

**THE NEED FOR AN INSTITUTIONAL SAFEGUARD TO ENFORCE AN EXPRESS
CODE OF JUDICIAL CONDUCT FOR THE EXTRAORDINARY CHAMBERS IN THE
COURTS OF CAMBODIA**

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I. INTRODUCTION:

The Khmer Rouge seized power in Cambodia in 1975, committing some of the worst human rights abuses of the 20th century.¹ In June of 2003, after five years of negotiations and 24 years after the Khmer Rouge were driven from power, the United Nations (UN) and the Cambodian government signed the 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 (Agreement).² This Agreement established the Extraordinary Chambers in the Courts of Cambodia (EC),³ and in 2004 the Cambodian National Assembly promulgated an UN-approved law to govern the EC (Law).⁴ The Agreement established a tribunal which relies largely on domestic law and procedure. This reliance on domestic law and procedure has produced a tribunal that many human rights advocates view as a defeat for international standards of justice, fairness and due process. Noticeably lacking in the judiciary is strict disciplinary accountability according to a well-defined code of ethics.

Transitional states such as Cambodia often lack effective judiciaries.⁵ In Cambodia, a country ravaged by war and political upheaval, the judiciary has been crippled by years of repression, interference and political control.⁶ The international precedent for hybrid tribunals, those that rely on national judiciaries while supplementing them with international standards, personnel and resources, has been to accommodate the shortcomings of domestic judges by requiring a majority of international judges.⁷ This is evidenced in the hybrid tribunals established in both Sierra Leone and East Timor, where international judges form a majority on the court, as was the UN's preference for Cambodia.⁸

The EC is distinguished from each of the international tribunals that came before it, mixed or otherwise, in that it is essentially controlled by the host nation, Cambodia.⁹ However, by basing the EC in the existing Cambodian court system, the tribunal inherits many of the shortcomings so noticeable in the Cambodian judiciary.¹⁰ Notable among these defects is corruption, lack of independence and impartiality, and a long history of political control. As argued by Mike Jendrzeczyk, director of Human Rights Watch's Asia Division,¹¹ "with Cambodia's judiciary at the center of the tribunal, the agreement ensures that it will be politics and not law that dominate the tribunal's work."¹²

While there are numerous factors that contribute to the problems facing Cambodia's judiciary, this comment will narrow its discussion to the need for a clear, well-defined code of judicial ethics with an effective, independent enforcement mechanism. This requires me to focus primarily on judges, although in some instances inclusion of prosecutors is proper. This comment will argue that the adoption of international standards of judicial conduct, such as those espoused in the Bangalore Principles,¹³ while a necessary first step, is by itself insufficient to ensure a fair tribunal in a country as riddled with corruption as Cambodia. Any standards adopted must include or be followed by the creation of an independent judicial council or other such judicial disciplinary body, comprised of judges, to enforce a clear, express code of conduct.

Part II of this comment will provide historical background on Cambodia both under and after the Khmer Rouge regime. It will detail the negotiations leading to the formation of the EC and the broader trend in international criminal accountability of which it represents.

Part III of this comment identifies the lack of a clear code of ethics, to be implemented by an independent judicial enforcement mechanism, as a required yet absent element of the EC. It argues that such an element is necessary if the EC is to

achieve a measure of success on four levels: first, to deliver justice to the Cambodian people; second, to bolster the Cambodian legal system and enhance the rule of law in general; third, to provide valuable precedent for the future of hybrid tribunals and for international criminal accountability as a whole; and fourth, to provide the knowledge needed to prevent such an occurrence in the future.

Part IV will analyze the present state of the Cambodian judiciary, identifying as problems an inexperienced, unqualified judiciary, a history of political influence and control, endemic corruption, and an essentially flawed structure which fails to protect against these shortcomings.

Part V will propose the implementation of an independent judicial council or other like enforcement mechanism tasked with implementing an express code of conduct and sanctioning any violations thereof as a necessary safeguard to ensure that some measure of success is achieved by the EC. In conclusion, this comment argues that despite the many flaws of the Cambodian judiciary and the many inherent risks, some measure of success is essential and can best be ensured by the adoption of the proposed institutional safeguards, namely an independent judicial council tasked with judicial oversight and discipline.

II. BACKGROUND:

A. A History of the Khmer Rouge:

Pol Pot, born Saloth Sar, was the son of wealthy Cambodian landowners.¹⁴ Educated in France, Pol Pot returned to Cambodia and helped form, and then assumed control of, the country's radical Communist Party.¹⁵ The Communist Party of Kampuchea (CPK), termed the "Khmer Rouge" by King Norodom Sihanouk in the 1960's, took control of Cambodia on April 17, 1975.¹⁶ The Khmer Rouge sought to eradicate traditional and foreign cultural influences, vowing "to turn back the clock [in Cambodia] to 'Year Zero.'"¹⁷ To this end they implemented a radical Maoist and Marxist-Leninist program with the intent of forming a classless, agrarian society.¹⁸ Money was abolished, cities were emptied, and all Cambodians were forced into the countryside to work as forced labor on state-run agrarian communes.¹⁹ Religion, prayer, and formal education were prohibited, and intellectuals, seen as a threat to the new society, were targeted and killed.²⁰

By the end of 1977, clashes began breaking out between the Vietnamese and Cambodians.²¹ The Khmer Rouge drove out large numbers of ethnic Vietnamese living in Cambodia, engaging them with guerilla tactics along the Vietnamese Cambodian border.²² On January 6, 1979, Vietnamese forces, frustrated by these continued border clashes, entered Phnom Penh, overthrowing Pol Pot and his Khmer Rouge and driving them to the jungles of northern Cambodia and Thailand, where they would wage guerilla warfare for another 19 years.²³

The end of the Khmer Rouge regime saw an estimated 2 million dead.²⁴ Hundreds of thousands were executed for a variety of reasons: for having been associated with the previous government, for being members of the previous government's army, or for simply being related to those who were; for coming from an educated background, or for wearing eyeglasses, which implied that they were from such a background; for not working hard enough; for being sick; for expressing any religious sentiments; for being a member of any ethnic group other than ethnic Khmer, as other groups such as the Chinese, Vietnamese, Cham and Indigenous Highlanders were considered untrustworthy; for being perceived in the increasingly paranoid eyes of the Khmer Rouge leadership as disloyal; even thinking about the past became a crime—"memory sickness"—that warranted execution.²⁵ Many more perished from disease, starvation and exposure.²⁶

The end of the Khmer Rouge regime was followed by a civil war which last until 1998, when the Khmer Rouge political and military structures were finally dismantled.²⁷ 1998 saw the death of Pol Pot and the surrender of the Khmer Rouge leadership to the Cambodian government, a government which, ironically, would now negotiate with the international community a means of holding key members of the Khmer Rouge criminally liable for their acts.²⁸

**B. The formation of the Extraordinary Chambers as a
'Hybrid' tribunal:**

In the months preceding Pol Pot's death in 1998, Cambodia's two Prime Ministers, after being approached by the UN, submitted a request to the UN for assistance in establishing legal proceedings to try members of the Khmer Rouge for human rights violations committed between 1975 and 1979.²⁹ The EC was established in 2003 to establish accountability for the abuses that occurred during these years.³⁰

The EC is part of a broader trend in international law, which began with the court established in Nuremburg after World War II to try Nazi officials, to establish accountability for those who commit grave war crimes and other human rights abuses.³¹ Beginning in 1993 with The International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), a number of international and mixed criminal courts have been established to deal with serious human rights abuses.³² The first of these tribunals were dominated by international staff and resources and possessed important flaws, most notably weak connections to the domestic populations they were intended to serve, which led to the portrayal of the tribunals as "instruments of Western political

intervention.”³³ These flaws led to the creation of mixed, or ‘hybrid’ tribunals characterized by joint local and foreign participation.³⁴ Hybrid tribunals incorporate national laws, judges and prosecutors, which helps to develop the host nation’s judiciary and legal system, while including international norms and personnel, which confers legitimacy, resources and technical expertise.³⁵ These include the tribunals established in East Timor in 2000 and Sierra Leone in 2002.³⁶ Cambodia’s EC is one of these hybrid courts, although it has an unprecedented domestic character. As you will see, this domestic character was neither the intention nor the desire of the UN.

C. Negotiations:

In 1997 the UN approached Cambodia about the possibility of creating a tribunal to try members of the Khmer Rouge.³⁷ By then it had become apparent to the international community that the Khmer Rouge continued to exert considerable influence in Cambodia and would likely never be held accountable absent UN involvement.³⁸ Following the resulting meeting between UN Special Representative Thomas Hamburg and Cambodia’s two Prime Ministers, in June of 1997, nearly two decades after the Khmer Rouge were driven from power, then-First Prime Minister Norodom Ranariddh and then-Second Prime Minister Hun Sen submitted a request for the assistance of the UN and the international community in bringing the Khmer Rouge to justice.³⁹ This letter

referenced both the ad hoc tribunals established in Yugoslavia and Rwanda and appeared to be asking for similar assistance.⁴⁰ This was not the case, as later actions show that Cambodia's intent was never the establishment of an international tribunal but rather a more domestic tribunal, one which the Cambodian government would maintain full control over.⁴¹

In response to this request the UN established a Group of Experts with the goal of exploring options for trials before international or domestic courts.⁴² After traveling to Cambodia and conducting extensive research and investigations, the Experts concluded that due to the uncertain state of the Cambodian judiciary, the risk of political influence on the domestic courts, and the contentious international law issues involved, the establishment of an ad hoc UN tribunal seated outside of Cambodia would be the best course of action.⁴³ UN Secretary General Kofi Annan agreed with the Experts' conclusions and announced that "if international standards of justice, fairness and the process of law are to be met . . . the tribunal in question must be international in character."⁴⁴

The Cambodian government, now headed by Hun Sen after a successfully orchestrated coup in July of 1997 effectively marginalized Prince Ranariddh and left Sen as Cambodia's sole Prime Minister,⁴⁵ immediately rejected the Experts' conclusions and made clear its refusal to consider a predominantly

international tribunal.⁴⁶ This refusal was later reported to have been made within five days after the Experts had concluded their investigation and prior to any release of their findings.⁴⁷ This indicates Hun Sen's intention of prioritizing national sovereignty over international justice and further validates the Group of Experts' fear that the Cambodian government would attempt to control the tribunal.⁴⁸ However, facing international pressure and delayed membership in the Association of Southeast Asian Nations (ASEAN), Sen was forced to resume negotiations.⁴⁹ Nevertheless, he would continue to reject any mechanisms that would provide for international control over the tribunal, instead insisting that any tribunal be based in the Cambodian judiciary and, while utilizing some international personnel, would contain a majority of Cambodian judges at all levels.⁵⁰ Ironically, the court as envisioned by Hun Sen received the support of high level members of the Khmer Rouge.⁵¹ Ieng Sary, a former Khmer Rouge deputy prime minister and foreign minister and thus a likely target of any tribunal, declared that he "supports resolutely the [Royal Government's] idea and stance on defending national sovereignty by taking for priority the existing national tribunal in collaboration with foreign judges and prosecutors whose number is lesser than those from Cambodia."⁵²

With the rejection by the Cambodian government of any principles proposed by the UN and intended to ensure an independent and impartial tribunal and judiciary which met international standards of justice, the UN announced it was withdrawing from negotiations with the Cambodian government in February of 2002.⁵³ However, the United States, Japan, France and Australia, angered by Secretary General Annan's decision to withdraw from negotiations, pressured the UN to accept a tribunal as envisioned by Hun Sen's government, albeit with a new supermajority formula which had been accepted by Hun Sen.⁵⁴ Negotiations were resumed, and in March of 2003 the UN and the Cambodian government reached the Agreement.⁵⁵ Under the terms of the new Agreement, the tribunal would rest squarely within an untested, inexperienced Cambodian judiciary with a long history of corruption and political control, with no express codes of conduct or independent institutional mechanism with which to enforce such conduct.

III. IDENTIFICATION OF THE LEGAL PROBLEM:

By design, then, the EC is part of the Cambodian judicial system, with Cambodians constituting a majority of its judges and legal staff.⁵⁶ Article 12 of the Agreement provides that:

[T]he procedure [to be used in the ECCC] shall be in accordance with Cambodian law. Where Cambodian law does not deal with a particular matter, or where there is uncertainty regarding the interpretation or application of a relevant rule of Cambodian law, or

where there is a question regarding the consistency of such a rule with international standards, guidance may also be sought in procedural rules established at the international level.⁵⁷

These rules fail to establish transparent, enforceable codes of conduct, with appropriate sanctions for violations, for judges and prosecutors.⁵⁸ Such codes of conduct do not currently exist in Cambodian law.⁵⁹ Institutional safeguards are needed.

Namely, unified codes of conduct with appropriate enforcement mechanisms and sanctions are needed to ensure that the EC maintains international standards of justice and fairness and remains consistent with the practice of other international tribunals.⁶⁰ Such standards are particularly important in Cambodia, where there has been a history of corruption and a lack of independence.⁶¹ The success of the EC depends in large part on the quality of its personnel. Taking the necessary steps to ensure this quality is critical.

A. Relevance to the legal community:

If the judiciary is not held to international standards of independence, impartiality, integrity and competence, the EC will fail to accomplish its task of seeking justice for Khmer Rouge victims, hinder efforts to improve Cambodia's legal system, and cast doubt upon the future of hybrid tribunals and any further attempts to implement principles of international justice in domestic legal systems.⁶² Finally, only credible

proceedings can provide the type of knowledge and insight into the events of the Khmer Rouge regime that can help to prevent such acts from happening again.

The EC's primary goal must be to provide justice for the victims of the Khmer Rouge. Achieving this justice requires more than simply convicting and punishing those most responsible for atrocities committed. Justice requires that the trials be fair. Only by setting an example of high legal and ethical standards can the tribunal pave the way toward a more robust rule of law in Cambodia.⁶³

While most are aware, and have accepted, that the justice doled out will be imperfect at best, one must also be aware that a failed or compromised process will cause much damage to the Cambodian people and legal system. Such a failure will have an enormously demoralizing effect on Cambodian society and development. It will serve to open up the painful wounds of a tragic past without providing the necessary healing and closure, the sense that their past can help in the bringing about of a new, better future. The pain caused cannot be undone, but a credible process through which those responsible are held accountable can help Cambodians come to terms with their past and move toward a more promising future.⁶⁴

A fair, independent and impartial judiciary conducting credible proceedings can play an important role in establishing

the rule of law in Cambodia. The tribunal can advance the goal of better establishing the rule of law in Cambodia by serving as a model of justice for the Cambodian domestic courts.⁶⁵ Since the EC is part of the domestic court system, the majority of the personnel are Cambodian nationals. These Cambodians can learn about international standards through the EC and transfer this knowledge to the domestic legal system.⁶⁶

Likewise, a successful tribunal will bolster public expectations of justice in Cambodia and public faith in the judiciary and legal system as a whole. Witnessing the EC deliver credible verdicts can help renew Cambodian faith in societal norms and the legal and institutional system designed to enforce them, while a sham trial will accomplish just the opposite.⁶⁷

Simply put, if the trials demonstrate that it is possible for the judiciary in Cambodia to act independently, impartially, and fairly, they will have a positive impact; but if they do not, the impact will be negative, precisely to the extent that they demonstrate the power of politicians to sabotage and subvert even the most closely watched trials, and override the knowledge, training, and desires of those in the court system who favor truth and justice.⁶⁸

These trials will provide invaluable legal judgments and precedents for future tribunals and for international criminal accountability in general. The emergence of hybrid tribunals in East Timor, Kosovo, Sierra Leone and Cambodia, and more recently the creation of a War Crimes Chamber in Bosnia, the request made

by the government of the Republic of Burundi to the UN to assist in setting up a truth and reconciliation commission and a Special Chamber within the court system of Burundi, and calls for the transfer of cases from the ICTY to a Serbian domestic war crimes tribunal evidence the future import of hybrid tribunals.⁶⁹ Given the precedential value of the EC's work it is imperative that such efforts are credible and on par with international standards, lest they diminish both international standards as well as the credibility of the UN in dealing with future criminal activity. Mike Jendrzeczyk has warned:

A tribunal that doesn't meet international standards would . . . damage the credibility of the UN and lower international standards for international justice. In the future, why would countries accept the rigorous models used for the crimes in the former Yugoslavia and Rwanda when they demand the soft 'Cambodian model?'⁷⁰

Finally, only fair trials, conducted according to international standards and subjected to a minimum of political influence will increase our understanding of the events that occurred under the Khmer Rouge and why.⁷¹ A tribunal which lacks an independent, impartial and competent judiciary will contribute nothing new to the international community's understanding of what happened during this period.⁷² This understanding of the Khmer Rouge crimes is essential, as it is only through a true understanding of what happened and why that we may be able to prevent such an event from happening again.

IV. ANALYSIS:

What we have in Cambodia, then, is a tribunal based firmly upon a defective, corrupt, politically controlled judiciary, and the absence of proper safeguards in place to lessen the EC's susceptibility to the undue influence and political control that have plagued the Cambodian judiciary for years.

A. A problematic structure:

First, the structure of the EC is problematic in that it gives control of the tribunal to a Cambodian judiciary which is universally acknowledged to be very weak and to lack independence and adherence to the rule of law.⁷³ The Agreement sets up a two-tiered system of Extraordinary Chambers created through Cambodian law and integrated into the existing judiciary: a Trial Chamber and a Supreme Court Chamber which serves as a final court of appeal.⁷⁴ The Cambodian government insisted, successfully, that a majority of judges in both chambers be Cambodian.⁷⁵ The EC statute also provides for a Pre Trial Chamber.⁷⁶ The Pre Trial Chamber will also contain a majority of Cambodian judges, with one serving as President.⁷⁷ This Pre Trial Chamber is tasked with resolving disputes that arise between the two co-Prosecutors⁷⁸ and the two co-Investigating Judges.⁷⁹ If the Pre-Trial chamber cannot attain a 'supermajority,' enlisting the support of at least one international judge, the process is deadlocked.⁸⁰

Such a deadlock can occur in any of the three chambers. The supermajority formula, the one concession of any substance accepted by the Cambodian government, in essence means that at least one international judge must vote with a simple majority.⁸¹ This is an essentially flawed system, as the UN and Cambodia, after agreeing on the supermajority formula, did not continue to negotiate how to resolve this potential for impasse.⁸²

Furthermore, while the supermajority voting structure provides the international judges (if they vote together) with some ability to block decisions made by a majority of Cambodian judges, it does not allow the international judges to convict defendants worthy of conviction without some of the Cambodian judges concurring.⁸³ This "supermajority arrangement at the heart of the agreement anticipates, and indeed now virtually guarantees, bloc voting by the Cambodian judges"⁸⁴

The Cambodian judges occupying these Chambers will be chosen by the Supreme Council of the Magistracy, a Cambodian government body known to have been subject to political intervention at the highest levels, "in accordance with the existing procedures for appointment of judges."⁸⁵ There are no formal criteria regarding the selection of judges. Rather, there have been widespread allegations of political interference pertaining to the selection and appointment of judges.⁸⁶ Appointments are arbitrary and lack transparency.⁸⁷ According to

Dinah PoKempner, general counsel of Human Rights Watch,⁸⁸ "judges and prosecutors remain for the most part apparatchiks, selected for loyalty and entirely manipulated by the executive in cases with any political or patronage dimension. Like the rest of the government, the justice system is notorious for corruption."⁸⁹ The Cambodians will ultimately be responsible for selecting the international judges as well, who will be selected by the Supreme Council of the Magistracy from a list submitted by the UN Secretary General.⁹⁰

The Cambodian government also prevailed in regard to the relation of the EC to the domestic judiciary. The EC, as its name indicates, is located within the domestic legal system of Cambodia and is regarded by the Cambodian participants as "their" court.⁹¹ Similarly, under the EC Statute, Cambodian law governs except where there are gaps in the law or conflicts with international law.⁹² In such circumstances, any international law utilized to supplement domestic law and procedure is to be applied at the discretion of the judges, as well as the co-Prosecutors' and co-Investigating judges, but not the Defense Counsel.⁹³

A different structure, one which was preferred by the UN and one which provides some measure of protection against outside influence can be seen with that utilized in the ICTY. The ICTY is organized to ensure maximum independence and

impartiality.⁹⁴ There are 16 members of the tribunal, elected by the General Assembly, with no more than one judge from any single country.⁹⁵ The office of the prosecutor is completely independent and answers to no one, not even the UN Security Council, and is limited only by the requirement that there be reasonable grounds for believing that somebody has committed a crime.⁹⁶

B. An inexperienced, unqualified judiciary:

This structure of the EC, relying so heavily on members of the Cambodian judiciary, is particularly problematic because of a lack of qualified, experienced judges in Cambodia.⁹⁷ During the Khmer Rouge regime, Cambodia's legal system itself came under attack and was virtually destroyed.⁹⁸ Attempting to establish a homogeneous society without classes and distinctions, the Khmer Rouge were threatened by the prospect of intellectuals and their perceived ability to challenge Khmer Rouge rule.⁹⁹ These individuals were therefore targeted as potential enemies.¹⁰⁰ The lucky few were stripped of their positions, while the vast majority of judges, lawyers and prosecutors were systematically murdered.¹⁰¹ Some estimate that less than 10 lawyers survived the KR regime.¹⁰²

The result is, of course, a current lack of qualified personnel. World Bank data from 2004 reports that only one in six of Cambodia's 117 judges and one in nine of Supreme Court

judges had a law degree.¹⁰³ Likewise, few have any substantial experience in international law.¹⁰⁴ In describing a list of 29 judges considered for nomination by Cambodia, Son Chhay, Member of Parliament, Sam Rainsey Party, remarked: “[some] are barely out of high school- they are in their mid to late twenties, early thirties. They have degrees from Kazakhstan, Russia, Vietnam- countries not known for judicial excellence.”¹⁰⁵

C. Endemic corruption:

This unqualified, inexperienced judiciary is more susceptible to corruption and undue influence for a variety of reasons.¹⁰⁶ First, with increased experience and qualification comes increased identification with one’s institutional role in the judiciary, a factor which in turn makes one less prone to be involved with corruption.¹⁰⁷ A qualified judiciary also enjoys greater social prestige, which in turn attracts better candidates and makes more powerful the sanction of being excluded from the judiciary because of improper behavior.¹⁰⁸ Finally, qualified judges are likely to adopt their fellow judges and other legal professionals as a reference group.¹⁰⁹ In this way, an indirect check is activated by the professional environment, since judges will tend to exert the discretion they enjoy according to the values of the profession as a whole.¹¹⁰ Cambodia’s inexperienced judiciary, then, is uniquely vulnerable

to corruption and political influence, a significant problem in Cambodia, a nation well known for such corruption.

Reports of corruption within the Cambodian judiciary are widespread. Bribes are routinely offered to judges and prosecutors as a necessary, expected step in the judicial process.¹¹¹ Bribery is so entrenched in the judicial establishment, and discipline for such actions so unlikely, that those who accept bribes often take little care to hide it, as the following example demonstrates.¹¹² In 2006 the Supreme Council of the Magistracy named Nil Nonn, the President of the Battambang Provincial Court, as one of the Cambodian judges in the EC Trial Chamber. Soon thereafter it was reported that Judge Nil had indicated to a foreign news magazine in 2002 that he frequently accepted bribes from litigants. The producer of the news magazine subsequently reported that she possessed both transcripts of the interview and a film on which Judge Nil is recorded as saying:

Yes, it happens to me as it does to others as well, but it is not through any efforts on my part. However, if after a trial people feel grateful to me and give me something, that's normal, I don't refuse it. I've settled the case for them and people feel grateful.¹¹³

Confronted with this incriminating evidence, the Cambodian spokesman for the EC told the press that the issue was in the past and irrelevant to the current proceedings.¹¹⁴ Judge Nil was

appointed by the Supreme Council of the Magistracy on May 4, 2006 and remains an EC Trial Chambers Judge today.¹¹⁵

D. Political influence:

Like Cambodia's judiciary, Cambodia's executive has a long history of corruption and of exerting influence over the nation's weak judiciary.¹¹⁶ The end of the Khmer Rouge regime saw legal institutions dismantled and legal "culture" all but gone, requiring that the Cambodian judicial system be rebuilt from scratch with scarce resources, almost no properly trained individuals and ongoing conflict continuing into the 1990's.¹¹⁷ To the extent that the courts were re-established by the new government, utilizing Vietnamese assistance, they were conceived and designed as instrumental to political needs.¹¹⁸ This endemic interference has changed little and remains today.

As documented in numerous reports by the United Nations, international legal organizations and Cambodian NGOs, the Cambodian judiciary and legal system remain under the tight control of the government. The government has ensured the appointment to the ECCC of Cambodian judges, prosecutors and security personnel who are politically loyal to the prime minister, the deputy prime minister and the national police chief, Hok Lundy. Such political control mechanisms are aimed at preventing judges and prosecutors from acting independently and conducting fair trials free from political interference.¹¹⁹

Political influence is exerted largely from Hun Sen's CPP party, which has effectively retained administrative and legislative power since the Vietnamese expelled the Khmer Rouge in 1979.¹²⁰ Hun Sen is himself a former Khmer Rouge communist who began his career in politics as a low level Khmer Rouge commander operating in the eastern area of Cambodia.¹²¹ When Pol Pot began his purges of Eastern Zone cadres in 1973, Hun Sen fled for his life across the border to Vietnam.¹²² After putting him in custody, the Vietnamese released him so that he could play a role in the resistance movement advanced by the Vietnamese against Pol Pot's Khmer Rouge.¹²³ When the Vietnamese ousted Pol Pot from power in 1979, they made Hun Sen, then 27 years old, Foreign Minister of the new government.¹²⁴ From there he rapidly maneuvered his way into the leadership of the communist government, and in 1985 formed his Cambodian Peoples Party (CPP) which controls Cambodian government to this day.¹²⁵

The CPP, which was initially composed of Khmer Rouge deserters and has continued to incorporate them as a means of incorporating power, today has many ties with the former Khmer Rouge government and potentially much to lose from disclosures that may be made during trials in the EC.¹²⁶ As the guerilla war continued throughout the early 1990's, Hun Sen, seeking to end the Khmer Rouge as a military threat, convinced many of its leaders to stop their struggle and join his government.¹²⁷ Tired

of the endless fighting and confident in the ability of their former comrade to provide for them in his new government, many Khmer Rouge leaders defected, bringing with them hundreds of communist soldiers.¹²⁸ "In the case of some Khmer Rouge military units, it was as simple as changing uniforms - one day they were Khmer Rouge guerillas in black pajamas; the next day they were loyal government soldiers in green uniforms."¹²⁹

In the late 1990's, then, many high ranking Khmer Rouge, including Ieng Sary,¹³⁰ Khieu Samphan,¹³¹ Ke Pauk,¹³² and Nuon Chea,¹³³ were allowed to defect to the government.¹³⁴ While all of these men, except for Ke Pauk, who died in 2002, have currently been indicted by the EC, many other members of the Khmer Rouge have been effectively incorporated into the administration and military and have faced no repercussions for any abuses committed during the Khmer Rouge regime.¹³⁵ For example, Heng Samrin, currently the Honorable President of the CPP and National Assembly member, was formerly a Commander of the Easter Zone of Democratic Kampuchea until Pol Pot's purges forced him to defect to Vietnam in 1978.¹³⁶ Keat Chhon, currently Minister of Economy and Finance, was formerly an aid and ambassador to Pol Pot and his regime.¹³⁷ Sar Kheng, currently head of the Ministry of the Interior, was a permanent secretary for the communist party for the Northeast Zone until he too fled to Vietnam in 1976.¹³⁸ The list goes on.

Ironically, "a Cambodian government full of former Khmer Rouge- including the Prime Minister, Defense Minister, Army Chief of Staff and Interior Minister- is now effectively leading the prosecution."¹³⁹ The limited jurisdiction of the EC and its mandate to try only the most senior leaders of the Khmer Rouge will likely limit the threat of direct indictment of former Khmer Rouge who now occupy places in the Cambodian government and military.¹⁴⁰ Nevertheless, there is sure to be much information about past activities during the years of Khmer Rouge rule which they will want to hide.

E. An uncommon experience:

Finally, as all Cambodian families were affected by the tragedy caused by Khmer Rouge rule, the Cambodian judges themselves are likely to have personal experience of the Khmer Rouge regime and the atrocities committed.¹⁴¹ This fact will give the Cambodian judges a different perspective than that of their international counterparts.¹⁴² For years, Cambodians have been exposed to propaganda proclaiming that the events of their past constituted genocide and that the Pol Pot regime was responsible.¹⁴³ As a result, bias in the form of preconceived notions about the Khmer Rouge is a significant concern.¹⁴⁴ May 20th marks an annual day of remembrance of the Khmer Rouge known as the 'Day of Hate' or the 'Day to Remain Tied in Anger.'¹⁴⁵ While this common experience does not necessarily mean that

local judges will lack impartiality and pre judge defendants, this is certainly a possibility that must be considered and protected against. Similarly, the EC will almost certainly face great public pressure to convict defendants.¹⁴⁶ Judges must possess a level of immunity to public and political pressure, as well as to their own emotions, and must rule fairly, respecting the presumption of innocence and procedural fairness. To do so requires that the judges be of a particularly high standard.¹⁴⁷

F. What it all means:

The question that must be asked, then, is what institutional arrangements have been established to ensure the independence and impartiality of the Cambodian judiciary and safeguard the proceedings against corruption and other unacceptable judicial behavior? Both the Law and the Agreement governing the ECCC mandate judicial and prosecutorial independence, impartiality, integrity and experience.¹⁴⁸ However, neither provides any mechanisms to ensure such independence. Rather, history points to an almost inevitable problem of corruption and government influence.¹⁴⁹

Cambodia's Constitution created a Supreme Council of Magistracy to be tasked with appointing and removing judges and imposing discipline.¹⁵⁰ This Council was established as a separate, co-equal branch of government by the Constitution to guard the independence of the judiciary.¹⁵¹ However, after much

discord and negotiation, the executive, and thus the CPP, retain control of the Council, as all members except the King, who sits as the Chair of the Council, are members of the CPP party, including the vice Chair, a representative of the executive's Minister of Justice.¹⁵² Given this control, "the prospects for even incremental progress on judicial independence and reform became almost non-existent."¹⁵³ In May of 2005 Hun Sen rendered this Council effectively powerless by dissolving its Secretariat and transferring its powers to the Ministry of Justice, a Ministry headed by a member of his ruling party.¹⁵⁴ As of 2005, the Council has played almost no role in the oversight or reform of the judiciary and functions only as a "*de facto* CPP party organ."¹⁵⁵

V. PROPOSAL:

The reality is thus that Cambodians will hold a majority in each of the court panels, and they will be susceptible to control exerted by Hun Sen and his government. The idea that merely placing Cambodian judges and prosecutors in the same building with international colleagues will somehow block outside influence and ensure independent action is wishful thinking.¹⁵⁶ An institutional mechanism must be created and tasked with judicial oversight and discipline to guarantee this independence and sanction any violations thereof.

First, the ECCC must adopt an enforceable code of ethics for judges and prosecutors, one that applies to both national and international staff alike. At the time this comment was written no judicial code of conduct had been adopted by the EC.¹⁵⁷ However, the Review Committee of the judges of the ECCC, the committee charged with evaluating the internal rules of the court and recommending revisions to the full plenary of judges, held a session from October 29 to November 9, 2007, to prepare recommendations for the plenary session currently scheduled to begin in late January.¹⁵⁸ During this meeting the Committee reviewed and/or adopted recommendations for a Draft Common Code of Judicial Ethics to be applied to all national and international EC judges.¹⁵⁹ This comment strongly supports the adoption by the EC of a code of conduct. Such a code is found in the Bangalore Principles of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity in 2001 and revised in 2002.¹⁶⁰ These Principles include the universally accepted values of independence, impartiality, integrity, propriety, equality, competence and diligence,¹⁶¹ a collection of the core principles of judicial conduct codes from around the world representing all of the world's major legal systems.¹⁶²

There are numerous advantages to the implementation of such a code. Such an express code would provide members of the judiciary with the minimum guidelines with which they must

comply, as well as provide the judiciary with standards against which they can measure their performance.¹⁶³ It would limit the possibility that members of the judiciary can effectively claim ignorance of conduct that reaches below acceptable standards.¹⁶⁴ Clear, written standards can provide a training mechanism for members entering the judicial profession and serve to protect members of the judiciary against charges of misconduct that are arbitrary and capricious.¹⁶⁵ Such a code would exhibit the commitment of the Cambodian government to international standards of justice, the commitment to become integrated into the international community of nations that abide by the rule of law.¹⁶⁶ Enforcing standards of conduct shows both the national and international community that the corrupt customs so prevalent in Cambodia's judiciary are no longer tolerable and will no longer be tolerated.¹⁶⁷ Such a code will help to instill in the judiciary the public confidence that is thus far lacking.¹⁶⁸ Finally, a code of conduct can inform the public about the standards of conduct that judges can be expected to uphold.¹⁶⁹ For these reasons this comment strongly advocates for its adoption.

However, the existence of clear rules of conduct does not guarantee their adoption in practice. Such a code, alone, would be ineffective to combat the well ingrained corruption and lack of independence characteristic of the Cambodian judiciary. The

code of conduct proposed fails to provide for the creation of an independent enforcement mechanism.¹⁷⁰ Thus, it is my contention that a code of conduct alone will be unsuccessful without an effective enforcement mechanism. Merely asserting that judges shall be independent does not make them independent in fact.¹⁷¹ What is needed is an institutional safeguard in the form of a judicial council, unique to the EC, which is empowered to provide complete oversight of the judiciary. With regards to this oversight, the object is to formulate a method with which to detect misconduct accurately, to investigate it fairly and to eradicate it effectively without eroding an independent judiciary.¹⁷²

This council must be empowered to subject members of the judiciary to both criminal, in cases such as the taking of bribes, and non criminal sanctions if behavior warrants such action.¹⁷³ No one must be seen to be above the law, particularly members of the judiciary.¹⁷⁴

This council must be controlled by the judiciary, employing members of its own. Investigations into misconduct must be conducted by the judiciary to protect against influence of legislative and executive branches. Investigations or the threat thereof must not be a potential tool to be used by other branches of government as retaliation for unpopular decisions or to exert pressure on judges.¹⁷⁵

The best way to do this is through the creation of a judicial council, comprised of judges, tasked with the enforcement of a clear, express code of conduct. However, whatever process is put in place, it must be balanced to, on the one hand, protect judicial independence, while on the other, provide for accountability of judges' actions. Such a procedure would require sufficient transparency to command public confidence.¹⁷⁶

VI. CONCLUSION:

The most important right of all in any trial aimed at achieving justice is the right to independent, impartial, and competent judges. After an entire generation of suffering and decades of negotiations, the Cambodian people are on the verge of attaining the justice and accountability that has eluded them for so long. The tribunal that has emerged from these many years of negotiations, however, is a domestic institution, vulnerable to the corruption and political exploitation so prevalent throughout Cambodia's entire legal system.¹⁷⁷

Unlike other tribunals like those established in Yugoslavia and Sierra Leone, the EC judges will rely primarily on Cambodian laws and procedure, turning to international law only when necessary to fill in gaps and clarify inconsistencies.¹⁷⁸ However, despite the obvious room for improvement, there is nothing, according to Cambodian scholar Steve Heder,

fundamentally wrong with the EC Law and Agreement, "at least on paper" in terms of individual rights.¹⁷⁹ What is in serious doubt is the ability of the EC to guarantee such rights in practice, particularly with regards to the independence and impartiality of Cambodian officials.¹⁸⁰

The EC rests squarely upon a judiciary which can only be described as a "highly politicized, under-educated, modestly trained, and thoroughly corrupt institution."¹⁸¹ As it is, the potential is simply too great for the Cambodian government to interfere with the proceedings. Concrete, fundamental change is needed lest the tribunal rest squarely "under the thumb" of Prime Minister Hun Sen.¹⁸² This comment argues that the adoption of an express code of conduct that applies to judges and prosecutors, coupled with the creation of a judicial council tasked with judicial oversight and discipline, is one such fundamental change that must be made.

Any chance that exists for some semblance of fair and independent trials will come from the insistence of the international community and the UN in particular of the creation of external safeguards, independent of the various political controls which have manipulated Cambodian justice for so long. I applaud the proposal for the adoption of a judicial code of conduct, but insist that such a measure will accomplish little by itself. The EC must move beyond addressing the issue of an

independent, impartial and competent judiciary through rhetorical fiat alone¹⁸³ and establish an independent judicial council tasked with judicial oversight and discipline.

¹ THE KHMER ROUGE TRIBUNAL 11 (John Ciorciari ed., 2006).

² 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, G.A. Res. 57/228(B), U.N. GAOR, 57th Sess., U.N. Doc. A/Res/57/228(B) (May 22, 2003) (ratified by the National Assembly of the Royal Government of Cambodia on October 5, 2004), [hereinafter Agreement], available at http://www.eccc.gov.kh/english/cabinet/agreement/5/Agreement_between_UN_and_RGC.pdf.

³ THE KHMER ROUGE TRIBUNAL, *supra* note 1 at 14.

⁴ Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, with inclusion of amendments, NS/RKM/1004/06 (adopted by the National Assembly of the Royal Government of Cambodia on October 5, 2004 and promulgated on October 27, 2004), [hereinafter Law], available at http://www.eccc.gov.kh/english/cabinet/law/4/KR_Law_as_amended_27_Oct_2004_Eng.pdf.

⁵ Alberto Costi, *Hybrid Tribunals as a Viable Transitional Justice Mechanism to Combat Impunity in Post-Conflict Situations*, 22 N.Z.U.L. REV. 213 (2006) (discussing judiciaries in transitional, post conflict countries).

⁶ See KHAMBOLY DY, *A HISTORY OF DEMOCRATIC KAMPUCHEA* (2007).

⁷ Scott Luftglass, *Crossroads in Cambodia: The United Nation's Responsibility to Withdraw Involvement from the Establishment of the Cambodian Tribunal to Prosecute the Khmer Rouge*, 90 VA. L. REV. 893, 936 (2004).

⁸ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS 97 (Stephen Humphreys et al. eds., 2006).

⁹ Scott Worden, *An Anatomy of the Extraordinary Chambers*, in BRINGING THE KHMER ROUGE TO JUSTICE 187 (Jaya Ramji & Beth Van Schaack eds., 2005).

¹⁰ *Id.* at 188.

¹¹ Human Rights Watch is the largest human rights organization based in the United States. Human Rights Watch researchers conduct fact-finding investigations into human rights abuses in all regions of the world. Human Rights Watch then publishes those findings in dozens of books and reports every year, generating extensive coverage in local and international media.

¹² THE KHMER ROUGE TRIBUNAL, *supra* note 1 at 52.

¹³ BANGALORE PRINCIPLES OF JUDICIAL CONDUCT, Judicial Group on

Strengthening Judicial Integrity (Nov. 25-26, 2002), available at http://www.unodc.org/pdf/corruption/bangalore_e.pdf.

¹⁴ HOWARD BALL, PROSECUTING WAR CRIMES AND GENOCIDE 94 (1999).

¹⁵ *Id.*

¹⁶ DY, *supra* note 6 at 1.

¹⁷ BALL, *supra* note 14 at 94.

¹⁸ DY, *supra* note 6 at 2.

¹⁹ BALL, *supra* note 14 at 95.

²⁰ *Id.*

²¹ DY, *supra* note 6 at 59-60.

²² *Id.* at 60.

²³ BALL, *supra* note 14 at 95-96.

²⁴ DY, *supra* note 6 at 3 (according to Document Center of Cambodia estimates, although no completely agreed upon death toll has emerged).

²⁵ DY, *supra* note 6.

²⁶ *Id.* at 3.

²⁷ *Id.* at 61-62.

²⁸ William W. Burke-White, *A Community of Courts: Toward a System of International Criminal Law*, 24 MICH. J. INT'L L. 1, 31 (2002).

²⁹ BALL, *supra* note 14 at 118.

³⁰ THE KHMER ROUGE TRIBUNAL, *supra* note 1 at 14.

³¹ *Id.* at 139.

³² JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 154-55.

³³ THE KHMER ROUGE TRIBUNAL, *supra* note 1 at 18.

³⁴ *Id.* at 18.

³⁵ Costi, *supra* note 5 at 7.

³⁶ THE KHMER ROUGE TRIBUNAL, *supra* note 1 at 18.

³⁷ John Hall, *In the Shadow of the Khmer Rouge Tribunal: The Domestic Trials of Nuon Paet, Chhouk Rin and Sam Bith, and the Search for Judicial Legitimacy in Cambodia*, 20 COLUM. J. ASIAN L. 235, 243 (2006).

³⁸ *Id.*

³⁹ Luftglass, *supra* note 7 at 906.

⁴⁰ *Id.*

⁴¹ *Id.* at 906-07.

⁴² Katheryn M. Klein, *Bringing the Khmer Rouge to Justice: The Challenges and Risks Facing the Joint Tribunal in Cambodia*, 4 NW. U.J. INT'L HUM. RTS. 549, 14 (2006). The UN Group of Experts consisted of Australian Ninian Stephen, Mauritian Rajsoomer Lallah, and American Steven Ratner, was given a threefold mandate. It was to evaluate the evidence and determine the nature of the crimes committed by the Khmer Rouge between the years of 1975 and 1979; assess the possibility of bringing the leaders to trial; and explore the various international and national options for putting the Khmer Rouge in trial. THE KHMER ROUGE TRIBUNAL, *supra* note 1 at 38.

⁴³ Klein, *supra* note 42 at 15; see also Luftglass, *supra* note 7 at 908-09.

⁴⁴ Luftglass, *supra* note 7 at 909.

⁴⁵ THE KHMER ROUGE TRIBUNAL, *supra* note 1 at 38-39.

⁴⁶ Luftglass, *supra* note 7 at 909.

⁴⁷ *Id.* at 909-10.

⁴⁸ *Id.* at 910.

⁴⁹ STEVEN D. ROPER & LILIAN A. BARRIA, *DESIGNING CRIMINAL TRIBUNALS: SOVEREIGNTY AND INTERNATIONAL CONCERNS IN THE PROTECTION OF HUMAN RIGHTS* 39 (2006).

⁵⁰ See Luftglass, *supra* note 7.

⁵¹ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 10.

⁵² *Id.* at 10-11.

⁵³ Brad Adams, *Cambodia's Judiciary: Up to the Task?*, in *BRINGING THE KHMER ROUGE TO JUSTICE* 130 (Jaya Ramji & Beth Van Schaack eds., 2005).

⁵⁴ *Id.* at 129-30.

⁵⁵ INTERNATIONALIZED CRIMINAL COURTS 208 (Cesare P. R. Romano et al. eds., 2004).

⁵⁶ Interview with Marcel Lemonde, Co-Investigating Judge (France), Extraordinary Chambers in the Courts of Cambodia, Phnom Penh, Cambodia (July 9, 2007).

⁵⁷ Agreement, *supra* note 2, Art. 12.

⁵⁸ Interview with Rupert Skilbeck, Head of Defense Support Section, Extraordinary Chambers in the Courts of Cambodia, Phnom Penh, Cambodia (July 18, 2007).

⁵⁹ Skilbeck, *supra* note 58.

⁶⁰ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 4-5.

⁶¹ *Id.* at 53.

⁶² *Id.* at 2.

⁶³ See THE KHMER ROUGE TRIBUNAL, *supra* note 1.

⁶⁴ *Id.* at 13.

⁶⁵ *Id.* at 152.

⁶⁶ *Id.*

⁶⁷ *Id.* at 137.

⁶⁸ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 57-58.

⁶⁹ Costi, *supra* note 5 at 14.

⁷⁰ Hall, *supra* note 27 at 245.

⁷¹ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 56-57.

⁷² *Id.*

⁷³ David Cohen, "Hybrid" Justice in East Timor, Sierra Leone, and Cambodia: "Lessons Learned" and Prospects for the Future, 43 STAN. J. INT'L L. 1, 34 (2007).

⁷⁴ Law, *supra* note 4, Art. 9; see also ROPER, *supra* note 49 at 42.

⁷⁵ Law, *supra* note 4, Art. 9; Agreement, *supra* note 2, Arts. 3.2(a),(b); Cohen, *supra* note 73.

⁷⁶ Law, *supra* note 4, Art. 20; see Cohen, *supra* note 73 at 35.

⁷⁷ Law, *supra* note 4, Art. 20.

⁷⁸ *Id.* Art. 16.

⁷⁹ *Id.* Art. 23.

⁸⁰ Cohen, *supra* note 73 at 35.

⁸¹ Law, *supra* note 4, Art. 14; see also JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 97.

⁸² Cohen, *supra* note 73 at 35.

⁸³ Herbert D. Bowman, *Not Worth the Wait: Hun Sen, The UN, and the Khmer Rouge Tribunal*, 24 UCLA PAC. BASIN L.J. 51, 72 (2006).

⁸⁴ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 137.

⁸⁵ Law, *supra* note 4, Art. 11; JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 101.

⁸⁶ Skilbeck, *supra* note 58.

⁸⁷ Suzannah Linton, *Safeguarding the Independence and Impartiality of the Cambodian Extraordinary Chambers*, 4 J. INT'L CRIM. JUST. 327, 332 (2006).

⁸⁸ See *supra* note 11.

⁸⁹ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 35.

⁹⁰ Law, *supra* note 4, Art. 11; ROPER, *supra* note 49 at 42.

⁹¹ Law, *supra* note 4, Art. 2; Cohen, *supra* note 73 at 28.

⁹² See Agreement, *supra* note 2, Art. 12.

⁹³ Linton, *supra* note 87 at 336.

⁹⁴ Luftglass, *supra* note 7 at 928.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Worden, *supra* note 9 at 188.

⁹⁸ See Dy, *supra* note 6.

⁹⁹ *Id.* at 44.

¹⁰⁰ *Id.*

¹⁰¹ THE CENTER FOR SOCIAL DEVELOPMENT, ANNUAL REPORT: THE COURT WATCH PROJECT (FEB. 2007)(on file with author).

¹⁰² *Id.*

¹⁰³ Linton, *supra* note 87 at 338.

¹⁰⁴ Worden, *supra* note 9 at 188.

¹⁰⁵ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 112.

¹⁰⁶ Greg Mayne, *Judicial Integrity: The Accountability Gap and the Bangalore Principles*, www.transparency.org/content/download/18706/255314 (last visited Jan. 6, 2008) (on file with author).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Bowman, *supra* note 83 at 67.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See http://www.eccc.gov.kh/english/judicial_officers.aspx.

¹¹⁶ Klein, *supra* note 42 at 23.

¹¹⁷ THE CENTER FOR SOCIAL DEVELOPMENT, ANNUAL REPORT: THE COURT WATCH PROJECT, *supra* note 101.

¹¹⁸ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 134.

¹¹⁹ Human Rights Watch, *Cambodia: Government Interferes in Khmer Rouge Tribunal* (Dec. 5, 2006), hrw.org/english/docs/2006/12/05/cambod14752.htm.

¹²⁰ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 33.

¹²¹ Bowman, *supra* note 83 at 64.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 33.

¹²⁷ Bowman, *supra* note 83 at 56.

¹²⁸ *Id.*

¹²⁹ *Id.* at 57.

¹³⁰ Ieng Sary: Deputy Prime Minister for Foreign Affairs.

¹³¹ Khieu Samphan: President of the Democratic Kampuchea State Presidium and Central Committee Member.

¹³² Ke Pauk: Member of Central Committee.

¹³³ Nuon Chea: "Brother Number Two" and Deputy Secretary of the CPK Central Committee.

¹³⁴ NIGHT OF THE KHMER ROUGE 20 (Jorge Daniel Veneciano & Alexander Hinton eds., 2007) (on file with author).

¹³⁵ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 34.

¹³⁶ Bowman, *supra* note 83 at 79.

¹³⁷ *Id.*

¹³⁸ *Id.* at 79-80.

¹³⁹ Adams, *supra* note 53 at 164.

¹⁴⁰ See THE KHMER ROUGE TRIBUNAL, *supra* note 1 at 143.

¹⁴¹ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 103.

¹⁴² *Id.*

¹⁴³ Linton, *supra* note 87 at 339.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ THE KHMER ROUGE TRIBUNAL, *supra* note 1 at 147.

¹⁴⁷ *Id.* at 148.

¹⁴⁸ Law, *supra* note 4, Arts. 10, 19; Agreement, *supra* note 2, Arts. 3.3, 6.3.

¹⁴⁹ Luftglass, *supra* note 7 at 936.

¹⁵⁰ Bowman, *supra* note 83 at 66; Adams, *supra* note 53 at 155.

¹⁵¹ Adams, *supra* note 53 at 155-56.

¹⁵² *Id.*

¹⁵³ *Id.* at 156.

¹⁵⁴ Bowman, *supra* note 83 at 66.

¹⁵⁵ Adams, *supra* note 53 at 158.

¹⁵⁶ Bowman, *supra* note 83 at 67.

¹⁵⁷ Open Society Justice Initiative, *Recent Developments at the Extraordinary Chambers in the Courts of Cambodia: December 7, 2007 Update* (on file with author).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ BANGALORE PRINCIPLES OF JUDICIAL CONDUCT, *supra* note 13.

¹⁶¹ *Id.*

¹⁶² Charles A. Caruso, *The Role of Codes of Conduct for Legal Professional in the Effort to Eliminate the Culture of Corruption*, A.B.A. ASIAN L. INITIATIVE 23, http://www.abanet.org/rol/publications/asia_raca_role_of_codes.pdf (last visited Jan. 6, 2008).

¹⁶³ Mayne, *supra* note 106; see also Caruso, *supra* note 162.

¹⁶⁴ Mayne, *supra* note 106.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ E-mail from Ann Heindel, Legal Advisor, Documentation Center of Cambodia, to author (January 3, 2008, 11:04:29 PST) (on file with author).

¹⁷¹ JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 12.

¹⁷² Caruso, *supra* note 162.

173 *Id.*

174 *Id.*

175 Caruso, *supra* note 162.

176 Mayne, *supra* note 106.

177 JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 32.

178 Agreement, *supra* note 2, Art. 12.

179 THE KHMER ROUGE TRIBUNAL, *supra* note 1 at 146.

180 *Id.* at 146-47.

181 Adams, *supra* note 53 at 127.

182 THE KHMER ROUGE TRIBUNAL, *supra* note 1 at 52.

183 JUSTICE INITIATIVES: THE EXTRAORDINARY CHAMBERS, *supra* note 8 at 12.