

## STUDENT CONTRIBUTION

# Dispensation of Justice by the Extraordinary Chambers in the Courts of Cambodia: A Critical Appraisal

M. Ehteshamul Bari \*

*This article examines the Extraordinary Chambers in the Courts of Cambodia established to try those responsible for the atrocities perpetrated against the Cambodian people by the former Khmer Rouge Regime (1975-1979). It focuses on the trial of the first case conducted by the ECCC which resulted in the ‘lenient’ judgment. The paper then outlines in details the factors such as political interference, corrupt practices and inordinate delay of the legal process which are undermining the ECCC’s credibility to administer fair justice to the victims of genocide, crimes against humanity and war crimes. Finally, it stresses on the fact that the failure of the ECCC and its stakeholders to duly address these fundamental issues would end in the farcical dispensation of justice.*

### Keywords

ECCC, War Crimes, Crimes against Humanity, Genocide, Political Interference, Corruption and Inordinate Delay

\* Lecturer (on leave for study) at Department of Law, Manarat International University. Diploma in Law (London), LL.B. (Hons. London), LL.B. (1<sup>st</sup> Class Hons. Dhaka), LL.M. (Distinction Malaya, Kuala Lumpur). The author may be contacted at: mebari07@gmail.com / Address: Bungalow No-55, Jalan (Street)-16/2, Section-16, 46350 Petaling Jaya, Selangor, Malaysia.

## I. Introduction

The ‘Ultra-Maoist’ Khmer Rouge, which came to power in Cambodia in 1975 and deposed by the Vietnamese troops after nearly 4 years of its reign in 1979, annihilated 1.7 million people in the ‘killing fields’ - about a quarter of Cambodia’s population at that time.<sup>1</sup> In order to do justice to the victims of the mass atrocities of the Khmer Rouge regime, and to achieve the wider objective of preventing the perpetration of such mass atrocities in the future, the United Nations assisted the Cambodian government to establish the Extraordinary Chambers in the Courts of Cambodia (“ECCC”), a hybrid tribunal.<sup>2</sup> It became fully functional in June 2007 after lengthy and troublesome negotiations,<sup>3</sup> to bring to trial ‘senior’ and “most responsible leaders” of the Khmer Rouge<sup>4</sup> accused of committing genocide,<sup>5</sup> war crimes,<sup>6</sup> “crimes against humanity,”<sup>7</sup> and

<sup>1</sup> The communist Khmer Rouge under the leadership of Pol Pot backed by China opposed the Government led by popular leader Norodom Sihanouk. It gained support after Sihanouk was toppled by Lon Nol (1970) having the support and blessings of the United States. In between the two forces, a new force of communist Vietnamese fighters emerged and sought refuge in the neutral territory that was Cambodia at that time. Ultimately, secret US bombings, which allegedly caused more than 150,000 casualties, probably paved the way for Pol Pot, the leader of communist Khmer Rouge, and his troops to take up power. On April 17, 1975, Pol Pot’s troops marched into Phnom Penh. Their proclamation of ‘Year Zero’ opened up an era of terror and horror. In one single week, the 2.5 million citizens from Phnom Penh were forced out to the countryside. The Ultra-Maoist Khmers mercilessly held to the maxim: “Keeping you is no benefit, losing you is no loss.” The regime launched a revolution in which all pre-existing economic, social and cultural institutions were destroyed, all foreign influences were wiped out and the entire population was transformed into a collective work force. The Khmer Rouge set out to kill anyone who could possibly thwart its goal of creating a new society, including those among its own ranks whom were viewed as potential dissidents. It perceived ‘intellectuals’ such as doctors, teachers, lawyers, students and those capable of speaking a foreign language as particularly threatening a mere fact of appearing to be intellectual by wearing spectacles was sufficient reason to be condemned to death. An unknown number of persons were thrown into slavery, arbitrarily executed, or died of starvation, disease or exhaustion in labour camps. In the space of 4 years, the Khmer Rouge genocide extinguished 1.7 million people in the ‘killing fields,’ or about a quarter of Cambodia’s population at that time. For further information, see II BRITANNICA READY REFERENCE ENCYCLOPAEDIA 134 (2007); Wendy Lambourne, *The Khmer Rouge Tribunal: Justice for Genocide in Cambodia?* 3-4 (Law and Society Association and New Zealand (“LSAANZ”) Conference, University of Sydney, Working Paper, Dec. 10-12, 2008), available at <http://ses.library.usyd.edu.au/bitstream/2123/4042/1/LSAANZ%20Lambourne%20Cambodia%20conf%20paper%20final.pdf> (last visited on Mar. 10, 2010); Trial Watch, *Criminal Court for Cambodia*, available at <http://www.trial-ch.org/index.php?id=923&L=5> (last visited on Mar. 12, 2010). The Secretary-General, *Report of the Group of Experts for Cambodia Established Pursuant to General Assembly Resolution 52/135*, 53d Sess., Agenda Item 110(b), U.N. Doc. A/53/850, at 9 & 13 (March 16, 1999); Theresa Klosterman, *The Feasibility and Propriety of a Truth Commission in Cambodia: Too Little? Too Late?*, 15 ARIZ. J. INT'L & COMP. L. 803, 849 (1998); and Rachel S. Taylor, *Better Late Than Never*, in INTERNATIONAL AND COMPARATIVE CRIMINAL LAW SERIES, ACCOUNTABILITY FOR ATROCITIES: NATIONAL AND INTERNATIONAL RESPONSES 237, 239 & 240 (Jane E. Stromseth ed., 2003).

<sup>2</sup> Laura A. Dickinson, *The Promise of Hybrid Courts*, 97 AM. J. INT'L L. 295, 295 (2003).

<sup>3</sup> For a comprehensive overview of the ECCC, see John D. Ciorciari, *History and Politics behind the Khmer Rouge Trials, in ON TRIAL: THE KHMER ROUGE ACCOUNTABILITY PROCESS* 33 (John D. Ciorciari & Anne Heindel eds., 2009).

<sup>4</sup> The Law on the Establishment of the Extraordinary Chambers arts. 1 & 2, NS/RKM/1004/006 (2004).

<sup>5</sup> *Id.* art. 4.