The Extraordinary Chambers in the Courts of Cambodia: Gauging the (In)Effectiveness of a Locally-Run Tribunal

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I. INTRODUCTION

The Khmer Rouge’s control of Cambodia lasted less than four years (three years, eight months, and twenty days, to be exact), but in those four years almost a fifth of the country’s population was slaughtered. Between forced labor initiatives (which led to disease and starvation) and mass executions, nearly two million Cambodian citizens died under the Khmer Rouge regime. While the Khmer Rouge was ousted from power in 1979, its leaders lived as free men for 25 years, and the Extraordinary Chambers in the Courts of Cambodia (“ECCC”) was not formed until 2003. The ECCC differs from other international criminal tribunals in that the majority of the ECCC’s judges are Cambodian nationals, which has led many observers to suspect the tribunal could be susceptible to influence from the Cambodian government.

This Article proceeds in three sections. First, the Background examines a brief history of the Khmer Rouge regime and the inception of the ECCC. This Article then advances the Argument that the ECCC is ineffective because it is a domestic tribunal rather than an international tribunal. Finally, this Article concludes with a brief synopsis of the argument and proposes options that could provide a more independent, confidence-inducing tribunal.

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5. Glaspy, supra note 2, at 146.
6. Id. at 146-47 (noting the concern regarding members of the Khmer Rouge who were members of the Cambodian government).
II. BACKGROUND
A. THE KHMER ROUGE’S RISE TO POWER

From 1863 to 1953, Cambodia was, in effect, a French colony. The French were already occupying South Vietnam and were seeking even more control over Southeast Asia, while Cambodia was looking for protection. During the fifty years preceding France’s colonization of Cambodia, Cambodia had suffered from, “[c]ivil wars, rebellions, invasions from Siam, and a prolonged Vietnamese protectorate. . . .” During the same time period Cambodia also bore witness to fighting between Thai and Vietnamese soldiers that took place on Cambodian soil.

For 90 years, Cambodia remained a French protectorate; however, France’s control over Cambodia began to weaken in 1947 when Cambodia was finally given the right to promulgate a Cambodian constitution and have its own political parties. While Cambodia gained more power from this agreement, France still maintained control over Cambodia’s defense, foreign affairs, and finances. Cambodia’s first constitution was finished in 1947, which established a constitutional monarchy with King Norodom Sihanouk serving as Cambodia’s leader. Although the constitution limited King Sihanouk’s powers to those granted to him in the constitution, he quickly became more dictatorial in style and pronounced that he was not limited by the new constitution. King Sihanouk declared Cambodia’s independence from France in 1953 and Cambodia was recognized as an independent country during the 1954 Geneva Convention, with the stipulation that Cambodia must hold elections before the end of 1955. King Sihanouk renounced the throne in 1955 to form a political party, which won every seat in a national election that was observed to be “fraught with fraud and violence.” Sihanouk was elected Prime Minister of Cambodia in this election, and ruled Cambodia until 1970. Although he was actually the Prime Minister of Cambodia, Sihanouk was generally referred to ask ‘Prince Sihanouk’ due to his royal pedigree. In earlier times, rulers

8 Id.
9 Id.
10 Id.
12 Id.
13 Id.
14 Id.
15 Montesano, supra note 11, at 78.
16 Id.
17 Id.
19 Montesano, supra note 11, at 78 n.55.
of the Khmer Kingdom had been treated as deities, and Sihanouk received the same treatment. Sihanouk was a brutal ruler who arranged to have political rivals beaten and arrested anyone who disagreed with him all while still estimated to have the support of 80% of the Cambodian people. Unhappiness with Sihanouk began to grow during the mid-1960s, especially among the more-educated citizens of Cambodia.

During the same period in which Cambodia was gaining its independence from France, Cambodia’s communist movement – the Communist Party of Kampuchea (the formal name of the Khmer Rouge) – was forming. The Khmer Rouge was influenced by the communist Vietnamese forces, and was pro-North Vietnam in the Vietnam War. Pol Pot, a Cambodian citizen who spent time in France and was a member of the French Communist Party before coming back to Cambodia in 1953, became leader of Khmer Rouge in 1963. On March 18, 1970, while Sihanouk was out of the country, a coup engineered by General Lon Nol, and backed by the United States, overthrew Sihanouk. After the coup, the National Assembly voted to give Lon Nol emergency Prime Minister powers. The United States backed Lon Nol out of concern that Cambodia would follow North Vietnam’s lead and become a Communist nation. When Sihanouk was ousted from power, many Cambodians were upset with Lon Nol and the United States for ousting a member of the royal family. Sihanouk quickly aligned himself with the Khmer Rouge and began fighting to regain power. Between 1969 and 1973 the United States and South Vietnam bombed regions of Cambodia in an attempt to fight off the communist forces. This only added to Lon Nol’s unpopularity in Cambodia. By 1973, the Khmer Rouge had gained control of 85% of Cambodian territory with the help of North Vietnam, despite the fact that Lon Nol’s government had U.S. support. The United States withdrew its support of Lon Nol’s government in January of 1975, and on April 1, 1975 Lon Nol left

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20 Id. at 79.
21 Id.
22 Id. at 80.
23 The Group of Experts for Cambodia, supra note 2, at 8.
24 Montesano, supra note 11, at 78.
25 Luftglass, supra note 4, at 898.
26 Chandler, supra note 18.
28 Scully, supra note 1, at 308.
29 Montesano, supra note 11, at 80.
30 Scully, supra note 1, at 308.
31 Id. at 309.
32 Id. at 308-09.
33 Luftglass, supra note 4, at 898.
34 Chandler, supra note 18.
35 Scully, supra note 1, at 309.
Less than three weeks later on April 17, 1975, the capital city of Phnom Penh fell to Khmer Rouge forces.\textsuperscript{37}

B. **THE KHMER ROUGE’S BLOODY REIGN**

Once the Khmer Rouge had control of the capital city, Pol Pot gave the Khmer Rouge leadership (known as the “Angkar Loeu”) an eight-point plan for Cambodia: “(1) evacuate the people from the cities; (2) abolish all markets; (3) abolish currency; (4) defrock all monks; (5) execute leaders of Lon Nol’s army and government; (6) establish cooperatives across Cambodia, with communal eating; (7) expel the entire Vietnamese population; and (8) establish firm and guarded borders.”\textsuperscript{38}

The Khmer Rouge wasted no time in carrying out Pol Pot’s orders, and quickly revealed themselves to be a violent government as soon as they took power: soon after they had taken over Phnom Penh, the remaining members of Lon Nol’s cabinet were summarily executed.\textsuperscript{39} Much of Khmer Rouge’s support came from citizens of rural areas (rather than citizens of the cities, who tended to be more educated), so the Khmer Rouge’s first priority upon taking over the country was to evacuate all of the residents of cities in Cambodia.\textsuperscript{40} The Khmer Rouge and Pol Pot wished to implement an “agrarian utopia” and the citizens that were pushed out of the cities were forced into agricultural cooperatives.\textsuperscript{41} Besides needing more workers for their agricultural communes, emptying the cities also served as a means: “to dilute the power of those viewed as counterrevolutionaries.”\textsuperscript{42} A United Nations (“U.N.”) Report estimates that thousands from Phnom Penh died solely from the forced marches alone.\textsuperscript{43} The report goes on to say, “[w]itnesses reported numerous instances of hospital patients being dragged from their beds and dying on roads out of the city.”\textsuperscript{44} Before the forced evacuations, the population of Phnom Penh was over two million: after the forced marches, only 20,000 residents were left in the capital city.\textsuperscript{45}

Once in the rural cooperatives, life did not improve for Cambodian citizens. Citizens were forced to grow crops for long hours each day, in excess of 12 hours everyday, without any days off.\textsuperscript{46} Agricultural communes caused the largest number of deaths under

\textsuperscript{36} Cambodia Civil War 1970-1975, Armed Conflict Events Data, supra note 27.
\textsuperscript{37} Montesano, supra note 11, at 81.
\textsuperscript{38} Luftglass, supra note 4, at 899-900.
\textsuperscript{39} Id.
\textsuperscript{40} The Group of Experts for Cambodia, supra note 2, at 9.
\textsuperscript{41} Scully, supra note 1, at 310.
\textsuperscript{42} The Group of Experts for Cambodia, supra note 2, at 9.
\textsuperscript{43} Id. at 10.
\textsuperscript{44} Id.
\textsuperscript{45} Id.
\textsuperscript{46} Chandler, supra note 18.
Khmer Rouge leadership.\textsuperscript{47} The communes lacked adequate food, medicine, and sanitation, and starvation alone led to an estimated 726,000 deaths during the Khmer Rouge’s short four-year reign.\textsuperscript{48} Pol Pot even admitted that 20 to 30 percent of the population was suffering from starvation.\textsuperscript{49} The starvation of so many of its citizens became even more brutal when one learned that Cambodia was producing more than enough rice to feed its citizens, but Pol Pot chose to export it instead.\textsuperscript{50} In 1975, an estimated 3.36 million tons of rice were produced in Cambodia.\textsuperscript{51} Approximately one million tons of rice would have been needed to adequately feed all of Cambodia’s citizens, but the Khmer Rouge government only allotted 600,000 tons to feeding the people of Cambodia, and exported the rest.\textsuperscript{52} Citizens who attempted to supplement their food supplies by foraging were put to death.\textsuperscript{53} Khmer Rouge overseers also killed those who refused to continue working, or physically could not work, as well as their families.\textsuperscript{54}

In addition to trying to survive on inadequate food and medicine while working long hours, Cambodian citizens also had to deal with the Khmer Rouge’s attack on the traditional family unit. Children were often separated from their families, and married citizens who did not have approval of Khmer Rouge authorities could be put to death if they were caught having sexual relations.\textsuperscript{55} Families were not allowed to have meals as a unit; instead, all meals were prepared and eaten as a community.\textsuperscript{56}

Forced labor was not the only dramatic action taken by the Khmer Rouge; in order to implement their vision of a communist society: the government “abolished money, free markets, normal schooling, private property, foreign clothing styles, religious practices, and traditional Khmer culture.”\textsuperscript{57} The Khmer Rouge also turned all government buildings, churches, schools, and shops into jails, “reeducation camps,” and granaries.\textsuperscript{58} Pol Pot was an intelligent leader: he realized that even though outside forces had helped him gain leadership, outside forces were now a danger to his regime.\textsuperscript{59} In order to insulate Cambodia, he cut off international communication by “exil[ing] all journalists and reporters, end[ing] international

\textsuperscript{47} The Group of Experts for Cambodia, supra note 2, at 10.
\textsuperscript{48} Montesano, supra note 11, at 84.
\textsuperscript{49} Id.
\textsuperscript{50} Id.
\textsuperscript{51} Id.
\textsuperscript{52} Id. (Pol Pot acknowledged in 1978 that up to a third of his population was starving).
\textsuperscript{53} Id.
\textsuperscript{54} The Group of Experts for Cambodia, supra note 2, at 10.
\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} Chandler, supra note 18.
\textsuperscript{58} Id.
\textsuperscript{59} Luftglass, supra note 4, at 899.
Forcing its citizens into agricultural communes and cutting off communication with the outside world was not enough for Pol Pot. The Khmer Rouge also instituted mass imprisonment, torture, and killings. While no one was completely safe from torture and execution, some groups were singled out with greater suspicion. These groups included officials from Lon Nol’s regime; ethnic minorities such as Cham, Vietnamese, and Chinese; educated individuals such as students and teachers; and religious leaders.

One of the most notorious of the Khmer Rouge’s prisons, Tuol Sleng (codenamed S-21) saw between 16,000 and 20,000 prisoners get tortured, interrogated, and executed during the Khmer Rouge’s brief reign. Of those 16,000 to 20,000, only seven people are known to have survived the atrocities committed there. At Tuol Sleng, “[m]ethods of interrogation included, but were not limited to, electric shocks, severe beatings, removal of toenails and fingernails, submersion in water, cigarette burnings, needling, suffocation, suspension, and forced consumption of human waste.” Within a year of taking over the country, paranoia began to spread within the Khmer Rouge, leading to massive internal purges. No one within the party was safe as party leaders were executed and entire units of soldiers. An estimated one million Cambodian citizens died on account of executions. By the time the Khmer Rouge was ousted from power in 1979, an estimated 1.7 million to 2 million Cambodians had lost their lives.

C. THE FALL OF THE KHMER ROUGE

Although North Vietnam and the Khmer Rouge had initially been allies, once the U.S. withdrew from Vietnam and the Khmer Rouge successfully took over Cambodia, relations between the two countries went downhill. Between 1975 and 1977, the two countries engaged in numerous low-level conflicts near their shared border. The fighting slowly escalated until December 24, 1978, when Vietnam invaded Cambodia. Less than two weeks later on January 6, 1979,
Vietnam forces reached and overtook Phnom Penh, installing a new government after forcing the Khmer Rouge out.75 The remaining Khmer Rouge leadership fled to the jungles near the Cambodia-Thailand border where they re-established themselves and continued to fight against Vietnam and the new Vietnamese-supported Cambodian government.76 Due to the international community’s animosity towards Vietnam, the United Nations continued to recognize the Khmer Rouge government as the holder of Cambodia’s seat in the General Assembly.77 The United States, China, and Thailand all supported the Khmer Rouge in its fight against the Vietnamese-controlled government.78

Ten years after its occupation began, Vietnam announced in 1989 that it was withdrawing its troops from Cambodia.79 This announcement led to the Paris Conference on Cambodia, where four Cambodian delegates (including the Khmer Rouge) met and eventually agreed to the Paris Agreements on October 23, 1991.80 Under the peace agreement, the four factions agreed to demobilize and disarm and the United Nations Transitional Authority in Cambodia (“UNTAC”), which was formed to hold elections in Cambodia.81 Unfortunately, in June of 1992, the Khmer Rouge reneged on the agreement and refused to demobilize and refused to cooperate throughout the rest of the process.82 The Khmer Rouge was not done killing just yet and attacked UNTAC and massacred ethnic Vietnamese still living in Cambodia.83 The Khmer Rouge finally disbanded in 1993, with its remaining members joining the Cambodian Army or rejoining civilian life in the country.84 Cambodia’s newly elected legislature outlawed the Khmer Rouge in 1994.85

D. BRINGING THE KHMER ROUGE TO JUSTICE

On June 21, 1997, Cambodia’s co-Prime Ministers: First Prime Minister, Prince Norodom Ranariddh (son of King Norodom Sihanouk), and Second Prime Minister, Hun Sen, sent a letter to U.N. Secretary General, Kofi Annan, requesting the U.N.’s assistance in prosecuting the Khmer Rouge for genocide and crimes against humanity.86 Unfortunately, less than a month later, Hun Sen ousted Ranariddh in an internal coup, which temporarily derailed talks with

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75 Id.
76 Id. (the Khmer Rouge received support from other countries, which gave them the means to continue fighting).
77 Id.
78 Scully, supra note 1, at 311.
79 The Group of Experts for Cambodia, supra note 2, at 14.
80 Id.
81 Id.
82 Id.
83 The Group of Experts for Cambodia, supra note 2, at 13.
84 Id. at 14.
85 Id.
86 DAVID SCHEFFER, INTERNATIONAL CRIMINAL LAW: INTERNATIONAL ENFORCEMENT, VOL. III, 221 (M. Cherif Bassiouni, 2008).
the U.N.\textsuperscript{87} A few months later, Hun Sen and the new First Prime Minister, Ung Huot, sent a letter to President Bill Clinton which seemed to affirm their commitment to bringing the Khmer Rouge to justice.\textsuperscript{88} The letter specifically requested help in setting up an “international criminal tribunal.”\textsuperscript{89} In 1998 Pol Pot, the former leader of the Khmer Rouge, died before he could be brought to justice.\textsuperscript{90}

The U.N. Security Council discussed extending the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia to encompass the Khmer Rouge era of Cambodia, but some members preferred an independent tribunal for Cambodia.\textsuperscript{91} In April of 1998, the U.S. circulated a proposal that would establish the International Criminal Tribunal for Cambodia, which would be a subsidiary of the Security Council and would be headquartered in the Netherlands.\textsuperscript{92} The U.N. decided to send a team of experts into Cambodia to examine their options and propose a course of action for bringing the Khmer Rouge to justice; the report returned by the experts has been used in preparing this article.\textsuperscript{93} When the U.N. requests an expert report, it holds off on further discussion of the issue until the report has been delivered, so further discussion of an international tribunal for Cambodia was put off until the report was issued in March of 1999.\textsuperscript{94}

When the U.N. report was issued, it recommended an ad hoc international tribunal and discouraged U.N. involvement in a Cambodian domestic tribunal.\textsuperscript{95} When discouraging a domestic tribunal, the experts cited three main factors that were lacking for Cambodia to provide fair trials: “a trained cadre of judges, lawyers, and investigators; adequate infrastructure; and a culture of respect for due process.”\textsuperscript{96} Under the Khmer Rouge reign, lawyers and judges were routinely executed because of their education or fled the country, so very few trained lawyers were left in Cambodia.\textsuperscript{97} Furthermore, the Report found that Cambodia’s legal system was “routinely” subjected to political influence,\textsuperscript{98} which was especially troublesome because former Khmer Rouge members were still working in the Cambodian government – Hun Sen, the current prime minister, had been a Khmer Rouge member before defecting to Vietnam.\textsuperscript{99} The Group also discouraged a hybrid tribunal made up of both

\textsuperscript{87} Id.
\textsuperscript{88} Id.
\textsuperscript{89} Id. at 222.
\textsuperscript{91} SCHEFFER, supra note 85, at 222.
\textsuperscript{92} Id.
\textsuperscript{93} The Group of Experts for Cambodia, supra note 2.
\textsuperscript{94} SCHEFFER, supra note 85, at 223.
\textsuperscript{95} The Group of Experts for Cambodia, supra note 2, at 39.
\textsuperscript{96} Id. at 36.
\textsuperscript{97} Id.
\textsuperscript{98} The Group of Experts for Cambodia, supra note 2, at 39.
\textsuperscript{99} Id. at 29.
international and Cambodian personnel for the same reason that it would lack independence by needing the Cambodian government’s permission for most actions it wanted to undertake.  

At this point it became apparent that Hun Sen did not actually want an ad hoc international tribunal, despite what he had said in earlier letters. Within five days of the release of the Group of Experts Report, Hun Sen rejected its recommendations. According to one Cambodian official, the Cambodian government had decided to reject the report before it was even released. A few days later, one of Khmer Rouge’s two military commanders during Pol Pot’s reign, Ta Mok, was captured and the Cambodian Foreign Minister publically announced that Khmer Rouge leaders would be tried in Cambodia’s courts.

At this point, international actors started to shift discussions to a mixed tribunal in an attempt to continue working with Hun Sen. The U.N. drafted a new proposal which included Cambodian and international judges, with international judges making up the majority, as well as an international chief prosecutor and investigator. Once again, Hun Sen rejected the U.N. proposal. Hun Sen met with Kofi Annan on September 20, 1999, and gave Annan three options: 1) the U.N. could send a legal team which would participate in legal action taken within Cambodia’s existing courts, 2) the U.N. could send a legal team that would observe rather than participate, or 3) withdraw completely. As negotiations for a tribunal went forward, Hun Sen continued to insist that a majority of the judges be Cambodian – something the U.N. opposed. Prolonged negotiations continued for years until the U.N. finally withdrew from talks in early 2002, due to a failure to find acceptable compromises. The U.N. made an announcement that a tribunal based on Cambodia’s demands could not guarantee justice or independence.

Negotiations resumed in December of 2002, when the General Assembly passed Resolution 57/228 requesting Annan to resume tribunal talks with Cambodia. An agreement was finally reached in March 2003, ignoring most of the recommendations from the Expert Report. The ECCC, as finally negotiated, is headquartered in Cambodia, a majority of its judges are Cambodian rather than international, and follows Cambodian tribunal procedures rather

\[100 \text{Id. at 39.}
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\[101 \text{Luftglass, supra note 4, at 909.}
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\[102 \text{Id. at 909-10.}
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\[103 \text{SCHEFFER, supra note 85, at 226.}
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\[104 \text{Id. at 227.}
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\[105 \text{Id.}
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\[106 \text{Id. at 228.}
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\[107 \text{Id. at 229.}
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\[108 \text{SCHEFFER, supra note 85, at 230.}
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\[109 \text{Id. at 235.}
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\[110 \text{Id.}
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\[111 \text{Id. at 236.}
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\[112 \text{Luftglass, supra note 4, at 916.}
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than international law.\textsuperscript{113} The Trial Chamber is composed of three Cambodian judges and two international judges, while the appellate court has seven judges, four of whom are Cambodian.\textsuperscript{114} Any judicial decision requires a supermajority vote, which helps ensure that one side (national or international) cannot take unilateral action.\textsuperscript{115} Each case has two prosecutors, one international and one Cambodian, and the same structure is followed for investigators.\textsuperscript{116} However, Cambodia has considerable say in the international judges and attorneys; the Cambodian Supreme Council of the Magistracy chooses each of the international participants from lists created by the U.N. Secretary-General.\textsuperscript{117} The judges and attorneys were sworn into office in 2006, commencing the start of a tribunal ten years in the making.\textsuperscript{118}

\section{ARGUMENT}

From the beginning, the domestic-international mixed nature of the tribunal has led to problems for the ECCC. It took the judges almost a year to pass internal rules for the tribunal; when the judges disagreed during drafting sessions, it was often Cambodian judges versus the international judges.\textsuperscript{119} In the almost seven years since the ECCC was established, only one person (a man known as “Duch,” who oversaw a notorious prison) has undergone a trial and been sentenced for his crimes.\textsuperscript{120} His “sentence” for being responsible for the deaths of 14,000 to 20,000 Cambodian citizens was a paltry 35 years of imprisonment.\textsuperscript{121} While three other cases are pending, one of the accused in Case 002 is no longer being prosecuted and the Cambodian government is putting pressure on the tribunal to stop proceedings in Cases 003 and 004.\textsuperscript{122}

Case 001, the only case thus far to be completed in the ECCC, saw Kaing Guek Eav, known as ‘Duch,’\textsuperscript{123} put on trial for his leadership of Tuol Sleng (S-21) prison, where an estimated 16,000 to 20,000 people were sent, with only seven people surviving.\textsuperscript{124} Prior to being detained by the ECCC, Duch had been in the custody of the Cambodian Military Court since May of 1999.\textsuperscript{125} Voluminous evidence was heard against Duch, and given by Duch: he admitted that “interrogators were permitted to use four violent interrogation

\begin{footnotes}
\item[113] Id.
\item[114] Id.
\item[115] Scheffer, supra note 85, at 246.
\item[116] Luftglass, supra note 4, at 917.
\item[117] Id.
\item[118] Scheffer, supra note 85, at 238.
\item[119] Id.
\item[120] Id.
\item[122] Scheffer, supra note 85, at 238.
\item[123] Scully, supra note 1, at 320.
\item[124] Luftglass, supra note 4, at 901.
\item[125] Prosecutor v. Kaing Guek Eav alias Duch, supra note 116, at 245.
\end{footnotes}
techniques: beating, electrocution, asphyxiation with a plastic bag and ‘water-boarding.’” Execution methods included, “being beaten, hanged, or cut apart and fed to farm animals.” Other S-21 prisoners died by having blood drawn from them until they died: the blood was then used for transfusions into wounded Khmer Rouge soldiers. A recitation of the horrors committed under Duch’s leadership could span an entire article, but suffice to say, there was plenty of evidence to convict him of crimes against humanity.

Despite the volumes of evidence against him, Duch only received a 35 year sentence, and must only serve 18 years of his sentence (Duch was given a five year reduction of his sentence for his illegal detention by the Cambodian Military Court and credit for time served). In contrast to other tribunals: the Tokyo Tribunal sentenced 92% of the individuals convicted to life sentences or death; the Nuremburg Trials resulted in 79% of those convicted receiving life sentences or death. To be fair, Duch’s sentence is the only one to be passed down thus far, but if the man responsible for running the most notorious Khmer Rouge prison only receives a 35 year sentence, what hope is there for sentencing of other responsible individuals?

The Cambodian government has also proven correct predictions made by observers that the government would attempt to exert influence over the ECCC. In 2007, the government issued a statement saying that the ECCC would be terminated if it attempted to “illegally” prosecute King Sihanouk. This statement could easily be seen as a not-so-subtle warning to the ECCC not to cross the government. In 2009, co-prosecutors disagreed on whether to investigate more Khmer Rouge leaders beyond the five indicted in Cases 001 and 002, with the Cambodian prosecutor refusing to sign new Introductory Submissions, which are the documents used to bring charges against an individual. The divide among Cambodian and international counterparts continued in the Pre-Trial Chamber, with the Cambodian judges voting the investigation should

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126 Id. at 85.
127 Id. at 65.
129 Prosecutor v. Kaing Guek Eav alias Duch, supra note 116, at 78.
130 Id. at 216.
132 Scully, supra note 1, at 320.
not continue.\textsuperscript{135} Due to the supermajority voting requirements of the Chamber, the investigation did continue at that point.\textsuperscript{136} In November 2010, when the ECCC had just recently finished sentencing in Case 001, Hun Sen, the Prime Minister, made a public announcement that no more trials should be pursued after Case 002.\textsuperscript{137} Not surprisingly, the Co-Investigating Judges reached the same impasse as the prosecutors and Pre-Trial Chamber, with the Cambodian co-investigator refusing to sign the necessary document to allow for investigation.\textsuperscript{138} The investigation continued forward due to the clause in the ECCC providing that if prosecutors or co-investigators disagreed, the investigation would continue.\textsuperscript{139} The agreement that the Cambodian government got to choose the international personnel on the ECCC from a list created by the U.N. was helpful to the Cambodian government; after choosing a new international Co-Investigative Judge in 2011, the Co-Investigative Judges announced in April 2011 that they were closing the investigation into Case 003.\textsuperscript{140} This led to the resignation of at least five members of the U.N. personnel working at the ECCC in protest of the Co-Investigative Judges’ decision.\textsuperscript{141} The international co-prosecutor appealed the decision, and as of December 2, 2011, the investigation was re-opened,\textsuperscript{142} but a review of the ECCC official website shows that only twelve court documents regarding Case 003 have been filed in the past year.\textsuperscript{143} Also worrisome is the fact that Cambodia could again influence the judges into dropping the case altogether.\textsuperscript{144} The international co-investigative judge resigned in protest over the debacle, citing political interference for his resignation, including statements by a Cambodian official that, “If they want to go into Case 003 and 004, they should just pack their bags and leave.”\textsuperscript{145} This means that a new Co-Investigative Judge

\textsuperscript{135} Scully, supra note 1, at 327.
\textsuperscript{136} Id.
\textsuperscript{137} Id. at 326.
\textsuperscript{141} Scully, supra note 1, at 328.
\textsuperscript{144} Scully, supra note 1, at 331.
will be appointed by the United Nations, and Cambodian officials can attempt to continue their improper influence and intimidation.

IV. CONCLUSION

The Cambodian government has clearly managed to influence the ECCC, even getting Case 003 dismissed at one point. The lenient sentence of Duch also leads to questions of whether the ECCC judiciary is being influenced by the government (which contains ex-members of the Khmer Rouge). In order to dispel the view that the ECCC is being influenced by the Cambodian government, the ECCC needs to amend its operating documents to more closely follow the recommendations set forth in the U.N. Report. Having a majority of the judges and attorneys hail from Cambodia is not working. At the very least the majority of the ECCC needs to be international, and chosen by the U.N. Secretary General instead of by the Cambodian Prime Minister. The best reform would involve amending the ECCC into a traditional ad hoc international tribunal with its headquarters located outside of Cambodia, and all of the judges and attorneys being international rather than Cambodian citizens. Unfortunately, time is running out to bring the remaining Khmer Rouge leaders to justice. Some have already died, including Pol Pot and Ta Mok, and the surviving leaders are growing old and infirm. In the interest of time, amending the majority requirements to be international is a more feasible solution than revamping the entire tribunal into an ad hoc international tribunal.

146 Scully, supra note 1, at 318.