In Need of Prosecution: The Role of Personal Jurisdiction in the Khmer Rouge Tribunal

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Lessons to Draw from the ECCC's Approach to Personal Jurisdiction

1. Clear & Broad Jurisdictional Language

2. Simplistic & Unbiased Judicial Structure

3. Proactive Limitations on Political Interference

4. Improved Accountability Mechanisms

Structure & Defining Characteristics

- "Self-contained" court within the domestic court system
- Multiple levels
- Majority Cambodian judges; key positions split into Cambodian and international roles
- Super-majority voting requirement

Jurisdictional Language

"The purpose of this law is to bring to trial **senior leaders** of Democratic Kampuchea and those who were **most responsible** for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from 17 April 1975 to 6 January 1979."

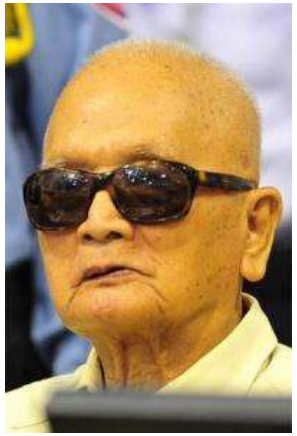
- Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia, Ch. I, art. 1.

Political Interference & Jurisdictional Interpretation

- Case 001 (Comrade Duch) – jurisdictional language operates as "**investigatorial and prosecutorial policy**" to guide Co-Prosecutors and Co-Investigating Judges
- Case 004/01 (Im Chaem) – Dismissal of all charges upon finding that Im Chaem did not qualify as an individual "most responsible" for the Khmer Rouge atrocities

Case 001 – Kaing Guek Eav (Convicted)

Case 002 – Nuon Chea & Khieu Samphan (Convicted)



Case 004/1 – Im Chaem (Dismissed)

Case 003 – Meas Muth (Pending)

Case 004 – Ao An & Yim Tith (Pending)

1. Clear & Broad Jurisdictional Language

- Avoid unnecessarily limiting responsibility language (Example: ICTY & ICTR)

- Alternatively, if parameters are necessary, clarify these as guideposts for prosecutorial policy, not strict jurisdictional limitations

2. Simplistic & Unbiased Judicial Structure

- Straightforward voting structure; majority international judges and a single prosecutor/ investigating judge

- Standard joint-nomination process for tribunal judges, with appointment authority reserved for a U.N. body (Example: ICTY)

3. Proactive Limitations on Political Interference

- Necessary for tribunals in all nations recovering from mass atrocities, especially those susceptible to corruption

- Limiting the role of the national government, especially in circumstances where the government does not provide full support for the tribunal (Example: Sierra Leone)

4. Improved Accountability Mechanisms

- Incorporating accountability measures in governing law
- Proactive enforcement of accountability measures
- Management Committees staffed by representatives from primary donor nations (Examples: Sierra Leone & Lebanon)

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