



OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER
FOR HUMAN RIGHTS



RULE-OF-LAW TOOLS FOR POST-CONFLICT STATES

*Maximizing the legacy
of hybrid courts*



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NOTE

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With the publication of *Maximizing the Legacy of Hybrid Courts and Reparations Programmes*, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations system's lead entity on transitional justice, launches the second part of its series on transitional justice tools for post-conflict States. These publications are meant to help develop sustainable institutional capacity within United Nations missions, as well as to assist transitional administrations and civil society to better craft their responses to transitional justice needs.

Countries emerging from conflict often suffer weak or non-existent rule of law, inadequate law enforcement, insufficient capacity in the administration of justice, and increased instances of human rights violations. This situation is often exacerbated by a lack of public confidence in State authorities and a shortage of resources.

Hybrid courts can have a positive impact on the domestic justice system of post-conflict States so as to ensure a lasting legacy for the rule of law and respect for human rights. In addition, *Maximizing the Legacy of Hybrid Courts* explores how hybrid courts can receive the mandates and the political support required to be more effective in building capacity and bestowing an enduring legacy upon the justice system. Grounded in international human rights standards and inspired by best practices, *Maximizing the Legacy of Hybrid Courts* provides the indispensable information required to target interventions with regard to hybrid courts in particular, as well as domestic legal reform in general. Its goal is not dictating strategic and programmatic decision-making, since this must be shaped in the field as an appropriate response to specific circumstances and environments.

Maximizing the Legacy of Hybrid Courts, jointly with the parallel publication of *Reparations Programmes*, builds on our 2006 series, which included *Mapping the Justice Sector*, *Prosecution Initiatives*, *Truth Commissions*, *Vetting* and *Monitoring Legal Systems*. Each of these tools can stand on its own, but also fits into a coherent operational perspective. The principles used in these tools have been primarily garnered from previous experience and lessons learned in United Nations operations.

In line with its engagement in transitional justice policy development and responding to requests from the United Nations system, particularly its field presences, as well as other partners, OHCHR will continue to develop rule-of-law tools.

I would like to take this opportunity to express both my appreciation for the feedback received from our partners thus far and my gratitude to all those who have contributed to this important initiative.



Louise Arbour

United Nations High Commissioner for Human Rights

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OHCHR wishes to thank the individuals and organizations that provided comments, suggestions and support for the preparation of this tool. In particular, it would like to acknowledge the work of the consultant who had primary responsibility for developing the tool, Marieke Wierda. OHCHR would also like to acknowledge the organization that provided essential support to the consultant, the International Center for Transitional Justice.

Hybrid courts are defined as courts of mixed composition and jurisdiction, encompassing both national and international aspects, usually operating within the jurisdiction where the crimes occurred. This rule-of-law policy tool aims to serve two purposes: first, to explore the potential positive impact hybrid courts may have on the domestic justice system of post-conflict States so as to ensure a lasting legacy for the rule of law and respect for human rights; second, to examine how hybrid courts can receive the mandates and necessary political support required to be more effective in terms of legacy and capacity-building.

Drawing on the lessons learned from hybrid courts created since 1999, this publication suggests effective and meaningful policies, processes and techniques on the interrelationship between hybrid courts and domestic courts. The suggested practices will enhance the credibility, effectiveness and impact of hybrid courts on the long-term stability and development of the domestic justice system, including respect for human rights protections, the rule of law and legal institutions.

Hybrid courts are often designed in a way that only a nominal number of defendants accused of particularly serious crimes, such as war crimes or crimes against humanity, will come before them.¹ Most defendants will, theoretically, face justice before the domestic justice system—situations this judicial system is often unprepared for. In post-conflict situations, domestic courts often suffer from systemic problems that include inadequate laws, endemic corruption, incompetence, poor conditions of service and pay, lack of access to justice, including inadequate legal representation, and little, if any, case-law reporting.

The establishment of hybrid courts will not solve all these problems, but if strategically designed and thought through, the targeted international intervention that hybrid courts represent can leave behind more than just convictions, acquittals and “bricks and mortar.” Interventions to create hybrid courts constitute unique moments in terms of the international community’s attention, resources and effort, and this window of opportunity should be maximized.

Legacy should be differentiated from the broader sociological impact that prosecution initiatives may have over time. The analysis of this impact is best left to historians and other experts. Although legacy should also be differentiated from the broader effort to rebuild the rule of law in a particular context, which may take many years, it nonetheless seeks to situate the international assistance provided by hybrid courts within a broader context. It attempts to narrow the gap between investments in prosecuting a limited number of serious crimes in the immediate aftermath of conflict through a hybrid court and the frequent lack of investment in the local

¹ For the particular considerations of prosecuting massive human rights violations, see OHCHR *Rule-of-law Tools for Post-conflict States: Prosecutions initiatives*, available at <http://www.ohchr.org>.

justice system in the post-conflict context.² Hybrid courts should not be seen as isolated engagements, nor should they constitute a quick fix in tackling the immense challenges of building or restoring justice systems in the post-conflict context. They should instead be viewed as part of a multifaceted intervention, with the allocated resources being proportionally spent on each element.

Legacy is a narrow and more practical concept: it should be used to devise strategies that maximize the impact of a mechanism in its design and operations. “Software” that would form part of legacy includes policies and processes that help to ensure the domestic justice system operates more effectively and efficiently, consistent with its international human rights obligations. This would include, but not be limited to, substantive legal framework reform, professional development (e.g., cross-fertilization of expertise), and raising awareness of the role of courts as independent and well-functioning rule-of-law institutions, operating within a human rights framework and scrutinized by a strong civil society.

Finally, this tool does not deal with legacy considerations pertaining to the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda or the International Criminal Court. The situation of international tribunals must be differentiated from that of hybrid courts, for they generally hold trials abroad. This does not mean that their legacy is irrelevant: in fact, many of the lessons below apply and may be even more challenging for international courts. However, by virtue of being situated in the country itself, hybrid courts have more potential for legacy than purely international justice processes.

The situation of the International Criminal Court is even more exceptional. In a broad sense, the regime of the Rome Statute and the principle of complementarity that underpins it will have its own impact on domestic legal systems,³ in that States parties to the Rome Statute are required to amend their national legislation to implement their treaty obligations. Furthermore, the International Criminal Court’s actions may either catalyse domestic processes or the Court may employ specific efforts to assist national jurisdictions. These issues are, however, beyond the scope of this tool.

² This gap is particularly stark between the investment in the International Criminal Tribunal for Rwanda and that in the Rwandan domestic courts or *gacaca* courts. It is also an issue in Sierra Leone, where the Special Court’s annual budget is about \$25 million, compared to the roughly \$350 million worth of foreign aid that the country receives.

³ Complementarity is a system whereby the Court will exercise its jurisdiction only if a State party is unwilling or genuinely unable to do so (see art. 17 of the Rome Statute).

I. PRELIMINARY ISSUES

A. Background

Hybrid courts have recently gained prominence as one of the most important policy developments in transitional justice, established in a wide variety of circumstances, to respond to different needs.⁴ In Kosovo (Serbia) and Timor-Leste, international legal professionals were incorporated into domestic systems by a United Nations administration, to cope with the challenge of trying mass crime and politically sensitive cases against a background of an extremely weak national system. Hybrid courts (or processes) were established by the United Nations Interim Administration Mission in Kosovo (UNMIK) in 2000 (international judges and prosecutors programme) and by the United Nations Transitional Administration in East Timor (UNTAET) in 2000 (Serious Crimes Unit and Special Panels for Serious Crimes). In 2005, the Special War Crimes Chamber was established in Bosnia and Herzegovina by agreement between the Office of the High Representative, the International Criminal Tribunal for the former Yugoslavia and the national authorities.

In other contexts, the United Nations was invited by national authorities to establish a hybrid tribunal within its territory. This was the case in Sierra Leone, where the Special Court for Sierra Leone was established by agreement between the United Nations and the Government of Sierra Leone in 2002. Similarly, in 2003 the United Nations and the Government of Cambodia concluded a lengthy negotiating process and agreed to create Extraordinary Chambers in the Courts of Cambodia to try the Khmer Rouge. Negotiations are currently under way with the Government of Burundi and, pursuant to Security Council resolution 1664 (2006), with the Government of Lebanon.

The rationales for creating hybrids are varied, complex and dependent on the national context.⁵ Some of the often cited are:

⁴ For recent studies on policy aspects of hybrid tribunals, see Tom Perriello and Marieke Wierda, *The Special Court for Sierra Leone under Scrutiny* (New York, 2006), Tom Perriello and Marieke Wierda, *Lessons from the Deployment of International Judges and Prosecutors in Kosovo* (New York, 2006) and Caitlin Reiger and Marieke Wierda, *The Serious Crimes Process in Timor-Leste: In Retrospect* (New York, 2006), in the Prosecutions Case Studies Series of the International Center for Transitional Justice (ICTJ), available at <http://www.ictj.org>.

⁵ For a discussion of the circumstances in which it may be appropriate to establish a hybrid tribunal, see OHCHR *Rule-of-law Tools for Post-conflict States: Prosecution initiatives*.

- *Lack of capacity or resources at the national level.* Hybrid courts have often been established where the domestic legal system is unable to cope because of a lack of technical and legal capacity or a lack of basic resources to try past and current crimes fairly. Consequently, in some situations, hybrid interventions have been intended to contribute to efforts to rebuild legal capacity. For example, in Timor-Leste, Kosovo, and Bosnia and Herzegovina, international assistance has been a component of broader efforts to operationalize criminal courts. Hybrid courts have also been created to overcome domestic legal barriers, such as amnesty or sovereign immunity, by direct application of international law or to ensure that international standards of fairness will be applied.
- *Fears of bias or lack of independence in the legal system.* In some situations, an international element has been introduced to overcome a perception of bias or lack of independence within the legal system, which may prevent cases from being prosecuted competently. This has been a motivating factor in establishing hybrid capacities in the former Yugoslavia or Cambodia.⁶ It is also presumed that international judges and prosecutors will generally be less vulnerable to security threats or political pressure.

The above-cited rationales are in addition to those often cited for the prosecution of mass crimes:

- *Contributing to the right to justice and an effective remedy.* Hybrid courts play a central role in ensuring that those suspected of criminal responsibility are investigated, prosecuted and punished.
- *Contributing to ending a culture of impunity.* Hybrid courts are intended to contribute to ending impunity by ensuring prosecution of particularly serious crimes. This, in turn, may serve to bolster the rule of law, particularly where impunity may have been a root cause of conflict. Restoring respect for the rule of law and indicating that war crimes, crimes against humanity and genocide should not go unpunished may be seen as the cornerstone of a sustainable peace and democratic transition.
- *Contribution to reconciliation.* Some argue that in the post-conflict context, trials should contribute to reconciliation. The extensive debate on this issue is not explored further in this tool.

B. Definition of legacy

The concept of legacy has gained prominence with the establishment of hybrid courts and tribunals. In this context, legacy is defined as a hybrid court's lasting impact on bolstering the rule of law in a particular society, by conducting effective trials to contribute to ending impunity, while

⁶ In the Extraordinary Chambers, this concern has resulted in a complex mechanism for judicial decision-making in which a "super majority," namely a simple majority plus one, is required. The Extraordinary Chambers are the only hybrid court to date with a majority of national judges on each bench.

also strengthening domestic judicial capacity. The aim is for this impact to continue even after the work of the hybrid court is complete. The need to leave a legacy is now firmly accepted as part of United Nations policy. For example, in his report on the rule of law and transitional justice in conflict and post-conflict societies, the Secretary-General states: “it is essential that, from the moment any future international or hybrid tribunal is established, consideration be given, as a priority, to the ultimate exit strategy and intended legacy in the country concerned.”⁷

While the concept of legacy itself is not particularly contested (at least at the level of rhetoric), most of the challenges relate to scope and implementation, as can be seen from the history of hybrid courts. Successes, although not entirely absent, have been few. In Kosovo and Timor-Leste, the introduction of hybrid capacities was very much in response to the immediate challenges and needs on the ground, as opposed to being part of a strategic and long-term international intervention. In Cambodia and Sierra Leone, legacy initiatives face the political complications of introducing international capacities into existing domestic legal systems. In Sierra Leone, legacy has also been hampered by pressures to conduct trials within a certain time frame and allocation of resources. In Cambodia, it remains to be seen whether the addition of international personnel will be sufficient to withstand the political interference evident in the domestic justice system.

While past interventions have not always been strategic, the recent trend has been, as far as possible, to build on existing structures and to consider the sustainability of those structures that are put in place. This has been the approach in Bosnia and Herzegovina and what is envisaged for Burundi.⁸ The model that will leave the best legacy depends largely on the specific context and this tool will endeavour to recommend specific strategies to maximize this legacy.

C. Scope

In almost all legal systems, it takes many years to complete even basic legal training. Fundamentally reforming dysfunctional judicial systems and developing a culture based on the rule of law and respect for human rights are long-term goals. Despite the breadth of rhetoric emerging around the potential impact of hybrid courts, it is, therefore, important to have realistic expectations of legacy efforts. On the one hand, it is relatively easy to conclude from experience that legacy needs a strategy and will not necessarily happen automatically or by osmosis. On the other, too much emphasis on legacy may give rise to unrealistic expectations. Hybrid courts are almost always targeted interventions, with limited temporal jurisdictions and time frames, and

⁷ S/2004/616, para. 46.

⁸ See “Report of the assessment mission on the establishment of an international judicial commission of inquiry for Burundi” (S/2005/158, para. 60): In deciding to recommend a special chamber within the court system of Burundi, the mission has drawn upon the model of the War Crimes Chamber now being established in the State Court of Bosnia and Herzegovina. It has thus opted for a judicial accountability mechanism not only located in the country, but forming part of the Burundian court system (a “court within a court”), with a view to strengthening the judicial sector in material and human resources, leaving behind a legacy of trained judges, prosecutors, defence counsel and experienced court managers.

are under pressure to confine and finish, rather than expand, their aim of conducting complex trials. It will therefore be important to manage expectations with regard to legacy.

At the same time, realistic and targeted additional efforts, which need not be a significant drain on resources, may help to maximize the long-term impact. Areas that may provide practical opportunities for legacy include professional development, legal reform and physical infrastructure. But the question of legacy should extend beyond that of tangible impact on the domestic legal system and encompass a shift in terms of trust in the legal system as a viable avenue for dealing with future conflicts and ongoing violations of human rights. This is referred to as the “demonstration effect,” which may be enhanced through effective outreach and broader civil society engagement.

Hybrid courts alone cannot implement a successful legacy strategy. The United Nations Secretary-General’s report clearly states that national legal reforms must be domestically owned and driven, and that “ultimately, no rule of law reform, justice reconstruction, or transitional justice initiative imposed from the outside can hope to be successful or sustainable.”⁹ Unless a hybrid court incorporates a domestic judicial reform agenda, which includes the building of positive relationships with local legal actors, progress in legacy will remain ad hoc and unsatisfactory. All of these factors call for tempering expectations of what can realistically be achieved and for viewing the role of a hybrid court not as a driver, but as a catalyst for motivating a broader set of actors or initiatives that may contribute to legacy.

Particularly where hybrid courts have jurisdiction over past crimes as opposed to present or future crimes, the importance of legacy is best understood if the role of prosecutions of massive violations of human rights is not seen as a mere extension of existing ordinary criminal jurisdiction, but rather as an extraordinary occasion for a society to make a transition to a culture of rule of law. In this respect, justifications such as deterrence or retribution should not be viewed as central to the decision to conduct these trials. A better rationale for prosecutions of massive human rights violations is to convey to citizens a *disapproval of violations* and *support for certain democratic values* (including fair trials). A strong expression of formal disapproval by State institutions committed to human rights and democratic values can help to persuade citizens as well as institutions of the centrality of those values.¹⁰

The implications for legacy are twofold. First, *how* it is done is as important as *what* is done. Second, if a particular hybrid court fails in delivering on its core mandate, either of signalling disapproval of criminal conduct, by failing to exercise independent jurisdiction over those who designed and orchestrated the mass crimes, or of reaffirming democratic values (including the right to a fair trial by an impartial tribunal), its legacy will necessarily be diminished.

⁹ S/2004/616, para. 17.

¹⁰ For further discussion, see OHCHR *Rule-of-law Tools for Post-conflict States: Prosecution initiatives*. Ascribing goals of achieving a sustainable peace, or reconciliation, to criminal trials should likewise be avoided. These are very complex objectives that require an approach that goes beyond criminal prosecutions.

II. SETTING THE STAGE: PRELIMINARY CONSIDERATIONS

A. Mandate

In past initiatives in Kosovo, Timor-Leste and Sierra Leone, the issue of legacy was not specifically incorporated in the mandate. Instead, their mandates focused mostly on subject-matter jurisdiction. In Kosovo, the primary objective was to counter the alleged lack of independence and bias within the local justice system. The lack of a specific mandate on legacy or capacity-building often meant that prosecutors and judges simply focused on the task at hand of trying cases.¹¹

Without an explicit mandate on the issue, the interpretation of legacy is, to a large extent, left to the discretion of individual actors. Many will automatically gravitate to an approach which focuses on the efficient disposing of cases. Those individuals have on occasion successfully promoted legacy initiatives, but these were not necessarily systemic, neither did they receive basic political or budgetary support.

The extent to which legacy should be part of a hybrid court's core mandate is a matter of some controversy. Some contend that a hybrid court should concentrate on a core mandate of ending impunity, complemented by a strong rule-of-law agenda, with legacy being a matter for design and implementation. They reason that a primary focus on successful investigations and prosecutions, followed by convictions or acquittals and subsequent enforcement of sentences, will be the key marker of success, nationally and internationally. This approach asserts that legacy can be sustainable even if not explicitly set out in the mandate.

Others hold that it is more difficult to build political support for legacy without an explicit mandate and that political support is an important factor for legacy to succeed. This view posits

¹¹ In the context of peacekeeping, additional considerations may arise. In Kosovo, the hybrid panels under UNMIK Regulation N° 2000/64 fell under the Department of Judicial Affairs in Pillar II of UNMIK, while capacity-building in the justice sector is managed by the Organization for Security and Co-operation in Europe (OSCE) under Pillar III. Some actors in Pillar II took the view that they did not have a mandate for capacity-building but that their role was to ensure the functioning of the justice system. Many resources were consumed by the Department of Judicial Affairs and certain unpopular decisions, such as the use of executive detentions, provoked criticism from OSCE, thereby contributing to the gap between the two approaches.

that ending impunity and ensuring the work of the court leaves a legacy are concurrent and mutually reinforcing goals. In addition, a number of experts express the view that an explicit mandate should be defined as narrowly as possible, because a broad mandate gives rise to the potential for more political interference. Equally important is the need to ensure the mandate and any new laws surrounding its establishment are synchronized, both in fact and in perception, with local law.

The case of Sierra Leone is instructive in this regard. Some senior officials within the Special Court were committed to legacy, but their initiatives were not always supported by the Management Committee.¹² The Management Committee, responsible for advising the Special Court on non-judicial matters and assisting with fund-raising, previously focused on conducting the Special Court's operations within tight budgets and time frames. This is consistent with an attitude currently prevalent among some policymakers that too much money has been spent on the ad hoc Tribunals,¹³ with too few results, including finished cases and impact in the region. Another issue which has limited the Special Court's ability to contribute to legacy has been the implicit tight time frame of its mandate, initially interpreted to be around three years (although this has proved to be impracticable).

At the same time, policymakers may wish to see impact and long-term benefits, and need to be informed and educated on what some of the possibilities may be. Concerns about resources do need to be addressed. The Secretary-General has expressed a clear preference for assessed contributions in relation to hybrid courts; yet, the present situation is that hybrids have tended to rely on voluntary contributions.¹⁴ However, addressing these concerns should not come at the cost of abandoning the building of sustainable capacities within realistic parameters. Even a commitment to using and building up national capacity where possible, combined with a *modest* percentage of the total budget (such as 5 to 10 per cent), reserved for specific outreach and legacy activities, would go a long way.

The dangers of not doing so are demonstrated by the experience of the Serious Crimes Unit in Timor-Leste, which was shut down with little legacy and no clear legal recourse for unresolved cases. There is a necessary and inherent link between trying crimes to end impunity and building a sustainable capacity to address such crimes in the future. Moreover, building capacity is also a necessary part of an effective approach to prosecution, where it may be necessary, for instance, to rely on local investigators, interpreters, etc. Consequently, legacy should be explicitly mandated and receive support from the core budget. Also, pressure to impose unrealistic time limits should be avoided.

¹² The Management Committee is composed of Canada, Lesotho, the Netherlands, Nigeria, Sierra Leone, the United Kingdom, the United States of America and the United Nations Office of Legal Affairs (OLA). Its role is to give advice and policy direction on all non-judicial aspects of the Court's operations, as well as to oversee financial issues.

¹³ The International Criminal Tribunals for Rwanda and the former Yugoslavia.

¹⁴ S/2004/616.

B. Planning

Thorough planning for the establishment of a hybrid court is essential for the effective deployment of international legal capacity at the domestic level. This should include a clear assessment of the national capacity, with the participation of human resource experts. Without such planning, decision makers may have incorrect assumptions regarding domestic capacity and other conditions. Incorrect assumptions and diagnostics may, in turn, fuel strategies that are inefficient and alienate national counterparts. At the same time, such assessments have often been brief or have received limited attention during planning missions.¹⁵ To ensure maximum benefit of an international intervention and to develop an effective strategy for legacy, *more planning is needed than has been the case to date*. Tools such as reports by United Nations human rights mechanisms (e.g., Independent Experts, Special Rapporteurs), peacekeeping mission reports to the United Nations Security Council, justice sector surveys routinely prepared by the United Nations Development Programme (UNDP) or non-governmental organizations (NGOs), mapping of human rights abuses or court monitoring reports should complement these assessments.

The composition of assessment teams is critical, and teams should not only be led by a United Nations actor with detailed knowledge of the country but also include national legal actors. Where there is a peacekeeping operation on the ground, it should provide support to the planning mission and may have already conducted certain assessments. Ideally, justice sector assessment missions should undertake a comprehensive overview of the criminal justice sector and the state of the national legal framework, which may take longer than the few weeks often set aside for this purpose. Planning missions should seek to engage with a wide variety of actors, including civil society, and may devise a checklist to this end.

C. Ownership

By definition, hybrid approaches require investment from both international and national organizations, Governments, victim organizations, legal communities, and civil society. Ideally, all those involved ought to feel vested in the process. Experience has shown that appropriate levels of ownership are difficult to achieve and are intimately connected with political will.

While the establishment of the War Crimes Chamber in Bosnia and Herzegovina was linked to the International Criminal Tribunal for the former Yugoslavia's completion strategy and its decision to hand cases back to national jurisdictions, it does provide a promising new model from the perspective of ownership. The Chamber forms part of the Criminal Division of the new permanent State Court for Bosnia and Herzegovina. Although there are currently international prosecutors, judges and others within the Chamber, it is a national court and international participation will be phased out within approximately five years. The Chamber took positive steps

¹⁵ "Report of the Planning Mission on the Establishment of the Special Court for Sierra Leone" (S/2002/246, annex).

from the outset to clearly reinforce its domestic nature. For example, local judges preside over trials, even if the other two judges on the panels are international.¹⁶ Most of the national staff are part of the national court system. Although the Republika Srpska is still underrepresented, the Chamber receives political support from all three members of Bosnia and Herzegovina's presidency and the staff represent all three major ethnic groups. The president, a national, provides overall leadership of the Chamber, even if internationals still play a significant role in management and policymaking. The international presence was designed to install a measure of confidence that otherwise might have been difficult to create in the light of persistent ethnic mistrust and tensions in the country.

In both Kosovo and Timor-Leste, ownership has been complicated by the fact that they were both under United Nations executive administration when the regulations forming their hybrid courts or processes were passed. In both those cases, virtually no consultation with local legal actors or the public preceded the decisions to insert international actors into the domestic legal system reflected in UNMIK Regulation N° 2000/64 and UNTAET Regulation N° 2000/15.¹⁷ The lack of any meaningful consultation with regard to hybrid courts was indicative of a broader failure to consult legal actors and the public on the many robust law reform efforts undertaken in Kosovo and Timor-Leste since 1999. Neither Kosovo nor Timor-Leste had a functioning legal system at the time, but not including local actors in decision-making processes from the outset had a deleterious impact on domestic ownership. For example, local legal professionals have played little or no role in the formulation of legal policy in Kosovo, which remains in the sole domain of the Department of Judicial Affairs of UNMIK. Furthermore, most of the plans to establish a ministry of justice for Kosovo were formulated by international policy-makers.¹⁸

Where a hybrid court is established through negotiation with a sovereign Government, the scope for domestic ownership may be larger, but complications of a different nature may arise. The role of Sierra Leoneans within the Special Court's structures was affected by the Government's decision to appoint international staff to some of the key posts that should have been filled by a Sierra Leonean.¹⁹ This and other factors have contributed to the perception that the

¹⁶ This has the added advantage that all the most active participants in the courtroom are addressing each other in the same language, even though translation is obviously still required.

¹⁷ For a discussion on how this developed in Timor-Leste, see Suzannah Linton, "Rising from the ashes: the creation of a viable criminal justice system in East Timor", *Melbourne University Law Review*, vol. 15, N° 1 (April 2001), p. 122.

¹⁸ Local legal professionals were not represented in the Department of Judicial Affairs until recently and consultation of local counterparts in policy decisions remains limited. The fact that the Special Representative of the Secretary-General upon the recommendation of the UNMIK Department of Judicial Affairs can decide to allocate or take cases without local involvement in making that decision has further detracted from ownership and has made local judges feel disempowered.

¹⁹ This was the case for two of the four judges and the Deputy Prosecutor. There was express provision in the Agreement that the post of Deputy Prosecutor was reserved for a Sierra Leonean. However, the Government moved to amend the Agreement through an exchange of letters and had Parliament amend the language of the implementing legislation in order to allow for the selection of internationals. The Sierra Leonean Bar Association objected to the implicit suggestion that the Government deemed none of its members to be qualified. The Special Court gradually came to be viewed as increasingly international, in part because of the lack of Sierra Leoneans in senior or representative positions.

Special Court is mainly an international institution. Ownership should be considered both at the point of creation and whenever any important decisions are made throughout a tribunal's existence, incorporating the engagement of a variety of actors, including civil society.²⁰

D. Interlocutors

Intimately connected with the question of ownership is that of identifying interlocutors. The range of interlocutors with whom the international community seeks to engage during the negotiation on the formation of a hybrid court plays an important role in securing buy-in from stakeholders in civil society and the legal community. As a result, this range should be wide and include major stakeholders.

While negotiations to establish a court must by definition be limited to representatives of the United Nations and the relevant Government, it may be possible for either side to conduct specific consultations with a wider range of actors while the process is ongoing. In the context of Burundi, it was recommended that in parallel to the negotiation process, there should “be a broad-based, genuine and transparent process of consultation [. . .] with a range of national actors and civil society at large, to ensure that, within the general legal framework for the establishment of judicial and non-judicial accountability mechanisms acceptable to the United Nations and the Government, the views and wishes of the people of Burundi are taken into account.”²¹

Past practice, however, illustrates that the realm of interlocutors has often been narrow and not included all major stakeholders, such as victim representatives. For example, the negotiations to establish the Special Court for Sierra Leone were held with a relatively small group, mainly Government actors, with the Sierra Leonean Attorney-General and Minister of Justice leading the delegation. The lack of involvement of Sierra Leonean legal professionals more broadly and the failure to keep them adequately informed of progress meant that, firstly, lawyers felt disengaged from the process and, secondly, a lack of information led to misplaced hopes and expectations.²² Such misperceptions and any resentment that resulted could easily have been prevented if there had been more consultation from the outset. Similar resentment initially

²⁰ In the Special Court, the percentage of Sierra Leonean staff overall is greater; however, very few Sierra Leoneans are in positions of authority or participate in high-level decision-making.

²¹ S/2005/158, para. 75.

²² Many local lawyers had hoped that the Special Court would be located in the centre of the town alongside the domestic courts, giving rise to opportunities for informal mingling. Instead, a planning mission in January 2002 decided that the Court would build its own premises away from the centre. Others had hoped that there would be large numbers of professional jobs available for Sierra Leoneans, without realizing that the core staff of the Special Court was going to be quite small. Also, some were disappointed that early outreach events scheduled either by international NGOs or by the Court itself tended to be “one-way” information sharing rather than a genuine dialogue. The outreach programme has since proved to be influential and successful. The majority of those working in the outreach programme are from Sierra Leone and a number of initiatives to include civil society in the dissemination of information about the trial of Charles Taylor have begun.

seemed to emerge around the decision to remove Charles Taylor, former President of Liberia, to The Hague (Netherlands) for trial, a decision from which civil society had been excluded.²³

E. Structure

1. *Relationship with the domestic legal system*

If the current trend towards making specialized capacities sustainable continues, hybrid courts will increasingly seek to build on existing domestic institutions. A closer relationship with the domestic legal system invariably means that there will be a greater emphasis on the application of domestic law. While this may be seen as desirable from the perspectives of legitimacy and legal certainty, in some areas the law may be lacking or in need of reform. A common formulation is for the currently applicable law to apply, except where it is not consistent with international human rights standards. However, where such an approach is taken, it is vital to assess the existing law immediately to determine where the inconsistencies lie.

It is also critical to clarify from the outset which domestic laws apply. Moreover, in some cases the need to amend domestic laws which are contrary to international standards could usefully form part of the negotiations on the creation of the hybrid court. For example, in Cambodia, prior reform of the criminal procedure code and of the law on the Supreme Council of Magistracy would have greatly assisted the Extraordinary Chambers.

There may be occasions when relying on existing domestic laws will not be appropriate. For instance, the Special Court for Sierra Leone could not exist as part of the domestic legal system without raising complex questions relating to a prior amnesty law and the sovereign immunity of Charles Taylor. Also, domestic courts may be hamstrung by limitations with regard to extradition and other extraterritorial functions.

There are strong arguments for devising special rules of procedure for hybrid courts, accommodating the peculiarities of trials dealing with mass crimes, such as genocide, crimes against humanity and war crimes. While these may be viewed as limiting the immediate potential for legacy, such rules are necessary for the effective and fair prosecution of mass crimes, and would still provide the impetus for reform at a later date.

2. *Location: centralized versus decentralized approaches*

It is debatable whether legacy is better promoted with the deployment of international staff throughout a national legal system (i.e., in local courts in the provinces) or through creating a centralized and specialized capacity, for instance in the capital. Currently, the centralized model seems to be prevailing and has been used in Sierra Leone, Bosnia and Herzegovina, and Cam-

²³ See "Taylor trial should be moved from Sierra Leone only as last resort", ICTJ, press release, 3 April 2006.

bodia. Of late, discussions on centralizing international capacity have also emerged in Kosovo.²⁴ A clear advantage of a centralized model is that it is easier to manage and administer, relatively insulated from the systemic problems that may plague a domestic legal system. This makes it possible to achieve progress in a short time and cultivate an air of achievement and success, with clear benchmarks. In Sierra Leone, and Bosnia and Herzegovina, the structures around the courts were built up quickly. The high-tech, impressive premises of these institutions have served as a source of pride and demonstrated a tangible success, in contrast to the drabber facilities of purely domestic courts. Furthermore, a centralized capacity gives more opportunities for training, preparing and developing the specialized expertise of a group of preselected national (and international) counterparts. Importantly, given the crimes and suspects being tried, it also facilitates more rigorous security procedures.

The argument against such centralized structures is that they create a two-tiered justice system because of the disparity with the domestic legal system as a whole. From such a position of privilege, it may be harder to have an impact on the legal system as a whole, and may antagonize those other national legal professionals who are not directly engaged.²⁵ In Bosnia and Herzegovina an enormous gap exists between perceptions of the Bosnian State Court, which is described as “supermodern,” and the district and cantonal courts. This is comparable to the gap that exists between the War Crimes Chamber in Bosnia and Herzegovina and the International Criminal Tribunal for the former Yugoslavia. The Chamber may therefore be highlighting the inadequacies of the domestic courts without having an obvious role in overcoming them. Many criminal defendants may therefore, ironically, aspire to appear before the Chamber or to appeal to international judges. The same is true for the Special Court for Sierra Leone. In both Timor-Leste and Cambodia, there are similar disparities, as the Special Panels and the Extraordinary Chambers operate in newly refurbished courtrooms with recording facilities and other modern amenities that the ordinary courts do not possess. In many of these instances, the demands for appropriate premises has also meant locating hybrid courts in separate premises from local courts, which may further diminish the potential for legacy by limiting the interaction with domestic court personnel.

The only example to date of a truly decentralized model is Kosovo, where international prosecutors and judges were increasingly deployed to local courts in the various districts. Some international judges and prosecutors complained of isolation and its impact on their morale, but conceivably the Kosovo model could have given rise to more extensive, localized interaction between international and national personnel. In some cases this seems to have been the result, and some international personnel have spoken favourably about the experience. But in

²⁴ Originally, there had also been a plan to create a special war and ethnic crimes court for Kosovo. However, it was eventually abandoned on grounds of cost and security. See Perriello and Wierda, *Lessons from the Deployment...*, pp. 10–12. See also David Marshall and Shelley Inglis, “The disempowerment of human rights-based justice in the United Nations Mission in Kosovo”, *Harvard Human Rights Journal*, vol. 16 (spring 2003), p. 95.

²⁵ In Bosnia and Herzegovina, there is a pending question about whether cases can or should be tried at the entity or cantonal level, and whether the War Crimes Chamber should be involved in building the capacity of those courts.

general terms, deployment was not strategic and opportunities for mixing were hampered by several factors, including the early abandonment of mixed panels composed of international and national personnel, the lack of high-quality language interpretation and the lack of shared locations for national and international personnel. In general, experts have concluded that the impact of international prosecutors and judges on the domestic legal system in Kosovo has been negligible to date.²⁶

In late 2005, all international judges and prosecutors were recalled to Pristina, Kosovo's capital, and plans have been proposed to establish a centralized capacity in the form of a special chamber or court to resemble the War Crimes Chamber. International judges have assisted in suggesting this approach and many seem to favour it.²⁷ However, international judges who have been recalled to Pristina say their contacts with local counterparts are even more limited than before.

If international personnel are going to be deployed as they were in Kosovo and have more impact in the future, their placement must be more strategic and accompanied by a capacity-building mandate with clear benchmarks for progress and handover. Even then, a decentralized approach is probably better conceptualized as part of a comprehensive rule-of-law programme rather than as a legacy of hybrid courts. Whilst it may be preferable from a combined efficiency and legacy viewpoint to adopt centralized structures, these must be able to both effectively train a cadre of national personnel, who can themselves act as future trainers, and ensure a countrywide demonstration effect.

3. Integrated vs. parallel management structures

The practice of either integrating court administration or running parallel structures has varied. For instance, the Extraordinary Chambers in Cambodia have adopted a different management structure from other hybrid courts. Although the planning documents referred to a structure that integrated both national and international components, the Secretary-General recognized that the particularities of the Agreement between the United Nations and the Royal Government of Cambodia required separate lines of responsibility for certain aspects of the administration, including finance, procurement and staffing.²⁸ Parallel structures and separate budgets

²⁶ The Secretary-General's Special Envoy to Kosovo concluded that "there is little reason to believe that local judges and prosecutors will be able to fulfil in the near future the functions now being carried out by international personnel" (S/2005/635, annex, para. 40).

²⁷ Instead of having localized jurisdiction, the new special court for Kosovo would have jurisdiction over the whole territory of Kosovo. Administration would be centralized, as would the collection and storage of information. This, too, provides a strong rationale for dealing with system crimes. Another intended function could be to step up capacity-building and clarify handover plans.

²⁸ See, for example, articles 8 (Office of administration) and 17 (Financial and other assistance of the United Nations) in the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea (General Assembly resolution 57/228 B of 13 May 2003, annex).

were therefore established in these key areas, which in practice are reflected in separate physical offices for the respective components in all sections except outreach and public affairs.

There is potential for greater integration between national and international staff and within the structure of the prosecution, defence and judicial arms of the Extraordinary Chambers. However, this is dependent on the institutional culture set by the first organ to be established, the office of administration. In general, integrated structures should be encouraged wherever possible, for separation risks minimizing the potential for transferring skills between staff and places the burden on individual sections and staff to operate in a truly integrated manner.

F. Avoiding “reverse” legacy

Some have argued that a hybrid court can result in a negative legacy, if it drains domestic capacity as local professionals try to move to the hybrid court,²⁹ diverts the focus away from investment in the necessary domestic legal reforms³⁰ or contributes to negative perceptions of the local legal system.

These concerns have not necessarily materialized in the specific situations examined here. Of course, the draining of local capacity from the ordinary domestic system may be short-term, an issue only during the lifetime of the hybrid court. However, it may develop into a longer-term concern if staff use the experience gained to seek jobs abroad, or in the private sector, and do not return to the domestic system. Alternatively, a negative legacy may still result if national staff return to the domestic system only to be frustrated by the lack of resources and progress.

The competition for resources among fledgling ministries or institutions is more complex to analyse. A popular argument in Sierra Leone has centred on the US\$ 80 million spent on the Special Court thus far, which some claim should have been spent on improving the domestic legal system. Similar points of view are raised in relation to the War Crimes Chamber and Extraordinary Chambers.³¹ However, this stance does not necessarily support the position that *less* should be spent on hybrid courts, but advocates that *more attention and resources* should be afforded to post-conflict domestic justice systems as a whole. It is clearly arguable that, in the immediate post-conflict context, this area has been generally underemphasized.³² There is obviously a need for simultaneous investment in hybrid courts and domestic judicial systems,

²⁹ See, for example, Niobe Thompson, *In Pursuit of Justice: A Report on the Judiciary in Sierra Leone* (Commonwealth Human Rights Initiative, 2002), p. 31: “there is a delicate balance to be found between employing local court personnel, and therefore building capacity and legitimacy, and using foreign personnel to bring a sense of impartiality and to ensure that resources are not sucked out of the existing judicial structures.”

³⁰ In most hybrid courts, a large share of the total resources goes to paying international salaries.

³¹ See, for example, Douglass Gillison, “Sihanouk says he opposes KR tribunal”, *The Cambodia Daily*, 10 July 2006.

³² In Sierra Leone, the Justice Sector Development Programme, funded by the United Kingdom, is currently under way, devoting £25 million to the development of the domestic legal system over five years. It started only in 2005, some three years after the establishment of the Special Court.

and often donors will finance both from different funding sources, eliminating the necessity to have to choose between them.

It is imperative that any Government requests for international assistance should be framed in a manner that does not diminish either international or national confidence in domestic legal systems. There are three crucial ways in which “reverse legacy” may be prevented:

- (a) Avoiding a mere replacement of local with international resources or the creation of parallel systems;³³
- (b) Pursuing a hybrid court within a general framework that advocates strengthening the domestic legal system; and
- (c) Instituting a rigorous plan for handover.

The War Crimes Chamber has applied a strict regimen for handover. Registry functions will be handed over within two years (originally by 2006), whereas judges and prosecutors are scheduled to leave office within five years (by 2009). Such an approach is context-specific and may not be appropriate in all circumstances; in some cases, a handover strategy based on conditions rather than specific dates will generally be preferable.

G. Relationship between legacy and completion strategy

An effective legacy strategy requires planning from the outset. It remains a challenge to anticipate everything that may occur at the closure of an international intervention when the immediate priority is its establishment. Although the formulation of a completion strategy brings its own opportunities for legacy,³⁴ international experience illustrates that the potential impact is much greater if legacy is an integral part of policy planning from the conception of a hybrid court. Concurrently, developing a completion strategy may give opportunities for accelerated capacity-building programmes and discussions on the consolidation of legacy.

³³ In Kosovo, international judges have wholly substituted for Kosovo judges in cases that are deemed to invoke a security risk for the latter, such as organized crime, which is rife in Kosovo’s clan-based society and common to many post-conflict societies, and all war crimes-related cases. International judges are also trying cases that Kosovo judges simply do not want to do, such as UNMIK traffic violations. It is unclear when international staff can stop fulfilling such a role and, meanwhile, little trust is being generated in the local judiciary.

³⁴ This has been the case for the ad hoc Tribunals, where the completion strategy has focused more attention on legacy issues, such as the fate of their archives, issues of enforcement of sentences and witness protection, and transferring cases to domestic courts.

III. IMPLEMENTING LEGACY: PROMOTING A CULTURE OF RULE OF LAW AND HUMAN RIGHTS

A. “Demonstration effect”: impact on rule-of-law culture

With successful outreach, hybrid courts may serve a function far beyond their lifespan in setting certain standards through their so-called demonstration effect. Hybrid courts may contribute to a culture shift and demands for change or increased accountability through increased rights awareness. Demonstrating the *supremacy of law* and its independence from political considerations will play an essential role in this contribution. For this reason, 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.³⁵

Experience confirms that this indirect form of impact has not been closely analysed, but there are several, more or less obvious areas in which such an impact may be expected. What is important is that hybrid courts tend to be closely scrutinized and must uphold high standards across all areas of practice to maximize their demonstration effect. Briefly, these are some examples:

- *Fair trial standards.* A strong approach to issues of fair trial and equality of arms potentially leads to the recognition of the important role of the defence. As such a culture shift would require proper resourcing of the defence, it may lead, for example, to improved legal assistance for indigent defendants in domestic courts.³⁶
- *Prosecutorial standards.* Prosecutorial standards in relation to fair trial that deserve highlighting include disclosure of exculpatory evidence, not pursuing cases with insufficient evidence, ensuring victims know their rights and acting in an impartial manner.

³⁵ See “Updated Set of principles for the protection and promotion of human rights through action to combat impunity” (E/CN.4/2005/102/Add.1) and “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (General Assembly resolution 60/147 of 16 December 2005, annex). All core human rights instruments can be found at <http://www.ohchr.org>.

³⁶ A number of local judges in Kosovo commented that they had generally been impressed by the room for legal argument that international counterparts gave to the defence (space that they said would ordinarily be occupied by the judge in a Kosovo courtroom).

- *Transparency of public institutions and levels of professionalism.* A hybrid institution must be perceived as accessible and transparent to be successful. Access to senior officials of the court and to clear information will have a positive effect on how the court is perceived, setting realistic expectations on what the court can achieve. Financial propriety is also an important consideration, as are standards of professional ethics and codes of conduct.
- *Standards for detention and imprisonment.* The existence of hybrid courts may give rise to opportunities to demonstrate international standards of detention units and prisons. Prisons remain much neglected in efforts to rebuild criminal systems in the post-conflict context. The much higher standards prevailing in international detention facilities may lead to change on the national level but also raise public relations challenges that will need to be carefully managed. In some post-conflict situations, the proposed establishment of a hybrid tribunal gives rise to discussions on the abolition of the death penalty. On the other hand, excessive periods of pretrial detention or such detention by executive order may have undermined respect for human rights in both Kosovo and Timor-Leste.
- *Gender issues.* Strong policies both on prosecuting gender crimes and on gender equality in employment may bring about a culture shift in societies where women may enjoy a lower social status.³⁷
- *Fostering a human rights dialogue.* A critical contribution may be fostering a culture where human rights will be protected on several levels. But steps may also be taken to continue a human rights dialogue into the future. In Sierra Leone, the Special Court has contributed to the establishment of "Radio Justice," a BBC-run radio programme that provides a platform for various justice-oriented discussions.
- *Non-discrimination and equal employment.* In Sierra Leone, personnel policies were devised that promoted the hiring of persons with disabilities, including blind individuals.

B. Outreach and public information

Outreach is crucial to the success of the demonstration effect and should be covered by the core budget of future hybrid courts. Research in different contexts has shown that the legitimacy of a tribunal may be intimately connected with public perceptions of its work.³⁸ Moreover, surveys conducted in Rwanda, Uganda and Sierra Leone have illustrated a close relationship between knowing about a court and supporting it.³⁹ Outreach may be the main way of involving victims

³⁷ In Sierra Leone, the conscious decision to prosecute gender crimes motivated the inclusion of forced marriage in some of the charges. The impact of this on the domestic system is evident, exemplified by at least one case holding confidential hearings in a trial involving a rape victim, a decision some attribute to the Special Court's influence.

³⁸ See Eric Stover and Harvey Weinstein, *My Neighbour, My Enemy* (Cambridge University Press, 2005).

³⁹ See, for instance, ICTJ and Human Rights Center, University of California, Berkeley, *Forgotten Voices: A Population-Based Survey on Attitudes about Peace and Justice in Northern Uganda* (July 2005) and The Post-conflict Reintegration Initiative for Development and Empowerment and ICTJ, *Ex-combatant Views of the Truth and Reconciliation Commission and the Special*

and other stakeholders, who may not otherwise be able to participate more formally in the trials. A hybrid court may be seen as largely irrelevant unless there is a robust outreach programme that informs the public about its activities.

A successful outreach programme necessitates both receiving and sharing information, seeking to integrate such a court into society. Providing timely and accurate information to the public is a matter of policy and transparency, which in turn reinforces legitimacy. Although the early shortcomings of the ad hoc Tribunals in this area were well known, the early hybrid courts have faced similar challenges.⁴⁰ In part, this has been owing to a general reluctance, including on the part of legal professionals within hybrid tribunals, to view the trial processes of hybrid courts as inherently different from domestic criminal proceedings.⁴¹ Trials involving serious and complex crimes, including war crimes and crimes against humanity, require dialogue with the public to be understood. This is particularly the case where exposure to formal justice systems, or even basic literacy levels, may be low.

Even where this is not the case, hybrid courts will require more explanation than existing judicial bodies. This important task should not be left to the local or international media, which in the post-conflict era is often not able to responsibly deal with these issues, often requiring its own capacity-building.⁴² While NGOs can play a crucial role in amplifying awareness and encouraging debate about hybrid courts, this should not in turn justify a reduction of the hybrid court's own responsibility for outreach. Outreach needs to be complemented by public information and by a trained media adviser and spokesperson. Public information offices of hybrid tribunals can contribute to building the capacity and legal literacy of local media, including through working with NGOs.⁴³

Effective outreach should involve:

1. A proactive strategy that seeks to target different sectors of the population (women's groups, schoolchildren, the legal profession, the security sector, private business, etc.).

Court in Sierra Leone (September 2002). See also Stover and Weinstein, *op. cit.*

⁴⁰ In Timor-Leste, the Special Panels similarly did not initially engage in any form of public outreach or even dissemination of basic information, in contrast to the Serious Crimes Unit. The only form of public information about their work came from an NGO, the Judicial System Monitoring Programme. In Kosovo, the Legal System Monitoring Section of the OSCE Department of Human Rights and Rule of Law has played a key role in publicly reporting on the state of the justice system and, in particular, the trials involving international judges and prosecutors.

⁴¹ In Kosovo, there has been virtually no outreach concerning the international judges and prosecutors programme initiated by UNMIK.

⁴² Local media coverage in Kosovo is often described as incendiary and biased, and many of the international judges and prosecutors have complained about constant media attacks on them and their decisions. Members of the local press complain that press conferences are infrequent, and argue that the absence of such contact makes the justice system seem opaque to the press and the public, thereby undermining the rule of law.

⁴³ Organizations such as the Institute for War and Peace Reporting, Hironelle and Internews have worked with both international and hybrid courts to train journalists on reporting war crimes trials.

2. A comprehensive approach that focuses not just on the prosecutor, who will always attract much public attention at the beginning of the proceedings, but on all parts of the trial process, including the right to a fair trial and competent defence. This should include the provision and dissemination of preliminary basic information as early as possible.⁴⁴
3. A network that is able to disseminate accurate information quickly over a wide geographic area.
4. Genuine, two-way communication that involves dialogue and opportunities for feedback.

It may also be useful for hybrid courts or the NGOs that support them to obtain structured feedback on perceptions through the use of surveys, public opinion polls and focus groups. To a large extent, these strategies have been reflected in the work of the Special Court for Sierra Leone⁴⁵ and the War Crimes Chamber.⁴⁶

C. Development of local civil society

As previously mentioned, in times of transition, prosecutorial approaches within hybrid courts have the unique ability to contribute to restoring and building upon a culture that respects the rule of law and human rights. Partnership with local civil society is a crucial part of this. Hybrid courts may play an active role in affirming the important role of local civil society and, for this very reason, should seek to engage local civil society directly in their work.⁴⁷ Such involvement can yield important benefits, including access to valuable information and evidence, additional technical expertise, political support, and an additional medium of outreach and public engage-

⁴⁴ An excellent example of this is the booklet *An Introduction to the Khmer Rouge Trials* produced by the Cambodian Government Task Force, prior to the appointment of judges and staff to the Extraordinary Chambers. It is available at <http://www.cambodia.gov.kh>.

⁴⁵ See its *Outreach Report, 2003–2005* (2006). In Sierra Leone, the Prosecutor organized town hall meetings in every district, typically attended by hundreds of people. Subsequently, outreach was taken over by the Registry, and the strategies and approaches of this Outreach Unit are widely acclaimed. Almost all the staff are Sierra Leonean, speak the local languages including Krio, and are well equipped to gauge context and audiences. Videos of highlights of court proceedings have also been made available to affected districts. Of note, the Special Court organized a large national conference on victim commemoration to give opportunities for feedback about the public expectations of the process.

⁴⁶ In Bosnia and Herzegovina, efforts have been made to ensure public knowledge of, and access to, the trial proceedings. Tours have been organized for victim groups and DVDs of the War Crimes Chamber process are given to members of the media.

⁴⁷ At the Special Court for Sierra Leone, several initiatives have attempted to involve civil society. For example, the Registrar convened a monthly “Special Court Interactive Forum,” where the Court and civil society could share impressions and exchange information directly. The Office of the Prosecutor engaged Sierra Leonean women’s groups to determine how to bring charges of forced marriage. There was extensive engagement with child protection agencies on the issue of finding and taking statements from potential child witnesses. Furthermore, the Sierra Leone Court Monitoring Programme has been one of the few consistent local voices to give independent comment on developments at the Special Court. In Bosnia and Herzegovina, an NGO network has been established to support the work of the War Crimes Chamber in a number of ways, including issues related to witness protection and support. The role that NGOs play in monitoring a hybrid court’s work is an invaluable capacity-building tool and has been shown to amplify outreach efforts. In Timor-Leste, the work of the Judicial System Monitoring Programme has been indispensable in fulfilling those roles and informing broader international audiences of the work of the “Serious Crimes” process through a well-maintained website.

ment. Likewise, the influx of international legal actors that a hybrid can bring may further yield extremely important benefits for civil society in terms of building technical capacity and augmenting political standing. In post-conflict settings NGOs tend to mushroom, although they are not necessarily reliable. For this reason, it will be important for a court to map the general state of civil society and to understand the dynamics from conception and through the period of its mandate. In this regard, it would be helpful to create an NGO liaison position within hybrid courts that will act as a regular forum for interaction between the court and civil society.

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IV. LEGACY: HUMAN RESOURCES AND PROFESSIONAL DEVELOPMENT

The development of professional capacity within the host country is difficult in itself and will depend on the successful fostering, from the outset, of a relationship between international and national actors that is conducive to skills transfer. This can be realized if hybrid tribunals (a) engage in sufficient planning and diagnosis of the national legal context; (b) have a thorough identification process to find suitable nationals and internationals for participation; and (c) engage in consultations with national actors throughout the process.

For international actors, recruitment processes should identify candidates who are able to adapt to difficult environments, are willing to depart from their own legal system if need be and learn about the host's domestic legal system, and who are suited to working constructively with local counterparts.

A. Recruitment

1. National staff and personnel policies

A direct consequence of conflict is the destruction, collapse or compromising of legal and justice systems. This, in turn, makes the recruitment of adequate national staff a real challenge for a hybrid court in the post-conflict context.⁴⁸ A crucial distinction will be whether recruitment is for or within the national court system, or for a special court. Recruitment policies and opportunities to vet may be more prevalent with the latter. In Timor-Leste, when UNTAET was looking to establish the first courts, only a handful of people with legal training were identified and most lacked practical experience. While legal professionals were also returning from the diaspora, many of these went into positions of political leadership. Kosovo faced very similar problems, as most Kosovo judges and prosecutors had been forced out by discriminatory laws. Any remaining practising Kosovo lawyers were mostly defence counsel.

⁴⁸ In Timor-Leste, many of the lawyers had been Indonesians, who had fled the country. While some Timorese had obtained legal qualifications before independence, they had been systematically discriminated against or were otherwise reluctant to participate in what they considered to be an arm of foreign oppression.

In such situations, after the initial assessment, the first necessary step is a proactive campaign to advertise for and identify qualified and representative national candidates. In Timor-Leste, leaflets were dropped all over the country in an attempt to find potential applicants. In Sierra Leone, posts are extensively advertised in national newspapers. One option is to apply affirmative action to particular posts. The Special Court automatically shortlists Sierra Leonean candidates for interviews. If qualified, the Sierra Leonean will be appointed; if not, detailed feedback is supposed to be given to assist the applicant in future career moves.

In some situations, national judges or staff may not be equipped to assume the responsibilities of conducting complex criminal litigation. In Kosovo, when judges proved themselves unable to conduct war crimes cases, UNMIK quickly resorted to replacing them with international judges and prosecutors. While this may have been a necessity at the time, an opportunity may have been lost to build in a system of mentoring or other capacity transfer, which could have contributed more directly to building local capacities. Moreover, both the unilateral nature of UNMIK regulations and the mechanics for reassigning cases from local to international judges have further contributed to diminishing local capacity and bred disappointment among local judges and lawyers.⁴⁹

In Timor-Leste, originally the intention was also to rely on local judges and prosecutors, for practical as well as symbolic reasons. When doubts developed concerning their readiness to try such complex cases, the Special Panels were introduced. Again, while a mixed-panel system may have contributed more directly to the development of capacity among the Timorese judges, in terms of both legal and language skills, the unilateral nature of the decision caused resentment and was seen as a comment on the Timorese system.

In Cambodia, the entire structure of the Extraordinary Chambers reflects an explicit lack of confidence on the part of the international community in the Cambodian legal system. This is evidenced by the “super-majority” mechanism for judicial decisions, in which at least one international judge’s vote is required.⁵⁰ It is also evident in the decision to have national and international co-prosecutors and co-investigative judges (with a special pretrial chamber to resolve any disputes). Even if this mechanism succeeds in preventing political interference, the cumbersome structure is likely to cause inefficiency and complications.

Decisions regarding the extent of international involvement should generally be made in ways that do not diminish confidence in local legal professionals and should focus on developing

⁴⁹ Originally Regulations N° 2000/6 and N° 2000/34 had provided for insertion of international judges and prosecutors into domestic panels, but OSCE and NGOs were critical of this approach because, while it did ensure a measure of impartiality, they felt it did not go far enough. Indeed, in practice international judges were often outvoted by the lay and professional Kosovo judges, leading to unsubstantiated verdicts of guilt against some Kosovo Serb defendants and questionable verdicts of acquittal against some Kosovo Albanian defendants. In December 2000 UNMIK Regulation N° 2000/64 was promulgated to respond to these concerns. It granted the Special Representative of the Secretary-General the authority to appoint a special panel of three judges with an international majority. The current situation is one of dependence on international panels with apparently few benefits for the local legal system.

⁵⁰ See article 4 of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea.

strategies to build local capacity from the outset. This may include placing national professionals in positions where they are able to gather practical experience without accepting full responsibility.

While every effort should be made to identify qualified national candidates, efforts should also be made to exclude or vet unsuitable candidates, bearing in mind the need to ensure judicial independence. Where the court itself is hiring, it will be possible to exclude such candidates through the hiring process, but it may be more difficult to vet candidates put forward by domestic authorities. For instance, in Cambodia the national Supreme Council of Magistracy was in charge of appointing both the international candidates proposed by the United Nations as well as the national candidates from the Government of Cambodia. The United Nations made the list of nominations for international candidates publicly available in advance, thus enabling public scrutiny of the candidates, but the list of Cambodian nominees was not similarly made public.⁵¹

2. Challenges regarding international recruitment

While international recruitment may, on the face of it, not be as much of a legacy concern as domestic recruitment, it is still crucial. If international recruitment fails to identify good candidates in a timely manner, the potential for overall impact and legacy will be reduced.

International recruitment has been a tremendous challenge for hybrid courts, in terms of both finding qualified applicants and putting in place efficient recruitment structures, and some have referred to systematic failures in this area. International recruitment under the auspices of the United Nations Secretariat, predominately applied for senior appointments, including the judges for the Special Court and the Extraordinary Chambers, is often slow and entirely reliant on Member States putting forward qualified candidates.⁵² In Kosovo⁵³ and Timor-Leste,⁵⁴ recruitment has been the direct responsibility of the peacekeeping mission. These processes have, however, not always yielded the most suitably qualified candidates. As for the advertising of vacant positions, the Special Court for Sierra Leone maintained its own web listings, not subject to the Staff Regulations of the United Nations, which made its hiring process more flexible.⁵⁵

⁵¹ See, for example, "Judge Selection for Khmer Rouge Tribunal", Cambodian Human Rights Action Committee, media statement, 24 August 2005, available at: <http://www.licadho.org>.

⁵² These candidates are then assessed by the Office of Legal Affairs (OLA). For example, in the Special Court for Sierra Leone, it took an entire year to recruit a second trial chamber. There were similar difficulties in finding a successor to the first Registrar. For the Extraordinary Chambers in the Courts of Cambodia, OLA sought nominations not only from Member States but also from NGOs and individuals, although this was not widely understood.

⁵³ In Kosovo, UNMIK posts vacancy announcements through the United Nations vacancy system and applications are sent to the personnel office at UNMIK.

⁵⁴ In Timor-Leste, international judges were appointed through the standard United Nations recruitment for peacekeeping missions, a process which does not involve targeted advertising of vacancy notices.

⁵⁵ Under the United Nations Regulations, it could take up to eight months to recruit a staff member. The Special Court, which operates outside of these rules, is able to recruit within six weeks. Although it is not able to offer the terms of service of the United Nations, including pensions and other benefits, it has some flexibility in salary scales, which has greatly assisted it in hiring qualified staff.

However, for all hybrid tribunals, identifying effective places to advertise, obtaining applications from candidates with the appropriate experience⁵⁶ and achieving a gender balance have been a challenge. These factors have had a great impact on the quality of jurisprudence and legal proceedings in hybrid courts, often resulting in negative consequences, such as the overturning of judgements. In addition, the impartiality of international staff should not be presumed and each candidate's individual record must be examined. Such examination of candidates in the course of recruitment will require a degree of assessment either by peers or professional bodies.⁵⁷ For instance, in the recruitment of judges and prosecutors, there should be a judge and prosecutor on the interviewing panel. Another issue relating to international staff has been short terms of service and a high degree of turnover.⁵⁸ International judges maintain that the short terms of tenure are a threat to their independence and interfere with their ability to focus on the task at hand, let alone engage in capacity-building. In conjunction with regular and reliable performance assessments, contracts should be afforded for at least one year and have the option of renewal, depending on performance.

The United Nations is considering developing a roster of potential candidates for rule-of-law positions.⁵⁹ Such a roster could be expanded to include judicial positions in international or hybrid courts. Some argue that a permanent pool of international personnel should be established as a first resort for new situations. However, even with a roster in place, it will be difficult to develop an enhanced system for recruiting international judges, prosecutors and senior administrators without a more coherent approach that is properly resourced. Such a system would require a degree of flexibility which has not commonly been available within the framework of United Nations Staff Regulations. One solution could be a new and separate capacity within, or attached to, the United Nations Secretariat that would develop a consistent applications system that proactively sought candidates and enforced comparable levels of qualifications. This would take the form of a specialized entity, such as an international judicial commission for appointments (and possibly disciplinary issues). Another solution to this dilemma could be the expansion and coordination of bilateral judicial rapid response capacities that have been developed in States such as Norway.

Two other important aspects of the demonstration effect in the recruitment of international judicial staff are its transparency and impartiality. This is of particular import where there is a lack of public trust in the domestic judicial appointment process. A system for identifying necessary

⁵⁶ By way of example, the experience of one of the international judges in Kosovo was exclusively in riparian rights; in Timor-Leste, more than one judge had no experience of courtroom management in criminal trials. Experience in complex trial litigation should be a prerequisite. At the War Crimes Chamber, the quality of international judges has been of concern, and the importance of having multiple candidates to choose from lists put forward by Governments has been stressed.

⁵⁷ A positive development in this regard was the inclusion of former judges from the International Criminal Tribunal for the former Yugoslavia on the interview panel for the international judicial nominations for Cambodia.

⁵⁸ In Kosovo, the average tenure of the international judges is approximately six months. Due to the short contracts, international judges have been known to leave the mission without finishing an ongoing case, resulting in delays owing to the need to restart the trial.

⁵⁹ S/2006/980, para. 48 (j).

qualifications should incorporate consultation with national counterparts. There may be a role for civil society in commenting on lists of nominated candidates.

A perceived lack of accountability for the duration of the tenure of international staff may have a negative impact on legacy. Although in certain recruitment processes it has been customary to at least consult with local counterparts before appointment, international staff are generally not subject to domestic bodies such as high judicial councils or even host country bar associations. It would be difficult to subject international legal staff to such national bodies for recruitment or discipline;⁶⁰ however, in the absence of an international equivalent, a satisfactory alternative can be found in the form of codes of conduct, examples of which can be found in the ad hoc Tribunals. Similar codes of conduct and ethics should be mandated as part of international conditions of service, including for judges. In the absence of an international disciplinary body, the matter of ensuring a higher degree of accountability and consistency between institutions, particularly those with United Nations involvement, needs to be addressed. As is demanded by the nature of such work, recruitment evaluations should seek candidates that can demonstrate that they can function in multicultural environments and are sensitive to the challenges of working with persons from other nationalities and backgrounds.

3. Conditions of appointment, service and remuneration

A source of tension in hybrid courts has been the vastly different conditions of service between international and local staff. This issue tends to be most explicit in salary scales.

In Cambodia, the Government has made a commitment that national staff of the Extraordinary Chambers will be paid half of what their international counterparts earn, which is vastly more than local counterparts.⁶¹ The position of defence counsel, however, is still unclear.⁶²

In Sierra Leone, posts rather than individuals are classified as either national or international. For example, trial attorneys in the Office of the Prosecutor are classified as international posts, even when occupied by Sierra Leoneans. The same applies to more senior positions in the Registry, such as Section Chiefs, and all judges are paid the same. Often incentives may also be used to close the gap in salary disparities. While this is conducive to better national-international relations within the Special Court, it can still create significant inequality with professionals in the domestic legal system, with salaries for Court judges about 12 times that of national judges.

⁶⁰ The Kosovo Judicial and Prosecutorial Council is itself a hybrid body, but international staff do not submit to it.

⁶¹ In November 2002, Cambodian judges' salaries were increased from around \$25 to a minimum of \$300 per month. See "Report of the Special Representative of the Secretary-General for Human Rights in Cambodia" (E/CN.4/2003/114, para. 14). According to Government statements reported in the local press, the Cambodian judges are expected to earn \$65,000 per year, half of the salary of their international counterparts. See Lee Berthiaume, "KR Trial Judges, Prosecutors to Earn \$65,000", *The Cambodia Daily*, 2 September 2005.

⁶² In Cambodia, it is also still unclear whether international defence counsel would have a right to appear in court.

B. Professional development

Professional development has usually been limited to those directly employed within a hybrid structure, although there are some positive examples of broader training or attempts to expand initiatives to domestic counterparts. In either situation, legacy initiatives are less likely to succeed if there is no strong administrative commitment or no dedicated staff member to serve as a focal point with knowledge of the domestic legal system to advise and organize initiatives. In Sierra Leone, a focal point for legacy was appointed and a White Paper drafted, but not until 2004–2005.⁶³ A working group on legacy was also convened. It had members from the various parts of the Special Court, including the prosecution, defence, Registry and chambers, and also included national staff members of the Special Court.

1. *Mixed teams or panels*

There is a general consensus from experiences in different countries that co-location and the opportunity to work in mixed teams or panels encourage legacy. However, while interactions with counterparts (both local and international) may provide a valuable opportunity for professional development, experience shows that such interactions have been, at best, ad hoc and need to be carefully managed to be beneficial.

Working in mixed teams or panels and sharing office space may provide such opportunities, but it also creates challenges, including language barriers. It is difficult to achieve a proper level of integration and this requires particular strategies. For instance, parallel rather than integrated administration structures may be a hindrance. Particularly in a hybrid court structure like the War Crimes Chamber or in the case of Kosovo, insufficient access to legal interpretation makes deliberations and broader exchanges considerably more difficult.⁶⁴ In Kosovo, with some exceptions, such as the District Court at Mitrovica and the Supreme Court, the offices of the international judges and prosecutors were in separate buildings from the national judges. A number of nationals said they would have welcomed more interaction.⁶⁵ In Timor-Leste, shared offices encouraged informal exchanges. Regular meetings and interpreters dedicated to judicial chambers have proven to be of great benefit.

In most hybrid courts, mentoring of local personnel is not considered part of the job of international personnel and they maintain they have insufficient time for this additional task. It therefore falls to the individuals and is dependent largely on personalities. With the benefit that can be obtained from mentoring programmes, thought should be given to developing mentoring

⁶³ This was despite a recommendation that a focal point should be put in place for legacy and professional development, in particular in a UNDP/ICTJ report issued relatively early in the life of the Special Court, in 2003. See “The ‘Legacy’ of the Special Court for Sierra Leone”, discussion paper, 29 September 2003.

⁶⁴ This was mentioned as a problem in the contexts of Bosnia and Herzegovina, and Kosovo.

⁶⁵ In Timor-Leste, beyond the three Timorese judges who were involved in hearing serious crimes cases at either trial or appellate hearings, there was virtually no social or professional interaction between the international and national judges in the courts of ordinary jurisdiction.

programmes as part of a continuing legacy, which would select mentors from the international personnel recruited to hybrid courts on specific grounds, linked to a reliable monitoring system and clear benchmarks.

2. Training programmes

A common complaint in hybrid courts has been the absence of a coherent approach to training, both for local and for international judges. At the outset, the focus of training programmes in hybrid courts has to date primarily been on training for *nationals*. To be effective, capacity-building in the form of training must be based on a *mutual* exchange of ideas. This principle should be reaffirmed at key junctures, such as at the design stage of training programmes. The following have been among the considerations:

- *Adequate induction for international judges and staff.* Most hybrid courts have lacked a thorough induction programme for new judges and staff.⁶⁶ Ideally, this should encompass a visit to local legal institutions and attendance at domestic trials as a way of better understanding their context. Induction should also cover cultural factors, as well as training on how to discuss problems with the national system tactfully. To make international actors properly familiar with and train them in domestic laws, translation may be required and needs planning.⁶⁷
- *Needs assessment prior to training.* Many programmes have overestimated the basic legal knowledge of both national and international personnel. Seminars on highly specialized areas of law should be preceded by assessments of participants' knowledge, with initial provision for those most in need of focused skills-development programmes on more basic legal fundamentals.⁶⁸
- *Specialized training for local or international judges.* In certain contexts, such as in Kosovo, there has been no pre-entry training on human rights and humanitarian law, criminal code or criminal procedure. Specialized training should be mandatory for both national and international personnel.⁶⁹ Furthermore, training programmes should be ongoing and

⁶⁶ In Kosovo, except for a brief induction course on basic information on life in Kosovo, international judges and prosecutors do not undergo any training on the Kosovo legal system before assuming their positions. According to local counterparts, many international staff, including judges, remain inadequately aware of local laws, consequently displaying a dismaying lack of knowledge (e.g., one international judge was apparently unaware of the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms to Kosovo.)

⁶⁷ In Cambodia, the Government Task Force undertook an extensive project to translate into English a collection of national laws relevant to the Extraordinary Chambers' future work, which will facilitate the integration of the internationals into the hybrid system.

⁶⁸ In Timor-Leste, many of the training programmes, including the major ones run by UNDP and the International Development Law Organization, reflected a lack of proper needs assessment from the outset. Areas that could have benefited from such an approach include legal reasoning and decision-writing, as well as more detailed and practically focused education on the applicable law that the judges were expected to use in the cases before them, rather than the courses in comparative family law or contract law.

⁶⁹ In Timor-Leste, judicial training sessions were generally conducted only for national judges, despite a demonstrated lack of consistency among the decisions of international judges.

tailored to the particular needs of the hybrid court's progress. For example, initial training may focus on an overview of the applicable international law and pretrial procedures.

- *Training must be coordinated with court schedules.* Aside from initial training before the start of proceedings, training that conflicts with court commitments will be poorly received by participants. Where possible, training should be scheduled for periods of judicial recess.
- *Establishing practical, rather than theoretical, training.* Programmes should generally seek to be interactive, participation-based and practice-oriented, rather than formal and theoretical.⁷⁰ Basic legal skills training, including legal reasoning, approaches to writing indictments, verdicts and questioning witnesses would be of great value. Exchange programmes, such as the one organized for the judges of the Special Court for Sierra Leone to the International Criminal Tribunal for the former Yugoslavia, are also effective.
- *Employing national trainers wherever possible.* Greater attention should be paid to identifying national legal professionals to conduct training rather than completely relying on international experts. This would also make the training programmes more effective by ensuring they are made relevant to national participants. For example, teaching of international law and procedure should be done by reference to its points of similarity or departure from the national law familiar to the participants.
- *Expanding training opportunities to the broader legal profession.* This will depend on cultivating a positive relationship with the broader legal profession.⁷¹ Trainings for the broader domestic legal profession should draw strategically on the presence of internationals.⁷²

3. Professional development for judges

Judges may resist having their knowledge base challenged and assume that they do not need any professional development, particularly if the issue is not addressed at the outset. The following should form part of a deliberate approach promoting an exchange of ideas among judges:

- *Mutual awareness and sensitivity.* Complaints received include international judges being described as distant and unhelpful, local judges needing to be sensitized to international staff, Timorese judges reporting they were not treated as equals, international staff dis-

⁷⁰ For local judges, exchange programmes with visits to foreign courts may be an attractive way to build capacity. For example, a senior judge in Kosovo commented that a visit to the European Court of Human Rights in Strasbourg (France) had a big impact on him.

⁷¹ In Sierra Leone, where the Special Court has a difficult relationship with the local legal profession, invitations have been extended but have not been taken up. Part of the reason given after Judge Renner-Thomas took over as Chief Justice of the Supreme Court was the application of one of the Special Court's accused that was pending before the Supreme Court.

⁷² In Kosovo, internationals have taught courses at the Kosovo Judicial Institute on issues of organized crime such as money laundering.

playing a lack of awareness of local cultural behaviours and historical background, particularly in questioning witnesses and in their interactions with national colleagues.⁷³

- *Skills other than “knowledge of the law.”* Judges may be much more open to learning new techniques that do not directly reflect their legal abilities, including courtroom management, information technology or aspects of procedure.
- *Use of junior staff such as law clerks.* In the case of judges, use could be made of international clerks, as some judges may be more open to advice coming from those below them in the hierarchy.⁷⁴

4. Professional development for lawyers

In general, hybrid courts in various locations have often served to strengthen the role of the prosecutor, even within systems that were previously associated with civil law, such as Bosnia and Herzegovina, Timor-Leste, and Kosovo. This new approach, in which the prosecutor rather than the investigative judge takes the lead on investigations and indictment drafting, may require training.

Regardless of the civil or common-law nature of a particular system, a general and achievable legacy goal for hybrid courts may be to create a permanent technical capacity to investigate and prosecute complex and organized forms of crime, including war crimes and crimes against humanity, but also other complex crimes, such as trafficking in humans or drugs and corruption. These kinds of crimes may create unique and common issues of multidisciplinary approaches, need for analysis, case management, witness protection, information technology, and international cooperation. A permanent capacity to prosecute them is particularly relevant in the post-conflict context.⁷⁵ Similarly, hybrid courts often have greater prosecutorial discretion than may be available at the national level in the development of a feasible prosecutorial strategy for case selection. At the same time, this should be treated with caution, for greater discretion may also bring with it greater potential for political influence.

⁷³ With the exception of a general induction provided by the United Nations mission, no specific cultural awareness training was ever provided in Timor-Leste. One public defender described the international judges as operating in a professional, social and cultural vacuum. None of the international judges spoke Bahasa Indonesia, the professional language of the Timorese judges, or Tetum, the language of daily communication in Timor-Leste. Timorese judges have been expected to communicate with their international colleagues in either English or Portuguese, languages in which they had only limited proficiency and received little support. A United Nations report published in 2003 noted that international advisers’ reluctance to learn local languages contributed to the poor rate of skills transfer from internationals to nationals.

⁷⁴ However, the presence of law clerks may be less accepted as a source of advice for judges from jurisdictions where such practice is alien.

⁷⁵ In Kosovo, the creation of a Special Prosecutor’s Office seeks to accomplish some of these goals. In Bosnia and Herzegovina, prosecutorial teams that work on war crimes tend to be mixed. Reshaping the work of the prosecutor, who until then had acted alone, into a multimember team has been crucial. In essence, there is much international expertise available on how to best investigate and prosecute system crimes, using multidisciplinary teams, analysis and information technology. Such models may also be explored in contexts where investigations are carried out by investigating judges. Particular successes have been achieved in transferring this expertise in the context of investigations; these lessons will be addressed below.

The defence is often marginalized in the establishment of hybrid courts.⁷⁶ Nonetheless, defence counsel can provide unique opportunities for legacy, as the defence often involves far more national actors than other organs of the court. Private defence counsel would have greater incentives to adapt and learn new skills, relevant to their immediate new task of successfully defending their clients, in what to many would be an unfamiliar area of law. In almost all hybrid courts, nationals have conducted most of the defence, as the accused often find it easier to build relationships of trust with lawyers of their own nationality.

A promising model is found in the Defence Office of the Special Court for Sierra Leone. It combines a core group of in-house defence counsel, acting as public defenders, accompanied by individual lawyers from a roster of approved lawyers who can be assigned to each defendant. Sierra Leoneans are well represented on both the Defence Office and the defence teams: they lead 3 of the 10 teams. The Defence Office has made a considerable effort to include local lawyers on the teams, whether as co-counsel or as legal assistants. The mixed teams work closely together. The Defence Office recently proposed to expand capacity-building efforts to the broader national legal system in a project called the “Sierra Leone rule of law and justice sector capacity-building project.”⁷⁷ At the War Crimes Court and the Extraordinary Chambers, the defence offices have actively sought interaction with the national legal professional organizations. This has been done in various ways, including by establishing offices closer to national courts, even though this means being further away from the hybrid court. In general, the approaches that have been taken by defence offices in the hybrid courts provide both inspiration and invaluable experience on successfully building relationships with local lawyers and devising effective capacity-building programmes.⁷⁸

5. Skills transfer for non-legal professionals

Skills transfer is generally less controversial when it does not pertain to legal skills. Other areas where skills transfer may yield significant legacy include language skills and translation facilities, court management, witness protection and support, psychology, forensics, personnel, procurement, law reporting, information technology, human rights work, public information and local journalism, and construction management. For all of these, it is possible to conceive legacy

⁷⁶ In Timor-Leste, when the Serious Crimes Unit and the Special Panels were first created, no provision was made for a specialized defence office. In Kosovo, valuable support to defence counsel, who are all national lawyers, was provided by the Criminal Defence Resource Centre, an NGO created by OSCE, but it lacked funding and was never elevated to a fully fledged legal institution.

⁷⁷ The project sought to hire 18 new lawyers to work with the Defence Office in various capacities (as co-counsel, legal assistants and interns). These numbers went beyond the Court's strict needs, but would have been incorporated for the sake of legacy, and with a view towards a possible establishment of a public defender's office at the national level. A training programme would also have been implemented for lawyers, police and prison officials, outside the Court's realm.

⁷⁸ Another positive example is the Criminal Defence Section known by the local acronym “OKO” in Bosnia and Herzegovina. It keeps a roster of defence lawyers and conducts research to be able to support or advise them. A major benefit of this system is that it will soon be handed over to local leadership.

programmes that will develop such capacity locally or which—with sufficient planning—might simultaneously seek to meet the needs of the tribunal and the wider justice system.

All of the hybrid courts have enjoyed notable successes in skills development with investigators and/or the police. In Sierra Leone, investigators from the domestic system have been involved in planning some of the most important operations to date, and they serve in key roles in almost every team that goes into the field.⁷⁹ The Kosovo Police Service is often cited as one of the most successful UNMIK legacies. The Service began by hiring 6,000 new officers. Although it absorbed 50 per cent of the Kosovo Liberation Army, it was able to significantly shift that body's institutional culture.⁸⁰

6. Linking capacity-building to other training programmes

Upon taking over the Serious Crimes Unit in early 2002, the Deputy Prosecutor-General for Serious Crimes embarked on an extensive restructuring of the office. This included developing initiatives to build capacity in Timor-Leste by training staff in prosecution, investigations, forensics and evidence custody. The Unit's training was both practical and theoretical, including moot exercises and videos. Each trainee was assigned to a prosecution team, which it accompanied to court. The programme involved prosecutors, case managers and analysts, with a separate training programme for police investigators. Approximately 30 were trained, a potentially significant contribution to a small country such as Timor-Leste. However, a new training programme subsequently started at the new Judicial Training Centre, established by the Timorese Government and UNDP. This programme did not appear to take into account the qualifications of those trained by the Serious Crimes Unit. It was conducted entirely in Portuguese, a language which the trainee prosecutors did not understand, and therefore even candidates who had completed the Serious Crimes Unit's training systematically failed the exams.

The coordination of training efforts is a crucial element in the future of hybrid tribunals. Recognition for successful completion of earlier components should be professionally acknowledged if credibly relevant to the tasks to be performed. Such an approach would allow for the implementation of more advanced training that assumes a similar level of knowledge among all

⁷⁹ In addition to long-term secondments, the Office of the Prosecutor set up a system of rotating Sierra Leonean police officers on 90-day assignments, exposing them to complex criminal investigations and evidence handling. Some human rights observers expressed concern privately about police involvement, given the negative track record of the police during the conflict, but in general the officers conducted themselves in a professional manner. Two of the officers who spent extended time working with the Office of the Prosecutor have returned to top positions in the police, one as the third-highest ranking member of the office and the other as the director for the eastern district.

⁸⁰ In Bosnia and Herzegovina, the International Criminal Tribunal for the former Yugoslavia provided early training sessions to the War Crimes Chamber, but these ceased in view of the pending completion strategy. The gap was filled by bilateral initiatives, which, although appreciated, are in general uncoordinated. The War Crimes Chamber has recently benefited from a training programme based on a British module for investigators that addressed crime-scene examination, documentary evidence and witness protection. The War Crimes Chamber itself concentrated on capacity-building on witness protection with police. This was essential, as police reforms have not been entirely successful and there is still a lack of trust in the police.

participants, if those in need have received preliminary training to catch up. This is an extension of the culturally sensitive approach that should be adopted in the creation, administration and closure of hybrid tribunals.

Training and capacity-building should be linked to particular appointment procedures. In Cambodia, UNDP conducted training courses for judges and lawyers on international law in advance of the selection for positions in the Extraordinary Chambers. It would have been useful if successful completion of those courses had been a requirement for selection.

V. PHYSICAL INFRASTRUCTURE OR MATERIALS AS A LEGACY

Legacy may also come in the form of physical infrastructure, such as facilities, as well as the physical domain of evidence and archives of court records. Physical legacy is an important factor since issues such as the choice of court premises may have significant symbolic meaning.

Physical legacy assumes greater significance where the hybrid court is not intended to remain as a permanent institution. However, even in Bosnia and Herzegovina, where the War Crimes Chamber will continue after the departure of the international component, many people take great pride in the facilities of the State Court. In Sierra Leone, a consultation is being planned on how the Special Court's site, with its state-of-the-art facilities, should be used after it completes its mandate. In Cambodia, the Extraordinary Chambers are 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.

Another aspect of physical legacy concerns the evidence that will have been gathered, as well as the trial records. The dilemmas faced by the Serious Crimes Unit and the Special Panels in Timor-Leste, the only ones to have completed their mandates, are indicative of the questions that may arise and will need to be addressed. The Special Panels' records were handed over to the District Court in Dili. However, the complexity of the situation arises because the Serious Crimes Unit was able to investigate only 672 of the 1,400 murders that had occurred during the 1999 riots. Security Council resolution 1599 (2005) therefore stated that a complete copy of the Unit's records should be retained in New York, in agreement with the Timorese authorities. In the recent violence, the Office of the Prosecutor-General, which holds original serious crimes records, was ransacked and some archives have gone missing.⁸¹ This raises questions of confidentiality of witness statements and the fate of protected witnesses, who had been assured that the information would not be shared.

Apart from issues of ownership and location, it should not be presumed that the "historical record" that is left behind by a court is necessarily accessible to the general public. Strategies to

⁸¹ See "Report of the Secretary-General on justice and reconciliation in Timor-Leste" (S/2006/580).

improve access may include making short documentaries or films, publishing abridged versions of judgements and incorporating findings from the jurisprudence into school curricula. Relationships with NGOs that would preserve documentation could be explored, such as the conversion of the Documentation Centre of Cambodia into a research facility. Clear policies would need to be developed from the outset with a view to facilitating the legacy of court archives and other materials, for instance on which documents will be permanently retained.

VI. LAW REFORM AS A LEGACY

A. Hybrid courts' contributions to law reform

The successful streamlining of legacy and legal reform presumes a political environment that is conducive to legal reform. It also presumes a convergence of international and domestic agendas to achieve certain reforms. At the same time, contributing to law reform can be an essential legacy, particularly if it leads to a stronger legal system where legal professionals are less susceptible to external pressures. For this, a clear and firm legal framework for the hybrid institution itself is of the utmost importance.

Examples of a fruitful convergence between international and domestic agendas, in part spurred on by the presence of international legal actors working in hybrid courts are Kosovo, and Bosnia and Herzegovina. In both Kosovo, and Bosnia and Herzegovina, international and local actors quickly recognized the need to institute broad reforms of criminal laws and procedures. For example, Kosovo, stripped of its autonomy in 1989, did not have its own criminal legislation when it came under United Nations administration.⁸² On 6 April 2004, the new Provisional Criminal Code and Provisional Criminal Procedure Code of Kosovo came into effect,⁸³ effectively replacing other criminal laws. These codes were drafted by a diverse working group of legal practitioners, including representatives of the Council of Europe, and were consolidated by the UNMIK Department of Judicial Affairs. In Bosnia and Herzegovina, the impetus for the establishment of a court at the State level is the result of extensive national and international collaboration, and was a precondition for accession talks with the European Union.⁸⁴ Simultaneously, a new Criminal Code was promulgated in March 2003 and the Office of the High Commissioner for Human Rights had a significant role in the original

⁸² Initially, in Regulation N° 1999/1, UNMIK declared the applicable law in Kosovo to be Federal Republic of Yugoslavia law, including the Serbian Penal Code, modified to conform to international human rights standards. This decision outraged many Kosovo Albanians, who refused to apply the penal code, resulting in widespread confusion. In response, UNMIK issued Regulation N° 1999/24 describing the applicable law to be the law in force in Kosovo prior to 22 March 1989, insofar as it was not in conflict with international human rights standards. But in the interim, new laws had to be drafted.

⁸³ UNMIK Regulations N° 2003/25 and N° 2003/26, promulgated on 6 July 2003.

⁸⁴ The War Crimes Chamber was originally established by an agreement negotiated between the Ministry of Justice of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina, the Prosecutor's Office, the International Criminal Tribunal for the former Yugoslavia, and the Office of the High Representative. The Council of Europe and OSCE provided comments.

draft as promulgated. It is hoped that with revision over time it would gain a more distinct national flavour.

Both systems were also spurred into reforms through the applicability of the European Convention for the Protection of Human Rights and Fundamental Freedoms and, in the case of Kosovo, the direct applicability of the International Covenant on Civil and Political Rights and the primary responsibility of UNMIK to protect and promote human rights.⁸⁵ Moreover, the presence of international staff has stimulated the introduction of certain common-law concepts into what was predominantly a socialist, civil-law system. Examples include rules relating to a stronger role for the prosecutor, the use of guilty pleas, modern measures for investigating organized crime, such as wiretapping, controlled purchase of narcotics, reduced sentences for cooperative witnesses and a witness protection programme with procedural tools allowing for anonymity. The new codes also incorporate criminal offences under international law and sexual offences that were not previously criminal. While the codes may need some time to become perceived as truly local, they have generally been welcomed.

In Timor-Leste, efforts at law reform have faced many difficulties. It may have been expected that the legal framework of the Special Panels, including its transitional rules of procedure, would have formed the basis for further legal reform. However, the legal framework had been drafted by international staff, without much local input, and the provisions were very complex, relying heavily on the Rome Statute. Its legal provisions were complex to use and judges received insufficient training on their application. The new Timorese Penal Code shows a definitive departure from the approach taken by UNTAET, relying instead heavily on Portuguese law. There was virtually no public consultation in the process of drafting or adopting the codes. Interestingly, instead of being adopted by Timor-Leste's newly elected Parliament, the new Code of Criminal Procedure and the Penal Code were enacted by executive decree after consideration by the Council of Ministers. The proposed codes exist only in Portuguese, a language most lawyers are unable to read and is spoken only by a small elite.

Where hybrid courts operate within an existing domestic system, the opportunity for having a positive impact is significantly contingent on the convergence of both the local and international agenda.⁸⁶ In Sierra Leone, there have been few direct links between the Special Court and the domestic law reform agenda. Nonetheless, an organization called the Legal Reform Initiative, without directly involving the Special Court's international staff, drew on the momentum of the Court's presence to pay targeted attention to law reform, particularly in rewriting the Criminal Procedure Act, and drafting a code of conduct for judges.⁸⁷ In Cambodia, the

⁸⁵ In 2006, UNMIK submitted its first report to the United Nations Human Rights Committee (CCPR/C/UNK/CO/1).

⁸⁶ In this respect, the Secretary-General has referred to the importance of supporting domestic reform constituencies (S/2004/616, chap. VII).

⁸⁷ Some of these initiatives may have been inspired by the Special Court for Sierra Leone; for example, one judge has said that the High Court Civil Procedure Rules were inspired by the practices of the Special Court. Another initiative aimed to bring reforms to laws affecting women, including property and inheritance laws.

Extraordinary Chambers' establishment is coinciding with the finalization of a new draft criminal procedure code that has been prepared with the assistance of the French Government over the past 10 years. While it is hoped that this code will form the basis of the Extraordinary Chambers' procedure, it may need amending or supplementing to deal with the particular requirements of their proceedings. Pursuant to the United Nations–Cambodian Agreement, the Extraordinary Chambers may defer to international standards on issues not sufficiently covered by Cambodian law. They have formed a rules committee to propose supplementary rules of procedure and a code of conduct, to be derived from the Rome Statute of the International Criminal Court, the ad hoc Tribunals and other hybrid courts.

The implementation of the Rome Statute of the International Criminal Court may provide opportunities for joint efforts to review existing laws. Also, the impact may be greater where there is a specific forum for national and international actors to meet and discuss reforms.

B. Impact of jurisprudence

The impact of hybrid courts on both domestic and international criminal jurisprudence will depend not only on the quality of the judges, but also on the role of precedent in the particular legal context. In certain systems a hybrid court has superior jurisdiction and can effect legal change from above.⁸⁸ This may be the case where hybrid appellate courts review the jurisprudence of the lower courts.⁸⁹ However, the narrow subject-matter jurisdiction of a hybrid court is a limiting factor.⁹⁰ A negative aspect of the legacy of hybrid courts is the lack of publication and inaccessibility of its jurisprudence.⁹¹ The lack of publication contributes to the transparency question raised above and, more importantly, deprives academia of material to engage in discussions that would in turn afford the judiciary valuable feedback.

Similarly, where multiple languages are used in the hybrid court, it is essential to translate its judgements into widely accessible local languages. In addition, jurisprudence should be made available more widely and actively distributed to the local media, law schools and other relevant institutions, particularly to have impact in some of the areas described under “demonstration effect” above. This is also essential for reasons of transparency.

⁸⁸ This may be the situation with the War Crimes Chamber, although it remains to be seen what impact its jurisprudence will have on lower courts.

⁸⁹ This is the situation in Timor-Leste and Kosovo.

⁹⁰ The courts in Sierra Leone will not be trying war crimes and crimes against humanity arising from the past conflict, owing to the application at the national level of an amnesty law, and the Prosecutor chose not to indict the few national offences included in the Special Court's jurisdiction.

⁹¹ A Kosovo judge in the Mitrovica District Court claimed that he had no access to the jurisprudence of the Supreme Court of Kosovo. There is no gazette to publish legal decisions. In any case, there is mainly reliance on “commentaries” in order to interpret the law. In Sierra Leone, likewise, the Special Court's jurisprudence is available online but has not been widely available to local legal audiences, as decisions are expensive to print.

CONCLUSION

Hybrid courts should not be expected to restore damaged or destroyed domestic legal systems, but should seek to make a strategic contribution where possible. Legacy should not be seen as a distraction but as compatible with the core mandate of hybrid courts, and complementary with an overall approach to the restoration of the rule of law and respect for legal institutions. Strategies that seek to promote legacy should incorporate considerations of impact, sustainability, and targeted use of resources into the establishment and implementation of a hybrid court.

It is imperative to design such hybrid courts with a view to having a permanent and lasting impact on the host domestic justice system. Their establishment is a critical phase during which relationships with local actors must be inclusive and carefully managed. At the core of legacy should be the concept of sustainability, namely, how to maximize international interventions in the aftermath of mass atrocities and make a permanent contribution to a country's capacity to deal with systematic crimes.

Among the most important impacts that a hybrid tribunal can have on the rule of law is the demonstration effect of conducting fair trials even of the most serious crimes. Another broad area where hybrid courts can serve as an exemplar is the importation of recent developments in international humanitarian law, human rights law, and measures to investigate and prosecute special crimes, including the use of cooperative witnesses. A coherent, transparent and stable legal framework will be crucial for hybrid courts to function effectively and to be able to leave a legacy through their jurisprudence.

Negative impacts such as simply draining domestic capacity must be avoided. Instead, personnel policies and professional development programmes that allow for the building of a sustainable domestic capacity to investigate, prosecute, adjudicate and defend complex crimes should be pursued. Methods for international recruitment ought to be re-examined to allow for the timely hiring of high-quality candidates. The physical legacy of a court requires careful advance planning and consultation. If used effectively, the opportunity afforded by the establishment of hybrid courts can act as a catalyst for change in legal institutions and culture.

ANNEX

Summary

1. Interventions to create hybrid courts constitute unique moments in terms of the international community's attention, resources and effort, and this window of opportunity should be maximized.
2. Legacy can be defined as a hybrid court's lasting impact on bolstering the rule of law in a particular society, by conducting effective trials to contribute to ending impunity, while also strengthening domestic capacity. This impact may continue even after its work is complete.
3. Legacy should also be differentiated from the broader effort to rebuild the rule of law in a particular context, which may take many years. Legacy seeks to narrow the gap in investments in prosecuting a limited number of serious crimes in the immediate aftermath of conflict through a hybrid court and the frequent lack of investment in the local justice system in the post-conflict context.
4. The context and rationale for the creation of each hybrid court should inform decisions on legacy. Each model is likely to be unique and will require its own strategy.
5. Legacy requires a strategy and will not necessarily happen automatically or by osmosis. However, expectations with regard to legacy will need to be managed.
6. Legacy must be domestically owned and driven. A hybrid court should be viewed not as a driver but as a catalyst for motivating a broader set of initiatives.
7. The importance of legacy is best understood if the role of prosecutions of massive violations of human rights is not seen as a mere extension of ordinary criminal jurisdiction, but rather as an extraordinary occasion for a society to make a transition to a culture of rule of law.
8. Experience indicates that, in order to succeed, legacy should be explicitly mandated and receive support from the core budget. A commitment to using and building up national capacity where possible, combined with a *modest* percentage of the total budget (such as 5 to 10 per cent), reserved for specific outreach and legacy activities, would go a long way.

9. To ensure maximum benefit of an international intervention and to develop an effective strategy for legacy, more planning is needed than has been the case to date.
10. The composition of assessment teams is critical and teams should be led by a United Nations actor who has detailed knowledge of the country. Including national legal actors in the assessment team is also essential.
11. A major challenge for hybrid courts is to achieve appropriate levels of ownership by local and international stakeholders. Ownership is an issue not just at the moment of creation, but whenever any important decisions are made throughout a tribunal's existence. Ownership should include engagement with a variety of actors, including civil society. A positive model for ownership may be found in the War Crimes Chamber.
12. The range of interlocutors with whom the international community seeks to engage during the negotiation on the formation of a hybrid court plays an important role in securing buy-in from stakeholders in civil society and the legal community. As a result, there should be consultations with a wide scope of interlocutors, including major stakeholders.
13. Hybrid courts will often seek to build on domestic laws, but it is important to clarify from the outset which laws will apply. Reforms may be necessary to bring a hybrid court into conformity with human rights law and to allow for the peculiarities of prosecuting mass crime.
14. In general, centralized models of deploying international capacity (i.e., creating a special court or chamber rather than diffusing international capacity throughout the court system) seem to be prevailing and may be preferable. A centralized capacity may be more efficient and may give rise to more opportunities for training, preparing and developing specialized expertise of a group of preselected national (and international) counterparts. Importantly, given the crimes and suspects being tried, it also facilitates more rigorous security procedures.
15. In general, integrated administration of the national and international counterparts of hybrid courts should be encouraged wherever possible.
16. Government requests for international assistance should be framed in ways that do not diminish confidence in their domestic legal system. Crucial ways of avoiding "reverse legacy" are (a) avoiding a mere replacement of local by international resources, or the creation of parallel systems; (b) pursuing a hybrid court within a general framework for strengthening the domestic legal system; and (c) instituting a rigorous plan for handover, based on conditions rather than dates.
17. While formulating a completion strategy may bring its own opportunities for legacy, international experience has shown that the potential impact is much greater if legacy is an integral part of policy planning from the conception of a hybrid court.

18. Hybrid courts may contribute to a culture shift through increased rights awareness and may lead to demand for change or increased accountability. An essential part of this will be demonstrating the *supremacy of law* and its independence from political considerations. This is why 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. Through the “demonstration effect” of these norms and values, hybrid courts may have an impact on domestic systems and contribute to a culture of human rights.
19. Effective outreach and public information are crucial to legacy and should form part of the core budget. Effective outreach should involve: (a) a proactive strategy that seeks to target different sectors of the population; (b) a comprehensive approach that focuses not just on the prosecutor but on all parts of the trial process, including the right to a fair trial and competent defence; (c) a network that is able to disseminate accurate information quickly over a wide geographic area; (d) genuine, two-way communication that involves dialogue and opportunities for feedback.
20. Partnership with local civil society is crucial to maximizing legacy. Hybrid courts may play an active role in affirming the important role of local civil society. For this reason, hybrid courts should seek to engage local civil society directly in their work.
21. Successful collaboration to develop professional capacity is difficult to achieve and will depend on fostering, from the outset, a relationship between international and national actors that is conducive to skills transfer. This is about (a) engaging in sufficient planning and diagnosis of the national legal context; (b) having a thorough identification process to find suitable nationals and internationals for participation (or vetting unsuitable candidates); and (c) engaging in consultations throughout the process.
22. For international actors, recruitment processes should identify candidates who are able to function well in an international environment, are willing to depart from their own legal system if need be and learn about the domestic legal system, and who are suited to working constructively with local counterparts.
23. The contracts of international staff should be for at least one year and extendible, depending on performance.
24. Transparency and impartiality should be respected in any recruitment. Moreover, for international staff, a system of accountability such as a code of conduct may be important, particularly if they are not subject to local structures of discipline.
25. Creative options, such as classifying posts rather than individuals or introducing structures for incentives, should be used to fill the gap in the conditions of service between international and national staff. Excessive gaps may cause resentment and hinder legacy.

26. Legacy initiatives require a strong administrative commitment and may require dedicated staff members or the formation of working groups.
27. There is a general consensus from experiences in different countries that legacy is assisted by co-location and by the opportunity to work in mixed teams or panels. However, while interactions with counterparts (local or international) may provide a valuable opportunity for professional development, experience shows that such interactions have mostly been ad hoc and need to be carefully managed to be beneficial. For instance, if mentoring by internationals is expected it should form part of the job description and be specified in the contract.
28. At the outset, the focus of training programmes in hybrid courts has to date primarily been on training for *nationals*. To be effective, capacity-building in the form of training must be based on a *mutual* exchange of ideas. A common complaint in hybrid courts has been the absence of a coherent approach to training, both for local and for international judges. Several factors that should form part of a coherent approach are outlined above.
29. The professional development of judges raises exceptional considerations which require separate strategies. Some of these are also outlined in the tool.
30. A general and achievable legacy goal for hybrid courts may be to create a permanent technical capacity to investigate and prosecute complex and organized forms of crime, including war crimes and crimes against humanity and other complex crimes. These kinds of crimes may create unique and common issues of multidisciplinary approaches, need for analysis, case management, witness protection, information technology, and international cooperation, and a permanent capacity to prosecute them is particularly relevant to the post-conflict context.
31. Defence counsel may provide unique opportunities for legacy, as the defence often involves far more national actors than other organs of the court. Private defence counsel may have greater incentives to adapt and learn new skills, which is more inherent in their jobs. However, providing sufficient institutional support for defence remains a challenge and, while some promising models have developed, this is an area in constant need of attention.
32. Other areas where skills transfer may yield significant legacy include investigations, language skills and translation facilities, court management, witness protection and support, psychology, forensics, personnel, procurement, law reporting, information technology, human rights work, public information and local journalism, and construction management. For all of these, it is possible to conceive legacy programmes that will develop such capacity locally, or which—with sufficient planning—might simultaneously seek to meet the needs of the tribunal and the wider justice system.

33. Capacity-building programmes instituted by a hybrid court should be careful to link with training initiatives that may exist within the domestic system.
34. Physical legacy (e.g., of court buildings) may be important particularly from a symbolic perspective, may raise complex questions of ownership, and should be carefully considered and requires consultation. Clear policies should be developed from the outset with a view to facilitating the legacy of court archives and other materials, for instance on which documents will be permanently retained.
35. The successful streamlining of legacy and legal reform presumes a political environment that is conducive to legal reform. It also presumes a convergence of international and domestic agendas to achieve certain reforms. While this remains a challenging area, contributing to law reform can be an essential legacy, particularly if it leads to a stronger legal system where legal professionals are less susceptible to external pressures. For this, a clear and firm legal framework for the hybrid institution itself is of the utmost importance.
36. The implementation of the Rome Statute of the International Criminal Court may provide opportunities for joint efforts to review existing laws. Also, the impact on law reform may be greater where there is a specific forum for national and international actors to meet and discuss reforms.
37. The impact of jurisprudence will depend not only on the quality of the judges, but also on the role of precedent in the particular legal context. Publication and dissemination of judgements in local languages is essential for impact on legacy and in turn will be an incentive for quality.
38. At the core of legacy should be the concept of sustainability—how to maximize international interventions in the aftermath of mass atrocities and make a permanent contribution to a country's capacity to deal with systematic crimes.