far more restricted.

Silke Studzinsky, the German lawyer for the civil parties at the Court, points out that representing victims means facing several obstacles. The challenges concern inadequate internet access, black-outs, nonexistence of a library, translating problems.²⁷ Motions have to be written in Khmer and either English or French. There are considerable logistical problems of providing for effective victim representation.

Need for a Truth Commission

Simultaneously to the Court, the Cambodian government should establish a truth commission. The process is unlikely to gain a full historical accounting and have the crimes acknowledged by the perpetrators. To date only five suspects have been arrested and charged. The Court plans to try as many as eight suspects. *Pol Pot* –the mastermind of the mass atrocities- died in 1998, so he will not be tried posthumously in the Court. For victim healing to occur, other complementary processes are needed. At a truth commission as an official truth-seeking body that documents a pattern of past human rights abuses a victim is able to tell about the atrocities it suffered in a more complete, coherent fashion than as witness or civil party in the trial. Cambodian survivors deserve an opportunity to restore their feelings of dignity and worth because they were obligated to ignore the past. Lower-level Khmer Rouge members could tell the story of their participation in the atrocities of the Khmer Rouge and about the structure of the regime. Victims could receive information about the disappearances thus, providing victims with a sense of relief and closure. As victims and perpetrators in Cambodia must co-exist in close proximity with one another, a truth commission may help that they learn to live with deep-seated animosity and the painful memories of the past. As a complementary form of story telling a truth commission may promote reconciliation within the divided communities.

²⁵ Rule 23 para 11, 12 Internal Rules.

²⁶ See Art. 68 III Rome Statute.

²⁷ See *Silke Studzinsky: Nebenklage vor den Extraordinary Chambers of the Courts of Cambodia (ECCC)- Herausforderung und Chance oder mission impossible?*, available at <http://www.zis-online.com>.

Conclusion

The establishment of the Khmer Rouge Tribunal has to be regarded as an enormous success concerning the Cambodian government's unwillingness to look back and the obstructions of some States. The prosecution of a few senior officials of the Khmer Rouge will render justice to the victims of the mass atrocities. The Court sets straight the historical record about the crimes for the Cambodian people and the international community. The Khmer Rouge Tribunal is unique. The legal basis distinguishes the Court from the ad hoc tribunals, ICTY and ICTR, the permanent ICC and the other hybrid tribunals. Unlike the ad hoc tribunals, ICTY and ICTR, the Court was established in the absence of a Chapter VII mandate. Instead of a multilateral treaty like the Rome Statute for the ICC the Court is based on a Cambodian Law together with a bilateral agreement between Cambodia and the United Nations. The proliferation of hybrid tribunals (Kosovo 2000, East Timor 2000, Sierra Leone 2002, Cambodia 2003, Bosnia and Herzegovina 2005, Lebanon 2007) has become a common feature of the international landscape and forms part of a tendency in international criminal law to national solutions with international participation. The deployment of international judges guarantees the independence of the judiciary and the application of international legal standards. The Cambodian judges, prosecutors and defense lawyers may learn to do the same in domestic trials thus, developing the domestic judicial capacity.

For over thirty years, two million victims of the Khmer Rouge have been demanding justice for their suffering. Now justice will be done. The Court constitutes an opportunity to restore the feelings of dignity and worth of the victims and may therefore contribute substantially to national reconciliation. School children do not know about the atrocities of the Khmer Rouge because this period is not part of the history curriculum. Therefore, the trials will educate Cambodia's youth about the darkest period in the country's history. The historic importance of this war crimes trial lies in signalling an end to impunity, even at the highest level and thus to contribute to the prevention of such crimes.²⁸

In comparison to the international tribunals for the former Yugoslavia and Rwanda the Khmer Rouge Court in Cambodia is facing far more local obstacles. The budget of the hybrid court is significantly lower than the international counterparts ICTY and ICTR. Furthermore the trials will only run for three years.

²⁸ See Preamble of the Rome Statute, para 5.

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