

CAMBODIA'S KHMER ROUGE TRIAL LAW

For the survivors of Pol Pot's brutal efforts at agrarian revolution during the four years he ruled Cambodia the horrific memories have in no way faded as Colin McDonald QC discovered when he attended the first community debate about the recently passed Khmer Rouge Trial Law in Phnom Penh this year.

"Late last year both houses of Cambodian parliament, after a long period — and I mean decades — of international pressure from the US and others, passed laws to deal with the period of genocide and crimes against humanity under Pol Pot," said Mr McDonald.

"I just happened to be in Cambodia at the time the Cambodian Centre for Social Development held a public meeting about the new law and its implementation. From later this year and next year this is going to be a significant international legal issue in terms of the investigation and prosecution of the senior leaders of the Khmer Rouge."

The law under discussion is called colloquially the Khmer Rouge Trial law but formally the *Law on the Establishment of an Extraordinary Formation in the Court of Cambodia for prosecuting crimes committed during the period of the Democratic of Kampuchea*.

The time period the law deals with is set out as 17 April 1975 — the day when Pol Pot entered, cleared the city Phnom Penh and started to create his vision of a rural Utopia — until 6 January 1979 which marked what Cambodians call "the era of the contemptible Pot".

During that time up to two million of the seven million Cambodian people — one in every five — were killed or died of hunger, disease and beatings.

"I still don't understand how it all happened. Cambodia was decimated by genocide, civil war and invasion. The people are literally exhausted. People are war weary and have had enough. And who can blame them? East Timor had major problems with its crimes against humanity but not in the order or magnitude as they did in Cambodia. Cambodia is really now



The streets of Cambodia still carry the marks of the destruction wrought under the Pol Pot regime

only about nine years ahead of East Timor," said Mr McDonald.

The Khmer Trial law sets up what are called Extraordinary Formations in the existing Cambodian court processes to prosecute the senior leaders of Democratic of Kampuchea and other persons responsible for the crimes and the most serious violations of Cambodian criminal law, including homicide, torture and religious persecutions.

The Extraordinary Formations also provide for people to be brought to trial pursuant to abuse of the Geneva Convention, the 1954 Hague Convention and shall have the power to bring to trial those suspected of being responsible for crimes against the persons who are internationally protected pursuant to the 1973 Convention for the Prevention and Punishment for Crimes Against the Internationally Protected Persons.

The Formations will be conducted in the First Instance Court, the Appeal Court and Supreme Court located in Phnom Penh. The Supreme Court of the Magistracy will appoint at least twelve Cambodian judges to be trial judges and a number of reserved judges as required.

The First Instance Court will be composed of five judges — two of whom will be foreign judges. The Court of Appeal will be composed of seven judges including three foreign judges, and the Supreme Court will have nine judges, including five foreign judges.

"I was fortunate to attend the public debate about the new law when I was in Cambodia and even had a full English translation of the discussion," Mr McDonald told *Balance*.

"It was a very polite, vigorous and captivating debate for an outsider. The main issues were: who were going to be put on trial; the competency of the Cambodian judges to hear the cases and the impartiality of the foreign judges to also hear the cases; and whether the Counsel appearing for the accused in the cases should be extended to foreigners.

"As one participant said: "when these extraordinary formations start hearing the charges some of the defendants are going to need 'extraordinary defence lawyers'.

"There were only four outsiders there. They set out chairs for about 100 people and about 2000 turned up in Phnom Penh.

"What really struck me was that the memories of that genocide had in no way faded," he said.

"I took notes of the debates and one of the main issues of concern for people there was who were the senior leaders during Pol Pot's regime. The overall expressions of concern was that prosecution should not be just confined to the top few and then the others get off," said Mr McDonald.

Pol Pot himself died in 1998 at the age of 73 unrepentant saying his "conscience was clear".

"The trials are clearly going to be a fascinating process and I am sure the international spotlight will be on Cambodia as they commence later in 2001," said Mr McDonald.