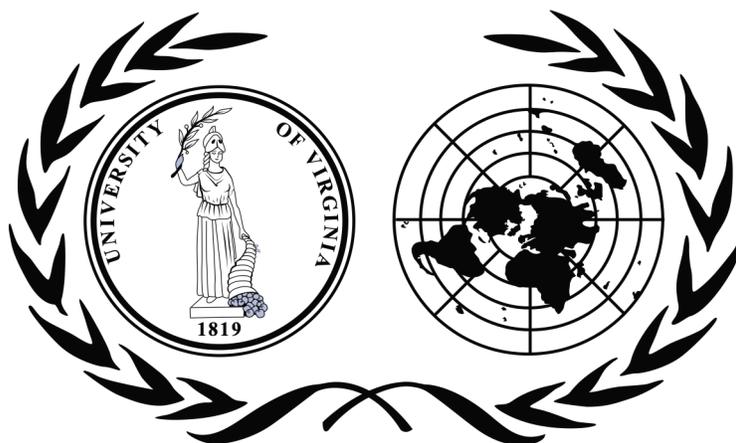


---

VIRGINIA JOURNAL  
OF  
INTERNATIONAL LAW  
DIGEST

Volume 59



Essay

What Hun Sen's Re-Election Means for the Fate of  
Cambodian Justice

*Sara L. Ochs*

---

ESSAY

# What Hun Sen's Re-Election Means for the Fate of Cambodian Justice

SARA L. OCHS\*

## I. INTRODUCTION

Hun Sen's re-election on July 29, 2018, marks his thirty-third year as Cambodia's prime minister.<sup>1</sup> As the world's sixth-longest-serving political leader,<sup>2</sup> Hun Sen has sustained his lengthy tenure primarily through political intimidation, violence, and oppression. In this most recent election, Hun Sen's victory came after a prolonged crackdown on independent and U.S.-backed media outlets and organizations.<sup>3</sup> In 2017, Cambodia's Supreme Court – at Hun Sen's behest – dissolved the nation's main opposition party, the Cambodia National Rescue Party (the “CNRP”), on unsupported allegations that the CNRP was conspiring with the United States to overthrow the Hun Sen government.<sup>4</sup> As part of this dissolution, CNRP officials were stripped of their seats in the National Assembly and banned from engaging in any political activity for five years.<sup>5</sup> Hun Sen also directed authorities to arrest the CNRP leader, Kem Sokha, on charges of treason.<sup>6</sup>

---

\* The author is a teaching fellow at Elon University School of Law. She earned her B.A. from Loyola University Maryland and J.D. from Loyola University New Orleans College of Law.

1. Nathan A. Thompson, *Cambodia's Election Condemned as a 'Sham'*, CNN (last updated July 29, 2018, 1:56 AM), <https://www.cnn.com/2018/07/27/asia/cambodia-election-intl/index.html>.

2. BRAD ADAMS, HUMAN RIGHTS WATCH, *30 YEARS OF HUN SEN: VIOLENCE, REPRESSION, AND CORRUPTION IN CAMBODIA 1* (2015), [https://www.hrw.org/sites/default/files/reports/cambodia0115\\_ForUpload.pdf](https://www.hrw.org/sites/default/files/reports/cambodia0115_ForUpload.pdf).

3. *Cambodia Top Court Dissolves Main Opposition CNRP Party*, BBC NEWS (Nov. 16, 2017), <https://www.bbc.co.uk/news/world-asia-42006828>. See also *The Outlook is Grim: Cambodia's Independent Media Under Hun Sen*, WORLD POL. REV. (May 29, 2018), <https://www.worldpoliticsreview.com/trend-lines/24801/the-outlook-is-grim-cambodia-s-independent-media-under-hun-sen> (noting that in May 2018, the Phnom Penh Post, “an independent newspaper often critical of the Cambodian government,” was sold to an investor with close links to Hun Sen).

4. Thompson, *supra* note 1.

5. *Cambodia Top Court Dissolves Main Opposition CNRP Party*, *supra* note 3.

6. James Hookway, *Cambodian Leader, Turning His Back on Western Threats, Plots Re-Election*, WALL ST. J. (July 27, 2018), <https://www.wsj.com/articles/cambodian-leader-turning-his-back-on-western-threats-plots-reelection-1532692801>.

Kem Sokha's charges stemmed from similar government-promulgated allegations that he was conspiring with the United States to engineer an uprising against Hun Sen.<sup>7</sup> Human rights groups have denounced this particularly oppressive period of Hun Sen's reign as the "death of democracy"<sup>8</sup> in Cambodia, ultimately culminating in his July 2018 "sham" re-election.

While the recent election presents overwhelming concerns regarding the efficiency and independence of Cambodia's democracy, even more alarming is the election's potential impact on the Extraordinary Chambers in the Courts of Cambodia (the "ECCC"). The ECCC is an international "hybrid" criminal tribunal jointly established by the Cambodian Government and the United Nations in 2006 to prosecute those most responsible for the Khmer Rouge regime.<sup>9</sup> Despite operating for more than twelve years and exhausting a budget exceeding \$300 million,<sup>10</sup> the ECCC has convicted only three individuals for the Khmer Rouge's mass atrocities.<sup>11</sup> Given the millions of victims murdered at the hands of the Khmer Rouge<sup>12</sup> and the sheer breadth of the regime's crimes, the ECCC's lack of progress is astounding, especially when compared to that of other international criminal tribunals. For instance, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, the two *ad hoc* tribunals established by the United Nations in the early 1990s, have respectively convicted 161 and 93 individuals.<sup>13</sup> Notably, both the civil war in Yugoslavia and the Rwandan genocide involved far less victims than the Cambodian Revolution.<sup>14</sup>

---

7. *Id.*

8. Oliver Holmes, 'Death of democracy' in Cambodia as Court Dissolves Opposition, THE GUARDIAN (Nov. 16, 2017), <https://www.theguardian.com/world/2017/nov/16/death-of-democracy-cambodia-court-dissolves-opposition-hun-sen>.

9. Seth Mydans, 11 Years, \$300 Million and 3 Convictions. Was the Khmer Rouge Tribunal Worth It?, N.Y. TIMES (April 10, 2017), <https://www.nytimes.com/2017/04/10/world/asia/cambodia-khmer-rouge-united-nations-tribunal.html>.

10. See, e.g., ECCC Financial Outlook as of 14 June 2018, THE EXTRAORDINARY CHAMBERS IN THE CTS. OF CAMBODIA (June 14, 2018), <http://223.223.174.143/sites/default/files/ECCC%20financial%20outlook%20as%20of%2014%20JUNE%202018.pdf> (showing that as of June 14, 2018, the ECCC has incurred a total of \$318.9 million in expenses).

11. John D. Giocriari and Anne Heindel, *Experiments in International Criminal Justice: Lessons from the Khmer Rouge Tribunal*, 35 MICH. J. INT'L L. 369, 370, 395 (2014).

12. See also JOEL BRINKLEY, CAMBODIA'S CURSE: THE MODERN HISTORY OF A TROUBLED LAND 57 (2d ed. 2012) (explaining that while the number of Khmer Rouge victims was originally calculated at 1.7 million, recent research puts the death toll closer to 2 million).

13. *The ICTR in Brief*, UNITED NATIONS INT'L RESIDUAL MECHANISM FOR CRIM. TRIBUNALS, <http://unictr.unmict.org/en/tribunal> (last visited Sept. 3, 2018); *Infographic: ICTY Facts & Figures*, UNITED NATIONS INT'L CRIM. TRIBUNAL FOR THE FORMER YUGOSLAVIA (last visited Sept. 3, 2018), <http://www.icty.org/en/content/infographic-icty-facts-figures>.

14. A 2010 report calculated the total number of casualties of the Bosnia-Herzegovina War at 104,732. Jan Zwierchowski & Ewa Tabeau, *The 1992-95 War in Bosnia and Herzegovina: Census-Based Multiple System Estimation of Casualties' Undercount* 2 (Feb. 1, 2010), <https://pdfs.semanticscholar.org/7760/022b84647f680b26d3d628f34afb70ce8122.pdf>. The death toll of the Tutsi genocide by the Hutu leadership in Rwanda in the 1990s is estimated at 800,000. Marijke Verpoorten, Le coût en vies humaines du génocide rwandais: le cas de la province de

Recently, this lack of progress, amidst clear evidence of political interference by the Hun Sen government, has incited rumors of the ECCC's imminent closure. Hun Sen, who has proven to be a formidable opponent to the ECCC since its creation, has repeatedly called for the Tribunal to discontinue investigations and prosecutions of potential Khmer Rouge defendants.<sup>15</sup> Hun Sen likely is attempting to divert attention from the numerous ex-Khmer Rouge officials, including himself, who maintain positions of great power within the Cambodian Government.

This summer's election presented an idealistic, albeit unrealistic, possibility for a new prime minister-led government that would provide the ECCC with the political support and funding it desperately needs. Yet, with the re-election of Hun Sen, the ECCC's future remains bleak, and closure appears inevitable.

## II. THE KHMER ROUGE AND HUN SEN'S RISE TO POWER

Democratic Kampuchea, the government established by the Khmer Rouge which ruled Cambodia between April 17, 1975, and January 7, 1979, is unquestionably one of the worst eras of mass atrocities and human rights violations in global history. Led by their deranged leader, Pol Pot, the communist Khmer Rouge became responsible for the deaths of nearly two million individuals, many of whom were savagely murdered by the regime.<sup>16</sup> In its three-year, eight-month, and twenty-day reign, the Khmer Rouge decimated approximately twenty percent of the Cambodian population before being overthrown by invading Vietnamese forces in 1979.<sup>17</sup>

Nearly forty years after the fall of Democratic Kampuchea, Cambodia remains largely within the shadow of the Khmer Rouge. Cambodia's current government is composed of numerous ex-Khmer Rouge commanders and cadre who defected prior to the fall of the regime, many of whom hold high-ranking positions.<sup>18</sup> Most disquietingly, Hun Sen himself is a former Khmer Rouge cadre who defected in 1977, only when he suspected the ever-paranoid Pol Pot and Khmer Rouge leadership of turning against him.<sup>19</sup> Today, not only are many victims forced to live

---

Gikongoro, 60 POPULATION 401, 403 (2005) (Fr.), translated in 60 POPULATION 331, 333 (2005), [https://www.cairn-int.info/article-E\\_POPU\\_504\\_0401--the-death-toll-of-the-rwandan-genocide-a.htm#no1](https://www.cairn-int.info/article-E_POPU_504_0401--the-death-toll-of-the-rwandan-genocide-a.htm#no1).

15. Kuch Naren, *Hun Sen Warns of Civil War if ECCC Goes Beyond 'Limit'*, CAMBODIA DAILY (Feb. 27, 2015), <https://www.cambodiadaily.com/news/hun-sen-warns-of-civil-war-if-eccc-goes-beyond-limit-78757/>.

16. Padraic J. Glaspy, *Justice Delayed? Recent Developments at the Extraordinary Chambers in the Courts of Cambodia*, 21 HARV. HUM. RTS. J. 143, 143-45 (2008).

17. *Id.* at 143, 145.

18. Robert Petit, *Lanfare and International Tribunals: A Question of Definition? A Reflection on the Creation of the "Khmer Rouge Tribunal,"* 43 CASE W. RES. J. INT'L L. 189, 190 (2010).

19. *Id.* See also BRINKLEY, *supra* note 12, at 58.

amongst their torturers,<sup>20</sup> but others remain governed by individuals responsible for murdering their families and loved ones. Unsurprisingly, between one-third to one-half of all Cambodians who lived through the Cambodian Revolution suffer from post-traumatic stress disorder.<sup>21</sup>

During Vietnamese occupation, and after serving for several years as foreign minister, Hun Sen was appointed prime minister in 1985 at the age of thirty-three.<sup>22</sup> He remained prime minister until 1993, when he lost the national election to Prince Norodom Ranariddh.<sup>23</sup> Rather than admit defeat, Hun Sen forced a negotiation with Ranariddh whereby the two men would rule the country jointly as co-prime ministers.<sup>24</sup> In 1997, Hun Sen staged a military coup in which he killed more than forty political opponents, ousted Ranariddh, and seized full control of the country.<sup>25</sup> He has been in power since.

### III. HUN SEN'S POLITICAL INTERFERENCE IN THE ECCC

In June 1997, Ranariddh and Hun Sen co-authored a letter to then-U.N. Secretary Kofi Annan, requesting U.N. assistance in bringing the Khmer Rouge to justice for genocide and related crimes against humanity.<sup>26</sup> Yet, mere weeks after sending the letter, Hun Sen staged his bloody coup against Ranariddh. Upon regaining sole power of the country, Hun Sen initially maintained his alleged commitment to establishing a Khmer Rouge tribunal, and even authored another letter to then-U.S. president Bill Clinton requesting U.S. assistance in the tribunal's establishment.<sup>27</sup> This commitment was short lived.

Early into negotiations with the international community, Hun Sen's true motivations for establishing the tribunal became evident. In 1998, following Pol Pot's death and the defection of Khieu Samphan and Nuon Chea—two leading figures of the Khmer Rouge—Hun Sen retracted all initial support for the creation of a tribunal, arguing that prosecutions could

---

20. See generally Elena Rose, *A Predictable Disagreement with an Uncertain Outcome*, OXFORD TRANSITIONAL JUST. RES. GROUP WORKING PAPER SERIES, Jan. 15, 2009, at 4, <https://www.law.ox.ac.uk/sites/files/oxlaw/rosefinal1.pdf>.

21. BRINKLEY, *supra* note 12, at 13.

22. *Id.* at 58.

23. *Hun Sen: Cambodia's Strongman Prime Minister*, BBC NEWS (July 27, 2018), <https://www.bbc.com/news/world-asia-23257699>.

24. *Id.*

25. Scott Luftglass, Note, *Crossroads in Cambodia: The United Nation's Responsibility to Withdraw Involvement from the Establishment of a Cambodian Tribunal to Prosecute the Khmer Rouge*, 90 VA. L. REV. 893, 907 (2004); Seth Mydans, *Cambodia Purge Said to Claim 40 Victims*, N.Y. TIMES (July 16, 1997), <https://www.nytimes.com/1997/07/16/world/cambodia-purge-said-to-claim-40-victims.html>.

26. David Scheffer, *The Extraordinary Chambers in the Courts of Cambodia* 2-3 (last visited Sept. 3, 2018), [http://www.cambodiatribunal.org/wp-content/uploads/2013/08/history\\_history-analysis-scheffer\\_english.pdf](http://www.cambodiatribunal.org/wp-content/uploads/2013/08/history_history-analysis-scheffer_english.pdf), in CHERIF BASSIOUNI, *INTERNATIONAL CRIMINAL LAW* (3d ed. 2008).

27. *Id.* at 3.

threaten national stability.<sup>28</sup> Upon Khieu Samphan's and Nuon Chea's defection, Hun Sen welcomed the two ex-Khmer Rouge leaders into his home, offering reconciliation and forgiveness, and even reportedly commemorated the occasion with a champagne toast.<sup>29</sup> During the meeting, Hun Sen publicly stated his belief that "the time had come to dig a hole and bury the past."<sup>30</sup> In an apparent effort to cease negotiations with the U.N., he repeatedly demanded that the Khmer Rouge defendants be prosecuted exclusively by national courts under Cambodian law, with no involvement by foreign judges or prosecutors.<sup>31</sup> This about face is logically attributed to Hun Sen's desire to avoid drawing international attention to ex-Khmer Rouge officials occupying vital roles within the Cambodian Government. Scholars even opine that Hun Sen's initial request for international assistance was a strategic ploy to divert attention from his 1997 coup.<sup>32</sup>

Despite Hun Sen's reluctance, the ECCC commenced operations in 2007 pursuant to a statute incorporated into Cambodian law, becoming the first and only U.N.-created tribunal to be the product of domestic legislation.<sup>33</sup> More than a decade after its establishment, the ECCC has convicted a mere three of thousands responsible for the Khmer Rouge's atrocities. Two of the three convicted are the men Hun Sen publicly forgave and celebrated upon their defection: Nuon Chea, Pol Pot's second in command, and Khieu Samphan, the head of state under the Khmer Rouge. In the first of two trials against Nuon Chea and Khieu Samphan, the Trial Chamber deemed the defendants criminally responsible for their roles in orchestrating the deadly infrastructure of Democratic Kampuchea implemented by the Khmer Rouge.<sup>34</sup> Both were convicted of and are

---

28. See Thomas Hammarberg, *How the Khmer Rouge Tribunal was Agreed: Discussions Between the Cambodian Government and the UN*, DOCUMENTATION CTR. OF CAMBODIA (2001), [http://www.dccam.org/Tribunal/Analysis/How\\_Khmer\\_Rouge\\_Tribunal.htm](http://www.dccam.org/Tribunal/Analysis/How_Khmer_Rouge_Tribunal.htm).

29. *Id.* See also *Cambodia: Stop Blocking Justice for Khmer Rouge Crimes*, HUM. RTS. WATCH (March 22, 2015, 11:07 PM), <https://www.hrw.org/news/2015/03/22/cambodia-stop-blocking-justice-khmer-rouge-crimes>.

30. Hammarberg, *supra* note 28.

31. *Id.*

32. See, e.g., Kathryn M. Klein, *Bringing the Khmer Rouge to Justice: The Challenges and Risks Facing the Joint Tribunal in Cambodia*, 4 N.W. J. INT'L HUM. RTS. 549, 554 (2006).

33. Beth Van Schaack, *The Building Blocks of Hybrid Justice*, 44 DENV. J. INT'L L. & POL'Y 169, 194 (2016).

34. Given the extensive list of crimes with which Nuon Chea and Kheiu Samphan were charged, the ECCC severed their proceedings into two separate trials based on the chronology of the crimes. See *Severance of Proceedings Ordered in Case 002*, EXTRAORDINARY CHAMBERS IN THE CTS. OF CAMBODIA (last visited Sept. 3, 2018), <https://www.eccc.gov.kh/en/articles/severance-proceedings-ordered-case-002>. The defendants were both convicted of various war crimes and crimes against humanity on August 7, 2014, and were sentenced to life imprisonment. See Nuon Chea and Khieu Samphan, Case No. 002/19-09-2007/ECCC/TC, Case 002/01 Judgement, at 579-80, 622 (Aug. 7, 2014), [https://www.eccc.gov.kh/sites/default/files/documents/court/2014-08-07%2017%3A04/E313\\_Trial%20Chamber%20Judgement%20Case%20002\\_01\\_ENG.pdf](https://www.eccc.gov.kh/sites/default/files/documents/court/2014-08-07%2017%3A04/E313_Trial%20Chamber%20Judgement%20Case%20002_01_ENG.pdf). [hereinafter Nuon Chea and Khieu Samphan Trial Judgment]. The second trial, involving charges of genocide and additional crimes against humanity, commenced in 2014 and remains ongoing. See *Case 002*, EXTRAORDINARY

serving life sentences for numerous crimes against humanity related to the forced evacuation of Phnom Penh in April 1975 and mass executions.<sup>35</sup>

From its inception, the ECCC has been plagued by allegations of political interference, which many blame for the Tribunal's failure to fulfill its designated mandate to prosecute senior leaders and those "most responsible" for Khmer Rouge atrocities. The Tribunal is composed of a majority of Cambodian and a minority of international judges, with the prosecutorial role divided between a Cambodian and international advocate.<sup>36</sup> Following the convictions of Nuon Chea and Khieu Samphan in 2014, a stark division has emerged between the Cambodian and international arms of the Tribunal over whether to prosecute additional defendants. The former – likely subject to the influence of the Cambodian government – has been working to prevent future prosecution, while the latter seeks to investigate and prosecute potential defendants in an effort to salvage the ECCC's mandate. This divisive split culminated in the ECCC's recent decision to dismiss all charges against Im Chaem, one of only four un-convicted defendants before the Tribunal.<sup>37</sup> This decision was reached solely by the Cambodian majority, and was grounded in the illogical conclusion that Im Chaem, who is allegedly responsible for upwards of 50,000 deaths during the reign of Democratic Kampuchea, was not "sufficiently responsible" to fall within the ECCC's personal jurisdiction.<sup>38</sup>

#### IV. POTENTIAL IMPACT OF RE-ELECTION ON THE ECCC

Throughout the ECCC's lifespan, Hun Sen has repeatedly vocalized his opinions on the Tribunal's proceedings. During negotiations, Hun Sen made clear he did not intend for the ECCC to try more than four to five Khmer Rouge suspects, a demand to which he has adhered to this day.<sup>39</sup> Hun Sen has opposed indictments and denied access to potential witnesses who currently possess powerful positions within the Cambodian Government.<sup>40</sup> He has repeatedly threatened that pursuing investigations and prosecutions into suspects beyond the three defendants convicted

---

CHAMBERS IN THE CTS. OF CAMBODIA (last visited Sept. 3, 2018), <https://www.eccc.gov.kh/en/case/topic/119>.

35. Nuon Chea and Khieu Samphan Trial Judgment, *supra* note 34.

36. Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, ch. III, art. 9; ch. VI, art. 16 (Oct. 27, 2004), [https://www.eccc.gov.kh/sites/default/files/legal-documents/KR\\_Law\\_as\\_amended\\_27\\_Oct\\_2004\\_Eng.pdf](https://www.eccc.gov.kh/sites/default/files/legal-documents/KR_Law_as_amended_27_Oct_2004_Eng.pdf).

37. *See* Im Chaem, Case No. 004-1-07-09-2009-ECCC/OCIJ (PTC50), Considerations on the International Co-Prosecutor's Appeal of Closing Orders (Reasons), (June 28, 2018), [https://www.eccc.gov.kh/sites/default/files/documents/court/ocj/5Bdate-intz%5D/D308\\_3\\_1\\_20\\_EN.pdf](https://www.eccc.gov.kh/sites/default/files/documents/court/ocj/5Bdate-intz%5D/D308_3_1_20_EN.pdf).

38. *Id.*

39. *Cambodia: Judges Investigating Khmer Rouge Crimes Should Resign*, HUM. RTS. WATCH (Oct. 3, 2011, 1:00 AM), <https://www.hrw.org/news/2011/10/03/cambodia-judges-investigating-khmer-rouge-crimes-should-resign>.

40. Mydans, *supra* note 9.

would return the country to civil war.<sup>41</sup> At Hun Sen's direction, Cambodian judges on the ECCC have blocked all recent attempts by the international co-prosecutor to expand the Tribunal's prosecutorial span. As the Open Society Justice Initiative pronounced in its extensive report evaluating the ECCC's operations to date, Hun Sen and the Cambodian Government's pervasive interference in the Tribunal has "generate[d] cynicism and basic distrust of the institution."<sup>42</sup>

Indeed, Hun Sen's conduct in stalling the progress of the Tribunal has been met with a heated response from the international community.<sup>43</sup> Yet, despite these criticisms, international funding continues to pour into Hun Sen's government, with minimal oversight or protection against corruption.<sup>44</sup> Further, despite serving as the Cambodian Government's partner in the ECCC, and the Tribunal's primary source of funding,<sup>45</sup> the United Nations has failed to implement any effective accountability mechanisms for the Tribunal.<sup>46</sup> Surprisingly, despite Hun Sen's conduct in compromising the judicial independence of the Tribunal, the U.N. has never publicly threatened to withhold assistance—financial or otherwise—until the Cambodian Government ceased interfering.

Given Hun Sen's open opposition to the ECCC's proceedings, the Tribunal's closure has been heavily anticipated for several years. This apprehension is underscored by recurring budgetary dilemmas. In May 2017, the media leaked a confidential proposal by ECCC judges which proposed to permanently stay all open cases due to funding shortages.<sup>47</sup>

---

41. Douglas Gillison, *Extraordinary Injustice*, INVESTIGATIVE FUND (Feb. 27, 2012), <https://www.theinvestigativefund.org/investigation/2012/02/27/extraordinary-injustice/>.

42. OPEN SOC'Y JUST. INITIATIVE, PERFORMANCE AND PERCEPTION: THE IMPACT OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, (2016), <https://www.opensocietyfoundations.org/sites/default/files/performance-perception-eccc-20160211.pdf>.

43. *See, e.g.*, Charlie Campbell, *Cambodia's Khmer Rouge Trials are a Shocking Failure*, TIME (Feb. 13, 2014) (describing the reaction of Theary Seng, a U.S. trained human rights lawyer whose parents were murdered by Khmer Rouge, to Hun Sen's conduct with regard to the Tribunal as follows: "'I'm in awe of Hun Sen,' says Theary Seng sardonically, deploring the 'manipulated and whitewashed' history the ECCC is now helping to propagate. 'It will go down in all the history books as a brilliant move.'"); Julia Wallace, *The Bucolic Life of a Cambodian Grandmother Accused of Mass Killings*, N.Y. TIMES (Feb. 24, 2017), <https://www.nytimes.com/2017/02/24/world/asia/cambodia-khmer-rouge-im-chaem.html> (quoting the ECCC scholar Anne Heindel as stating, "What a farce and pretense of justice to spend so much money convicting only the three [defendants] – a foregone conclusion – while pretending that the process was independent and not limited by politics for a decade.").

44. BRINKLEY, *supra* note 12 at 306-09 (explaining that as of 2010, the international community had given at least \$18 billion in funding to support Cambodia's recovery from the Khmer Rouge's mass atrocities, despite evidence that this funding was not being used to support the Cambodian people, and instead was used to increase the disparate prosperity of Hun Sen and high-ranking government officials).

45. *See* PERFORMANCE AND PERCEPTION, *supra* note 42 at 65, n. 202 (arguing the U.N. should be considered a partner to the Cambodian Government in the ECCC).

46. *See generally id.* at 64-65 (discussing the failure of the U.N. to create and enforce appropriate accountability mechanisms for the Tribunal).

47. Jonathan Birchall, *Concerns Over Bid to Wrap Up Outstanding Investigations at Cambodia's ECCC*, INT'L JUST. MONITOR (June 16, 2017), <https://www.ijmonitor.org/2017/06/concerns-over-bid-to-wrap-up-outstanding-investigations-at-cambodias-eccc/>.

While the proposal was ultimately discarded, the fact that such an approach was even considered fueled significant international criticism of the Tribunal and emphasized the ambiguity of the ECCC's future. The U.N.'s failure to implement and enforce accountability measures within the Tribunal further adds to growing speculation of the Tribunal's imminent closure.

The ECCC's already tenuous status was rendered even more so by its Pre-Trial Chamber's recent decision affirming the dismissal of charges against Im Chaem. This decision sets the stage for the dismissal of charges against three other ex-Khmer Rouge officials and ECCC defendants: Meas Muth, Ao An, and Yim Tith. While charges against all three defendants have remained pending for several years, these cases have become stagnant – largely due to the Cambodian judges' unwillingness to further these proceedings. Briefings have already been filed by the international co-prosecutor and the defense in the three cases, and the Tribunal is poised to decide whether any of the three defendants fall within the ECCC's personal jurisdiction.

Hun Sen's recent re-election leaves little doubt as to the imminent closure of the Tribunal. His repeated attacks on the legitimacy and necessity of the ECCC, as well as his indiscrete interference in blocking the Tribunal's investigations and prosecutions, were embodied in the recent dismissal of charges against Im Chaem, paving the way for the dismissal of the remaining defendants. His globally criticized re-election,<sup>48</sup> while reinforcing the lack of true democracy in Cambodia and underscoring the systemic corruption of the nation's government,<sup>49</sup> also effectively sounded the death knell for the Khmer Rouge Tribunal.

## V. CONCLUSION

Despite requesting the international legal community's assistance in establishing the ECCC, Hun Sen has remained the Tribunal's primary opponent since the negotiation phase. His open opposition to the Tribunal, threats against further prosecution, and even active role in recruiting and bribing judges into blocking investigations and prosecutions into key Khmer Rouge figures have stymied any potential success the Tribunal may have enjoyed. In light of the Tribunal's recent decisions dismissing charges on personal jurisdictional grounds, the fate of the ECCC is precarious at best. Hun Sen's re-election essentially confirms predictions that the ECCC will dismiss the three untried defendants before the Tribunal, and that it will

---

48. See, e.g., *Cambodia Election: Ruling Party Claims Landslide in Vote with no Main Opposition*, BBC NEWS (July 30, 2018), <https://www.bbc.co.uk/news/world-asia-44999358> (noting that the White House expressed "profound[] disappoint[ment]" in the "flawed" election).

49. In a 2017 study conducted by Transparency International, Cambodia was ranked the 161<sup>st</sup> of the 180 most corrupt nations. See *Corruption Perceptions Index 2017*, TRANSPARENCY INTERNATIONAL (Feb. 21, 2018), [https://www.transparency.org/news/feature/corruption\\_perceptions\\_index\\_2017#table](https://www.transparency.org/news/feature/corruption_perceptions_index_2017#table).

close following the conclusion of the second trial against Nuon Chea and Khieu Samphan. By closing, the ECCC would leave behind a legacy of corruption and political interference consisting of a repeatedly depleted budget, a humbling three convictions for thousands of culpable individuals, and a nation of victims without justice.

Hun Sen has publicly described Cambodian politics as “a struggle to the death between him and all those who dare to defy him.”<sup>50</sup> In the case of the ECCC, this description may be sadly accurate.

---

50. ADAMS, *supra* note 2 (noting that in June 2005, Hun Sen also publicly warned his political opponents to “prepare coffins and say their wills to their wives”).