

***The Khmer Rouge Tribunal, Power Politics, and Resistance in Transitional Justice.* By Julie Bernath. Madison, Wisconsin: University of Wisconsin Press, 2023. Hardcover: 271pp.**

History has yet to judge this unprecedented tribunal fully. Set up jointly by the United Nations (UN) and the Cambodian authorities in 2003, the Extraordinary Chambers in the Courts of Cambodia (ECCC) sought to deliver justice for the victims of the Khmer Rouge regime, which was responsible for the deaths of between 1.7 million and 2.2 million people during its four-year rule from 1975 until 1979. But if Julie Bernath’s book serves as an academic benchmark (as it should), future historians may not look too kindly at the tribunal.

Transitional justice frames how victims and societies respond to the legacy of serious human rights violations. It also questions the role of law and politics in meting out justice as well as what potential conflicts of interest might arise when a post-war society attempts to piece itself back together. It is through this prism that Bernath explores the informally named Khmer Rouge Tribunal, which began almost three decades after the crimes being prosecuted were committed.

This delay was the result of incessant bickering and politicking between the UN and the ruling elites in Phnom Penh. Both wanted control of the courts. Eventually, the Cambodian government gained the upper hand; its locally appointed judges and prosecutors outnumbered the international officials within the tribunal’s three chambers. This set the tone for what was to come. Tasked with prosecuting Khmer Rouge officials who were most responsible for crimes committed between April 1975 and January 1979, the ECCC was bedevilled by political interference. For instance, Hun Sen, Cambodia’s prime minister between 1985 and 2023, sought to protect certain ex-Khmer Rouge cadre from prosecution. In the end, despite sitting for 25 years, the court convicted only three senior Khmer Rouge leaders: Kaing Guek Eav, the commander of the S-21 death camp in Phnom Penh; Nuon Chea, “Brother Number Two” in the regime; and Khieu Samphan, the head of state. Many others—such as military chief Ta Mok and the Khmer Rouge’s foreign minister Ieng Sary, whose wife Ieng Thirith was ruled mentally unfit to stand trial—died of old age before justice could be rendered.

Hun Sen, whose government Bernath describes as “neo-patrimonial”, persistently politicized the ECCC as a vehicle to

ensconce his rule and his Cambodian People's Party (CPP), to which several Khmer Rouge commanders had defected and found sanctuary in the 1980s and 1990s. Bernath also criticizes the UN, Western powers and China, all of whom had backed the Khmer Rouge when it was ousted in 1979 by Vietnamese troops and some defectors, including Hun Sen, and after that refused to disassociate themselves from the Khmer Rouge in the 1980s even after its atrocities became well-known.

Bernath interviewed more than 400 people from across Cambodia, many from impoverished rural areas, as well as ECCC officers and staff of non-governmental organizations (NGOs) working in Cambodia's transitional justice system. She also interviewed the victims who opted out of the ECCC's civil party action—which enabled survivors to participate in the tribunal and seek reparations—and supporters of Cambodia's political opposition. Bernath dissects her interviewees' attitudes about justice and their beliefs in the ECCC's ability to deliver it through an exploration of their experience of living under the Khmer Rouge, of Vietnamese "occupation" in the 1980s and of the CPP's crackdown on political dissent in the 2010s.

Bernath's interviews in the final chapter are as powerful as they are erudite and telling. One respondent even suggested that the CPP's poor showing at the 2013 general elections, when it only narrowly beat its main rival in the popular vote, was because Hun Sen meddled in the ECCC and his protection of Khmer Rouge cadre who deserved to be prosecuted in cases 003 and 004 (p. 146), a reference to former Khmer Rouge commanders Meas Muth, Im Chaem, Ao An and Yim Tith. Poverty and wealth disparity, forced evictions, land grabbing, political alienation in the rural areas, the plundering of natural resources and the stripping of rainforests, and the use of courts to silence government critics—these are all prominent issues in Cambodia's post-war transition, all part of the story of the country's transitional justice, as this book explains.

Bernath ably articulates the criticisms of the tribunal but also stresses that it was not meaningless (p. 200). Far from it. The ECCC did secure convictions; it did put on the historical record and into international law the litany of atrocious crimes committed by the Khmer Rouge. The achievements could assist the justice systems of other post-conflict societies for generations to come.

However, two questions will continue to be debated: did the ECCC, as a hybrid tribunal, succeed in strengthening Cambodia's justice system; and can it serve as a model for future prosecutions of war crimes globally? Supporters of the hybrid model insist it was

important that prosecutions took place within the country where the crimes were committed, as opposed to happening somewhere like the International Court of Justice in The Hague, where there is less access for victims. However, detractors can point to Bernath's book when arguing that true justice cannot be achieved if a war crimes tribunal falls under the influence of self-serving ruling elites. "Even though it is an internationalized institution, the ECCC is deeply mistrusted for being embedded in the political status quo", Bernath writes (p. 199).

The *Khmer Rouge Tribunal* is a thoughtful, intelligent book. It deserves a place among the plethora of literature which testifies to the Khmer Rouge's atrocious crimes. This type of academic research was not thought possible 23 years ago when negotiations between the UN and Phnom Penh to create the tribunal seemed hopelessly deadlocked. It was only the ardent few who believed some type of justice for victims of the Khmer Rouge was possible—which it was.

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