# Legacy at the Extraordinary Chambers in the Courts of Cambodia: Research Overview

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*"We hope that judges, lawyers and legal staff working here will become a great asset for the Cambodian judicial system and its future reform."*
H.E. Tony Kranh,
Acting Director of the ECCC's Office of Administration
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## I. INTRODUCTION

This analysis provides a brief overview of the developing and ongoing legacy projects at the Extraordinary Chambers in the Courts of Cambodia (ECCC). It attempts to situate those initiatives in a broader framework, emphasizing connections to legacy 'themes' common to other hybrid and international tribunals as well as noting instances in which legacy at the ECCC might be unique, bearing in mind the Cambodian context. When relevant, this analysis offers comparisons to and examples from legacy projects at the Special Court for Sierra Leone (SCSL)—selected because of its hybrid structure, which is similar to the ECCC's—and the International Criminal Tribunal for Rwanda (ICTR)—selected because the international structure and location can be compared and contrasted with the ECCC's *in situ* status and hybrid nature.

Although this overview includes information gleaned from interviews with representatives from the Office of the United Nations High Commissioner for Human Rights in Cambodia, the court's Defence Support Section, Office of the Co-Prosecutors and Civil Party Lead Co Lawyers Section, the Cambodian Center for Human Rights, the Open Society Justice Initiative and the Documentation Center of Cambodia, due to time constraints the author was unable to obtain interviews with other relevant stakeholders, such as the court's Office of Administration, the Bar Association of the Kingdom of Cambodia and the Cambodian government's Council for Legal and Judicial Reform.[1] As a result, this research outline is not a comprehensive overview of legacy generally or legacy at the ECCC, and should not be relied on as such.[2] Rather, this outline might best be used as a starting place for further exploration and analysis of legacy initiatives at the ECCC.

## II. WHAT IS LEGACY?

### 1. Legacy: A Broad Definition

In the context of hybrid courts and tribunals, the Office of the United Nations High Commissioner for Human Rights (OHCHR) defines 'legacy' as "a hybrid court's lasting impact on bolstering the rule of law in a particular society, by conducting effective trials to contribute to

[1] Although the author would have liked to meet with and interview representatives from these offices, she was unable to do so due to limited time and difficulty getting in contact.

[2] Useful complementary resources include OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES: MAXIMIZING THE LEGACY OF HYBRID COURTS 4-5 (2008), *available at* http://www.ohchr.org/Documents/Publications/Amnesties_en.pdf, which provides a detailed overview of considerations for legacy at hybrid tribunals, and ALEX BATES, ATLAS PROJECT, TRANSITIONAL JUSTICE IN CAMBODIA: ANALYTICAL REPORT (2010), *available at* http://projetatlas.univ-paris1.fr/IMG/pdf/ ATLAS_Cambodia_ Report_FINAL_EDITS_Feb2011.pdf, which includes relevant information from Bates' interviews with various actors at the ECCC.

ending impunity, while also strengthening domestic judicial capacity."[3] As the International Center for Transitional Justice (ICTJ) describes, "[l]egacy should also lay the groundwork for future efforts to prevent a recurrence of crimes by offering precedents for legal reform, building faith in judicial processes, and promoting greater civic engagement on issues of accountability and justice."[4]

OHCHR describes several broad categories of potential legacy initiatives:

- First, human resources and professional development projects, such as national and international staff recruitment considerations, mentoring and training, which are designed to facilitate capacity building within the host country.[5] Professional development might include non-legal skills transfer, extending to related fields such as journalism, psychology, translation, and forensics.[6]
- Second, physical infrastructure projects, which include archiving court records and utilizing the physical court facility for continuing projects.[7]
- Third, hybrid courts might catalyze domestic legal reform, and impact on domestic and international jurisprudence.[8]
- Finally, rule of law legacy includes building confidence in the judicial system, for example using the "demonstration effect" to promote fair trial rights and high standards of judicial independence, impartiality, due process, and fostering respect for human rights in the national system by showcasing these values at the hybrid court.[9]

As will be discussed in more detail, the ECCC has ongoing or developing legacy projects in each of the four OHCHR categories, although support for and momentum behind legacy is stronger in some areas more than in others.

In addition to a wide range of potential legacy initiatives, 'legacy' is also not necessarily defined consistently from court to court or even among actors working on legacy within the same court. For example, the ECCC does not appear to have any cohesive public presence with respect to legacy. There have been a handful of press releases related to ongoing legacy initiatives;[10] however, there is no 'legacy' section on the court's website. The website's only reference to specific legacy projects is made by the court's Defence Support Section (DSS)—which provides a

[3] OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., *supra* note 1, at 4-5.
[4] CAITLIN REIGER, INT'L CTR. FOR TRANSITIONAL JUST., WHERE TO FROM HERE FOR INTERNATIONAL TRIBUNALS?: CONSIDERING LEGACY AND RESIDUAL ISSUES 1 (2009), *available at* http://ictj.org/sites/default/files/ICTJ-Global-Legacy-Tribunal-2009-English.pdf.
[5] *See* OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., *supra* note 1, at 23-34.
[6] *Id*. at 32.
[7] *Id*. at 35-36.
[8] *Id*. at 37-39.
[9] *Id*. at 17-18.
[10] *See, e.g.*, Public Announcement, Extraordinary Chambers in the Courts of Cambodia, ECCC enters into agreement for the creation of a virtual tribunal (2010), *available at* http://www.eccc.gov.kh/en/articles/eccc-enters-agreement-creation-quotvirtual-tribunalquot.

detailed description of its legacy projects in its section of the court's website. The DSS also uniquely includes an 'Outreach and Legacy' section in its submission to each month's Court Report online newsletter. The Victims Support Section references the concept of legacy in their mission statement, explaining that their vision includes: "to have the Court's legacy benefit future position developments in Cambodia."[11]

In contrast, the Special Court for Sierra Leone website describes a diverse range of what seem to be court-wide legacy projects, noting in its 'Legacy' section that the Court attempts to act as a model institution promoting the rule of law, facilitates professional development for national staff and seeks to strengthen the domestic justice system and related institutions.[12] It emphasizes specific court-driven legacy projects, including realizing a beneficial and viable continued usage of the Court's physical infrastructure,[13] reconfiguring part of the site into a museum,[14] transferring the Court's witness protection program to the national system,[15] establishing an archive for the court's records,[16] improving national detention standards,[17] and providing trainings to promote skills transfer to the national judicial system.[18]

## 2. Outreach v. Legacy

Sometimes 'outreach' seems to include programs that are or might additionally be categorized as legacy projects. For example, the ICTR's Outreach Program includes "training programs and professional workshops for Rwandan lawyers and judges aimed at strengthening Rwanda's judicial capacity."[19] Similarly, the 'Outreach Section' at the SCSL facilitates capacity-building

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[11] *VSS Structure*, Victims Support Section, EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIAhttp://www.eccc.gov.kh/en/victims-support/vss-structure (last visited Aug. 23, 2011).
[12] *Legacy Overview*, Legacy, THE SPECIAL COURT FOR SIERRA LEONE, http://www.sc-sl.org/LEGACY/tabid/224/Default.aspx (last visited Aug. 23, 2011).
[13] *Site Project*, Legacy, THE SPECIAL COURT FOR SIERRA LEONE, http://www.sc-sl.org/LEGACY/SiteProject/tabid/225/Default.aspx(last visited Aug. 23, 2011).
[14] *Peace Museum*, Legacy, THE SPECIAL COURT FOR SIERRA LEONE, http://www.sc-sl.org/LEGACY/PeaceMuseum/tabid/226/Default.aspx(last visited Aug. 23, 2011).
[15] *National Witness Protection Programme*, Legacy, THE SPECIAL COURT FOR SIERRA LEONE, http://www.sc-sl.org/LEGACY/NationalWitnessProtectionProgramme/tabid/227/Default.aspx(last visited Aug. 23, 2011).
[16] *Archives Development Programme*, Legacy, THE SPECIAL COURT FOR SIERRA LEONE, http://www.sc-sl.org/LEGACY/ArchivesDevelopmentProgramme/tabid/229/Default.aspx(last visited Aug. 23, 2011).
[17] *Improving Detention Standards and Access to Justice for Women and Juveniles*, Legacy, THE SPECIAL COURT FOR SIERRA LEONE,http://www.sc-sl.org/LEGACY/ImprovingDetentionStandards/tabid/231/Default.aspx(last visited Aug. 23, 2011).
[18] *Capacity-Building: Professional Development Program*, Legacy, THE SPECIAL COURT FOR SIERRA LEONE, http://www.sc-sl.org/LEGACY/ProfessionalDevelopmentProgramme/tabid/230/Default.aspx(last visited Aug. 23, 2011).
[19] INT'L CRIM. TRIB. FOR RWANDA & THE INT'L CTR. FOR ETHICS, JUST., AND PUB. LIFE AT BRANDEIS UNIV., SYMPOSIUM ON THE LEGACY OF INTERNATIONAL CRIMINAL COURTS AND TRIBUNALS IN AFRICA, WITH A FOCUS ON THE JURISPRUDENCE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA 35 (2010), *available at*http://www.brandeis.edu/ethics/pdfs/internationaljustice/Legacy_of_ICTR_in_Africa_ICEJPL.pdf.

projects within the Court's Legacy Programmes, including training local government and judicial actors "on topics pertaining to international humanitarian law, the rights of suspects and accused persons, international standards of detention and the rights of women in the native administration process."[20] Legacy work conducted by outreach offices might simply mean that those offices, at some hybrid and international courts, have responsibility for certain legacy initiatives. It does not necessarily imply that legacy is entirely subsumed under 'outreach.' Further, not all legacy projects seem to be categorized as outreach—for example, archives and physical infrastructure-related projects don't appear to be described as outreach projects.

Likewise, although outreach might connect to and enhance legacy projects, it is unclear that all outreach necessarily falls under the 'legacy' category. On the one hand, it might be argued that any efforts to spread awareness about ongoing proceedings and encourage related participation and educational initiatives contributes to the court's ability to promote domestic reform or act as a model court. OHCHR considers outreach to be a crucial component of legacy.[21] ICTJ suggests that ongoing outreach is a "major dimension of protecting the positive legacy" of hybrid and international tribunals.[22] At the SCSL, outreach activities are used to encourage civil society advocacy for improvements to the justice system and promotion of the rule of law.[23] With respect to the ICTR, it has been noted that an understanding of the Tribunal's work is essential for the Tribunal to contribute to peace in Rwanda and the region.[24] Interviewees from distinct ECCC sections said that their offices' participation in outreach to Cambodian communities enables them to explain their work to the public and helps make the court and its proceedings seem real to Cambodian communities.[25]

A possible dividing line between the concepts of legacy and outreach was suggested by an ECCC interviewee: outreach that includes explaining fair trial rights, rule of law, legal concepts and the workings of the justice system might be connected to legacy, whereas outreach that promotes understanding of the Court's purpose and reconciliation more generally might be separate from legacy.[26]

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[20] H. J. GEORGE GALAGA KING, SPECIAL COURT FOR SIERRA LEONE, FOURTH ANNUAL REPORT OF THE PRESIDENT OF THE SPECIAL COURT FOR SIERRA LEONE 53-54 (2007), *available at* http://www.sc-sl.org/LinkClick.aspx?fileticket=SaCsn9u8MzE%3d&tabid=176.

[21] OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., *supra* note 1, at 18.

[22] REIGER, *supra* note 4, at 5.

[23] INT'L CRIM. TRIB. FOR RWANDA & THE INT'L CTR. FOR ETHICS, JUST., AND PUB. LIFE AT BRANDEIS UNIV., *supra* note 20, at 36.

[24] *Id*. at 34.

[25] Interview with William Smith, Office of the Co-Prosecutors, Extraordinary Chambers in the Courts of Cambodia, in Phnom Penh, Cambodia (Aug. 23, 2011); Interview with Elisabeth Simonneau Fort, International Lead Co-Lawyer, Civil Party Lead Co Lawyers Section, Extraordinary Chambers in the Courts of Cambodia, in Phnom Penh, Cambodia (Aug. 24, 2011).

[26] Interview with Rupert Abbott, Defense Support Section, Extraordinary Chambers in the Courts of Cambodia, in Phnom Penh, Cambodia (Aug. 17, 2011).

### 3. A Legacy Mandate at the ECCC?

Neither of the Court's two foundational documents— the framework agreement between the UN and the Cambodian Government and the Cambodian law establishing the court—contain any mention of 'legacy.' The Court's Internal Rules only mention legacy indirectly, with respect to the Defence Support Section (DSS). Specifically, Rule 11(2)(k) states that DSS shall "Organize training for defence lawyers in consultation and cooperation with the BAKC [Bar Association of the Kingdom of Cambodia]."[27] Multiple interviewees suggested that because there is no reference to legacy in the founding documents and no specific legacy mandate for the court generally or specific offices, it has not always been clear who at the court or in individual sections can actively initiate or assume responsibility for legacy initiatives.[28]

Similarly, the SCSL's Statute, Agreement, and Rules do not contain any overt mention of legacy.[29] Referencing the sorry state of the SCSL's legacy, one report asserted that the situation existed "in part because legacy was not formally included in the tribunal's mandate."[30]

In comparison, the preamble to the ICTR statute mentions "the need for international cooperation to strengthen the courts and judicial system of Rwanda, having regard in particular to the necessity for those courts to deal with large numbers of suspects."[31] The reference to the national courts' complementary role likely reflects the ICTR's primacy over national courts trying similar crimes. In contrast, the ECCC is a national court specifically tasked with trying crimes from the Khmer Rouge era. As a consequence, it is unlikely that other domestic Cambodian courts will become seized of crimes falling within the ECCC's specialized jurisdiction. A possible consequence is that building additional domestic capacity to try mass crimes was not seen as a legacy priority.

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[27] ECCC Internal Rule 11(2)(k).

[28] For example, interview with Michelle Staggs Kelsall, Human Rights Officer, Office of the United Nations High Commissioner for Human Rights, in Phnom Penh, Cambodia (July 18, 2011) (discussing the court's lack of a broad mandate for legacy); interview with William Smith, *supra* note 25 (explaining that without a specific legacy mandate, a section is more likely to take advantage of opportunities as they present themselves).

[29] At least one U.N. report suggests that the purpose of establishing the SCSL included strengthening the national judicial system. U. N. Secretary-General, *Report of the Secretary General on possible options to further the aim of prosecuting and imprisoning persons responsible for acts of piracy and armed robbery at sea off the coast of Somalia…*, 39, U.N. Doc. S/2010/394 (July 26, 2010), *available at* http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Somalia%20S2010%20394.pdf. In fact, this Report suggests that relevant resolutions for the SCSL *and* ECCC "state that the purpose for establishment also includes the strengthening of the national judicial system." *Id*.

[30] THIERRY CRUVELLIER, INT'L CTR. FOR TRANSITIONAL JUST.& SIERRA LEONE CT. MONITORING PROGRAM, FROM THE TAYLOR TRIAL TO A LASTING LEGACY: PUTTING THE SPECIAL COURT MODEL TO THE TEST 37 (2009).

[31] Preamble, Statute of the Tribunal, International Criminal Tribunal for Rwanda, *available at*http://www.un.org/ictr/statute.html.

## 4. The Unique Potential for Legacy at the ECCC

The ECCC, a Cambodian court with UN participation, might be uniquely situated with respect to legacy. The *in situ* status of hybrid tribunals—located in the country where the conflict occurred—is often considered to enhance national capacity-building.[32] In fact, a hybrid national/international court's "supposed capacity-building effect upon the domestic criminal justice system" and local judges and lawyers is one of the more common justifications for in-country trials.[33]

A report from the U.N. Secretary-General on rule of law and transitional justice explains that a tribunal's national location might enhance domestic capacity-building by contributing physical infrastructure to national justice systems, building skills of national personnel, promoting collaboration between international and national staff, and providing on-the-job training.[34]

A hybrid tribunal enables international and local legal professions to work together, which might lead to "the local application of existing international humanitarian law as well as the local development of mass atrocity norms."[35] An in-country location might uniquely position a hybrid tribunal as a "standard-setting institution," able to advance rule of law principles such as independence, impartiality and equality before the law.[36]

Additionally, one report suggests that even when a hybrid court's national staff is working at the hybrid court instead of inside the national judiciary, they retain their bonds with other members of the local judiciary and are likely to return to the local system, "infusing it with the skills and knowledge obtained at the hybrid."[37] However, as the report notes and as is discussed in more detail in Section IV(4) supra, there is a risk of attrition, and the return to the local system is not guaranteed.[38] The ECCC may be especially unique in this respect, because many of the court's national staff also continue to work in the national legal system. One interviewee suggested that the court's national staff could share information with those working in the national legal sector whether or not they continue or return to working in the domestic legal system. He noted that many national staff retain connections to their colleagues in the national system and could communicate with them to enable information-sharing.[39]

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[32] U.N. Secretary-General, *The rule of law and transitional justice in conflict and post-conflict societies: Rep. of the Secretary-General*, ¶ 44, U.N. Doc. S/2004/616 (Aug. 23, 2004), *available at* http://daccess-ods.un.org/TMP/ 6171277.76145935.html.

[33] BATES, *supra* note 2, ¶ 142.

[34] U.N. Secretary-General, *supra* note 32, ¶ 44.

[35] Laura A. Dickinson, *The Promise of Hybrid Courts*, 97:2 AM. J. INT'L L. 295, 307 (Apr., 2003).

[36] INT'L CRIM. TRIB. FOR RWANDA & THE INT'L CTR. FOR ETHICS, JUST., AND PUB. LIFE AT BRANDEIS UNIV., *supra* note 19, at 36 (referring to the SCSL).

[37] Etelle R. Higonnet, Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform, 23:2 Ariz. J. Int'l & Comp. L. 347, 368 (2006).

[38] *Id*.

[39] Interview with Panhavuth Long, Program Officer, Cambodia Justice Initiative, in Phnom Penh, Cambodia (Aug. 23, 2011).

With respect to the *in situ* location of and national participation in the SCSL, Vincent O. Nmehielle and Charles Chernor Jalloh observe: "It eases and reduces the costs of investigations and prosecutions; facilitates the collection and preservation of evidence and interaction with witnesses; builds the capacity of national staff in a range of areas; and leaves open the possibility that upon completion of its work, there will be a transfer of the court's physical infrastructure—including buildings and equipment—to the largely dilapidated and impoverished Sierra Leonean courts."[40] Further, in Sierra Leone, "the national lawyers working at the Special Court speak positively about their experience and agree that it has assisted them to enhance their advocacy skills and to improve in their case management."[41]

Contrasting the SCSL with the ICTR, one observer has noted that at the SCSL, a feeling of "ownership" facilitated "an atmosphere of heightened awareness and active participation," which was not the case at the ICTR.[42] Although the ICTR is not a hybrid court, the participation of Rwandan staff has been described as "especially useful for local courts" for both specific projects such as apprehending perpetrators and more general principles of fair trials.[43]

The ECCC appears well-positioned to impact the national judicial system because it is a national court whose Internal Rules are based on the Cambodian Criminal Procedure Code. The ECCC's interpretation of the Internal Rules might be uniquely relevant to domestic law and practice. For example, the Legal Practitioners Handbook (discussed below), which will annotate the Cambodian Criminal Procedure Code with relevant ECCC decisions, seeks to capitalize on this connection.[44]

### 5. Avoiding Negative and Reverse Legacy

With unique potential comes unique challenges, however, and assumptions that hybrid tribunals are better positioned to positively influence national systems "should be scrutinized, as they often fail to adequately recognize the particularities of the contexts in which these courts exist."[45]

#### a. Negative Legacy

[40] Vincent O. Nmehielle& Charles Chernor Jalloh, *The Legacy of the Special Court for Sierra Leone*, 30:2 THE FLETCHER F. OF WORLD AFF. 107, 109 (2006).
[41] Michelle Staggs, "*Bringing Justice and Ensuring Lasting Peace": Some Reflections on the Trial Phase at the Special Court for Sierra Leone*, SECOND INTERIM REPORT ON THE SPECIAL COURT FOR SIERRA LEONE (War Crimes Studies Center, University of California, Berkeley), Mar. 30, 2006, at 24-25 *available at* http://www.ocf.berkeley. edu/~changmin/documents/SecondInterimReport_001.pdf.
[42] INT'L CRIM. TRIB. FOR RWANDA & THE INT'L CTR. FOR ETHICS, JUST., AND PUB. LIFE AT BRANDEIS UNIV., *supra* note 20, at 35.
[43] *Id*. at 9.
[44] Concept Paper from the Office of the Co-Prosecutors at the ECCC on the Cambodian Criminal Procedure Code Legal Practitioners Handbook (Oct. 22, 2010) (on file with author); *infra* § III(2).
[45] REIGER, *supra* note 4, at 4-5.

The 'Demonstration Effect' refers to a hybrid court's ability to promote "trust in the legal system as a viable avenue for dealing with future conflicts and ongoing violations of human rights."[46] As a Cambodian court that endeavors to act as model institution upholding—among other ideals—fair trial rights and judicial independence (hence upholding the rule of law), it is especially important that the ECCC itself embody these values. When the court fails to do so, the message it sends to the domestic judicial system and those who come into contact with it is one that is negative, rather than positive. If a court like the ECCC is unable to exercise judicial independence, for example, despite vast international support and presence, citizens may ask themselves how a regular Cambodian court can be expected to do so. Because the domestic nature and location of the court facilitate heightened public awareness about court proceedings, it is particularly important that the court proceedings demonstrate the values that they purport to model and encourage. As the OHCHR has noted: "It is essential that hybrid initiatives aspire to the highest standards of independence, impartiality, and application of norms of due process and international human rights."[47]

Although available empirical evidence tends to suggest that the ECCC has had a positive domestic impact on perceptions of justice to date, the potential for negative legacy remains, in particular due recent controversies regarding inchoate Cases 003 and 004. Several interviewees reflected on the ECCC's potential for a negative legacy. One pointed to allegations of corruption and political interference that might result in a negative 'demonstration effect.'[48] Likewise, another noted that the ECCC demonstrates to the domestic legal system that even a Cambodian court receiving international support and under international scrutiny can be subject to corruption and political interference.[49] Another questioned the overall legacy of an international criminal institution "if it effectively colludes to shelter those alleged to have committed the most heinous atrocities from facing accountability."[50] These interviewees express concern that the court—despite demonstrating many important aspects of fair trials and the rule of law—could ultimately have a negative demonstration effect on the rule of law and related values.

b. Reverse Legacy

Hybrid courts must also avoid "reverse legacy," which refers to the potential for a capacity drain from the domestic system to the hybrid court.[51] Reverse legacy could divert focus from domestic legal reforms, and could contribute to negative perceptions of the local legal system.[52] It has been argued, for example, that the ECCC has taken the focus away from the "poor state of

[46] OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., *supra* note 2, at 6.
[47] *Id.* at 17.
[48] Interview with Rupert Abbott, *supra* note 26.
[49] Interview with John Coughlan, Cambodian Center for Human Rights, in Phnom Penh, Cambodia (Aug. 23, 2011).
[50] E-mail from Clair Duffy, Khmer Rouge Tribunal Monitor, Open Society Justice Initiative, to author (Aug. 19, 2011, 15:15 ICT) (on file with author).
[51] OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., *supra* note 2, at 15.
[52] *Id.*

the domestic criminal justice system," allowing the government to deflect attention and providing a distraction—likely domestic and international—from the domestic system's problems.[53] Another observer, however, has suggested that in fact the increased national and international attention around the ECCC creates a unique space in which to advocate for domestic legal reform.[54]

OHCHR suggests three ways that reverse legacy might be prevented: avoiding creating a parallel system that replaces local resources with international resources; complementing the hybrid court with advocacy for a strengthened domestic system; and "instituting a rigorous plan" for handing over the hybrid court to the national system.[55]

Reverse legacy issues proved problematic for the Special Court for Sierra Leone, where high numbers of national staff at the court created a "gap in the domestic judiciary,"[56] with one observer noting that the "quite a lot" of the "best professionals" left the national system for the Special Court.[57] However, one interviewee suggested that although the ECCC might 'drain' domestic capacity from other parts of the national justice sector—including courts, relevant government ministries, law schools and non-governmental organizations—this drain was perhaps not significantly different to that caused by large foreign embassies and a number of foreign organizations operating in Cambodia, and was tempered by the fact that some Cambodian nationals working at the ECCC continue to work in the national justice sector in addition to undertaking their responsibilities at the Court.[58]

## 6. Evaluating Legacy

Although one would assume that 'legacy' ought to be evaluated in some way, information about specific methods for evaluating or measuring legacy seems to be sparse. The most common form of evaluation appears to be gauging public perceptions of the court and its work, which might indicate a court's significance as a 'model' institution, impact on rule of law and/or potential to inspire domestic reform. The ICTJ notes that one measure of tribunals' legacy is "the extent to which they have contributed to public perceptions and debates about events that took place during the conflict."[59]

In a report entitled "After the First Trial," the Human Rights Center at the University of California, Berkeley School of Law surveyed the knowledge and perception of justice among Cambodians

[53] BATES, *supra* note 2, ¶ 143.
[54] Interview with John Coughlan, *supra* note 49.
[55] OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., *supra* note 2, at 16.
[56] Jessica Lincoln, *Chapter Six: Legacy*, Peace and Accountability, 30 (unpublished draft) (on file with author).
[57] *Id*. at 31 (quoting from an interview with a Sierra Leonean judge).
[58] Interview with Rupert Abbott, *supra* note 26.
[59] REIGER, *supra* note 4, at 5.

with respect to the ECCC.[60] Its report summarizes surveys of 1000 Cambodians, selected at random, who were interviewed in December 2010.[61] This report might offer insight into certain elements of the ECCC's impact and potential legacy, as it provides information about public knowledge, perceptions, and expectations of the ECCC.[62]

Tracking participants in training programs, workshops, internships or related initiatives might be another way to measure the impact of capacity-building legacy projects. When asked about whether or not the DSS 'tracks' law students participating in DSS legacy initiatives—internships in the defence teams at the ECCC or the 'Fair Trial Rights Club' (discussed below) for example[63]—to determine whether they have benefited from participating and to evaluate the potential impact of their participation on their career, Rupert Abbott from the DSS explained that follow-up with past-participants happens in the short-term, but only informally in the longer term.[64] While the DSS requests feedback from students participating in DSS legacy initiatives and evaluates the short-term impact of such initiatives on participants' knowledge and skills, he noted that it will be difficult to measure the ultimate legacy of the Court after its conclusion, because the ECCC itself—and the sections facilitating legacy initiatives—will no longer exist.[65] This suggests that the long-term impact of legacy initiatives must either be evaluated by separate entities—OHCHR, NGOs, or perhaps academic institutions, for example—or that the court must somehow provide for continuing impact assessment after the judicial proceedings conclude.

## III. AN OVERVIEW OF CURRENT ECCC LEGACY PROJECTS

### 1. Relevant Actors

a. Court Actors

The Legacy Advisory Group (LAG)and Legacy Secretariat (LS) represent the court's attempt to collaboratively plan and implement legacy projects.[66] The Director and Deputy Director of the Office of Administration chair LAG, which is also intended to include the President of the Office of the Resident Judge, the National and International Prosecutors of the Office of the Co-Prosecutors, the National and International Co-Investigating Judges of the OCIJ, the President of

[60] PHUONG PHAM ET AL., HUMAN RIGHTS CENTER, UNIVERSITY OF CALIFORNIA, BERKELEY SCHOOL OF LAW, AFTER THE FIRST TRIAL: A POPULATION-BASED SURVEY ON KNOWLEDGE AND PERCEPTION OF JUSTICE AND THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (2011), *available at* http://www.law.berkeley.edu/HRCweb/pdfs/After-the-First-Trial.pdf.
[61] *Id*. at 3.
[62] *Id*. at 3-4.
[63] *Infra* § III(2).
[64] Interview with Rupert Abbott, *supra* note 26.
[65] *Id*.
[66] Administrative Circular from the ECCC Office of Administration on the Establishment of ECCC's Legacy Advisory Group and Legacy Secretariat (Mar. 26, 2010) (on file with author).

the Pre-Trial Chamber, the President of the Trial Chamber, the President of the Supreme Court, the Chief of Victims Support Section, the Chief of Court, the Chief of ICT Section and the Chairperson of the Legacy Secretariat, or their representatives.[67] LS is composed of the National Chief of Budget and Finance, the Chief of Court Management, the National and International Legal Officers, the Chief of Victim Support Section, the Deputy Chief of ICT Section, and the Chief of Public Affairs.[68] Interviews and observations suggest that LAG and LS are minimally active, do not meet regularly, and might not currently oversee any court-wide legacy initiatives.[69]

The Defence Support Section (DSS) sees its contribution to the court's legacy as promoting a culture of rule of law and human rights, and working to build capacity in the local justice system around those themes.[70] DSS has been a leader in legacy initiatives, perhaps for several reasons. First, it is uniquely mandated by the ECCC Internal Rules to provide certain training and to collaborate with the Bar Association of the Kingdom of Cambodia.[71] Additionally, the Section's employees have allocated time and resources to implement a legacy program.[72] Further, it is in the interests of the defence generally for the DSS to promote fair trial rights and rule of law, as it helps the Cambodian public understand the role of the defence at the ECCC.[73] DSS legacy work includes:

- Lawyers:
  Training for Cambodian lawyers, in collaboration with the BAKC, including on legal skills, international criminal law, and case management.
    - On-the-job learning and training opportunities for Cambodian defence and DSS personnel at the ECCC, with in-office mentoring.[74] The DSS invites Cambodian lawyers working outside of the court to participate in relevant trainings provided to DSS and defence personnel.[75]
- Law students
    - Fair Trial Rights Club—presentations, seminars, guest lectures, and role-play exercises to teach Cambodian students about fair trial rights, with reference to best practices and challenges at the ECCC.
    - DSS has undertaken outreach to universities to increase students' understanding of fair trial rights and the role of the defence.

[67] *Id*.
[68] *Id*.
[69] These observations are supported by several interviews. However, due to time constraints, the author was unable to meet with the Office of Administration to confirm these observations.
[70] Interview with Rupert Abbott, *supra* note 26.
[71] ECCC Internal Rule 11(2)(k).
[72] Interview with Rupert Abbott, *supra* note 26.
[73] *Id*.
[74] *Legacy*, Defence Support Section, EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, http://www.eccc.gov.kh/en/dss/legacy, (last visited Aug. 23, 2011).
[75] Interview with Rupert Abbott, *supra* note 26.

    - DSS collaborated with the Institute of Human Rights at Montpellier Bar to organize a mock trial at the ECCC, to which they invited Cambodian law students to observe a typical French criminal trial.[76]
- NGOs and the media:
    - DSS has provided training to NGOs and journalists on fair trial rights and DSS representatives participate in NGO-organized initiatives relating to the ECCC.
- Cambodian public:
    - DSS participates in outreach initiatives organized by the ECCC Public Affairs Section, and uses its public voice to promote fair trial rights in the media.
    - DSS is also hoping to raise funds to produce a video, to be shown in Cambodian communities, about the experiences of defending Khmer Rouge leaders.[77]

The Office of the Co-Prosecutors (OCP) and the Civil Party Lead Co Lawyers Section (LCLS) appear to have similar approaches to legacy that might be indicative of legacy projects (or lack thereof) at the court more broadly. Representatives from both offices suggested that due to limited time, resources and funding, their offices focus primarily on their trial-related work. An OCP interviewee emphasized that when he and his colleagues do their jobs properly, that also can promote the court's legacy.[78] Similarly, a LCLS interviewee noted that how her office shapes the rights and role of civil parties through their trial behavior and trial-related work contributes to the court's legacy.[79] Both offices participate in outreach to Cambodian communities, and OCP's legacy-related work is limited to such outreach activities.[80] Because their primary focus is their trial responsibilities, neither office is able to initiate their own legacy initiatives, although both representatives described participating in legacy and/or outreach projects when the opportunities present themselves.[81] Although the LCLS would like to work with BAKC, and met with them in the spring to discuss collaboration, they have not yet developed a collaborative project because they are busy with their trial-related and civil party organizational responsibilities.[82]

Both offices described capacity-building that happens organically. Deputy Prosecutor William Smith from OCP noted that national prosecutors are exposed to different technical skills at the ECCC than they are in the national system,[83] and International Civil Party Lead Co-Lawyer Elisabeth Simonneau Fort explained that daily collaboration between national and international staff exposes national staff to a different style of legal interpretation and advocacy.[84] In addition,

[76] *Id*.
[77] *Id*.
[78] Interview with William Smith, *supra* note 25; interview with Elisabeth Simonneau Fort, *supra* note 25.
[79] Interview with Elisabeth Simonneau Fort, *supra* note 25.
[80] *Id*.; Interview with William Smith, *supra* note 25.
[81] Interview with William Smith, *supra* note 25; Interview with Elisabeth Simonneau Fort, *supra* note 25.
[82] Interview with Elisabeth Simonneau Fort, *supra* note 25.
[83] Interview with William Smith, *supra* note 25.
[84] Interview with Elisabeth Simonneau Fort, *supra* note 25.

the LCLS occasionally has more formal, internal trainings led by experts, academics and NGOs.[85] Neither the OCP nor the LCLS appear to participate in court-wide legacy projects.

The LCLS recognizes that its experiences with the court's unique civil party participation model might be particularly informative to both national and international courts. Elisabeth Simonneau Fort is thus compiling all relevant documents related to civil party rights and the Section's related work.[86] This compilation could offer guidance and jurisprudence for both international and national courts about civil party rights at trial.[87]

b. National and International Actors

The court's Internal Rules mandate the Defence Support Section (DSS) to collaborate with the Bar Association of the Kingdom of Cambodia (BAKC),[88] and these offices have collaborated on certain training projects,[89]usually initiated by DSS.[90] BAKC has also met with representatives from the Civil Party Lead Co Lawyer Section to discuss possible collaboration, although a collaborative project has not yet taken place.[91] Reportedly, the President of BAKC is interested in incorporating the Internal Rules into domestic procedure,[92] which suggests that BAKC, amongst others, might be particularly receptive to or involved with the CCPC Legal Practitioners Handbook project (discussed below).[93]

The Council for Legal and Judicial Reform, established in 2002,[94] is the Cambodian government's primary connection to ECCC legacy initiatives. The CLJR has announced that it will be adopting an ECCC legacy project in 2012, which will primarily focus on working with the Cambodian judiciary.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) employs Michelle Staggs Kelsall as a full-time staff member dedicated to legacy initiatives. OHCHR has

[85] *Id*.
[86] *Id*.
[87] *Id*.
[88] ECCC Internal Rule 11(2)(k).
[89] *See Judicial Updates: Defence Support Section*, THE CT. REP. (Extraordinary Chambers in the Courts of Cambodia, Phnom Penh, Cambodia), Feb. 2011, at 6 [hereinafter Feb. 2011 Court Report] ("The DSS Officer-in-Charge met with the President and Secretary General of the Bar Association of the Kingdom of Cambodia and with the Legacy Officer at the Office of the UN High Commissioner for Human Rights to discuss developing a training program for Cambodian defence lawyers working in the national courts."), *available at* http://www.eccc.gov.kh/ sites/default/files/publications/Court_Report_February_2011.pdf.
[90] Interview with Rupert Abbott, *supra* note 26.
[91] Interview with Elisabeth Simonneau Fort, *supra* note 25.
[92] Interview with Michelle Staggs Kelsall, *supra* note 28.
[93] *Infra* section III(2).
[94] Olga Martin-Ortega & Johanna Herman, *Hybrid Tribunals & the Rule of Law: Notes from Bosnia & Herzegovina & Cambodia* 13 (JAD–PbP Working Paper Series No. 7, May 2010).

actively sought partnerships with others, primarily the ECCC, in pursuing its legacy work.[95] Currently, they partner with DSS to facilitate the Fair Trial Rights Club. They also work with the Pannasastra University School of Law and Public Policy to coordinate a Lecture Series on Law, Human Rights and International Justice Legacy. OHCHR is also organizing judicial roundtable events, designed to promote judicial independence and encourage collaboration among national judges in collaboration with the CLJR.[96] In the future, OHCHR has plans to work with national lawyers to undertake test cases, which may include the use of ECCC jurisprudence, to incorporate human rights arguments into the work of lawyers before the national judiciary.[97]

c. Non-Governmental Organizations

The Cambodian Human Rights and Development Association (ADHOC) currently implements a program working closely with a nationwide network of Civil Party representatives, and serves as a liaison between these representatives and the court. It provides trainings to the representatives regionally. Part of these trainings has included a legacy component, in which OHCHR and ADHOC are partnering to explain the significance of the ECCC's legacy to these representatives, and to consider ways in which the group might think about putting the skills they are learning to additional practical use in their communities in the longer term.[98]

The Cambodian Center for Human Rights (CCHR) focuses primarily on Cambodian national courts.[99] They serve as a watchdog with respect to the ECCC's potential for negative legacy around issues such as corruption and political interference, and give voice through their website, press releases, letters, and commentary to what the ECCC might model—good and bad—for domestic courts.[100] They are currently seeking funding for a project that would involve more direct monitoring of the ECCC in collaboration with another non-governmental organization, in order to compare ECCC proceedings to national courts.[101]

The Documentation Center of Cambodia (DC-Cam) facilitated a legal training workshop from October 15-20, 2010, for fifteen Cambodian law students, working with representatives from the Office of the Co-Prosecutors and the DSS, a prosecutor from the Cambodian Appeals Court, and a former S-21 prison guard.[102] The workshop focused on the facts and legal principles of the

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[95] Interview with Rupert Abbott, *supra* note 26.
[96] Interview with Michelle Staggs Kelsall, *supra* note 28.
[97] *Id*.
[98] Interview with Michelle Staggs Kelsall, *supra* note 28. Due to time constraints, the author was unable to be in touch with ADHOC to learn more about their legacy-related work, but would recommend that any additional research on legacy at the ECCC include learning more about ADHOC's work.
[99] Interview with John Coughlan, *supra* note 49.
[100] *Id*.
[101] *Id*.
[102] *DC-Cam Legal Training: Sharing Expertise and Creating Focus Groups*, THE CT. REP. (Extraordinary Chambers in the Courts of Cambodia, Phnom Penh, Cambodia), Oct. 2010, at 10 [hereinafter Oct. 2010 Court Report], *available at* http://www.eccc.gov.kh/sites/default/files/publications/Court_Report_October2010.pdf.

Duch trial, as well as lawyering strategies, and was intended to reduce confusion about the Court's work and legal processes by educating a small focus group to share their knowledge.[103] Additionally, DC-Cam works informally to connect Cambodian students with internship opportunities at the ECCC.[104] The new DC-Cam ECCC Case 002 Observation Project, which includes mentorship and training of four Cambodian junior lawyers who participated in the 2010 program, is providing legal outreach to Cambodians, including presentations about relevant legal issues at local Cambodian universities.[105] The project seeks to promote rule of law, respect for human rights and understanding of key legal concepts among Cambodian lawyers.[106]

Open Society Justice Initiative (OSJI) frames their trial monitoring operation in the context of the court's legacy, explaining: "What is the purpose to monitoring these proceedings if not to encourage critical analysis and discussion about what the court is doing well, and what it is not doing well[?]"[107] OSJI's focuses primarily on the transfer of best practices from the ECCC to the domestic legal system.[108] Their reporting aims at a broader analysis of the court's proceedings, including to what degree it contributes to the development of rule of law in Cambodia, particularly with respect to separation of powers.[109]

### 2. Specific Legacy Projects

The East-West Management Institute (EWMI) Legacy Project on Cambodian Criminal Procedure, the Guide to Cambodian Criminal Procedure Law, is currently in the development stage. The guide is not a court project; rather, it began from the initiative of several interested individuals, and currently involves collaboration between EWMI and various Cambodian universities, as well as increasing involvement of Cambodian government actors and members of the national judiciary.[110] The project is intended to assist in the transfer of knowledge of ECCC criminal practice to local Cambodian courts, and capitalizes on the unique connection between the new Cambodian Criminal Procedure Code (CCPC) and the ECCC Internal Rules.[111] The project's Concept Paper, distributed on October 22, 2010, notes that the ECCC is well-placed to advocate for higher judicial standards, and that the guide will be a valuable tool for national legal practitioners "who want guidance in implementing the law correctly."[112]The guide is intended as

[103] *Id*.
[104] Conversations with Youk Chhang, Director, Documentation Center of Cambodia, in Phnom Penh, Cambodia (Aug. 2011).
[105] Memorandum from Randle DeFalco on the DC-Cam ECCC Case 002 Observation Project (Aug. 22, 2011) (on file with author).
[106] *Id*.
[107] E-mail from Clair Duffy, *supra* note 50.
[108] Interview with Panhavuth Long, *supra* note 39.
[109] E-mail from Clair Duffy, *supra* note 50.
[110] Interview with William Smith, *supra* note 25.
[111] Concept Paper from the Office of the Co-Prosecutors at the ECCC on the Cambodian Criminal Procedure Code Legal Practitioners Handbook, *supra* note 44.
[112] *Id*.

an educative tool,[113] and will follow the CCPC articles in chronological order, connecting them to any relevant interpretations from ECCC decisions, orders or practice.[114] As one of the individuals involved in initiating the project noted, its utility will depend on how effectively the project is introduced to the national judges and prosecutors who are the handbook's intended users.[115]

The Fair Trial Rights Club is an initiative developed by the DSS and the OHCHR. The Club includes eight interactive lesson modules, including "presentations, seminars, guest lectures, and role-play exercises to teach Cambodian students about fair trial rights, with reference to best practices and challenges at the ECCC."[116] The aim of the project is to empower Cambodian law students to promote fair trial rights and strengthened rule of law in their future work in the Cambodian justice sector.[117] The initiative will likely be repeated, and the organizers hope to expand the project, in an abbreviated form, to the two other provinces where law is currently taught in Cambodia.[118] Additionally, there are plans to develop a Fair Trial Rights curriculum for universities and a Fair Trial Rights handbook for students, based on the presentations and discussions at the Fair Trial Rights Club.[119] DSS and OHCHR have embraced social media to facilitate ideas-sharing by participants and have launched a Fair Trial Rights Club Facebook page.[120]

The Cambodia Tribunal Monitor (CTM) website, publishing since 2006, "is a consortium of academic, philanthropic and non-profit organizations committed to providing public access to the tribunal and open discussion throughout the judicial process."[121] It offers multi-media news and interviews, ECCC and NGO reports, Khmer Rouge and ECCC historical information, video access to court proceedings, and expert commentary including a daily trial blog. It is sponsored by Northwestern University School of Law Center for International Human Rights, the Documentation Center of Cambodia, the Illinois Holocaust Museum and Education Center, and the J.B. & M.K. Pritzker Family Foundation.

The Virtual Tribunal (VT) website is a collaboration between the ECCC; the Hoover Institution, Stanford University; and the War Crimes Studies Centre of the University of California at Berkeley that "consists of a digital multimedia library of documents and video that includes the

[113] Interview with William Smith, *supra* note 25.
[114] Concept Paper from the Office of the Co-Prosecutors at the ECCC on the Cambodian Criminal Procedure Code Legal Practitioners Handbook, *supra* note 44.
[115] Interview with William Smith, *supra* note 25.
[116] *Judicial Updates: Defence Support* Section, THE CT. REP. (Extraordinary Chambers in the Courts of Cambodia, Phnom Penh, Cambodia), May 2011, at 7, *available at* http://www.eccc.gov.kh/sites/default/files/publications/ May%202011%20Court%20Report%20FINAL.pdf.
[117] *Id*.
[118] Interview with Rupert Abbott, *supra* note 26.
[119] *Id*.
[120] *Id*.
[121] *See* http://www.cambodiatribunal.org/about-us.

contributions of educational institutions, academics, media, NGOs and civil society groups."[122] It became accessible online for registered users in November 2011. Acting Director of Administration, Tony Kranh, has stated that the website is intended to serve as a virtual legacy of the court, to be utilized by lawyers, legislators, victims and the general public.[123] However, it has been suggested that one potential flaw of the VT project may be that the national side will exercise final control over the contents of the digital library, and hence be able to shape the story that the VT project tells about the trials and the court.

### 3. General Legacy Initiatives

a. Internship Programs

Cambodian students are able to participate as interns at the ECCC. There is no funding available for the court's national internship program,[124] and Rupert Abbott of DSS believes that this might hinder the ability of qualified Cambodians to participate in the program.[125] Although students are able to participate as interns, it has been noted that the concept of internships is not well known to many Cambodian students or staff. Thus, students do not necessarily seek out such internships, nor does their supervisors necessarily provide national interns with the most interesting or relevant projects.[126]

Comparatively, the Special Court for Sierra Leone provided funding for national interns. The Special Court Internship Programme, thanks to a donation from the European Commission, was able to provide national interns in the technical and administrative fields with $300/month. Additionally, qualified national lawyers could serve as interns in the Freetown and the Hague with the Appeals Chamber, Office of the Prosecutor, or Office of the Principal Defender, and received a $1000/month stipend in addition to medical and travel costs.[127]

b. Physical Infrastructure

It appears that the physical space of the ECCC might *not* be used to promote legacy. In its policy tool issued in 2008, OHCHR noted that: "In Cambodia, the Extraordinary Chambers are

[122] *ECCC Launches Virtual Tribunal Website*, THE CT. REP. (Extraordinary Chambers in the Courts of Cambodia, Phnom Penh, Cambodia), Aug. 2011, at 4 [hereinafter Aug. 2011 Court Report], *available at* http://www.eccc.gov.kh/sites/default/files/publications/5-August%202011%20Court%20Report.pdf.
[123] *Id.*
[124] Conversations with Youk Chhang, *supra* note 104.
[125] Interview with Rupert Abbott, *supra* note 26. Additionally, an interview with a former ECCC intern revealed that, at least for that particular intern, lack of funding was not an issue because he wanted the experience of working at the court and to do the work for his country. Interview with Sokvisal Kimsroy, Documentation Center of Cambodia, in Phnom Penh, Cambodia (Aug. 19, 2011).
[126] Conversations with Youk Chhang, *supra* note 104.
[127] *Internships*, About, THE SPECIAL COURT FOR SIERRA LEONE, http://www.sc-sl.org/ABOUT/Internships/tabid/143/Default.aspx (last visited Aug. 24, 2011).

currently located in a newly built military compound on the assumption that, upon the Chambers' completion, the facilities will revert to military use—a decision which takes no account of legacy."[128] However, none of the interviewees interviewed for this report commented on the legacy potential of the court buildings themselves.

c. Public Lectures and Events

OHCHR, in collaboration with the Pannasastra University of Cambodia, facilitates a Lecture Series on Law, Human Rights and International Justice Legacy. International Co-Prosecutor Andrew Cayley spoke at the first public lecture, on June 30, 2011, discussing the Srebrenica Genocide. The second lecture in the series was held on August 19, 2011, and National Co-Prosecutor Chea Leang gave a lecture to an audience of about 200 people, including many students, entitled 'The Prosecution's Role in Protecting Public Confidence in the Judiciary'. Based on this author's observations, Chea Leang's talk primarily focused on her personal experiences and certain technicalities related to national prosecutions and the role of a prosecutor more generally, rather than directly addressing the stated topic. Although there was a question and answer session, attendees were reminded by a representative from Pannasastra University and Chea Leang herself that no political questions or questions related to political issues were allowed; instead, questions were to be limited to technical questions because, reminded the university representative, the lecture was not a place for propaganda. Judge Silvia Cartwright gave a lecture on "CEDAW and the Challenge of Combating Violence Against Women" on September 15. The lecture series will continue until the end of 2011, and it is intended that it will continue into 2012.

d. Staff Trainings

In the early stages of the ECCC, the court, Open Society Justice Initiative, and the Asian International Justice Initiative facilitated trainings for national and international staff, including trainings for the Office of Co-Investigating Judges and Office of Co-Prosecutors, and general international criminal law trainings.[129]

e. Student Engagement

In addition to the initiatives already described, student-focused legacy includes the following projects:

On October 21, 2010, Court officials spoke to law students in a verdict distribution ceremony at the Royal University of Law and Economics in Phnom Penh.[130] Deputy Director of Administration

[128] OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., *supra* note 2, at 35.
[129] Martin-Ortega & Herman, *supra* note 94, at 17-18. At least one interviewee suggested that there have been additional NGO-facilitated staff trainings, but the author was unable to learn specific information about these trainings due to time constraints.
[130] *Court Officials Take Duch Verdict Lessons to Law Students*, Oct. 2010 Court Report, *supra* note 102, at 2.

Knut Rosandhaug is quoted in the October 2010 Court Report telling students: "It's allowed to disagree with a judicial decision, but you have to do it in a legally accepted manner. If you get that message, you will be able to do the legal reform this country needs."[131] Acting Director of Administration, H.E. Tony Kranh, echoed those sentiments, telling the students that he hoped they would use the lessons of the verdict in their coursework and future careers.[132]

On January 25, 2011, DSS, the Office of the Co-Prosecutors and the Public Affairs Section participated in an outreach event with 400 students from the Royal University of Law and Economics.[133]

On February 17, 2011, a DSS representative met with Royal University of Law and Economics law students "to discuss the role of the defence and lawyers' ethics in international criminal law."[134]

A Student Forum was held at Pannasastra University in Phnom Penh on July 22, 2011, to discuss the trial with students.[135]

As part of its ongoing efforts to mainstream legacy in its rule of law work, OHCHR will include a component of legacy in its legacy advocacy work in 2012-13. The Office will be employing a legal advocacy officer, who will work with all of OHCHR's program units, in addition to legal aid organizations, to consider ways in which arguments that support the protection and promotion of human rights when applying Cambodia's domestic laws can be brought to the attention of the courts. The legal advocacy officer will be working with OHCHR's Legacy Officer and the DSS to discuss how decisions at the ECCC can be utilized to "test" the application of human rights in cases before the national courts.

A joint DSS and OHCHR letter to the Editor of the *Cambodia Daily*, titled 'ECCC Legacy Should be to Empower Youth,' argued that ECCC legacy initiatives should put young Cambodians at centre-stage, "transferring the knowledge and skills that will enable them to engage with and improve the national justice system as an important step in the development and further democratisation of the country."[136]

f. <u>Workshops</u>

[131] *Id*.
[132] *Id*.
[133] *Judicial Updates: Defence Support Section*, Feb. 2011 Court Report, *supra* note 89, at 6.
[134] *Judicial Updates: Defence Support Section*, THE CT. REP. (Extraordinary Chambers in the Courts of Cambodia, Phnom Penh, Cambodia), Mar. 2011, at 6, 7 *available at* http://www.eccc.gov.kh/sites/default/files/publications/ March%202011%20Court%20Report_0.pdf.
[135] *Outreach Calendar*, Aug. 2011 Court Report, *supra* note 122, at 10.
[136] 'ECCC Legacy Should be to Empower Youth', OHCHR and DSS, Letter to Editor, *Cambodia Daily* 3 August 2011.

On March 10, 2009, over 75 representatives from the court as well as local and international NGOs participated in the workshop "Leaving a Lasting Legacy for Victims" facilitated by the Victims Unit, ICTJ, and the Cambodian Human Rights Action Committee (CHRAC).[137]

On December 16, 2010, OHCHR and CHRAC convened a Legacy Workshop at which ECCC lawyers and lawyers working in the Cambodian legal sector discussed applying lessons learned at the ECCC to the domestic judicial system.[138]

On August 30, 2011, the Cambodian Human Rights Action Committee (CHRAC) held a workshop entitled "Experiences and Exchanges in the Implementation of Law: From ECCC to national courts."[139]

Open Society Justice Initiative holds a bi-monthly NGO update meeting, during which NGOs with ECCC-related projects update each other on their work and share information more generally. The meetings also seek to encourage collaboration around advocacy-related initiatives. Recently, half-an-hour of each of these meetings has been devoted to specific discussion of legacy projects, led by Michelle Staggs Kelsall from OHCHR. In addition to the half-hour legacy discussion at each meeting, the entire July update meeting had a legacy theme, intending to encourage NGOs to think about legacy before the start of Case 002 and to highlight certain issues related to the potential legacy of the ECCC. Andrew Cayley intended to participate in this meeting, but he was ultimately unable to due to illness.[140]

## IV. THEMES WITHIN A BROADER LEGACY FRAMEWORK

Conversations with those involved with legacy at the ECCC as well as research into legacy at international and hybrid tribunals more generally reveal several themes that are both broadly and specifically relevant to legacy and the ECCC.

### 1. Feasibility

Legacy projects must be feasible to be successful. Adequate resources are crucial, but often lacking. Furthermore, as the ECCC experience demonstrates, political will is essential to enable legacy projects to succeed and to promote a hybrid court's positive impact on a national judicial system.

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[137] INT'L CTR. FOR TRANSITIONAL JUST., VICTIMS UNIT & CAMBODIAN HUM. RTS. ACTION COMM., WORKSHOP REPORT: LEAVING A LASTING LEGACY FOR VICTIMS (2009), *available at*http://ictj.org/sites/default/files/ICTJ-ECCC-Cambodia-Victims-Workshop-2009-English.pdf.

[138] *Judicial Updates: Defence Support Section*, THE CT. REP. (Extraordinary Chambers in the Courts of Cambodia, Phnom Penh, Cambodia), Jan. 2011, at 7 *available at* http://www.eccc.gov.kh/sites/default/files/publications/Court_Report_January_2011.pdf.

[139] *Id*.

[140] E-mail from Clair Duffy, *supra* note 50.

a. Resources

Several interviewees remarked that the court's ability to initiate and implement legacy projects is limited by insufficient funding and human resources. The only mention of legacy in the court's 2005-2009 Budget Estimates relates to the proposed transcription service; the document notes that full transcripts can contribute to the court's legacy "by providing a complete record of the trials and appeals."[141] The ECCC's Revised Budget Requirements for 2010-2011 notes that no costs were incurred for legacy development projects under the National Component in 2010.[142] The revised 2010-2011 budget designates $155,300 for short-term legal consultants, advocacy and dissemination, and legacy development.[143]

Insufficient resources for the national judiciary might also hinder the court's contribution to domestic legal reform. "The Cambodian Ministry of Justice has 1% of the ECCC's budget to run 25 courts in the country," thus it would be difficult to replicate some of the ECCC's practices in the domestic system.[144] One interviewee emphasized that national courts lack the translation, transcription and AV systems that the ECCC relies on, and have comparatively small budgets and low salaries, which might impact transfer of best practices from the ECCC to national courts.[145]

Participants in the Expert Group meeting on "Closing the International and Hybrid Criminal Tribunals: Mechanisms to Address Residual Issues" noted that it may be easier for international and hybrid tribunals to raise funds by emphasizing to donors "the importance of their contribution to development and rule of law."[146] Donors are likely to look for "specific projects with concrete outcomes."[147] This might suggest that legacy initiatives will develop, in part, because they attract funding. On the other hand, however, donors might be "less than enthusiastic about what is perceived as a 'side project' because they fear the court will become a development agency…."[148]

When funding *is* available for a court's legacy initiatives, it has the potential to create a new set of challenges. For example, recent donor attention on legacy at the ECCC has reportedly led to

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[141] EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, REVISED BUDGET ESTIMATES FROM 2005-2009 32 (2008), *available at* http://www.unakrt-online.org/Docs/Other/2005-2009%20ECCC%20Approved%20Budget.pdf.
[142] EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, REVISED BUDGET REQUIREMENTS 2010-2011 ¶ 9(e) (2011), *available at* http://www.eccc.gov.kh/sites/default/files/reports/revised_budget_eccc_2010-2011.pdf.
[143] *Id*. ¶ 52. The revised budget for those categories was reduced by $152,000, "due to the reduced use of short term consultants and experts," and the deferment of dissemination and advocacy activities.
[144] Martin-Ortega & Herman, *supra* note 94, at 16.
[145] Interview with Panhavuth Long, *supra* note 39.
[146] INT'L CTR. FOR TRANSITIONAL JUST., PERMANENT MISSION OF CAN. TO THE U.N. & UNIV. OF W. ONT. FAC. OF L., FINAL REPORT TO THE EXPERT GROUP MEETING ON "CLOSING THE INTERNATIONAL AND HYBRID CRIMINAL TRIBUNALS: MECHANISMS TO ADDRESS RESIDUAL ISSUES" 6 (2010), *available at*http://ictj.org/sites/default/files/ ICTJ-Global-Tribunal-Hybrid-2010-English.pdf.
[147] *Id*.
[148] CRUVELLIER, *supra* note 30, at 37.

controversy among the various actors who would like to shape and control the court's legacy work.

A lack of funds for legacy initiatives is not a challenge unique to the ECCC. Funding issues appear endemic to legacy initiatives at international and hybrid tribunals.[149] However, cost is not always a barrier to legacy projects. A representative from DSS noted that funding has not been an insurmountable challenge for certain DSS legacy initiatives, which require little funding other than staff time.[150]

b. Will

The lack of political will and the resulting inhospitable climate for domestic legal reform poses an enormous challenge to legacy at the ECCC.

Certain legacy-related themes appear to be off-limits for discussion. At OHCHR's Public Lecture Series, designed to promote the ECCC's legacy, participants were warned by one of the facilitators that questions to the National Co-Prosecutor following her lecture, 'The Prosecutor's Role in Protecting Public Confidence in the Judiciary' should be limited to technical topics, and should not touch on "political" issues.[151] There appears to be ongoing sensitivity towards discussions or debates taking place that could be seen to contravene public statements made by government officials about the work of the Court. As a result, there was the sense from at least one interviewee that events organized either needed to be, or needed to be perceived as being, "government approved" in order to be successful. Key actors—particularly judges and prosecutors—expressed hesitation when they felt they might be seen as going against that approval, particularly given they required confirmation from the Ministry of Justice for their participation. Actors from the court are often reluctant to discuss current issues at the court.[152] Clair Duffy from Open Society Justice Initiative explains that although "[p]eople are generally happy to schedule lectures on Srebrenica, or annotate the criminal code, for example … many are afraid to discuss (or even to endorse discussion of) some of the bigger questions."[153]

The ECCC is a Cambodian court, and several observers have noted that the national side of the court is expected to, and seeks to, lead the court's legacy initiatives; however, domestic political pressure to avoid substantive domestic legal reform prevents legacy efforts in that area. For example, although the national government's Council on Legal and Judicial Reform has expressed a desire to take ownership over legacy initiatives, it is not clear that they have the

[149] *See, e.g.*, Lincoln, *supra* note 56, at 30, 36, 40 (containing several references to the lack of sufficient funding for legacy projects at the SCSL); Nmehielle & Jalloh, *supra* note 40, at 121 (stating that inadequate funding is the principle potential threat to the achievement of the court's legacy objectives).
[150] Interview with Rupert Abbott, *supra* note 26.
[151] Statement made by the Dean of Pannasastra Law School prior to H.E. Leang's lecture. Author's observations at public lecture.
[152] *Id*.
[153] E-mail from Clair Duffy, *supra* note 50.

political will to catalyze rule of law sector improvements.[154] This places international organizations in the difficult position of seeking to motivate and support action without causing conflict through their intervention.[155] One report notes that "[n]otwithstanding the rhetoric of capacity building, it is unlikely that there will be any significant impact upon the domestic legal system given the lack of political will to improve it."[156] Others have similarly suggested that strong, independent judiciary is not in the current government's interest. Another report asserts that the Council's lack of political will derives from its desire to maintain their "control of the judiciary,"[157] an objective contrary to the judicial independence that legacy projects seek, in part, to achieve.

It has been suggested that top international actors at the ECCC similarly seek to limit legacy to avoid domestic political transformation in order to avoid antagonizing the national side. This has led to a legacy 'message' that focuses on the less controversial facets of legacy—emphasizing archives and outreach, for example, while avoiding national legal reform and capacity-building.

In the context of the lack of political will for domestic legal reform, one observer noted that a 'top-down' approach to legacy, working only through government-aligned actors to implement legacy initiatives, would likely fail. Instead, legacy initiatives should focus on developing understanding and knowledge about fair trial rights and human rights, and building the capacity of certain stakeholders to contribute to increasing the demand for a fairer justice system and rule of law from the 'bottom-up.'[158] Another observer suggested that it would be possible to start with less politically controversial reforms, such as promoting a culture of writing reasoned judicial decisions, which might ultimately create demand for bigger changes.[159]

In addition to preventing certain types of legacy initiatives, political interference could undermine the capacity-building projects that do take place. Several interviewees questioned what happens when members of the domestic judiciary become "better" at practicing law if they remain under political control.[160] To what extent can the ECCC have a positive impact on rule of law when judges remain politically influenced or corrupt?[161]

### 2. Intentionality

Both scholarship and practice make clear that legacy initiatives should be developed and implemented from a court's earliest stages. Further, although some aspects of legacy and

[154] Martin-Ortega & Herman, *supra* note 94, at 16.
[155] Interview with Michelle Staggs Kelsall, *supra* note 28.
[156] BATES, *supra* note 2, at 3.
[157] Martin-Ortega & Herman, *supra* note 94, at 16.
[158] Interview with Rupert Abbott, *supra* note 26.
[159] Interview with Panhavuth Long, *supra* note 39.
[160] Interview with John Coughlan, *supra* note 49.
[161] Interview with Panhavuth Long, *supra* note 39.

capacity-building might happen organically in a hybrid setting, legacy initiatives appear most effective if they are intentional initiatives rather than only the positive externalities of the hybrid court model.

a. Legacy from the Beginning

OHCHR's Legacy Report emphasizes that planning is necessary for successful legacy initiatives, and that this planning should include an assessment of national capacity and ought to involve national staff in the planning process.[162] Legacy should be part of a court's development from the beginning, because a hybrid court's "potential impact is much greater if legacy is an integral part of policy planning from the conception,"[163] and a court's establishment" is a critical phase during which relationships with local actors must be inclusive and carefully managed."[164] Although legacy is most likely to succeed when it has been addressed from the beginning, it is precisely in a court's earliest stages that "the court staff is under the most severe pressure to make sure that the core mandate of the court is fulfilled," and thus might be distracted or prevented from developing legacy initiatives.[165]

"Inadequate planning" has been referenced as one of the reasons that SCSL failed to realize its legacy vision.[166] The ICTJ noted that the SCSL's capacity building initiatives came too late and seemed "to be an afterthought rather than a carefully planned policy and priority."[167] Similarly, another observer reflecting on the SCSL's limited legacy achievements suggested that certain developments, such as the appointment of an SCSL legacy officer and improvements to the court's relationship with the domestic legal sector, should have come earlier in the court's lifespan, and that a "more structured approach to training for both international and national judges, lawyers, and other staff should involve the creation of a central focal point *from the outset* to coordinate efforts and promote continuity and legacy."[168] Notes one SCSL staff member, "…you don't start legacy when you are about to end. It has to be from the start."[169]

b. Organic v. Intentional Legacy

In a hybrid tribunal setting, national and international staff work side by side, a structure within which capacity-building might happen naturally.

Certain actors at the ECCC have presented a belief that, although capacity-building is not in the mandate of the ECCC per se, some degree of capacity-building happens organically within the

[162] OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., *supra* note 2, at 9.
[163] *Id*. at 42.
[164] *Id*. at 40.
[165] CRUVELLIER, *supra* note 30, at 37.
[166] *Id*. at 3.
[167] *Id*. at 36.
[168] *Id*. at 37 (emphasis added).
[169] *Id*. at 36, (quoting an interview with Abdul Tejan-Cole, a former member of the OTP and then-head of the Anti-Corruption Commission).

court's integrated structure. Deputy Director of Administration Knut Rosandhaug has stated that he believes that capacity building happens as a "side effect" at the ECCC, and International Co-Prosecutor Andrew Cayley explained that national lawyers would benefit and learn because of their involvement in the process.[170] Cambodian nationals described a similar phenomenon, with some Cambodian lawyers noting that they learned "by example" and the President of the Trial Chamber expressing that he would try to adopt aspects of the "reasoning culture" of the other judges.[171] Several interviewees commented on different skills and styles of practice to which national lawyers at the ECCC might be exposed in their daily work, including exposure to different technical skills that might not be fully developed in Cambodia's young judiciary,[172] and different strategies of challenging judicial decisions and styles of interpretation.[173] That said, as one interviewee cautioned, skills transfer to the national system might not happen entirely organically. He referenced the different culture of legal reasoning and written judgments that enable the accused, lawyers and the public to see the reasons behind a judicial decision at the ECCC, but explained that although this could be promoted in the national system, it would require deliberate capacity-building because it might be a new and strange format for national practitioners.[174]

To be sure, the ECCC might uniquely promote national and international collaboration, because such collaboration is seemingly inherent to the Court's structure. That said, organic capacity-building will depend "on the particular circumstances how both sides work together,"[175] and will likely vary from section to section. For example, according to one report, although primarily international actors worked on pursuing additional ECCC prosecutions, "staff within the defence section report that they work very well together."[176] The Office of Administration, which is structured in a "split way" in which national staff report to the national head and international staff report to the international deputy head, "does not necessarily facilitate integration where it is not being actively promoted on a particular department initiative."[177]

Examples from other courts further demonstrate that it is not guaranteed that national and international staff will work together in a way that facilitates capacity building or skills transfer. For example, the SCSL was "criticized for its failure to share responsibilities between international and national staff and insufficiently integrated national staff with few Sierra

[170] BATES, *supra* note 2, ¶ 144.
[171] *Id.*
[172] Interview with William Smith, *supra* note 25.
[173] Interview with Elisabeth Simonneau Fort, *supra* note 25.
[174] Interview with Panhavuth Long, *supra* note 39.
[175] Martin-Ortega & Herman, *supra* note 94, at 19.
[176] *Id.*
[177] *Id.*

Leoneans in positions of high responsibility."[178] Similarly, the ICTR "largely failed to hire Rwandans in important positions."[179]

"Cross-fertilization" might be enhanced through intentional initiatives, such as "mandating regular joint strategy meetings and informational presentations," where national and international staff could share ideas, explain their ongoing work, and "give each other feedback, advice, and support."[180] As one scholar notes, such programs "must consistently be reinforced."[181]

### 3. Collaboration

Legacy initiatives are best supported by a collaborative effort from the broadest levels of supporting framed to specific legacy projects. This includes collaboration between: national and international staff; court, government, and non-government actors; and across departments within the court itself.

a. Collaboration at the ECCC

Successful legacy at a hybrid tribunal requires collaboration between national and international actors. OHCHR explains that effective capacity-building requires trainings that are "based on a mutual exchange of ideas" rather than focusing only on training national staff.[182] One report noted that after a training workshop in 2005, many members of the Sierra Leone judiciary stopped working with the Court because they felt they had been patronized by their international counterparts.[183] Reflecting progress toward mutuality at the ECCC, an international judge suggested that although initially there had been a gap between the knowledge and expectations of national and international judges, over time their work became "collaborative" rather than a capacity-building project.[184]

Describing the SCSL's failure to realize its legacy vision, the ICTJ's Sierra Leone Court Monitoring Programme emphasized the court's "insufficient integration of senior Sierra Leoneans into the

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[178] Martin-Ortega & Herman, *supra* note 94, at 18.
[179] ALEJANDRO CHEHTMAN AND RUTH MACKENZIE, DOMAC, CAPACITY DEVELOPMENT IN INTERNATIONAL CRIMINAL JUSTICE: A MAPPING EXERCISE OF EXISTING PRACTICE 18 (2009), *available at* http://www.domac.is/ media/domac-skjol/DOMAC2-2009.pdf.
[180] Higonnet, *supra* note 37, at 369.
[181] *Id*.
[182] OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., *supra* note 2, at 29.
[183] Rachel Kerr & Jessica Lincoln, *The Special Court for Sierra Leone: Outreach, Legacy, and Impact*, Draft Interim Report: War Crimes Research Group Department of War Studies, King's College London, 17 (War Crimes Research Group, Department of War Studies, King's College London, Draft Interim Report, July 2007) *available at* http://www.kcl.ac.uk/sspp/departments/warstudies/research/groups/wc/slInterimreport.pdf.
[184] *See* Martin-Ortega & Herman, *supra* note 94, at 19

court itself," noting continued reliance on international staff and lack of national institutional involvement.[185] For example, with the exception of paid interns, "no Sierra Leoneans are part of the Trial Chambers' legacy support staff."[186] The failure to hire sufficient national legal practitioners led to tension between international and national staff at the SCSL that might have hindered collaborative relationships conducive to capacity-building and other legacy initiatives.[187] At the ECCC, national staff predominate, thus the court is particularly well-positioned in that regard to promote collaborative relationships.

Many have observed, however, that there has been minimal collaboration around legacy among ECCC actors, and there is no unified, court-wide legacy effort. Currently, although certain sections at the court facilitate their own legacy projects, whether or not and how they do so appears often to be personnel driven, and reflects the fact that individual sections have varying perspectives on legacy.

Several interviewees suggested that The Office of Administration might be an appropriate office to coordinate, initiate and facilitate legacy efforts, because they are more likely to be perceived as a "neutral" office, and might have the resources and mandate to promote collaboration and to carry out legacy projects. To date, however, the Office of Administration appears to have done little with respect to legacy, reportedly, at least in part, in deference to the national side.[188]

At the ECCC, collaboration between national and international actors might uniquely serve to hinder legacy initiatives related to domestic legal reform and rule of law, because international actors worried about the court's survival have an incentive to cooperate with national actors seeking to maintain control over the judiciary and avoid transformative, top-down domestic legal reform and rule of law projects. Further, tensions around Cases 003/004 have reportedly made court-wide communication about legacy more difficult.

b. Collaboration Beyond the ECCC

Legacy is not limited to court-driven initiatives. ICTJ notes that a "broad range of stakeholders, including national governments, civil society, and international development agencies" should take up ongoing legacy work, including outreach about tribunals' historical records and "bolstering national justice systems."[189]OHCHR corroborates this assertion, explaining that hybrid approaches, by definition, necessitate the investment of both international and national organizations, and suggests that governments, victims, legal communities, and civil society should all feel "vested" in the legacy process.[190] The ICTJ further emphasizes that effective legacy

[185]CRUVELLIER, *supra* note 30, at 31.
[186]*Id*. at 32.
[187] See *e.g.*, Lincoln, *supra* note 56, at 33 (explaining that the appointment of an international lawyer as Deputy Prosecutor led to "significant hostility between the Court and the Sierra Leone Bar Association.").
[188] Interview with Panhavuth Long, *supra* note 39.
[189]REIGER, *supra* note 4, at 5.
[190]OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., *supra* note 2, at 9.

must involve "a multiplicity of actors," not just "the policies and actions of the tribunals themselves."[191]

Mr. Thun Saray, CHRAC Chairman and President of ADHOC, has noted that it is important for civil society together with other relevant institutions, such as OHCHR-Cambodia, to start focusing on the ECCC's positive lasting legacies for the national court system, suggesting that NGOs should be involved in the process.[192] Youk Chhang, Director of the Documentation Center of Cambodia, asserted NGO participation more strongly, suggesting that, in fact, it should *only* be the job of non-court actors to facilitate legacy projects. If the court focuses on legacy, he suggested, it will distract from their work to complete the trials and achieve justice.[193] NGO involvement with certain aspects of ECCC legacy is not new. In fact, "NGOs have been advocating for fair trial rights in domestic courts and for proper funding of the Cambodian legal system for at least fifteen years."[194] As one ECCC lawyer noted, NGOs might complement her office's legacy and outreach work as they may be better connected to the Cambodian communities and the victims, and may be best positioned to explain certain aspects of the court's work.[195]

c. Collaboration Through Information-Sharing

In order for a 'broad range' of actors to be involved in legacy initiatives, awareness about ongoing and developing legacy initiatives is essential. Several interviewees suggested that it is important for an organization to take the lead in initiating communication and encouraging collaboration. One interviewee observed that this should be distinguished from coordination, which might imply control; rather, collaboration could lead to a 'movement' for legacy that pushes the ECCC hierarchy—on the international and national side—into action.[196] Currently, there is no formal mechanism for court and non-court actors at the ECCC to share information about their legacy work. The ability to share information and network is an important part of creating a broader legacy movement, however information-sharing at the ECCC is complicated by the politics around how legacy is framed. For example, individual sections at the court reportedly face obstacles at times in communicating their legacy work to the public. During the course of the author's interviews with various court and non-court actors, it became clear that many interviewees were not aware of others' legacy-related projects, but were eager to learn about other legacy initiatives, share their own work and collaborate.

d. Framing 'Legacy'

[191] REIGER, *supra* note 4, at 4.
[192] Thun Saray, CHRAC Chairman and ADHOC President, Keynote Address at a Workshop for Civil Party & Defence Lawyers of the ECCC: Brainstorming of Lessons Learnt at the ECCC to be transferred to national court (Dec. 16, 2010), *available at*http://www.adhoc-cambodia.org/article.php?language=english&art_id=185&currentpage=1.
[193] Conversations with Youk Chhang, *supra* note 104.
[194] BATES, *supra* note 2, ¶ 143.
[195] Interview with Elisabeth Simonneau Fort, *supra* note 25.
[196] Interview with Rupert Abbott, *supra* note 26.

As mentioned, discordance exists within and outside of the court with respect to the contents and objectives of 'Legacy':

- There are political undertones to framing legacy. Some government actors have an incentive to maintain the status quo with respect to the domestic judicial system, and thus reportedly seek to frame legacy in a way that avoids emphasizing domestic legal reform or rule of law goals, focusing instead on records, archives, and physical infrastructure. Certain actors within the court, such as the Public Affairs Section, appear at times to endorse a similarly limited conception of legacy. Reportedly, the court doesn't look favorably on sections taking the initiative to promote rule of law or capacity building related legacy projects.
- Because different sections within the court have distinct definitions of legacy, the court does not appear to have a unified presence with respect to legacy initiatives.
- This challenge is not unique to the ECCC. A recent report on legacy at the Special Court for Sierra Leone notes, "[t]he biggest issue surrounding legacy for the Court has been a lack of clarity about what is meant by legacy…."[197]

Framing 'legacy' also refers to *who* shapes the legacy of the court through specific projects that describe the court and its work. For example, there is reportedly some concern about which actors will or will not have ultimate input to shape the Virtual Tribunal project, suggesting that the presentation and contents of that project might tell the court's story in a way that would be dissatisfying to other actors.

This type of framing might also be relevant to the court's 'demonstration effect,' and the ability of the court to model rule of law and fair trial rights. A nuanced public presentation of ongoing developments at the court, as well as media focus and related NGO work, might also influence the court's ultimate legacy.

Sometimes, legacy projects themselves should be 'framed' so as to be more appealing and useful for their intended recipients. For example, one interviewee explained that national judges might feel attacked by initiatives that promote judicial independence. Instead, he suggested emphasizing that judicial independence enables judges to protect themselves from certain scrutiny and ensures discretion.[198] He also noted that capacity-building might be more successful when it includes tangible best practices rather than vague aspirations.[199]

### 4. Sustainability and Relevance

OHCHR notes that the concept of sustainability—maximizing international interventions "to make a permanent contribution to a country's capacity to deal with systematic crimes"—should be "[a]t the core of legacy."[200]

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[197] Lincoln, *supra* note 56, at 1.
[198] Interview with Panhavuth Long, *supra* note 39.
[199] *Id*.
[200] OFF. OF THE U.N. HIGH COMM'R FOR HUM. RTS., *supra* note 2, at 40.

Legacy initiatives need to be relevant to domestic practice to have an impact on the domestic system. As noted, given the connection between the CCPC and the Internal Rules the ECCC might be uniquely situated to provide a relevant jurisprudential legacy. That said, any precedential value of ECCC decisions might be tempered by the limited role of precedent in civil law systems like Cambodia. At least one interviewee emphasized, however, that even in a civil law system examples have influence.[201] Additionally, the use of annotated criminal procedure codes in other civil law jurisdictions would tend to suggest that there is still room to develop a valuable and relevant product.

Further, in order for capacity-building projects to influence domestic practice, it is essential that national staff are able to find relevant employment in the national judiciary after leaving the court. For example, a one report on the SCSL noted that when the court concluded its mission, there was a risk of unemployment for the majority of the court's national staff due to a shortage of job opportunities in the national system.[202] National Co-Prosecutor Chea Leang noted a similar phenomenon at the ECCC, explaining that although she and her colleagues would like to bring their ECCC experiences to the national judicial system, "severe funding problems and human resource issues" would present challenges to doing so.[203]

Additionally, it is not guaranteed that national staff will *choose* to return to the national judicial system when they are finished working at the hybrid court. For example, a report on the Special Court for Sierra Leone noted that many Sierra Leoneans who had worked at the SCSL would "leave once the court finishes," minimizing the benefits to the national system.[204] Additionally, reports suggest that several of the national lawyers at the SCSL belonged to the Sierra Leonean diaspora and would continue live and work abroad after the trials concluded.[205] Others would choose to work at other international tribunals instead of returning to domestic practice.[206]

The SCSL might demonstrate other challenges related to the ability of national staff to apply their hybrid court experiences to the national system. Interviews revealed that isolation, "systemic inertia, and the potential resentment toward those who benefited from the experience (and pay) at the SCSL are among the factors that inhibit their ability [to impact the national system."[207]

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[201] Interview with William Smith, *supra* note 25.
[202] Kathy M. Lippert et al., *Human Relations Training in Post-War Sierra Leone: Implications for Trainers and Consultants*, 39:2 OD PRAC. 17, 18 (2007), *available at* http://209.34.253.86/upload/article%20Ritvo.pdf; *see also* Kerr & Lincoln, *supra* note 183, at 17 (citing sources suggesting that there were "no jobs" in Sierra Leone for the national staff of the SCSL).
[203] BATES, *supra* note 2, ¶ 147.
[204] Kerr & Lincoln, *supra* note 183, at 17.
[205] Staggs, *supra* note 41, at 25.
[206] *Id*.
[207] CRUVELLIER, *supra* note 30, at 36.

## V. CONCLUSION

Recognition of the ECCC's potential to influence the domestic legal system is widespread. Court and non-court interviewees referenced that this aspect of the court's legacy informs and motivates their work. Despite this widespread recognition, however, collaborative, intentional legacy work appears to be currently limited by political resistance, insufficient resources and a lack of coordination and leadership. However with public perception of the court now fragile due to controversies involving Cases 003 and 004, the importance of the Case 002 trial might provide an impetus for a renewed focus on legacy, and could catalyze collaborative and purposeful initiatives to realize the court's legacy potential.