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Inspiring Public Trust in the Domestic Legal System: The Impact of the Extraordinary Chambers in the Courts of Cambodia (ECCC)

Jung Min Shin
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**Inspiring Public Trust in the Domestic Legal System:
The Impact of the Extraordinary Chambers in the Courts of Cambodia
(ECCC)**

Jung Min Shin
Spring 2015

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Abstract

One of the anticipated effects of post-conflict hybrid tribunals is their spillover benefits to the domestic justice sector. While several studies have examined the impact of these courts in light of training legal personnel, establishing good practice, and providing jurisprudence, not many scholars have examined the tribunals' abilities to inspire public confidence in the national judiciary, which is also an important element of strengthening the domestic justice sector. This study examines the impact of the Extraordinary Chambers in the Courts of Cambodia (ECCC), the nation's UN-backed war-crime tribunal that prosecutes those most responsible for atrocities under the Khmer Rouge period, in generating greater trust in the Cambodian legal system. Given the ECCC's function as a domestic "model" court and the largely positive impressions it has enjoyed from the public, the tribunal exhibits noteworthy potential for its ability to improve public opinion on the national justice sector. Utilizing existing survey data, four personal interviews, and scholarly publications, this paper analyzes the changes in the public perception of the domestic legal sector since the establishment of the ECCC. Findings of the study suggest that while the ECCC has created spikes in public confidence in the legal system after concluding its first case, the Duch Trial, it has had an overall minimal impact in improving the image of the national justice sector and will most likely continue to have negligible, if not negative, influences in the future.

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I. Introduction

Often referred to the third-generation of post-conflict courts, hybrid tribunals emerged in the 1990s and have been widely applied to prosecute crimes of systemic mass violence, as in

the cases of Sierra Leone, Lebanon, East Timor, and Cambodia.¹ These courts, which operate within the concerned country and involve both domestic and foreign judges, are unique in that they aim to respect national sovereignty and remain close to the local population, all the while upholding fair and consistent international judicial standards.² Moreover, due to their incorporation into the domestic legal system and application of domestic law, they are anticipated to serve as models for the national judicial organs and leave lasting legacies on the state's justice sector.³ Some of the courts' potential benefits in this regard include better trained legal personnel, provision of jurisprudence, and transferal of good courtroom practice.⁴

One anticipated impact of tribunals which has garnered less attention is their influence on public trust in the domestic justice system. People's confidence in the judiciary is an important factor in strengthening the legal sector, and many justice-related think tanks and research institutions monitor it throughout the world.⁵ Without public confidence, the judicial branch's ability to carry out its fundamental functions are compromised because citizens will often resort to alternative, non-legal means address their disputes.⁶ Hence, in order to achieve an overall bolstering of the rule of law in a nation, public trust in the judiciary is highly necessary. It is worth noting, however, that the perception of the justice sector may not always properly reflect the actual state of the judicial system. While lack of public trust initially stems from the real shortcomings of the courts and judicial personnel, once the

¹ Caitlin E. Carroll, "Hybrid Tribunals are the Most Effective Structure for Adjudicating International Crimes Occurring Within a Domestic State." *Seton Hall Law*. January 2013. 10.

² *Ibid.*, 2

³ L. A. Dickinson, 'The Promise of Hybrid Courts', 97 *The American Journal of International Law* 2 (2003), 306.

⁴ E. Higonet, 'Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform', 2005 *Yale Law School Student Scholarship Series*, Paper 6, 12.

⁵ For example, the European Network of Councils for the Judiciary (ENCJ) Institute for Criminal Policy Research (ICPR), and the Australian Institute of Criminology has issued publications measuring public confidence in the judiciary in their respective regions. See Mike Hough and Julian V. Roberts. *Public Confidence in Justice: An International Review*. London: Institute for Criminal Policy Research, 2004, Australia Institute of Criminology. *Trends & Issues in Crime and Criminal Justice*. Vol. 387. N.p.: Australian Government, 2009, and "Judicial Reform in the EU." *Judicial Reform in the EU*. European Network for the Councils of the Judiciary, 2013.

⁶ United States of America. New York State Courts, *Judicial Elections Report*. New York: USA Government, 2005, 1.

negative image is set in people's minds, it may be hard to change it even with significant improvements in the justice sector. Hence, the level of public confidence in the judiciary may not always be an accurate reflection of its actual state. Ultimately, then, holistic strengthening of the rule of law in a nation demands not only tangible improvements in the justice sector but explicit efforts to increase public trust in the system.

Given the importance of public confidence in the judiciary and the anticipated benefits of hybrid tribunals, this study examines whether the Extraordinary Chambers in the Courts of Cambodia (ECCC) has inspired greater trust in Cambodia's domestic justice system. Established after extensive negotiations between the United Nations (UN) and the Cambodian government, the ECCC is a hybrid tribunal that prosecutes those most responsible for atrocities under the Khmer Rouge period, in which crimes against humanity, war crimes, and genocide were ruthlessly committed by members of the Pol Pot regime from 1975 to 1979.⁷

The ECCC is a particularly relevant case to study given the high expectations that were placed on the court to inspire improvements in the domestic justice sector. When agreement concerning the ECCC was finally reached between the UN and the Cambodian government in 2004, the UN Secretary-General highlighted the tribunal's potential to have an "educational effect on existing formal institutions" and raise the "general population's....demand for a well-functioning judicial system."⁸ Also, the UN Special Rapporteur on the Situation of Human Rights in Cambodia emphasized the significance of the ECCC's activities in "[setting] an important example for the national sector of the administration of justice."⁹ Finally, The Trial Chamber of the ECCC acknowledged the court's potential role as a source of learning for domestic courts as well, stating that the "[ECCC] may, as a model

⁷ David Chandler, *A History of Cambodia*, 3d ed., Westview Press, 2000, 56.

⁸ Special Representative of the Secretary-General for Human Rights in Cambodia, Situation of Human Rights in Cambodia, 19, U.N. Doc. E/CN.4/2005/116 (Dec. 20, 2004).

⁹ Special Rapporteur, *Report of the Special Rapporteur on the situation of human rights in Cambodia*, U.N. Doc. A/HRC/18/46 (2 August 2011), para. 34.

court... serve to encourage and underscore the significance of institutional safeguards of judicial independence and integrity.”¹⁰ Hence, while improving the domestic legal system is not the primary function of the ECCC, there have certainly been expectations for the court to have an overall positive impact on the legal environment in Cambodia. In light of this expectation, measuring the court’s ability to increase confidence in the justice sector addresses an important dimension of its spillover benefits, since public trust is a vital aspect needed in establishing a sound legal system.

Literature Review

Most of the existing literature on the ECCC’s impact on the domestic legal system – which predominantly consists of peer-reviewed articles in law journals and publications by UN agencies and non-governmental organizations (NGOs) – concerns the court’s ability to serve as a “model,” establishing good courtroom practices and demonstrating fair trial standards.¹¹ Aside from this demonstrative effect, several articles have addressed the ECCC’s capacity-building aspect, training domestic personnel and providing opportunities for knowledge transferal between judges, lawyers, and legal experts.¹² A number of publications have also mentioned the court’s possible contributions toward modernizing Cambodia’s judicial framework and providing jurisprudence.¹³

As previously mentioned, not many studies have delved deeply into the ECCC’s, or any hybrid tribunals’, potential impact on public confidence in the domestic legal system. A

¹⁰ The Extraordinary Chambers in the Courts of Cambodia (ECCC). *Case of NUON Chea et al.*, 002/19-09-2007-ECCC/TC, Decision on IENG Sary’s Application to Disqualify Judge Nil Nonn and Related Requests, 28 January 2011.

¹¹ See E. E. Stensrud, “New Dilemmas in Transitional Justice: Lessons from the Mixed Courts in Sierra Leone and Cambodia,” 46 *Journal of Peace Research* 1 (2009), Hanna Bertelman, “National Ownership and International Standards. Independence and Impartiality of Hybrid Courts: The Extraordinary Chambers in the Courts of Cambodia.” *University of Lund*, 2009., and Coughlan et. al, “The Legacy of the Khmer Rouge Tribunal: Maintaining the Status Quo of Cambodia’s Legal and Judicial System,” *Amsterdam Law Forum* 4.2 (2012).

¹² Jenny Holligan and Mahdev Mohan. *ECCC’s Legacy for the Rule of Law in Cambodia (2013). Workshop Report: Implementation of the ECCC Legacies for Domestic and Legal Judicial Reforms*, 4, and Seeta Scully, “Judging the Successes and Failures of the Extraordinary Chambers of the Courts of Cambodia,” 341.

¹³ See Michael Karnavas, “Bringing Domestic Cambodian Cases into Compliance with International Standards,” *Cambodia Law and Policy Journal* 3 (2014).

couple of scholarly articles have briefly mentioned this spillover benefit,¹⁴ alongside addressing the aforementioned potential impacts of the court, but none have devoted much attention to it. One notable exception, however, is U.C. Berkeley Human Rights Center's (UCB) survey-based article, *After the First Trial: A Population-Based Survey on Knowledge and Perceptions of Justice and the ECCC*, which measures the change in public opinion on the domestic justice system before and after the conclusion of the ECCC's first case, the Duch Trial.¹⁵ Findings of this study will be integrated into this paper and will be discussed in greater detail in the following sections. Aside from UCB's research, there is generally a lack of scholarly attention on the specific impact of the ECCC on perceptions regarding the domestic justice sector. It is worth noting, however, that there is a considerable amount of research each on the public perception of the ECCC and that of the Cambodian justice sector, which has provided valuable data for this study.¹⁶ Essentially, this paper aims to put research concerning Cambodian public opinion on the domestic justice sector in conversation with the literature on ECCC's spillover benefits and legacies.

Research Methodologies

This study utilizes both qualitative and quantitative data, but mostly the latter in its core analysis of the ECCC's impact on perceptions of the domestic judicial system. To deduce the tribunal's overall influence on the trend of public perception over the course of its work, the paper draws from multiple population-based surveys on the Cambodian public in the last 15 years, including the World Bank (WB) survey in 2000,¹⁷ Center for Social

¹⁴ See Coughan et. al "The Legacy of the Khmer Rouge Tribunal," 21, and Scully, "Judging the Successes and Failures of the Extraordinary Chambers of the Courts of Cambodia," 342.

¹⁵ Pham PN, Vinck P, Balthazard M, Hean S. *After the First Trial: A Population-Based Survey on Knowledge and Perceptions of Justice and the Extraordinary Chambers in the Courts of Cambodia*. Human Rights Center, University of California, Berkeley. 2011.

¹⁶ See Appendix 1 for detailed information on the survey outcomes used in this paper.

¹⁷ World Bank. *Cambodia Governance and Corruption Diagnostic. Evidence from Citizen, Enterprise and Public Official Surveys*. 2000.

Development's (CSD) studies in 2004¹⁸ and 2005,¹⁹ Khmer Institute for Democracy's (KID) survey in 2008,²⁰ UC Berkeley Human Rights Center's (UCB) surveys in 2008 and 2010,²¹ and Asian Development Bank's (ADB) survey in 2014.²² Most of these data were found online, although some information, such as ADB's survey results, had to be directly requested from the organization. While different sample sizes, questions, and methodologies were used by these sources, each survey provides statistically sound data that utilizes similar questions for gaging the general attitude of the Cambodian public toward the domestic judiciary at the time. Hence, it is presumed that analysis based on these different data sets are reliable enough for getting a broad, macro-level picture of the public's attitude.

As for other parts of the paper, such as the characteristics of the ECCC that point to its potential to impact public confidence on the judiciary and analysis of the reasons behind the degree of the tribunal's actual impact, the study mostly employs qualitative data. Source of qualitative data include scholarly articles, publications from non-governmental organizations (NGOs) and international organizations, and four face-to-face interviews, which have provided insights into the specificities of the ECCC and its context, as well as supplementary information on public attitudes today toward the tribunal and the domestic justice sector. The four interviews were conducted in March and April 2015 with various individuals who have experiences involving the ECCC and/or Cambodia's justice system, or otherwise strong ties to Cambodia. They included an ECCC witness, a lawyer for a civil party to the ECCC, a representative of a NGO that works to strengthen rule of law in Cambodia, and members of a Cambodian student association. These individuals were identified through

¹⁸ Center for Social Development (CSD). *Corruption and Cambodian Households. Household Survey on Perceptions, Attitudes, and Impact of Everyday Forms of Corrupt Practices in Cambodia*. 2006.

¹⁹ Center for Social Development (CSD). *Report on Corruption Perception Barometer (CPB). Voice of People 2005*. 2005.

²⁰ The Khmer Institute for Democracy (KID). *Victim and Witness Project Standards for the ECCC and Beyond Project*, "KID-VWP Outreach Survey on Knowledge and Interest in the ECCC." 2008.

²¹ PH Pham et. al. *So We will Never Forget: A Population-Based Survey on Attitudes about Social Reconstruction and the Extraordinary Chambers In the Courts of Cambodia*. Human Rights Center, University of California, Berkeley. 2009., and aforementioned Pham et. al, *After the First Trial*, 2011.

²² Asian Development Bank (ADB). *Democracy in Cambodia. A Survey of the Cambodian Electorate*. 2014.

online research for their relevance to this study, and were asked about the public's attitude toward the tribunal and the domestic court system, their opinions on the court's legacy and impact on the national justice sector, and overall effectiveness of the court in Cambodia's transitional justice process. Three interviews were conducted in English and one was done in French, for which questions were translated beforehand and a fluently French-speaking colleague facilitated the conversation.²³

Due to the somewhat sensitive nature of the study topic, which is closely related to the memory of the mass-level atrocities committed during the Khmer Rouge period, ethical considerations have been taken closely into account for interviews. All interviewees were fully informed regarding the subject and nature of the study, as well as the questions that would be asked, prior to their decision to participate. Also, none of the questions were a direct enquiry into their experiences under the Khmer Rouge, if they had any. Finally, participants were informed that they can refuse to answer or stop the interview at any point they wish.

II. The ECCC's Potential to Inspire Public Confidence in the Domestic Legal System

Before examining the actual impact of the ECCC on perceptions of the domestic judiciary, it is necessary to identify the characteristics of the court that point to its potential for the influence. The two main indicators that suggest its impact on public opinion concerning the national justice system are its status as a domestic "model" court and the generally positive perceptions it has enjoyed from Cambodians.

²³ Mr. Thong Hoeung Ong's interview was done in French.

ECCC as a Domestic “Model” Court

While hybrid tribunals, by definition, combine both domestic and international elements, the ratio of these two components differ from tribunal to tribunal. In the case the ECCC, there is a very strong emphasis on the domestic elements, reflecting the Royal Government of Cambodia’s (RGC) stringent demands for national sovereignty during its negotiation with the UN.²⁴ In fact, the RGC went ahead and established the ECCC under its national law even before an agreement was reached with the UN, promulgating a domestic act creating the ECCC two years prior to the conclusion of the negotiations.²⁵ Furthermore, even when the government and the UN finally reached a consensus regarding the tribunal, it was made clear that the agreement’s purpose was to “regulate the cooperation between the UN and Cambodia,” not necessarily to give legal basis to the court itself.²⁶ Hence, scholars have described the ECCC as essentially a “court embedded in the domestic court system”²⁷ that is “bound by the Constitution and other Cambodian law.”²⁸ Furthermore, it has been noted that the ECCC has a “strong institutional link [with] the courts of Cambodia, justifying an expectation that the jurisprudence of the ECCC will be heeded by the domestic courts.”²⁹

Aside from its legal standing, the tribunal also has several explicit elements that ground its status as a national institution. First of all, the court’s location in Phnom Penh, Cambodia’s capitol, is a key factor that most obviously encourages it to be seen as a domestic institution. Furthermore, the fact that the majority of the judges are Cambodian, with three out of five judges in the Pre-Trial Chamber and the Trial Chamber and four out of seven

²⁴ Karnavas, “Bringing Domestic Cambodian Cases into Compliance with International Standards,” 4.

²⁵ Nouwen, Sarah M.H. “Hybrid Courts.’ The Hybrid Category of a New Type of International Crimes Courts.” *Utrecht Law Review* 2.2 (2006): 190-214. 200.

²⁶ United Nations General Assembly, 57th Session. “Resolution adopted by the General Assembly (2003) [on the report of the Third Committee]” (A/57/228B). 22. *Supra* note 47, Art. 1.

²⁷ Karnavas, “Bringing Domestic Cambodian Cases,” 4.

²⁸ *Ibid.*, 5.

²⁹ *Ibid.*

judges in the Supreme Court coming from the nation, speaks to the court's strong domestic leaning as well.³⁰

Given the ECCC's status and characteristics as a national institution, the public perceptions on the tribunal has considerable potential to influence the overall image of the domestic judicial system. Because of its close integration into the Cambodian justice sector and expected role as a "model," the ECCC could serve as a small but significant representation of the domestic justice sector to the Cambodian people. In line with this analysis, then, public perceptions on the ECCC are highly important, since positive impressions on the ECCC would translate into a better image of the domestic system, while negative impressions could have the opposite effect.

Public Perceptions on the ECCC

Several existing survey results point to a generally positive impression of the ECCC among the Cambodian public. According to the Khmer Institute for Democracy's (KID) population-based survey in 2008, 8,502 out of 9,074, or 94% of the participants, responded that they "support the ECCC trials."³¹ Also, about 70% of the respondents agreed with the statements that the court would "bring justice to the victims and their families," "rebuild trust in Cambodia," and "promote national reconciliation."³² In addition, through population-based surveys conducted in 2008 and 2010, researchers at the UC Berkeley Human Rights Center (UCB) found that "attitudes toward the ECCC remained positive and had become more favorable on certain indicators" in 2010 compared to 2008, with a 10% increase in the number of respondents who believed that the ECCC would help "rebuild trust in Cambodia and promote national reconciliation," and an 8% increase in those who believed that "the

³⁰ International Bar Association, *Safeguarding Judicial Independence in Mixed Tribunals: Lessons from the ECCC and Best Practices for the Future*, 2011. 19.

³¹ KID, *Victim and Witness Project Standards*, 4.

³² *Ibid.*, 10.

court is neutral.”³³ It is worth noting that the 2010 survey also found awareness levels on the ECCC to have risen since the last survey, with a 12% decrease in the proportion of respondents “claiming no knowledge of the ECCC,” from 34% to 22%. Hence, by 2010, a significant number of Cambodians knew about the tribunal and had a favorable view towards it, which established a good basis for the court to exert a positive influence on perceptions of the justice sector.

Cambodians’ general approval for the ECCC was also reinforced by personal interviews, which suggest the continuing favorable image of the court today. Mr. Thong Hoeung Ong, a survivor of a “reeducation camp” under the Khmer Rouge and witness to the 002/001 trial at the ECCC, commended the court for allowing “victims to break [their] silence without the fear of retaliation.”³⁴ While acknowledging that the ECCC alone cannot be “the perfect solution to reclaim rights after the genocide,” he noted that the victim-empowering aspects of the tribunal, alongside the accountability it enforces on the current regime from committing similarly heinous acts, make the court a highly “necessary and beneficial” entity for Cambodia.³⁵ Another interviewee, Ms. Banens, a lawyer for a civil party representing victims at the ECCC, noted that while most witnesses do have frustrations over the slowness of the judicial proceedings, they overall express a “great sense of relief that their sufferings are being recognized” and highly appreciate the tribunal’s incorporation of witnesses and location in Cambodia.³⁶

While these two interviews primarily represent the attitudes of Khmer Rouge victims, they are likely to represent the views of a significant part of the Cambodian population, given that over two-thirds of Cambodia’s population have lived under the Pol Pot regime.³⁷

³³ Pham et. al, *After the First Trial*, 4.

³⁴ Thong Hoeung Ong. “Public Perceptions on the Domestic Legal System and the ECCC,” interview by Jung Min Shin and Maria Newman. March 11 2015.

³⁵ *Ibid.*

³⁶ Alice Banens. “Public Perceptions on the Domestic Legal System and the ECCC,” interview by Jung Min Shin. March 31 2015.

³⁷ Pham et. al, *After the First Trial*, 18.

Furthermore, according to the UCB's 2008 and 2010 surveys, most Cambodians, regardless of whether they lived have directly experienced the painful era or not, support the ECCC on the grounds that it has a "positive impact on the victims."³⁸ Since the victims hold largely a favorable image of the court, this suggests the ECCC's positive impact on them, and hence the general public has solid grounds to hold similarly favorable sentiments about the court.

The public approval on the ECCC suggest the tribunal's potential to increase public confidence in the domestic legal system. Given its aforementioned domestic character, the ECCC may help improve the perception of the overall justice sector through its own positive image. Therefore, there are reasonable grounds to expect the tribunal's ability to inspire public confidence regarding the domestic legal system, which would be a major contribution to strengthening the rule of law in Cambodia in the long run.

III. Changes in the Public Opinion on the Domestic Legal System since the ECCC's Establishment

To identify the ECCC's influence on perceptions regarding the domestic legal system, existing statistical data on Cambodians' views toward the national justice sector from various past years were gathered and compared. Given that the ECCC began fully operating from 2007, close attention was paid to any changes in public opinion before and after that year. Considering the potential subtlety of the tribunal's impact and the slowness of changes in public opinion, data from a broad time frame, from years 2000 to 2014, were used to evaluate the changes the court may have inspired. Statistics gathered from years 2000, 2004, and 2005 were used to deduce Cambodians' views on the domestic judicial system prior to the ECCC,

³⁸ Ibid., 29.

and data from years 2008, 2010, and 2014 were compared to them to analyze the post-ECCC impression on the justice sector. Furthermore, close attention was paid to any fluctuations in public opinion regarding domestic courts from 2007 onwards, to deduce any micro-level changes attributable to the ECCC. Finally, in lieu of very recent statistical data on Cambodians' views on domestic courts, observations from personal interviews were used to analyze current public sentiments.

Public Perceptions of Domestic Legal System before the ECCC

Existing statistics reveal that the Cambodian public has held a negative image of the domestic judiciary long before the establishment of the ECCC. In a World Bank (WB) Survey in 2000, 64% of Cambodians agreed that “the judicial system is very corrupt,” and ranked corruption as the “most significant obstacle to using courts.”³⁹ In 2004, researchers from the Center for Social Development (CSD) found that public perceptions on the domestic justice sector had slightly worsened from 2000. In CSD’s population-based survey in 2004, the judicial system received a Net Opinion rating of -62%, meaning that there were 62% more participants who gave a negative response regarding the integrity of the courts than a positive response.⁴⁰ CSD’s study noted that this marked a 3% decrease in the Net Opinion on courts compared to WB’s survey results in 2000, which showed a -59% rating on the domestic judicial system when transformed to the same scale used by CSD.⁴¹ In its overall evaluation regarding the public image of the national justice sector, CSD noted that courts are one of the institutions that is “perceived as the most dishonest...no matter how one phrases the question.”⁴² Additionally, in a similar study conducted by CSD the following year, findings indicated a further deterioration in the reputation of the domestic legal system among the

³⁹ WB, *Cambodia Governance and Corruption Diagnostic*, 7.

⁴⁰ CSD, *Corruption and Cambodian Households*, 26.

⁴¹ *Ibid.*

⁴² *Ibid.*, 2.

public, with courts receiving a Net Opinion rating of -77.7%.⁴³ Of the 80.8% of the participants who gave a negative evaluation of the domestic judiciary in this survey, 36.5% gave the court the worst rating out of the 5-point scale on corruption, labeling it as “extremely corrupt.”⁴⁴ Altogether, each of the survey results from 2000, 2004, and 2005 unequivocally point to a negative image of the domestic legal system, and hence levels of public trust in the justice sector were significantly low before the ECCC came onto the scene.

Public Perceptions of the Domestic Legal System after the ECCC

From a macro-level perspective, there have not been much significant changes in public opinion regarding the domestic judicial system even after the establishment of the ECCC. While there have been noticeable improvements in 2010 following the conclusion of the tribunal’s first case, the Duch Trial, survey results gathered in more recent years, such as the Asian Development Bank’s (ADB) population-based research published in 2014, reveal the public’s ongoing skepticism regarding the neutrality and uprightness of the domestic judiciary. Furthermore, observations from personal interviews reflect continuing disapproval for the national justice sector as well.

Cambodian public opinion in 2008, one year after the commencement of the tribunal’s work, did not show much difference from years prior to the ECCC’s establishment. According to the results of the 2008 survey conducted by UCB, only 36% of Cambodians agreed that “they trusted Cambodian court system,” and 37% agreed that they trusted Cambodian judges.⁴⁵ Furthermore, only 40% of the respondents agreed that “Cambodian judges treat everyone equally,” and 44% responded that “justice in Cambodia is same for everyone.”⁴⁶ Finally, more than half of the participants responded that “going to court means

⁴³ CSD. *Report on Corruption Perception Barometer (CPB)*, 9.

⁴⁴ *Ibid.*

⁴⁵ Pham et. al, *So We Will Never Forget*, 33.

⁴⁶ *Ibid.*

paying a bribe (61%).”⁴⁷ Hence, Cambodians continued to hold a predominantly corrupt image of the domestic judiciary in 2008, similar to previous years.

Interestingly, in 2010, researchers from UCB found significant improvements in perceptions on the domestic legal system after the conclusion of the ECCC’s first case, the Duch Trial. The 2010 survey, conducted as a follow-up to the 2008 one, revealed a 17% increase in the proportion of participants who responded that “justice in Cambodia is same for everyone (61%),” and a 16% increase in those who believed that “Cambodian judges treat everyone equally (56%).”⁴⁸ Furthermore, more than half the respondents said that they “trusted the Cambodian justice system (52%), which marked a 16% increase from 2008.”⁴⁹ It is worth noting, however, on certain indicators, respondents gave a less favorable response regarding the justice sector. For example, 7% more respondents in 2010 noted that “going to court means paying a bribe (68%)” and 6% more agreed that “going to court is too expensive (86%).”⁵⁰ Although these findings complicate the overall state of public opinion regarding the domestic judicial system in 2010, they represent relatively subtler changes compared to the remarkable improvements in perceptions on judges and justice in Cambodia. Hence, the ECCC could be said to have produced a tangible spike in public trust levels toward the justice sector in 2010, demonstrating its ability to influence public opinion.

Despite the findings in UCB’s comparative study regarding notable improvements, however, ADB’s most recent survey, conducted in May and June 2014, showed that courts were still among “the most distrusted organs” in Cambodia. 63% of the respondents gave negative opinions when asked for the “integrity” of the justice sector, while only 12% gave positive evaluations.⁵¹ In relation to older data, this result represents an improvement from trust levels in 2005, when over 80% of the public gave a negative response to the same

⁴⁷ Ibid.

⁴⁸ Pham et. al, *After the First Trial*, 4.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ ADB. *Democracy in Cambodia*, 36.

question.⁵² However, it is also quite similar to the results of the 2000 WB survey and the 2008 UCB survey, each of which found approximately 60% of the respondents holding a negative image of the domestic justice system.⁵³ While such parallel analysis across surveys with different methodologies may be risky, the findings in 2000, 2008, and 2014 do resonate with one another on a broad level. This observation suggests that despite some fluctuations over the years, public opinion regarding the national judiciary from 2000 onwards have not really improved and continue to dwell on a significantly negative image of the courts.

While there are no available survey results on Cambodians' perceptions of the domestic legal system in 2015, personal interviews conducted for this study point to the persisting lack of public confidence in the justice sector today. All four interviewees, which included a broad spectrum of individuals with direct experience with the ECCC, the national justice sector, or with Cambodia in general, noted that the domestic judiciary cannot be trusted.⁵⁴ In particular, representatives of a Cambodian student association in France, a group of ten individuals with ages of 19 to 25, held very critical views of the justice sector. One student commented that "there is no justice in Cambodia" and "people go to jail for nothing."⁵⁵ The group collectively noted that bribery is a common practice in the Cambodian legal system and that the judiciary lacks overall independence from the RGC.⁵⁶ Notably, negative perceptions on the domestic judiciary impacted the interviewees' opinions on the ECCC as well, with several students advocating the removal of Cambodian judges from the tribunal to ensure greater impartiality.⁵⁷

Other interviewees, such as ECCC witness Mr. Ong, noted that while the justice system today is "slightly better than before," it is still highly corrupt, and the "rich can and

⁵² CSD. *Report on Corruption Perception Barometer (CPB)*, 9.

⁵³ Pham et. al, *So We Will Never Forget*, 33 and ADB. *Democracy in Cambodia*, 36.

⁵⁴ Interviews with Mr. Thong Hoeung Ong, Ms. Alice Banens, representatives of Sanmaki Kohn Khmer, and Mr. Liyanage mirrored this sentiment. For detailed information on interviews, see Appendix 2.

⁵⁵ Representatives of Sanmaki Kohn Khmer. "Public Perceptions on the Domestic Legal System and the ECCC," interview by Jung Min Shin. Mar 13 2015.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

always win in trials.”⁵⁸ Also, Mr. Liyanage, the International Programs Director at International Bridges to Justice (IBJ), which works to strengthen the domestic justice sector in Cambodia, echoed the results of aforementioned surveys, noting that the national judiciary is known for its “rampant corruption and bribery” among the public, especially in the rural areas of the nation.⁵⁹ Hence, as suggested by these interviews, perceptions of the domestic justice system still dwell on a largely negative note today, with levels of distrust broadly similar to those before the ECCC’s establishment.

IV. ECCC’s Impact on Public Trust in the Domestic Legal System

Evaluation of the Court’s Influence on Public Opinion

As demonstrated by the results of the aforementioned seven surveys and interviews, public opinion on the domestic judiciary has remained quite critical from 2000 onwards, despite the work of the ECCC. Cambodians, before or after the ECCC, have consistently demonstrated low levels of trust in the domestic judicial system, with most survey results reflecting a generally negative response to it. Hence, from a macro-level perspective, the ECCC’s impact on enhancing the overall image of the justice sector seems to have been largely minimal. While it is unfair to charge the ECCC with the task of completely altering perceptions on the domestic courts, especially given the actual shortcomings of the national judicial system,⁶⁰ the general stagnancy of public opinion over the years nonetheless suggest the ECCC’s limited impact in this aspect.

⁵⁸ Thong Hoeung Ong, interview by Jung Min Shin and Maria Newman.

⁵⁹ Sanjeewa Liyanage. “Public Perceptions on the Domestic Legal System and the ECCC,” interview by Jung Min Shin. Apr 17 2015.

⁶⁰ Scully, “Judging the Successes and Failures of the Extraordinary Chambers of the Courts of Cambodia,” 314.

Interestingly, however, as shown in UCB's survey results in 2010, the ECCC seems to be capable of shaping public opinion on a short-term basis, inspiring greater trust in the justice sector after the Duch Trial. The increase in positive perceptions of the domestic legal system in 2010 can be reliably attributed to the ECCC's work, given that UCB researchers asked participants directly regarding the impact of the Duch trial on their perceptions of the justice sector. 72% of the respondents in the 2010 survey agreed that "the Duch trial had increased their trust" in the legal system, with only 6% giving the contrary response.⁶¹ Hence, while the ECCC may be incapable of inspiring macro-level changes in public opinion, the case of the Duch Trial proves the ECCC's ability to increase public confidence in the domestic legal system on a short-term basis.

Explaining the ECCC's Short-Term Influence

Given the varying degree of the ECCC's influence on public opinion depending on the time frame of analysis, different factors explain its short-term positive impact and its long-term minimal impact. Elements that may explain the tribunal's short-term impact after the Duch Trial include the high level of public awareness on the trial and the Cambodian public's favorable views on it. In the aforementioned UCB's study, 54% of the participants knew that the Duch was on trial, and 47% reported having seen programs on TV regarding it.⁶² Also, more than 31,000 people attended the hearings, and the ECCC's Public Affairs Section (PAS) scaled up its outreach efforts during the trial, disseminating a wide range of informational materials and posting updates on the proceedings through various media outlets.⁶³

On top of publicity, the Duch Trial enjoyed a favorable impression from the public as well, with most Cambodians agreeing that "the trial was conducted fairly (69%) and "the

⁶¹ Pham et. al, *After the First Trial*, 22.

⁶² Ibid.

⁶³ ECCC. "32,633 Persons Visited ECCC in 2010", 30 December 2010 and Pham et. al, *After the First Trial*, 19.

Court was right to find Duch guilty (77%).”⁶⁴ While there were mixed views regarding the outcome of the trial, with 46% responding that the “Duch should spend more time in prison” in regards to his 19 year-long sentence,⁶⁵ there was a broad consensus on the ECCC’s competent handling of the trial. Given its publicity and favorable image, then, the Duch Trial served as a positive example in the minds of the public regarding legal institutions and processes. Primed by this generally satisfactory case, Cambodians seem to have embraced a more positive impression on the domestic justice sector in 2010, which demonstrates the ECCC’s short-term impact.

Explaining the ECCC’s Long-Term Influence

As for the tribunal’s minimal impact in the long-term perception of the domestic judicial sector, the ECCC’s own shortcomings, its special mandate, and low levels of interests in its activities may have served as contributing factors. First, the ECCC, despite enjoying a generally favorable view from the public, have also been subject to multiple allegations regarding political interference and corruption. For example, much criticisms rose against the tribunal in 2007 and 2008, with speculations that the Cambodian staff at the court were engaged in a “kick-back” scheme, returning a part of their salary to government officials in exchange for their jobs.⁶⁶ While this concern was eventually addressed by an agreement between the Cambodian government and the UN to appoint two “ethics monitors” for the ECCC,⁶⁷ it created suspicions about the tribunal’s ability to serve as a “model” court. Furthermore, since 2009, overt instances of the RGC’s interference with the court’s activities have threatened the ECCC’s reputation. According to ECCC civil party lawyer Ms. Banens,

⁶⁴ Pham et. al, *After the First Trial*, 22.

⁶⁵ Ibid.

⁶⁶ Bertelman, “National Ownership and International Standards,” 63-66.

⁶⁷ Douglas Gillison and Neou Vannarin. “Government Auditor Named New ECCC Graft Monitor.” *The Cambodia Daily*. 13 Aug. 2009. Web. Accessed Apr. 2015.

“governmental influences have been slowly increasing and more threatening to the court,” and the RGC has “blocked investigations on cases 003 and 004 from their start.”⁶⁸ Indeed, in 2010, Cambodian Prime Minister Hun Sen even publically stated to the UN Secretary-General that “the court will try the four senior leaders successfully and then finish with Case 002.”⁶⁹ Due to the blatant hindrances created by the government, two international judges and several staff have resigned from their jobs, frustrated at the highly politicized judicial process.⁷⁰

The aforementioned scandals of the ECCC portray the tribunal as susceptible to similar problems of bribery and bias as other domestic courts, and hence limited in its capacity to serve as a “model.” In this context, then, the ECCC’s ability to encourage a favorable impression of the overall domestic legal system has been most likely compromised. If the tribunal itself has struggled to be a trustworthy institution, its capacity to inspire confidence in the rest of the legal system would have been curtailed, leading to an overall minimal influence on perceptions concerning the justice sector.

Next, the ECCC’s special mandate to prosecute crimes exclusively from the Khmer Rouge period may have also detracted from its ability to encourage a positive view of the domestic judicial system. The tribunal’s distinct purpose and function may have encouraged it to be perceived as a completely separate legal entity from national judicial organs. The numerous exceptional elements in the ECCC not found in domestic courts – such as its set time frame and prosecution based on both domestic and international law – may have made the court seem disconnected from the overall judicial landscape of Cambodia. In light of this view, perceptions on the tribunal would not have extended to that of the national justice sector, given the perceived detachment between the two. Hence, the ECCC’s special mandate, which

⁶⁸ Alice Banens, interview by Jung Min Shin. March 31 2015.

⁶⁹ Ibid.

⁷⁰ “UN Judge Quits Cambodia War Crimes Tribunal,” *Al Jazeera*, 19 Mar. 2012. Web. Accessed Apr. 2015.

perhaps portrays it as an isolated legal entity, may have hindered its capacity to inspire changes in perceptions on the domestic legal system.

Finally, the dwindling interest levels in the court in recent years may have also limited its capacity to increase public confidence in the domestic judiciary. Several interviewees have noted that Cambodians pay less attention to the court's activities compared to the past.⁷¹ Mr. Ong noted that there is an increasingly strong public sentiment of wanting to "leave the past behind" and "move on with one's daily life," which encourages disinterest toward the ECCC.⁷² This observation falls in line with UCB's findings, which revealed an increase in the proportion of Cambodians who agreed that "it is more important for the government to address problems in the people's daily lives rather than crimes committed during the Khmer Rouge regime" in 2010 (83%) compared to 2008 (76%).⁷³ In addition, the trend of apathy toward the court seem to be especially severe with younger generations, many of whom do not know about the tribunal nor the details of the Khmer Rouge period.⁷⁴ Ultimately, the declining interest levels in the court hamper the ECCC's ability to impact public opinion. Even if the tribunal faithfully serves as a "model" court, if citizens do not pay attention to its activities, it would hardly influence their opinions about the domestic judicial system. Given the recent trend on interest levels, then, it is likely that the ECCC has been increasingly limited in its influence on public perceptions.

V. Looking Forward

Future Prospects of the ECCC's Influence on Public Opinion

Given the various elements that account for the tribunal's minimal influence in the long-term and positive effect in the short-term, it is possible to conjecture its future impact on

⁷¹ Interviews with Mr. Thong Hoeung Ong, Ms. Alice Banens, and representatives of Sanmaki Kohn Khmer, mirrored this sentiment.

⁷² Thong Hoeung Ong, interview by Jung Min Shin and Maria Newman.

⁷³ Pham et. al, *After the First Trial*, 19.

⁷⁴ Representatives of Sanmaki Kohn Khmer, interview by Jung Min Shin. March 13 2015.

public opinion concerning the domestic judicial sector. Overall, it does not seem very probable that the ECCC will have an increased level of influence on public perceptions in the coming years. First, the three hindrance factors identified for the tribunal's limited impact on the long-term are not easily addressable. In fact, the special mandate of the ECCC is an unchangeable element, and the two other factors, the court's own shortcomings as a "model" and declining interest levels, may even worsen in the future. Given the still ongoing interference of the RGC with the 003 and 004 case investigations, with Prime Minister Hun Sen recently stating that a "civil war will erupt if [the ECCC] proceeds" with them,⁷⁵ there is much skepticism on whether the court will be able to successfully complete its mandate. While the ECCC has recently made progress, making two more indictments in March 2015, these charges were imposed independently by the international co-investigating judge, without the agreement of his Cambodian counterpart.⁷⁶ Given the ongoing uncooperative attitude of the Cambodian staff and judges, the efficiency of the court is seriously at stake, and the continual delays in the justice process is likely to generate more public frustration and apathy on the ECCC.

Considering these circumstances, it is unclear whether the ECCC will be able to measure up as a "model" court in the future. At the risk of a tainted image and decreasing interest, the ECCC does not seem very promising in its capacity to inspire public confidence in the legal system over the coming years. Furthermore, the court is unlikely to have short-term impacts as it did in 2010 either, since the 003 and 004 trials will not enjoy as much positive publicity as the Duch Trial, due to the delays and political interference on them. Therefore, regardless of the time frame of analysis, the overall prospects for the ECCC to encourage greater trust in the domestic justice sector seem bleak.

⁷⁵ Naren, Kuch. "Hun Sen Warns of Civil War if ECCC Goes Beyond 'Limit,'" *The Cambodian Daily*. 27 Feb. 2015. Web. Accessed 30 Apr. 2015.

⁷⁶ Open Society Justice Initiative. *Recent Developments at the Extraordinary Chambers in the Courts of Cambodia*. 2015. Web. Accessed 30 Apr 2015.

Recommendations

While the ECCC is clearly in a difficult situation, there are nonetheless measures it could take to maximize its impact on public trust in the legal system. Most importantly, the tribunal should aspire to complete the 003 and 004 cases, despite the challenges of governmental interference. The stakes of failing to do so are simply too high –it would deny the long-overdue justice of the Khmer Rouge victims and cause irreparable damage to the collective faith in the legal system, demonstrating that even a UN-backed tribunal cannot overcome the RGC's influence. Hence, even if the burden lies heavily with the international staff, the tribunal should continue on with its investigations for the 003 and 004 cases. In facilitating the remaining trials, the tribunal should request assistance from the United Nations as needed, whether it be for financial or administrative support. It is particularly important for the court to secure adequate resources to complete the two cases, and the UN should assist the tribunal in sustaining donor support until it finishes its mandate. Furthermore, the UN should pay greater attention to the progress of these cases and firmly urge the RGC to comply with its obligations to support the court's investigations. While these recommendations cannot ensure the court's success in concluding the two cases, the ECCC's prospects would certainly be brighter with a firmer dedication toward the cases and greater support from the UN and international community. In addition, even if the court undergoes a rocky process in concluding these cases, its eventual success, granted that it takes place, will send a positive message both locally and globally that true justice is possible under even highly harrowing circumstances. Hence, the best option for the court as of now is to strengthen its commitment to its remaining work and take decisive actions to navigate its challenges.

Finally, while a relatively minor issue compared to legal investigations, the ECCC should also bolster its outreach efforts to the public, in order to wield a more positive influence on public perceptions concerning the justice sector. Although the ECCC's activities

are still covered on a consistent basis in newspapers and on television,⁷⁷ the declining interest levels on the court and slow progress of the cases at hand raise the need for a strengthened awareness-raising strategy from the tribunal's Public Affairs Section (PAS). PAS should emphasize the ECCC's firm dedication to cases 003 and 004 and efficiently provide updates on the court's work, as well as actively invite Cambodians from all provinces to attend the hearings once they begin. Outreach efforts should particularly target the rural population, who often show greater disinterest in the court,⁷⁸ through means such as the deployment of educational materials, facilitation of informational sessions, and provision of transportation to visit the ECCC. While these activities have already been undertaken by the PAS, most of them have been scaled down in recent years,⁷⁹ and renewed efforts in this regard will help remind the public regarding the significance and necessity of the ECCC's work. Finally, the court should also emphasize its capacity-building activities, such as training sessions and judicial roundtables with local lawyers, judges, and legal personnel,⁸⁰ in publicizing its work. Judging from the response of the interviewees, most of whom did not know about the court's initiatives involving the domestic legal system,⁸¹ the Cambodian public are not very aware of the ECCC's legacy-related efforts. Promoting awareness on these activities may help Cambodians see a more tangible connection between the ECCC and the domestic courts, and view them both in a more favorable light. Altogether, greater efforts for outreach by the PAS would highlight the tribunal's transparency and importance, and hence would encourage the public to place greater trust in the ECCC and potentially the judicial system as a whole, even if by a small margin.

VI. Conclusion

⁷⁷ Interviews with Mr. Thong Hoeung Ong and Ms. Alice Banens provided this information.

⁷⁸ Alice Banens. interview by Jung Min Shin. March 31 2015.

⁷⁹ Sanjeewa Liyanage, interview by Jung Min Shin. Apr 17 2015.

⁸⁰ Holligan and Mohan, *ECCC's Legacy for the Rule of Law in Cambodia*, 4.

⁸¹ Interviews with Mr. Thong Hoeung Ong and representatives of Sanmaki Kohn Khmer provided this observation.

Given the numerous existing deficiencies in the Cambodian justice sector today, the ECCC would not be able to generate groundbreaking levels of trust in the domestic legal system even if it were a perfect “model” court. As demonstrated through the change in public opinion after the Duch Trial, however, the tribunal has the capacity to create a more favorable image of the legal system in the public eye. Looking forward, while the 003 and 004 cases suggest negative prospects for the court’s short-term and long-term impact, the forecast could be brightened by the ECCC’s renewed commitment on the remaining cases, better support from the UN and the international community, and enhanced outreach activities.

To better analyze the tribunal’s future impact on public opinion and identify areas for its improvement, continual monitoring of Cambodians’ perceptions regarding the ECCC, the overall legal system, and specific cases of the ECCC is necessary. Many of the statistics available on these topics have been based on one-time surveys, with the exception of the UCB’s research, and more follow-up studies are necessary to gauge the true impact of the ECCC on public opinion. Furthermore, more research, overall, is needed on the impact of hybrid tribunals on public perceptions regarding the domestic justice system, taking into account how well integrated the tribunal is into the overall national legal landscape. As mentioned before, while the ECCC exhibits strong characteristics as a domestic court, this is not necessarily the case with other hybrid tribunals, and the difference between these courts in terms of their influences on public opinion would be an interesting area of study. Altogether, while this study offers rather bleak prospects regarding the ECCC’s future impact, ultimately the jury is still out on the final legacy of the tribunal in inspiring public trust, and there is much room for additional findings either on the ECCC or other hybrid tribunals.

Abbreviation List

ADB	Asian Development Bank
CSD	Center for Social Development
ECCC	Extraordinary Chambers in the Courts of Cambodia
IBJ	International Bridges to Justice
KID	Khmer Institute for Democracy
NGO	Non-governmental Organization
PAS	Public Affairs Section
RGC	Royal Government of Cambodia
UCB	UC Berkeley Human Rights Center
UN	United Nations
WB	World Bank

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Appendix 1 – Surveys Used in the Research

Title of Study	Organization	Survey Year	Sample Size	Region
Cambodia. Governance and Corruption Diagnostic. Evidence from Citizen, Enterprise and Public Official Surveys	World Bank	2000	1068 Households	Phnom Penh and 4 Provinces (Kandal, Siem Riep, Kampong Cham and Sihanouk Ville)
Corruption and Cambodian Households. Household Survey on Perceptions, Attitudes, and Impact of Everyday Forms of Corrupt Practices in Cambodia	Center for Social Development	2004	2000 citizens and their households	All regions, using a nationally representative proportionate sampling scheme
Report on Corruption Perception Barometer (CPB). Voice of People 2005.	Center for Social Development	2005	600 citizens aged 15+ and their households.	All regions, using a nationally representative proportionate sampling scheme
Victim and Witness Project Standards for the ECCC and Beyond Project, “KID-VWP Outreach Survey on Knowledge and Interest in the ECCC”	Khmer Institute of Democracy	2008	9,074 citizens	All regions, using a nationally representative proportionate sampling scheme
<i>So We will Never Forget: A Population-Based Survey on Attitudes about Social Reconstruction and the Extraordinary Chambers In the Courts of Cambodia.</i>	UC Berkeley Human Rights Center	2008	1,000 Cambodians 18 or older	All provinces, and selected 125 communes out of the 1,621 communes in Cambodia using systematic random sampling proportionate to population size.
<i>After the First Trial: A Population-Based Survey on Knowledge and Perceptions of Justice and the Extraordinary Chambers in the Courts of Cambodia.</i>	UC Berkeley Human Rights Center	2010	1,000 Cambodians 18 or older	Same as above (2008 survey)
Democracy in Cambodia – 2014 A Survey of the Cambodian Electorate	Asian Development Bank	2014	1,000 citizens	All regions, using a nationally representative proportionate sampling scheme.

