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A Curse Not Limited to Cambodia

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A Curse Not Limited to Cambodia

Abstract

Brinkley's piece draws welcome attention to the virtual farce of hybrid justice now underway in Cambodia, although the emphasis of the piece on the prevalence of corruption de-emphasizes a broader point: human rights protections are not respected in Cambodia, and serious accountability for the abuses by the Khmer Rouge or any subsequent abuses are unlikely, not merely because leaders are corrupt, but because the wide scale culture of impunity makes the protection of human rights and functional rule of law virtually impossible.

Keywords

Human rights, Cambodia, Post-war reconstruction, Peace, Stability, Corruption, Repression

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A Curse Not Limited to Cambodia

by Chandra Lekha Sriram

Brinkley's piece draws welcome attention to the virtual farce of hybrid justice now underway in Cambodia, although the emphasis of the piece on the prevalence of corruption de-emphasizes a broader point: human rights protections are not respected in Cambodia, and serious accountability for the abuses by the Khmer Rouge or any subsequent abuses are unlikely, not merely because leaders are corrupt, but because the wide scale culture of impunity makes the protection of human rights and functional rule of law virtually impossible. In such circumstances, it is not merely that political leaders circumvent institutions of accountability, including hybrid tribunals such as the [Extraordinary Chambers in the Courts of Cambodia](#) (ECCC). Rather, governments and officials implicated in past violence seek to control them from their inception—if they cannot prevent an accountability institution from being created due to international pressure, they have learned, they can still manipulate it. In such circumstances, as in Cambodia, governments may seek to limit the mandate or composition of a court, and further to control those nationals working for the court in an effort to limit the possibly moderating effect of international staff. In other cases, the international actors themselves promoting the tribunal may have specific agendas or the affected population may believe that they have such agendas. Institutions ostensibly designed to right past wrongs and promote an end to a culture of impunity instead become tools in political battles by entrenched elites hoping that they can limit their impact, (as in Cambodia) or only target particular groups of perpetrators (as some have alleged was the case in Sierra Leone). In this, Cambodia is not the only country cursed.

It wasn't supposed to be this way. Hybrid mechanisms were developed ostensibly to address both the weakness of international trials, which were too distant from "the scene of the crime," and of domestic trials, which were too susceptible to political manipulation. Specifically, the presence of international judges and staff is meant to defend against attempts by governments or others with power to manipulate local staff. However, in practice they are often still rather disconnected from the affected society, and, more relevant in this context, subject to political manipulation, bias, and the appearance of bias. This is not to say that many aren't created with the best of intentions, and dedicated and professional staff; but many are. However, local, regional, and international politics may still hamper their operation.

The Cambodian Extraordinary Chambers is but one of a range of current or proposed tribunals with hybrid characteristics which appear to be plagued by political manipulation and politicization. The [Lebanon Special Tribunal](#) was designed to address the killing of only one individual, [Prime Minister Rafik Hariri](#), which seems woefully limited given that country's long history of civil war, internal repression, and the 2006 conflict with Israel. Indeed, the creation of a costly hybrid for the assassination of one person is rather [disproportionate](#). Some in the region view its very creation through a political lens, as a Western-promoted institution designed to demonstrate Syrian guilt for the assassination, while a range of alleged violations of international humanitarian and human rights law go unpunished, such as Israeli conduct in Gaza, despite [international legal experts' calls for investigations](#). The tribunal proposed for Kenya following the report of a commission of inquiry into the election violence that shook the country in early 2008 has been defeated in Parliament, but may be revived less out of genuine political will to prosecute perpetrators, many of whom retain positions of power, than to avoid

[before the ICC](#). Kenyan politicians are likely to promote a toothless tribunal, empowered to try very few persons, to impose serious sentences, or unlikely even to publicize much of the evidence of high-level involvement in the violence. The less said about the [Iraqi High Tribunal's political origins](#) the better, notwithstanding the triumphant declarations by some that the acquittal of [Tariq Aziz](#) on some charges demonstrated its independence. The tribunal is in one sense a hybrid, in that it involves a domestic process with a statute that includes international crimes, but otherwise lacks the international judges or staff of other hybrids.

The shaky start of the ECCC may well illustrate the impact of corruption and a culture of impunity in Cambodia on the prospects for justice, but it also demonstrates a broader weakness with hybrid tribunals, their potentially great susceptibility to political manipulation. Just as governments can learn “donor speak” and continue with corruption, so too can they learn to mimic “human rights speak,” permitting tribunals with little power to function, and seeking continuously to limit their independence. In such circumstances, accountability, and future protections of human rights, are likely to get short shrift.

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