

Judicial Archives as Living Memory: Insights from the Extraordinary Chambers in the Courts of Cambodia

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Abstract:

International criminal law scholarship has long treated the judicial archive as passive evidentiary storage. This paper argues that judicial archives should be reframed from “storage memory” to “living memory,” capable of contributing to post-conflict transitional justice. Focusing on the Extraordinary Chambers in the Courts of Cambodia during its residual phase, this paper provides the first systematic account of how a post-judicial tribunal has operationalized its archive. Through four representative case studies, the paper analyzes how the ECCC has curated and disseminated historical narratives under institutional constraints and distills design principles for future post-conflict tribunals to more effectively leverage judicial archives.

Keywords: Extraordinary Chambers in the Courts of Cambodia (ECCC), Khmer Rouge Tribunal, Residual Mechanism, Judicial Archive, Memory Studies, Transitional Justice, International Criminal Law (ICL)

1. Introduction

In 2022, the Extraordinary Chambers in the Courts of Cambodia (ECCC) concluded the trials of the last surviving leaders of the Khmer

Rouge. Over seventeen years of trials, more than two million pages of evidence were submitted into the judicial record.¹ Within this “judicial archive” lies a detailed reconstruction of the Khmer Rouge period, assembled through witness testimonies, internal regime documents, academic and media reports, audiovisual materials, and an extensive body of judicial decisions and orders. Much has been written about the ECCC’s legal outcomes; a large portion of this scholarship is critical of the duration,² financial cost,³ or purported political bias of proceedings.⁴ Similar patterns appear in scholarship on other post-conflict tribunals, which likewise tends to center retrospective analysis of judicial outcomes.⁵ Far less attention has been paid to the ECCC judicial archive in itself, independent of its role at trial.

This omission reflects the broader terrain of international criminal law. In most other tribunals, post-judicial maintenance of legal archives has been deprioritized. The Special Tribunal for Lebanon (STL) maintains no physical archive,⁶ and the Special Panels for Serious Crimes in East Timor (SPSC) archive resides in a United Nations (UN) warehouse in New York that is closed to the public.⁷

¹ ECCC, *The Court Report: 2023*, at 20 (Jan. 2024).

² See, e.g., Sophie Ryan, *Delivering Justice: The ECCC’s Verdict in Case 002/02*, 24 AUSTL. INT’L L.J. 229, 231–232 (2018).

³ See, e.g., Viviane E. Dittrich, *The Legacy of the ECCC*, in *THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA* 123, 145 (Simon M. Meisenberg & Ignaz Stegmüller eds., 2016).

⁴ See, e.g., Seeta Scully, *Judging the Successes and Failures of the Extraordinary Chambers of the Courts of Cambodia*, 13 ASIA PAC. L. & POL’Y. J. 300, 325–332 (2011).

⁵ See, e.g., Alana Tiemessen, *The International Criminal Court and the Politics of Prosecutions*, 18 INT’L J. HUM. RTS. 444 (2014) (assessing prosecutorial selectivity at the ICC); Sara Kendall & Sarah Nouwen, *Speaking of Legacy: Toward an Ethos of Modesty at the International Criminal Tribunal for Rwanda*, UNIV. OF CAMBRIDGE FACULTY OF LAW RES. PAPER NO. 20/2016 (2021) (evaluating the success of the ICTR). Cf. *infra* Section 2.3 (discussing limited scholarship that does engage with judicial archives beyond their evidentiary role).

⁶ See *Virtual Tribunals Debuts the Special Tribunal for Lebanon Collection*, STAN. CTR. FOR HUM. RTS. & INT’L JUST. (July 18, 2024), <https://humanrights.stanford.edu/news/virtual-tribunals-debuts-special-tribunal-lebanon-collection>.

⁷ *An Overview: Justice Processes and Commissions for Timor-Leste*, ETAN/US (Apr. 2008), <https://etan.org/news/2007/03justsumm.htm>.

Even when judicial archives are more robust, their role remains limited to evidentiary preservation. The International Residual Mechanism for Criminal Trials (IRMCT) owns over nine kilometers of documentary evidence regarding the Rwandan and Yugoslav conflicts, and many of these documents are accessible to researchers.⁸ But the Rwandan government's requests to relocate archival materials to Rwanda have been refused,⁹ and amidst UN funding pressures, the IRMCT's mandate will soon terminate with little clarity on the archive's future.¹⁰ So, across both academic scholarship and institutional practice, judicial archives are assigned little independent value beyond their custodial function.

But the ECCC's context is distinct. The UN and the Cambodian government have jointly expressed a desire to move beyond passive storage and to instead actively disseminate archival information, leading the UN General Assembly to explicitly recognize the value of the ECCC archive as an "important component of international humanitarian law."¹¹ This desire is codified in the residual mandate ratified in 2021, which governs the ECCC's ongoing functions.¹² As tethered to a hybrid tribunal, the ECCC archive is physically located

⁸ Judge Graciela Gatti Santana (President of the IRMCT), *Address to the United Nations General Assembly*, at 5 (Oct. 16, 2024).

⁹ Press Release, Security Council, *Mechanism Concluding Tasks of Criminal Tribunals for Rwanda, Former Yugoslavia 'Steadily Advancing on Path of Completion', President Tells Security Council*, U.N. PRESS RELEASE SC/15724 (June 11, 2024).

¹⁰ Press Release, Security Council, *President of International Residual Mechanism Tells Security Council Justice 'Not a Finite Endeavour'*, U.N. PRESS RELEASE SC/16084 (June 11, 2025).

¹¹ U.N. General Assembly, *Report on the Use of the Commitment Authority and Request for a Subvention to the Extraordinary Chambers in the Courts of Cambodia*, para. 10, U.N. Doc. A/79/7/Add.23 (Nov. 14, 2024).

¹² Addendum to the Agreement between the Royal Government of Cambodia and the United Nations concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea on the Transitional Arrangements and the Completion of Work of the Extraordinary Chambers ("ECCC Residual Mandate") (Aug. 11, 2021), art. 3(1).

within the post-conflict society it concerns, and Cambodian nationals play a direct role in its oversight. In light of these circumstances, since January 2023, the ECCC has functioned as a judicial body whose core activities center on the management, curation, and dissemination of its judicial archive. This residual-phase archival function is novel, and it makes the ECCC a unique case through which to explore the value of a judicial archive in itself.

In this paper, I argue that current academic discourse around archives of post-conflict international tribunals overlooks the transformative potential of these judicial archives. Rather than conceptualizing the ECCC's archival function as a passive memory of the Khmer Rouge period frozen in time, I propose that judicial archives can function as a form of "living memory" that, when curated and disseminated, actively shapes post-conflict transitional justice (TJ) processes.¹³ Toward this end, I proceed in four parts. First, I review the existing literature surrounding judicial archives within transitional justice. Second, I explore the position of the ECCC within post-conflict Cambodian society. Third, I analyze how the ECCC's residual activities operationalize its judicial archive to curate and disseminate historical narratives. Finally, I distill broader design principles for future post-conflict tribunals to activate their judicial archives after legal proceedings conclude.

¹³ I borrow this term from the field of archival studies. For use in the judicial context, see Kirsten Campbell, *The Laws of Memory: The ICTY, the Archive, and Transitional Justice*, 22 SOC. & LEGAL STUD. 247, 249 (2012); Eric Keleetaar, *A Living Archive, Shared by Communities of Records*, in COMMUNITY ARCHIVES: THE SHAPING OF MEMORY 109, 121–123 (Jeannette Allis Bastian & Ben Alexander, eds., 2009) (both in the context of the ICTY Archive).

2. Theoretical Framework

In his foundational work on memory construction, Jan Assmann defines “cultural memory” as a collective representation of the past that exists “in disembodied form and requires institutions of preservation and reembodiment.”¹⁴ Cultural memory outlasts individual recollection because it is institutionalized: “cultivated by specialists,” symbolized in tradition and monument, or memorialized in library and archive.¹⁵ Aleida Assmann refines this framework by distinguishing between “storage memory” and “functional memory.”¹⁶ Storage memory is knowledge that has been stored for preservation in uncured form; it has no inherent “vital ties to the present or bearing on identity formation.”¹⁷ In contrast, functional memory is knowledge that has been curated by a specific carrier, be they an individual or an institution.¹⁸ Such information is value-laden and continues to shape the present and future; educational institutions, theaters, and concert halls all may serve as institutions that carry functional memory.¹⁹

These two forms of memory construction—storage and functional—are co-constitutive, not mutually exclusive. A. Assmann argues that “storage memory may be seen as an important reservoir for future functional memories.”²⁰ And, while there are several ways to preserve the memories of historical events—“monuments, museums,

¹⁴ Jan Assmann, *Communicative and Cultural Memory*, in *CULTURAL MEMORY STUDIES. AN INTERNATIONAL AND INTERDISCIPLINARY HANDBOOK* 109, 111 (Astrid Erll & Ansgar Nünning, eds., 2008).

¹⁵ *Id.* at 111–112. In the Cambodian case, because most survivors are elderly, the institutionalization of these memories and narratives is particularly time sensitive.

¹⁶ Aleida Assmann, *Cultural Memory and Western Civilization: Functions, Media, Archives*, at 123 (2011).

¹⁷ *Id.* at 127.

¹⁸ *Id.*

¹⁹ Merike Lang, *Cultural Memory in the Museum and its Dialogue with Collective and Individual Memory*, 2 *NORDISK MUSEOLOGI* 62, 65 (2007).

²⁰ A. Assmann, *supra* note 16, at 130.

parades, rituals, street names, graffiti,” among other methods—textual archives are unique in their longevity and ability to precisely influence collective relationships with the past.²¹ But archives only acquire this value when their stored memories are actively retrieved, curated, and disseminated as functional memory.

2.1. ICL Paradigm: Archive as Evidence

By treating the judicial archive primarily as evidence for a given legal proceeding, mainstream ICL scholarship conceptualizes post-judicial archives as largely untapped storage memory. William Schabas most directly lays out this paradigm in *Truth Commissions and Courts*. After Sierra Leone’s civil war, both a non-judicial Truth and Reconciliation Commission (TRC) and a judicial tribunal (the SCSL) were established. In discussing the relationship between these two bodies, Schabas cites Amnesty International: “While the TRC may be able to make an important contribution to establishing the truth about human rights abuses ... it should not be a substitute for prosecuting those responsible for serious crimes under international law.”²² This view reflects the dominant assumption, in which the function of a post-conflict tribunal is fundamentally prosecutorial: to “end impunity for the perpetrators,”²³ and to make judgments on individual guilt or innocence.

²¹ Peter Meusburger et al., *Cultural Memories: An Introduction*, in CULTURAL MEMORIES: THE GEOGRAPHICAL POINT OF VIEW 1, 7 (Peter Meusburger et al. eds., 2011).

²² *Sierra Leone: Renewed Commitment to End Impunity*, AMNESTY INT’L (2001), cited in William Schabas, *A Synergistic Relationship: The Sierra Leone Truth and Reconciliation Commission and the Special Court for Sierra Leone*, in TRUTH COMMISSIONS AND COURTS 3, 26 (William Schabas ed., 2004).

²³ Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 3 (“Rome Statute”), preamble. See also S.C. Res. 827, para. 2 (May 25, 1993) (the U.N. “decides hereby to establish an international tribunal for the *sole purpose* of prosecuting persons responsible for serious violations of international humanitarian law”) (emphasis added).

As such, the court's prosecutorial mandate underpins both the construction and the long-term function of the judicial archive. This archive-as-evidence framework becomes limiting once the judicial phase concludes. Because the ICL tribunal is primarily understood as a prosecutorial mechanism, rather than a vehicle for broader public engagement, external scholars and tribunals themselves have tended to frame judicial archives as proof of prosecutorial success: the number of exhibits and witnesses and convictions, the quality of judgments, and so on.²⁴ In the ICTY context, for example, archives were originally preserved for use in future legal appeals and for academic study of the legal process, as opposed to broader transitional justice purposes.²⁵ Accordingly, while survivors' groups sought to house the archives in the former Yugoslavia, the archives ultimately remained in The Hague.²⁶ Under this framing, the archive becomes a record of the judicial process for retrospective evaluation, rather than a resource to be repurposed for post-conflict purposes.

Scholarly engagement with judicial archives has reinforced this retrospective orientation. A growing emphasis on international transparency has expanded controlled access to tribunal records; for instance, the IRMCT has adopted the Universal Declaration on Archives, which calls for "the vital necessity of ... accountability and transparency" in archival practices.²⁷ So, in some contexts, researchers do have the ability to scrutinize this record of the judicial process. But even where access exists, the archive remains a passive repository of uncurated information; it is the external researchers choosing which

²⁴ See, e.g., Kendall & Nouwen, *supra* note 5, at 13–14.

²⁵ Rob van der Laarse et al., *Chapter Four: The ICTY Archives*, 5 HERITAGE, MEMORY, AND CONFLICT 139, 148–151 (2025).

²⁶ *Id.*

²⁷ Access Policy for the Records Held by the Mechanism for International Criminal Tribunals ("IRMCT Access Policy") (Aug. 12, 2016); Universal Declaration on Archives (Sept. 2010).

stories to tell and to whom to tell those stories.²⁸ This academic analysis is often retrospective and narrow in scope—of court procedure, quality of legal reasoning, cost-effectiveness—and does not engage affected communities in the post-conflict zones themselves.

So, in the mainstream ICL framework, the judicial archive functions solely as Assmann's "storage memory." Judicial archives preserve evidentiary documents, but only as a record of what has already been concluded by the judicial process. In some cases, archival materials are publicly accessible, but with minimal curation or interpretive guidance, "the judicial archive is ... excessive and overwhelming" to the post-conflict society itself.²⁹ As a result, little attention is placed on how archival materials might be activated to contribute to public education or support post-conflict collective healing. The archive is treated as a relic of the court's past work, rather than a mechanism to shape the future.

Of course, judicial archives *are* repositories of evidence for use in the legal process; this paper does not suggest that the archive should be divorced from evidentiary requirements or detached from legal functions. Rather, the question is what happens once the judicial function has been fulfilled. Post-conflict tribunals are valuable to the transitional justice process beyond solely their judicial outcomes: rebuilding trust in public institutions, reconstructing the truth for

²⁸ Daniela Accatino & Cath Collins, *Truth, Evidence, Truth: The Deployment of Testimony, Archives and Technical Data in Domestic Human Rights Trials*, 8 J. HUM. RTS. PRACS. 81, 96 (2016).

²⁹ *Id.* ("The technicalities and jargon contained in voluminous full case files are as likely to confuse as to illuminate ... pieces of the whole, if seized on in isolation, may confuse or mislead"); see also Arlette Farge, *The Allure of the Archives*, at 4 (2013).

families of victims, and preventing the recurrence of violence.³⁰ In the archival context, this collection of evidence, which has been scrutinized and preserved for trial, has the potential to be repurposed for other transitional justice purposes.³¹ Viewing judicial archives solely in terms of legal documentation obscures this potential. The following sections situate judicial archives in the context of Assmann's "functional memory," which contemplates the curation and dissemination of archives after the conclusion of the judicial phase.

2.2. Archival Studies Paradigm: Archive as Living Memory

While scholarship around judicial archives has remained squarely in the "storage memory" paradigm, a growing branch of archival studies scholarship has begun to interrogate methods to operationalize non-judicial archives in line with Assmann's "functional memory." These methods are varied, including the exercise of active curatorial control,³² the identification of narratives embedded in the archive,³³ and the dissemination of digitized archival materials.³⁴ Each of these practices is oriented toward shaping collective identity in the present and the future. For instance, in the context of post-socialist Hungarian society, Zsófia Réti argues that "the transmission of a clearly defined heritage to subsequent generations should be the duty of any functional memory project."³⁵ Unlike in the ICL paradigm, this goal

³⁰ Jessica Almqvist & Carlos Espósito, *Conclusion*, in *THE ROLE OF COURTS IN TRANSITIONAL JUSTICE* 290, 290–292 (Jessica Almqvist & Carlos Espósito, eds., 2012).

³¹ For this idea of "repurposing" archival materials, see Anita Ferrara, *Archives and Transitional Justice in Chile: A Crucial Relationship*, 22 *HUM. RTS. REV.* 253, 273–274 (2021) (in the context of Chile's TJ process).

³² Eilean Hooper-Greenhill, *Communication in Theory and Practice*, in *THE EDUCATIONAL ROLE OF THE MUSEUM* 28, 37 (Eilean Hooper-Greenhill ed., 1994).

³³ Anna Stowe, *Archive, Narrative, and Loss*, 66 *META* 178, 187 (2021).

³⁴ Dario Henri Haux et al., *A Cultural Memory of the Digital Age?*, 34 *INT. J. SEMIOT. L.* 769, 777 (2021).

³⁵ Zsófia Réti, *Past Traumas and Future Generations: Cultural Memory Transmission in Hungarian Sites of Memory*, 6 *HUNGARIAN HIST. REV.* 835, 838 (2016).

positions the archive itself as serving a purpose independent of the institution that created it.

In the specific context of post-conflict transitional justice proceedings, scholars have adapted Assmann's "functional memory" into the concept of "living memory." This paper understands living memory as the active curation and dissemination of archival materials as sources of truth and healing in post-conflict societies. Terry Cook maps a shift in the role of the archivist from passive custodian to active curator, as transitional justice archives have increasingly become tools of justice in their own right. For example, South Africa's Truth and Reconciliation Commission was aimed at this end—a curated archive, detached from any judicial purpose, was itself intended to serve as a shared repository of truth and a mechanism for collective healing.³⁶ Accordingly, for communities grappling with collective traumas, greater access to intelligible archival information allows them to "put their trauma in context" and "transfor[m] their experiences into meaning."³⁷

More recent scholarship reflects the argument that a TJ archive continues to shape collective memory even after its original institutional function has concluded. Julia Viebach posits that in the afterlife of an archive, its materials can be continually reinterpreted through public use.³⁸ In Pinochet's Chile, for instance, civil society's documentation of human rights abuses served multiple sequential

³⁶ Terry Cook, *Evidence, Memory, Identity, and Community: Four Shifting Archival Paradigms*, 13 ARCH. SCI. 95, 111 (2013). In particular, as with the ECCC in Cambodia, South Africa's TRC emphasized public acknowledgement of past abuses as a prerequisite to reconciliation and normalization of race relations. See Daniel L. Shapiro, *Reconciliation Systems Design: A Systematic Approach to Collective Healing in Post-Conflict Societies*, 26 HARV. NEGOT. L. REV. 193, 203–204 n.29 (2020).

³⁷ Ketelaar, *supra* note 13, at 120.

³⁸ Julia Viebach, *Transitional Archives: Towards a Conceptualisation of Archives in Transitional Justice*, 25 INT'L J. HUM. RTS. 381, 398 (2021).

functions. These archives established evidence of state abuses during the conflict period, were incorporated into two post-conflict truth commissions, supported subsequent criminal prosecutions, and were later “pluralized as collective memory in cultural representations,” including exhibitions in Santiago’s Museum of Memory and Human Rights.³⁹ So, scholars have recognized the potential for *extra-judicial* archives to be repurposed in this way, as a form of “living memory” that maps onto Assmann’s conceptual framework.

However, *judicial* archives remain comparatively absent from this strand of TJ literature. Some recent scholarship does analyze how international tribunals *produce* knowledge. Two works are particularly comprehensive in this regard. Kirsten Campbell analyzes the ICTY archive as a product of the external structures that constructed it, arguing that its process of evidence collection was shaped by its legal mandate, international pressures, and its role as an institution of post-conflict justice.⁴⁰ Henry Redwood’s *The Archival Politics of International Courts* builds out this theory as it pertains to the ICTR archive: the materials in judicial archives can, in certain cases, exclude certain voices and reproduce colonial paradigms.⁴¹ Less studied is what comes next. After archival knowledge has been produced and the legal proceedings have concluded, how can a judicial archive be further operationalized beyond its evidentiary role? The following sections of this paper aim to develop such a model.

2.3. Judicial Archives as Living Memory

Before proceeding, it is worth laying out the terrain of archival scholarship in the Cambodian context. In doing so, I aim to address

³⁹ *Id.* at 397; Ferrara, *supra* note 31, at 273.

⁴⁰ Campbell, *supra* note 13, at 251–252.

⁴¹ Henry Redwood, *The Archival Politics of International Courts*, at 28 (2021).

the following question: why should *courts*, rather than civil society organizations (CSOs) or other stakeholders, be responsible for operationalizing their archives? In Cambodia, non-governmental organizations (NGOs) have long played central roles in documentation and memory work. By 2013, in the middle of the trial phase, Cambodia hosted around 3,500 registered NGOs.⁴² Most notably, the Documentation Center of Cambodia (DC-Cam) was responsible for collecting a large portion of evidence later used by the ECCC.⁴³ The Tuol Sleng Genocide Museum preserves a public-facing repository of Khmer Rouge history,⁴⁴ and several other CSOs were responsible for administering court-approved reparations projects.⁴⁵ So, it's evident that—at least to some non-negligible degree—Cambodian NGOs and CSOs possess both the will and capacity to curate and disseminate archival information.

This question has been expressed in academic scholarship concerning the ECCC's trial phase. For instance, Michelle Caswell argues that “while the tribunal is concerned with administering legal justice, it is the [DC-Cam and Tuol Sleng] archives, not the tribunal, that is tasked with establishing truth.”⁴⁶ Others have examined the “boundary” between the narrowly defined legal project of the ECCC and the broader process of writing the historical narrative,⁴⁷ arguing

⁴² Helena Domashneva, *NGOs in Cambodia: It's Complicated*, THE DIPLOMAT (Dec. 3, 2013), <https://thediplomat.com/2013/12/ngos-in-cambodia-its-complicated/>.

⁴³ Kok-Thay ENG, *Documentation Center of Cambodia: 2013 Annual Report*, at 7 (James L. Black, ed., 2013).

⁴⁴ Timothy Williams, *Remembering and Silencing Complexity in Post-Genocide Memorialisation: Cambodia's Tuol Sleng Genocide Museum*, 15 MEM. STUD. 3 (2021).

⁴⁵ *Case 002/02 (Co-Prosecutor v. Khieu Samphân and Nuon Chea)*, Trial Judgment, E465, paras. 4420–4433 (Nov. 16, 2018).

⁴⁶ Michelle Caswell, *Khmer Rouge Archives: Accountability, Truth, and Memory in Cambodia*, 10 ARCH. SCI. 25, 36 (2010).

⁴⁷ Andrew Mamo, *History and the Boundaries of Legality: Historical Evidence at the ECCC*, 29 COLUM J. ASIAN L. 113 (2015).

that DC-CAM and other CSOs are better suited for the latter.⁴⁸ The purported logic is that judicial archives are restricted in the scope of evidence they hold; the evidence and the narratives excluded from the court's narrow jurisdiction or deemed inadmissible in court might be important in reconstructing the full truth of the Khmer Rouge period.⁴⁹

This paper takes a different view. CSOs indeed perform essential memory functions. Even so, legal tribunals are uniquely positioned to curate and disseminate archival narratives for three reasons. First is legal authority: the judicial process produces distinctive legal-historical narratives from which to engage post-conflict societies. Second is evidence credibility: the adversarial process, coupled with strict evidentiary standards, ultimately produces an archive that reflects rigorous methodological scrutiny. Third is political nexus: international tribunals are better able to engage the levers of power, which enables broader public engagement and norm diffusion. Here, I address each in turn.

Legal Authority: Legal narratives produced by international tribunals offer distinctive historical perspectives. Richard Wilson argues that criticisms of the court as an arbiter of history are only partially correct. Yes, non-judicial histories often take more comprehensive vantage points; however, at the same time, the process of legal analysis requires tribunals to generate highly directed historical findings that would not otherwise emerge.⁵⁰ The specific *mens rea* requirements of genocide and persecution, for instance, require courts to reconstruct events through a deliberate process that

⁴⁸ Peter Manning, *Complementary Knowledge*, in *TRANSITIONAL JUSTICE AND MEMORY IN CAMBODIA*, at 93 (Peter Manning, ed., 2017).

⁴⁹ Caswell, *supra* note 46, at 35–36.

⁵⁰ Richard A. Wilson, *Writing History in International Criminal Trials*, at 21–22 (2011).

emphasizes individual motivations and causal connections otherwise overlooked by non-judicial narratives. Drawing on the work of Laurence Douglas, Wilson argues that “legal imperatives drive forward collective historical inquiry into mass crimes,” meaning that tribunals generate specific historical findings that would not otherwise exist.⁵¹ Given that these findings are tested through multiple levels of the international judiciary, they carry a unique form of institutional authority in post-conflict societies.

Evidence Credibility: Evidence admitted into the judicial archive is unique in both its procedural safeguards and its rigorous testing. Evidence that has not passed a threshold of reliability is rendered of low probative value or excluded entirely. For example, across courts, NGO reports have been afforded low probative value; because they often lack transparent methodology, they are rarely relied upon to shape judicial narratives.⁵² At the same time, each piece of evidence is tested by dozens of lawyers and judicial officers at all levels.⁵³ In Case 002/01 at the ECCC, for instance, expert witness Phillip Short was heavily relied upon to establish various acts of violence, including the alleged mass execution of former Khmer Republic soldiers at Oudong.⁵⁴ While the Trial Chamber relied on this evidence to find that the mass execution occurred, the Supreme Court Chamber held that Short’s statements were hearsay; the evidence did not rise to

⁵¹ *Id.* at 22, citing Laurence Douglas, *The Legal Imagination and Traumatic History*, at 261–262 (2001) (arguing, in reference to the *Eichmann* trial, that the function of criminal prosecution to “represent and judge traumatic history” is an “imperative born of the scars left on an outraged collective consciousness”).

⁵² See *Prosecutor v. Laurent Gbagbo*, Pre-Trial Chamber Adjournment Decision, ICC-02/11-01/11, para. 29 (June 3, 2013); *Case 002/02* Trial Judgment, *supra* note 45, para. 130.

⁵³ Wilson, *supra* note 50, at 18.

⁵⁴ Yvonne McDermott, *The ECCC’s Approach to Evidence and Proof*, 18 J. INT’L CRIM. JUST. 747, 755 (2020).

the standard needed to establish this event.⁵⁵ To be sure, NGO reports and hearsay expert statements both have their place in establishing a comprehensive historical narrative; these forms of evidence are not intrinsically inferior. Rather, the point is that the evidentiary rigor of court proceedings makes the resulting judicial archive particularly well-suited to producing precise, methodologically transparent historical narratives.

Political Nexus: Because of their legal mandates and institutional support, legal tribunals hold a unique position within the broader post-conflict political landscape. International courts are born from state consent.⁵⁶ Of course, some of these courts face direct opposition from the post-conflict state itself, but when this is not the case, this political nexus has its advantages. In Cambodia, for instance, the ECCC can leverage state-facing channels—coordination with government ministries, schools, local authorities—as well as international diplomatic channels, in ways that NGOs and CSOs often struggle to access.⁵⁷ Not only does this theoretically increase tribunals’ abilities to disseminate an archival narrative, but it may also serve to spill over to other domestic institutions. Transitional justice scholarship has long centered the importance of rebuilding the integrity of post-conflict state institutions.⁵⁸ The Cambodian context demonstrates that when a tribunal employs transparent archival practices or preserves archival materials in compliance with

⁵⁵ *Case 002/01 (Co-Prosecutor v. Khieu Samphân and Nuon Chea)*, Appeal Judgment, F36, paras. 879–881 (Nov. 23, 2016).

⁵⁶ Karen Alter et al., *How Context Shapes the Authority of International Courts*, 79 L. & CONTEMP. PROB. 1, 6 (2016).

⁵⁷ See, e.g., Ben Sokhean, *Cambodia Highlights Achievements, Legacy of ECCC at Seminar*, KHMER TIMES (Nov. 29, 2024), <https://www.khmertimeskh.com/501599845/cambodia-highlights-achievements-legacy-of-eccc-at-seminar/>.

⁵⁸ Paul van Zyl, *Promoting Transitional Justice in Post-Conflict Societies*, in SECURITY GOVERNANCE IN POST-CONFLICT PEACEBUILDING 209, 211–212 (Alan Bryden and Heiner Hänggi, eds., 2005).

international standards, it has the potential to diffuse these norms into other state institutions.⁵⁹ Section 5.4 of this paper will further examine this idea.

Of course, it's possible that a given tribunal does not possess these advantages. The final two sections of this paper discuss the ECCC's unique challenges, as well as a set of structural limitations that many tribunals must grapple with. In any case, when tribunals comply with their mandates and operate within a supportive or neutral political environment, they hold intrinsic advantages over non-judicial bodies in curating and disseminating their archives as "living memory." With this background in mind, the next section turns from the theoretical to the practical context of the ECCC's judicial archive.

3. Context of the ECCC Archive

Three aspects of the ECCC make its judicial archive uniquely positioned for analysis. First, it is a hybrid court seated in Cambodia and operating in part within a framework of Cambodian law. Second, it was closely embedded within the Cambodian public during the trial phase, including unique forms of victim participation and public broadcasting of judicial proceedings. Third, the ECCC's 2023 residual mandate emphasizes both accessibility and dissemination of archival materials, centering the Court's post-judicial workings around its archive. Taken together, these factors establish the ECCC archive as capable of contributing to Cambodia's "living memory" and as a unique lens through which to study the potential of judicial archives in transitional justice. In this section, I consider each factor in turn.

⁵⁹ See, e.g., ECCC, *ECCC Welcomes the "Records and Archives Management Program" Organized by the National Archives of Korea* (Aug. 29, 2024), <https://www.eccc.gov.kh/en/resources/news-and-outreach/eccc-welcomes-the-records-and-archives-management-program-organized-by-the-national-archives-of-korea>.

3.1. Hybrid Structure

From its conception, the ECCC model was distinct from other international tribunals that had come before it. In 1997, the Government of Cambodia requested United Nations assistance in creating a new judicial body to try the surviving leaders of the Khmer Rouge.⁶⁰ From 1997 to 2003, a protracted series of negotiations ensued between the Cambodian government and the international community, each of whom sought control over the decisions of this new court.⁶¹ As evidenced by a 1998 UN draft resolution, the international community initially imagined the creation of an International Criminal Tribunal for Cambodia (ICTC), much like the ICTR and ICTY—seated in The Hague and governed solely by international criminal law.⁶² However, by 2003, this idea was jettisoned in favor of a compromise with significantly greater Cambodian involvement; this is the ECCC of today.⁶³

As such, the ECCC is among the few international tribunals that incorporated both national and international elements. Most notably, the ECCC anchored itself in Cambodian legal tradition. The ECCC Statute made clear that, along with international criminal law,

⁶⁰ First and Second Prime Ministers of Cambodia, *Letter dated June 21, 1997, from the First and Second Prime Ministers of Cambodia addressed to the Secretary General*, U.N. Doc. A/51/930 (June 24, 1997).

⁶¹ Hans Correll, *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*, U.N. AUDIOVISUAL LIBR. OF INT'L. L. (2020).

⁶² David Scheffer, *The Extraordinary Chambers in the Courts of Cambodia*, CAMBODIAN TRIBUNAL MONITOR, at 3 (2013), (Abridgement of David Scheffer, *The Extraordinary Chambers in the Courts of Cambodia*, in INTERNATIONAL CRIMINAL LAW (Cherif Bassiouni, ed., 2008)), https://cambodiatribunal.org/wp-content/uploads/2013/08/history_history-analysis-scheffer_english.pdf.

⁶³ *Id.*

Cambodia's domestic law was a source of statutory authority.⁶⁴ The ECCC Rules adopted the civil law practice of investigating judges, but it mandated two Co-Investigating Judges, one Cambodian and one international.⁶⁵ And every appointed judge, Cambodian or international, was confirmed by the King of Cambodia.⁶⁶ In sum, then, the ECCC was a fundamentally Cambodian project, borne of domestic legal tradition in a way distinct from other international tribunals.

The implication is that the ECCC archive, like its parent court, is uniquely embedded in Cambodia. Even in other hybrid courts located outside of The Hague, such as the EAC (East Africa) and the SCSL (Sierra Leone), official documentary languages were limited to English and French, while victims in Chad and Sierra Leone spoke a variety of indigenous languages.⁶⁷ In contrast, all documents filed in the ECCC were translated into three languages—English, French, and Khmer—and all three translations were formally entered into evidence.⁶⁸ And, while many scholars have fairly criticized the level of Cambodian government involvement in the workings of the Court,⁶⁹ by the same token, the state of Cambodia is intertwined with the future of the ECCC's archive. In the following sections, I will further

⁶⁴ Agreement between the Royal Government of Cambodia and the United Nations concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea ("ECCC Agreement") (June 6, 2003), art. 12(1).

⁶⁵ ECCC Agreement, *supra* note 64, art. 5(1).

⁶⁶ Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, with inclusion of amendments as promulgated on 27 October 2004 ("ECCC Statute") (Oct. 27, 2004), art. 11 new.

⁶⁷ Statute of the Extraordinary African Chambers (unofficial translation by Human Rights Watch) (Sept. 2, 2013), art. 30, <https://www.hrw.org/news/2013/09/02/statute-extraordinary-african-chambers>; Statute of the Special Court for Sierra Leone (Jan. 16, 2002), art. 24.

⁶⁸ ECCC Statute, *supra* note 66, art. 45 new.

⁶⁹ See, e.g., Shannon Maree Torrens, *Allegations of Political Interference, Bias and Corruption at the ECCC*, in *THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA* 45, 72 (eds. Simon M. Meisenberg & Ignaz Stegmiller eds., 2016).

consider the relationship between the state and the ECCC's archival activities. For now, it is sufficient to conclude that the legal framework of the ECCC embedded both the Court and its archive within Cambodia.

3.2. Social Embeddedness

International tribunals have consistently maintained some level of public involvement at trial. In the ICC, for instance, victims testify as witnesses and are afforded a legal representative to address matters that directly affect their interests, such as reparations.⁷⁰ The ECCC represented a step further, in terms of both breadth and depth of public involvement. For the first time, victims participated in the trial as full parties to the proceedings. Drawing from Cambodia's domestic legal system, these Civil Parties were, with few exceptions, afforded comparable rights to the prosecution and defense.⁷¹ Accordingly, victims' representatives were able to directly cross-examine defendants and present legal submissions throughout each trial; these rights had never previously been afforded to victims of internationalized crimes. In total, across the two cases that went to trial, 3,959 victims were formally admitted as Civil Parties.⁷²

And, indeed, the Cambodian public participated more broadly. Over 240,000 individuals attended these trials, which exceeds attendance over the lifespan of any other international or hybrid tribunal.⁷³ As the trials were broadcast through domestic media channels, access to the ECCC grew even in rural areas. A 2008 survey

⁷⁰ Rome Statute, *supra* note 23, art. 68(3).

⁷¹ ECCC, *Internal Rules* (June 12, 2007) ("ECCC Internal Rules"), r. 23.

⁷² ECCC, *Understanding the Extraordinary Chambers in the Courts of Cambodia* ("ECCC Public Guide"), at 10 (2023).

⁷³ *Id.*

conducted by UC Berkeley's Human Rights Center, just before the start of the first trial, found that 61 percent of Cambodian respondents were aware of the ECCC's existence.⁷⁴ In 2010, a few months after the verdict in that trial, a follow-up survey found 75 percent awareness, while 47 percent of respondents had seen segments of the trial on television.⁷⁵ By the end of the proceedings, daily trial reports were broadcast across Khmer-language television, radio, and news outlets.⁷⁶

This is not to say that the relationship between the ECCC and the Cambodian public has been entirely positive. Studies have found varying views of the Court's value to Cambodian society; for instance, Civil Parties were largely critical of the ECCC's inability to provide monetary compensation or funding for development projects.⁷⁷ Rather, more important for these purposes is the domestic legitimacy the ECCC has enjoyed. In Kosovo, for instance, lingering tensions mean that over 75 percent of ethnic Albanians believe the KSC's mandate is unfair and illegitimate.⁷⁸ In Cambodia, while the international community has largely criticized the failure to bring Cases 003 and 004 to trial as acts of political interference, there is little evidence of comparable domestic distrust in the Court or its mandate. Notably, there are no remaining organized pockets of Khmer Rouge

⁷⁴ Christoph Sperfeldt, *Broadcasting Justice: Media Outreach at the Khmer Rouge Trials*, 115 ASIA PAC. ISSUES 1, 5 (2014).

⁷⁵ *Id.* at 8.

⁷⁶ See, e.g., Ronit Arie, *Closing Argument Rebuttals Conclude in Case 002/02*, CAMBODIA TRIBUNAL MONITOR (June 22, 2017), <https://cambodiatribunal.org/2017/06/22/closing-argument-rebuttals-conclude-in-case-00202/>.

⁷⁷ See, e.g., James O'Toole, *Reparations Remain a Key Issue*, THE PHNOM PENH POST (July 27, 2010), <https://www.phnompenhpost.com/national/reparations-remain-key-issue>.

⁷⁸ Michael James Warren et al., *Public Perception of the Kosovo Specialist Court: Risks and Opportunities*, PAX: THE NETHERLANDS, at 13 (2017).

supporters,⁷⁹ which distinguishes Cambodia from most post-conflict contexts in which perceptions of accountability mechanisms mirror ongoing divides.

Structurally, the ECCC's proximity to the Cambodian public means that its archive has been uniquely embedded within Cambodian society. Unlike with cases tried in The Hague, Cambodian victims and former perpetrators live in direct proximity to the ECCC; the Civil Party structure also allowed local communities to contribute en masse to the production of the judicial record. Unlike other hybrid tribunals, the ECCC operated via broad public awareness; the process of building the evidentiary archive unfolded within a public that was already following the trials.⁸⁰ And unlike many international tribunals, the ECCC did not face significant political hostility; the narratives captured by the archive have been largely accepted as legitimate.⁸¹ In sum, because the ECCC's evidentiary archive was constructed from the start of proceedings as incorporated into public understanding, there is unique potential to study the archive as a tool of transitional justice.

3.3. Residual Mandate

In 2021, as the last remaining cases were concluding, the UN and the Cambodian government jointly conferred upon the ECCC a “residual

⁷⁹ Nichole Cochran & Andrew Wells-Dang, *Never Again? The Legacy of Cambodia's Khmer Rouge Trials*, U.S. INST. PEACE. (Oct. 3, 2022), <https://www.usip.org/publications/2022/10/never-again-legacy-cambodias-khmer-rouge-trials>.

⁸⁰ *C.f. East Timor: Justice Past, Present and Future*, AMNESTY INT'L, at 35 (June 26, 2001) (lack of domestic engagement with the SPSC).

⁸¹ *C.f., e.g.*, Harry Sekulich, *Three West African Countries to Quit International Criminal Court*, BBC (Sept. 23, 2025), <https://www.bbc.com/news/articles/czjvp0pr3eko> (hostility to the ICC); *Prosecutor for UN ex-Yugoslav Tribunal Warns of Negative Regional Political Situation*, U.N. NEWS (June 8, 2016), <https://news.un.org/en/story/2016/06/531612> (hostility to the ICTY & IRMCT).

mandate” to extend the functions of the court from 2023–2025; this mandate was subsequently extended until 2027.⁸² A small number of other tribunals, including the IRMCT and the SCSL, have similarly been endowed with residual mandates; these mandates each feature some custodial requirement. The IRMCT is required to “ensure the records’ preservation and facilitate their accessibility,” in 2016, it adopted an access policy to share declassified records, housed in the Netherlands, with those who request access.⁸³ While the SCSL archive is physically located in the post-conflict state (Sierra Leone), its residual mandate is similar: to ensure “the public archives shall be available to the public.”⁸⁴ These functions are largely reactive; the tribunals are tasked with granting controlled access to documents sought by researchers or other members of the public.

The text of the ECCC residual mandate goes further. Contained within this agreement is a mandate to “ensure that the archives of the Extraordinary Chambers are ... as broadly accessible as possible,”⁸⁵ including a requirement to “*disseminate information* to the public regarding the Extraordinary Chambers.”⁸⁶ This means that, by law, the ECCC—with both Cambodian and United Nations backing—is tasked with active dissemination of its archival materials across Cambodian society. Similar language does not appear in mandates of any other residual mechanism.

⁸² U.N. Secretary General, *Extraordinary Chambers in the Courts of Cambodia –residual functions*, para. 40, U.N. Doc. A/79/827 (June 24, 1997); ECCC, *The Court Report: 2025*, at 5 (Jan. 2026).

⁸³ IRMCT Access Policy, *supra* note 27, art. 2.

⁸⁴ Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Residual Special Court for Sierra Leone (Feb. 1, 2012), art. 7(2).

⁸⁵ ECCC Residual Mandate, *supra* note 12, art. 3(1).

⁸⁶ ECCC Residual Mandate, *supra* note 12, art. 2(1) (emphasis added).

From 2006–2022, the ECCC’s judicial proceedings helped embed the Court within the Cambodian public consciousness. The judicial archive was constructed with public access and input at multiple points throughout the trials. And, under its residual mandate, the ECCC is explicitly required to fashion its archive to engage actively with the public. Taken together, these circumstances position the ECCC archive not merely as a repository of judicial records, but as a vehicle through which this archival information can continue to influence the collective memory of the Khmer Rouge period. In the second half of this paper, I consider the ECCC’s residual activities in this context.

4. Methods

In the following two sections, I qualitatively analyze materials produced during the ECCC’s residual phase. The primary sources are official Court publications, including press releases, social media posts, judicial decisions, and annual reports. While such materials would be less appropriate in evaluating the efficacy of the ECCC’s archival initiatives, they provide the most direct account of the Court’s design choices and institutional priorities, which this paper aims to interpret. To contextualize these sources, I draw on Cambodian and international academic scholarship, media reporting, and my own professional experience while working at the ECCC during its residual function. I draw on my experiential knowledge only to clarify projects, rather than to make claims about the success of these initiatives.

This analysis provides a descriptive account of the ECCC’s archival projects, focusing on objectives, design choices, and constraints. I examine four cases selected to provide a representative account of the ECCC’s approach to developing a “living memory” archive: (1) the “CONSENT DENIED” exhibition, (2) the ECCC

Guidebooks, (3) the Mobile Resource Centre, and (4) the partnership with Cambodia's National Archives. I do not evaluate the success or failure of these cases; rather, I analyze the intentional curatorial decisions underlying each program, and I consider what these choices reveal about the ECCC's approach to post-judicial archival knowledge production. I conclude by synthesizing the most generalizable aspects of the ECCC's archival approach and response to these constraints into a set of design principles relevant to future post-conflict tribunals seeking to activate their archives toward TJ goals.

5. Archival Engagement at the ECCC

While academic and media pieces have put forward a bird's-eye view of the residual mechanism,⁸⁷ close to zero attention has been paid to the specific design choices embedded in the ECCC's archival programming. Accordingly, the day-to-day practices of judicial archival work have largely gone unexamined. It is these operational decisions—how archival materials are curated and disseminated to specific audiences—that are core to understanding how a tribunal constructs a “living memory” archive after completion of its judicial mandate. The following case studies address this gap by examining four of the ECCC's major archival projects in detail to draw out specific considerations shaping each project. In broad strokes, Case Studies 1 and 2 address the challenge of curating an archival narrative while maintaining fidelity to judicial findings; Case Studies 3 and 4 address

⁸⁷ See Andre Kwok, *On the Residual Functions of the Extraordinary Chambers in the Courts of Cambodia*, 166 TOAEP POLICY BRIEF SERIES (2025) (describing the Mobile Resource Center, digitalization, and victims' outreach); Choongman Lee, *The End of the Khmer Rouge Tribunal: Its Success and Legacy*, 34 MINN. J. INT'L L. 355, 377–378 (2025) (describing the elements of the ECCC's residual mandate); Maria Elander & Rachel Hughes, *Pressing Evidence: Activating Khmer Rouge Archives*, 33 SOC. & LEGAL STUD. 839, 855bird's-eye–856 (2024) (describing the ECCC's reclassification function).

the challenge of effectively disseminating that narrative to local audiences, whether individuals or state institutions.

5.1. “CONSENT DENIED” Exhibition

Since the conclusion of judicial proceedings, the ECCC Resource Center has hosted a series of multimedia exhibitions, drawn from a large swath of archival materials. One such exhibition, titled “CONSENT DENIED,” centers the ECCC’s findings on sexual and gender-based violence (SGBV) inflicted by the Khmer Rouge.⁸⁸ The exhibition, developed in close partnership with multiple CSOs and institutional partners,⁸⁹ integrates survivor testimony, audiovisual materials, excerpts from judicial findings and court-approved reparations projects, and narrative text.⁹⁰ It was launched through an expert panel discussion and a subsequent public ceremony, each featuring a variety of stakeholders: Civil Parties, political figures, CSO partners, university students, and members of the general public.⁹¹

This case represents the most direct effort of the court to activate a discrete set of archival materials into a single curated narrative (here, of SGBV during the Khmer Rouge period). The

⁸⁸ ECCC, FACEBOOK (Oct. 22, 2025), <https://www.facebook.com/reel/1593596381605584>.

⁸⁹ These include the Cambodian Ministry of Women’s Affairs, Tuol Sleng Genocide Museum, Bophana Center, Global Survivors Fund, HelpAge Cambodia, Kdei Karuna Organization, META HOUSE, TPO Cambodia, Youth for Peace-CAMBODIA, and Women Peace Makers. See GIZ Cambodia, FACEBOOK (Oct. 27, 2025), <https://www.facebook.com/gizcambodia/posts/pfbid0pJGbi1QuQ4t8uGPZ2BXhoFUGCsyJmq6TbpzFFSMY8NjzL9nDBhZfvkAFBsscBMX6l>.

⁹⁰ ECCC, FACEBOOK (Oct. 22, 2025), <https://www.facebook.com/eccckh/posts/pfbid02jWfliNLYDBYmzYQkLsCTdVWMrms3PyhXX16p6EXvdTynzWLCXXQmkuAbhVgCVL7el>.

⁹¹ *ECCC Opens Exhibition on Forced Marriage and Sexual Violence Under Khmer Rouge Regime*, KHMER TIMES (Oct. 28, 2025), <https://www.khmertimeskh.com/501780693/eccc-opens-exhibition-on-forced-marriage-and-sexual-violence-under-khmer-rouge-regime/> (opening ceremony); ECCC, FACEBOOK (Oct. 22, 2025), <https://www.facebook.com/eccckh/posts/pfbid0toPdaz38ZGjuFLZqfgt2ueMtJ6cXGnF12iZA22op6WfsdLhMnEhpGcWFGVrURRtl> (panel).

“CONSENT DENIED” exhibition most squarely resembles Assmann’s framework: it exemplifies the shift from storage memory, in the physical archive held in the basement of the ECCC Resource Centre, to functional memory, in the curated exhibition of archival documents on the floor above.⁹² Unlike the Court’s other forms of curation and dissemination, the exhibition is narrowly defined around a single subject area, and one that is particularly ripe for analysis. The Trial Chamber in Case 002/02 held that men *were* victims of forced marriage, but *were not* victims of the other inhumane act of sexual violence, as male sexual violence did not reach the severity threshold.⁹³ These findings were criticized on multiple fronts—both for failing to parse unique female harms under forced marriage,⁹⁴ and for excluding males as victims of sexual violence.⁹⁵ In the end, the Supreme Court Chamber (SCC) overturned the Trial Chamber’s (TC) judgment, holding that both female and male victims were subject to the other inhumane act of sexual violence.⁹⁶

With this context in mind, the most instructive curatorial decisions concern the exhibition’s choices in engaging with male victims of sexual violence and forced marriage. Rather than presenting the TC and SCC judgments as competing narratives, the

⁹² See Dagmar Brunow, *Curating Access to Audiovisual Heritage: Cultural Memory and Diversity in European Film Archives*, 18 IMAGE & NARRATIVE 97, 98 (2017) (“the process of selection, exhibition and recontextualization” is an “ac[t] of remembering,” as framed through Assmann’s distinction).

⁹³ Case 002/02 Trial Judgment, *supra* note 45, para. 3701.

⁹⁴ Melanie O’Brien, *Gender Dimensions of Forced Marriage in International Criminal Law*, in GENDER AND INTERNATIONAL CRIMINAL LAW 207, 226–227 (Indira Rosenthal et al., eds., 2022).

⁹⁵ Valerie Oosterveld & Patricia Viseur Sellers, *Issues of Sexual and Gender-Based Violence at the ECCC*, in THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA 321, 337–338 (eds. Simon M. Meisenberg & Ignaz Stegmüller eds., 2016); Myriam S. Denov & Mark A. Drumbl, *The Many Harms of Forced Marriage: Insights for Law from Ethnography in Northern Uganda*, 18 J. INT’L CRIM. JUST. 349, 366 (2020).

⁹⁶ Case 002/02 (Co-Prosecutor v. Khieu Samphân and Nuon Chea), Appeal Judgment, F76, para. 1563 (Dec. 23, 2022).

exhibition structures them as sequential components of a single unified narrative. A full panel dedicated to the judgments does not include any TC findings regarding male SGBV victims, but it highlights seven excerpts from the SCC judgment, all of which explicitly criticize the TC's reasoning on this question.⁹⁷ A panel presenting the timeline of the ECCC's SGBV jurisprudence is framed similarly: it first notes the TC's finding of "rape in the context of forced marriage committed against female victims," then the SCC's finding "with regard to male victims."⁹⁸ This framing, as an evolution rather than a dispute in the Court's jurisprudence, is careful not to place any sort of focus on the TC's findings that were subsequently overturned.

It's further worth noting that the full text of the exhibition is carefully positioned in alignment with the judgments. For instance, academic scholarship calls attention to the SCC's language framing sexual violence as committed by male victims "forced to victimise" female victims.⁹⁹ In the exhibition, expert witness Kasumi Nakagawa's account is framed along these same lines: Panel #10 of the exhibition does not refer to 'male rape victims,' but instead centers the fact that "men also suffered greatly when they had to force themselves to rape their wives."¹⁰⁰ This formulation is careful to track Case 001's narrow definition of rape, which requires sexual penetration, even though

⁹⁷ ECCC, "CONSENT DENIED" Exhibition, ECCC RESOURCE CENTRE, Phnom Penh ("ECCC SGBV Exhibition"), Panel #12 (Oct. 2025). For instance, it includes the following excerpt from the Case 002/02 Supreme Court judgment: "Similarly, the Trial Chamber neglected to consider, in its legal findings, the evidence of NAKAGAWA Kasumi that male victims were very seriously harmed by being forced to have sexual intercourse with their wives [...]" See *Case 002/02* Appeal Judgment, *supra* note 96, para. 1583.

⁹⁸ ECCC SGBV Exhibition, *supra* note 97, Panel #3 (emphasis in original).

⁹⁹ Juliette R. Tiedrez, *On the Rape of Men in the Context of Forced Marriages at the Extraordinary Chambers in the Courts of Cambodia*, EJIL: TALK! (Apr. 1, 2023), <https://www.ejiltalk.org/on-the-rape-of-men-in-the-context-of-forced-marriages-at-the-extraordinary-chambers-in-the-courts-of-cambodia/>.

¹⁰⁰ ECCC SGBV Exhibition, *supra* note 97, Panel #10.

that definition excludes most male survivors.¹⁰¹ While the exhibition could have highlighted male suffering more explicitly without emphasizing males as perpetrators—in alignment with the dominant ICL definition of rape, which considers males as rape victims—the Court instead prioritized strict fidelity to its jurisprudence.¹⁰² So, in curating its narrative, the Court was careful to align with judicial findings while acknowledging some degree of gendered harms against both male and female victims.

As with any project of this nature, a primary limitation is the falloff in deep, genuine engagement after the exhibition's initial opening-week hype. The ECCC has adopted two primary strategies to mitigate this challenge. First is the prominent display of two questions for reflection, both backwards-looking and forwards-looking.¹⁰³ In particular, the second forward-looking question asks visitors to think directly about their own responsibilities and obligations in response to the exhibit. Second is the “Tree of Hope,” which invites the predominantly university-student visitors to “leave messages of remembrance and solidarity” after interacting with the SGBV exhibition materials.¹⁰⁴ The design choice of incentivizing students to engage, both through self-reflection and through written messages,

¹⁰¹ *Case 001 (Co-Prosecutors v. Kaing Guek Eav alias 'Duch')*, Trial Judgment, E188, para. 362 (July 26, 2010).

¹⁰² Catherine A. MacKinnon, *The ICTR's Legacy on Sexual Violence*, 14 NEW ENG. J. OF INT'L & COMP. L. 101, 102 (2008). The prevailing standard was first established in *Akayesu*, which defines rape as any “physical invasion of a sexual nature, committed on a person under circumstances which are coercive.” See *Prosecutor v. Jean-Paul Akayesu*, Trial Judgment, ICTR-96-4-T, para. 598 (Sept. 2, 1998).

¹⁰³ In English, these questions are: (1) “What did you learn from the survivors' stories about breaking the silence and healing?” (2) “What is my responsibility—and our collective responsibility—to support survivors and prevent such crimes and other forms of sexual violence from occurring in the future?” See ECCC SGBV Exhibition, *supra* note 97, Panel #25.

¹⁰⁴ Ben Sokhean, *Exhibition on Sexual Violence under KR Regime*, KHMER TIMES (Oct. 30, 2025), <https://www.khmertimeskh.com/501781531/exhibition-on-sexual-violence-under-kr-regime/>.

aligns with the ICTJ's best practices for transitional justice educational outreach, which stress the importance of open, age-appropriate youth dialogue.¹⁰⁵ And, the ECCC Resource Center's physical function, as a free public library centrally-located in Phnom Penh, is particularly valuable in this regard; each week, roughly one thousand visitors engage with the exhibition as soon as they enter the public lobby,¹⁰⁶ and hundreds of messages expressing "commitment and hope for a future free from [SGBV]" have been posted on the tree exhibit, which sits directly facing the entrance to the building.¹⁰⁷

Taken together, then, this case is useful for two reasons. First, it demonstrates both the possibilities and the limitations of curating a complex, sometimes contradictory, set of individual historical experiences into one archival narrative. Second, it sheds light on the challenges and potential solutions of archival exhibitions in effectively engaging post-conflict communities.

5.2. ECCC Guidebooks

The ECCC's guidebooks demonstrate the Court's most direct effort to distill the totality of the ECCC's archives into a set of curated narratives. Since the beginning of the residual phase, the ECCC has produced several iterations of these materials, including a 66-page guide targeted toward the general public ("Public Guide"),¹⁰⁸ and two comprehensive technical guides totaling 645 pages ("Technical

¹⁰⁵ Clara Ramírez-Barat, *Engaging Children and Youth in Transitional Justice Processes: Guidance for Outreach Programs*, INT'L CTR. FOR TRANSITIONAL JUST., at 12 (Nov. 2012).

¹⁰⁶ Phoeurng Phearak, *ECCC Resource Centre Transforms into a Popular Library*, CAMBODIANNESS (July 6, 2025), <https://cambodianess.com/article/eccc-resource-centre-transforms-into-a-popular-library> ("In the past two months, we've averaged around 220 users per day").

¹⁰⁷ ECCC (@krtribunal), INSTAGRAM (Nov. 21, 2025), <https://www.instagram.com/p/DRTXoM9jelk/>.

¹⁰⁸ ECCC Public Guide, *supra* note 72.

Guides”),¹⁰⁹ among others.¹¹⁰ Together, these guides capture the ECCC’s efforts to curate 2.4 million pages of evidentiary materials and the judicial decisions built atop that evidence into formats accessible to the Cambodian and international publics.

This case is especially useful in exploring the ECCC’s efforts to construct archival narratives while avoiding undue political bias. In his work on the ICTY archive, David Kaye argues that judicial findings interpret the evidence in an “extraordinarily divisive and contested” manner.¹¹¹ The implication, Kaye argues, is that each state—Serbia, Bosnia, and Croatia, in the ICTY context—has an incentive to pressure tribunal archivists to “construct and narrate in such a way that is consistent with national or local narratives.”¹¹² In the Cambodian context, the most pressing dispute played out in Cases 003 and 004, in which Cambodian judges opposed the indictments of five Khmer Rouge leaders while international judges favored the indictments.¹¹³ Several scholars have argued that the sitting Cambodian government was politically opposed to the indictments because these defendants continued to hold leadership positions in the post-conflict regime.¹¹⁴

So, when the ECCC constructs archival narratives, an interesting question is raised—given that only three defendants were

¹⁰⁹ ECCC, *Guide to the Extraordinary Chambers in the Courts of Cambodia, Volume 1: Establishment, Operations and Cases* (2024) (“ECCC Technical Guide”); ECCC, *Guide to the Extraordinary Chambers in the Courts of Cambodia, Volume 2: Jurisprudence* (2025).

¹¹⁰ For example, a short pamphlet aimed at young children. See ECCC, *The ECCC Children’s Guide* (2024).

¹¹¹ David Kaye, *Archiving justice: conceptualizing the archives of the United Nations International Criminal Tribunal for the former Yugoslavia*, 14 ARCH. SCI. 381, 390 (2014).

¹¹² *Id.* at 392.

¹¹³ ECCC, *Case 003*, <https://www.eccc.gov.kh/en/cases/case-003> (last visited Dec. 5, 2025); ECCC, *Case 004*, <https://www.eccc.gov.kh/en/cases/case-004> (last visited Dec. 5, 2025).

¹¹⁴ See, e.g., Torrens, *supra* note 69, at 72; Heather Ryan, *And then, finally, a judge wrote the shameful end of the Khmer Rouge Tribunal*, JUSTICEINFO (Feb. 4, 2022), <https://www.justiceinfo.net/en/87248-finally-judge-wrote-shameful-end-khmer-rouge-tribunal.html>.

convicted, to what extent ought these narratives engage with the many non-convicted Khmer Rouge leaders,¹¹⁵ including the five defendants purportedly protected by the government?¹¹⁶ The Public Guide includes pages dedicated to each of the ten defendants; pages on the individual liability of Duch, Nuon Chea, and Khieu Samphan (the three convicted persons) include sections of “Key *Findings*,” as opposed to the other seven charged persons, which include “Key *Allegations*.”¹¹⁷ This is contrasted with the non-defendants: Pol Pot, Ta Mok, and others are mentioned in a two-page spread describing Angkar, the CPK’s leadership branch, but only as to their positions in Angkar—the guide includes no explicit allegations as to their criminal responsibilities.¹¹⁸ So, the general approach is this: the five charged persons in Cases 001 and 002 (including Ieng Sary and Ieng Thirith) are centered, the five investigated persons in Cases 003 and 004 are also highlighted, and other key players are placed on the periphery.

¹¹⁵ For further context: three Khmer Rouge leaders (Duch, Nuon Chea, and Khieu Samphan) were convicted. Two more (Ieng Sary and Ieng Thirith) were charged but died before the cases concluded. Five others (Meas Muth, Sou Met, Im Chaem, Ao An, and Yim Tith) were investigated but not charged. Two of the most senior leaders (Pol Pot and Ta Mok, among others) were not formally investigated at all, because they died before proceedings began.

¹¹⁶ While most international scholarship criticizes Cases 003 and 004 as political suppression, this is not the only perspective. The ECCC’s mandate covered “senior leaders of Democratic Kampuchea and those who were most responsible for the crimes” of the Khmer Rouge, aiming to achieve peaceful reconciliation instead of prosecuting rank and file cadres. Multiple judges interpreted this language to limit the Court’s jurisdiction to the upper echelon of Khmer Rouge leaders, which excluded the defendants in Cases 003 and 004. This interpretation too has merit, and the domestic media’s reaction to these outcomes was generally positive. See Rosemary Grey & Rachel Killeen, *Communicating Justice: Cambodian Press Coverage of the ECCC’s Final Judgment*, 23 INT’L CRIM. L. REV. 487, 498–501 (2023).

¹¹⁷ ECCC Public Guide, *supra* note 72, at 29–38.

¹¹⁸ *Id.* at 25–26. Pol Pot is also mentioned when listing the Key Allegations against Ieng Sary and Ieng Thirith. See, e.g., *id.* at 33–34 (“Along with Pol Pot, Nuon Chea, Khieu Samphan, and others, intended the commission of crimes at cooperatives ...”).

Across more than six hundred pages of the Technical Guides, the same pattern emerges: while being careful to frame trial judgments as solely pronounced against the five charged defendants,¹¹⁹ the allegations against defendants in Cases 003 and 004 are also highlighted.¹²⁰ For instance, as pertains to Case 003, “according to the International Co-Prosecutor, Meas Muth ... effectively control[ed] the town of Kompong Som, its surrounding area, and Cambodia’s coastal islands;” along with Sou Met, Meas Muth “allegedly ... participated in a criminal plan to purge the RAK of undesirable elements, resulting in at least thousands of deaths [...]”¹²¹ Of course, the guide is careful to note these are allegations, but they are still highlighted, with citations to Case 003 filings.¹²² With respect to the defendants in Cases 003 and 004, then, even absent comprehensive trials, the existing judicial documents included enough evidentiary analysis through which to curate narratives about the alleged individual responsibility of each defendant.

However, here, too, these narratives of individual criminal responsibility are told without including Pol Pot, Ta Mok, or others who played key roles but were not charged. The challenge with this approach is the danger of leaving parts of the historical narrative on the table by largely framing the Khmer Rouge violence around only three of the many high-ranking officials. A mitigating factor, though, is that each of the three ECCC judgments did establish judicial findings regarding the broader context of Khmer Rouge history, including structure and hierarchy. For example, both the Public Guide and Technical Guides discuss the roles of Pol Pot and Ta Mok in

¹¹⁹ See, e.g., ECCC Technical Guide, *supra* note 109, at 181.

¹²⁰ See, e.g., *id.* at 167.

¹²¹ See, e.g., *id.* at 211–212.

¹²² These passages cited the OCP’s Second Introductory Submission in Case 003. See *Case 003 (Co-Prosecutor v. Meas Muth)*, Second Introductory Submission, D1, paras. 3–4 (Nov. 20, 2008).

planning the fall of Phnom Penh, citing explicitly the Historical Background section of the Case 002/02 judgment in which the Court found the same. Similarly, the ECCC’s digital archive highlights each senior leader’s responsibilities within the Khmer Rouge hierarchy.¹²³ So, while ECCC archival narratives do not make claims about the individual crimes committed by Pol Pot or Ta Mok, they remain broadly able to tell a comprehensive story of the Khmer Rouge period.¹²⁴

The ECCC’s guidebooks, for the most part, have included a narrower set of claims about Pol Pot and other senior Khmer Rouge leaders than most Cambodian Genocide scholarship. Still, as outlined in the theoretical section of this paper, such an approach includes unique advantages in terms of the credibility and legitimacy of the historical narrative. Taken together, this case illustrates how tribunals may disseminate archival narratives that are as comprehensive as possible while still maintaining fidelity to judicial findings.

5.3. Mobile Resource Centre

The Mobile Resource Center is the ECCC’s most extensive archival outreach program, implemented through a high-tech bus that has travelled to all twenty-five provinces across rural and urban Cambodia.¹²⁵ The project was implemented in 2024 to “bring the ECCC to meet the Cambodian people,” with a particular focus on remedying

¹²³ ECCC, *Unmasking Angkar: Khmer Rouge Hierarchy*, <https://kr-hierarchy.eccc.gov.kh/en/cpk> (last visited Dec. 5, 2025).

¹²⁴ ECCC Technical Guide, *supra* note 109, at 5, citing *Case 002/02 Trial Judgment*, *supra* note 45, paras. 227, 229–233.

¹²⁵ Rabia Rasul, *The ECCC Resource Bus’ journey to Koh Kong to reframe Justice and Accountability through intergenerational dialogue*, ECCC (Feb. 13, 2025), <https://www.eccc.gov.kh/en/resources/news-and-outreach/the-eccc-resource-bus-journey-to-koh-kong-to-reframe-justice-and-accountability-through-intergenerational-dialogue>.

the lack of Khmer Rouge history in school curricula.¹²⁶ The bus is equipped with technology not commonly used in rural schools, including touch-screen laptops, projectors, and audiovisual equipment.¹²⁷ At each school, programming is divided into three activities: discussions in the classroom focused on Khmer Rouge history, outdoor exhibitions focused on ECCC tribunal proceedings, and small-group visits inside the bus to interact with the ECCC's digital archives.¹²⁸ In 2024, the bus visited 88 institutions, the majority of which were rural high schools, and engaged over 60,000 students in programming.¹²⁹

This case is particularly helpful in illustrating the ECCC's engagement with Cambodia's cultural context in the process of operationalizing its archive. Existing work on post-conflict "living memory" emphasizes that education must be carried out with careful attention toward the local context.¹³⁰ In Cambodia, the Mobile Resource Center has encountered student dynamics deeply ingrained in rural classrooms. Students are often discouraged from speaking up

¹²⁶ Hang Punreay, *ECCC launches 'Mobile Resource Centre'*, KHMER TIMES (Feb. 1, 2024), <https://www.khmertimeskh.com/501432478/eccc-launches-mobile-resource-centre/> (quoting ECCC Acting Director of Administration, Kranh Tony).

¹²⁷ Anton L. Delgado, *For Young Cambodians, a Mobile History Lesson from a Dark Time*, N.Y. TIMES (Aug. 24, 2024), <https://www.nytimes.com/2024/08/24/world/asia/cambodia-khmer-rouge-museum-bus.html>.

¹²⁸ Vikram Ramaswamy & Jehaan Sivasankar, *Bringing the ECCC to Takeo: A Snapshot of Our Journey with the Mobile Resource Centre*, ECCC (Aug. 13, 2025), <https://eccc.gov.kh/en/resources/news-and-outreach/bringing-the-eccc-to-takeo-a-snapshot-of-our-journey-with-the-mobile-resource-centre>.

¹²⁹ ECCC, *Quarterly Progress Report: Q1 2025* (Mar. 2025), https://www.eccc.gov.kh/sites/default/files/Quarterly%20Progress%20Report%20Q1%202025.final_website%20upload.pdf. See also ECCC, *Quarterly Progress Report: Q3 2024* (Sept. 2024), <https://www.eccc.gov.kh/sites/default/files/Quarterly%20Progress%20Report%20Q3%202024%20data.pdf>; ECCC, *Quarterly Progress Report: Q4 2024* (Dec. 2024), https://www.eccc.gov.kh/sites/default/files/Quarterly%20Progress%20Report%20Q4%202024_tables.pdf (both containing more detailed information).

¹³⁰ Campbell, *supra* note 13, at 262–263.

and asking questions, both in the home and at school.¹³¹ Teachers are expected to maintain a position of “distance, power, and status.”¹³² These dynamics also have a gendered dimension. Until 2007, the Cambodian high school curriculum included the Chbab Srey, a traditional poem reminding women to “show deference and subservience to their husbands;”¹³³ well after the poem was removed from the curriculum, surveys of Cambodian students and teachers have provided evidence that such values continue to be held in rural Cambodian schools.¹³⁴ Even the little details—boys and girls sitting in separate sections of the classroom, for instance—reinforce the academic norms that encourage Cambodian students to passively receive information¹³⁵ rather than to actively engage with the Khmer Rouge period.¹³⁶

So, in analyzing this project, the most instructive design choices concern the modes of engagement between the ECCC Outreach Team and rural students. In this context, the challenge is not motivation—a 2019 empirical survey of Cambodian youth found 98.6 percent of respondents were interested in learning more about Khmer

¹³¹ Jenny Pearson, *Capacity Development in Cambodia: The Challenge of Changing an Educational Culture*, in *EDUCATION IN CAMBODIA* 175, 180–181 (Vincent McNamara & Martin Hayden, eds., 2022).

¹³² *Id.*

¹³³ Emily Anderson & Kelly Grace, *From Schoolgirls to “Virtuous” Khmer Women: Interrogating Chbab Srey and Gender in Cambodian Education Policy*, 12 *STUD. SOC. JUST.* 215, 217 (2018).

¹³⁴ Rinna Bunry & Karen Walker, *Cambodian Women and Girls: Challenges to and Opportunities for Their Participation in Higher Education*, in *EDUCATION IN CAMBODIA* 275, 286 (Vincent McNamara & Martin Hayden, eds., 2022).

¹³⁵ Steven Prigent, *Concerning the education of children in contemporary rural Cambodia: Filial debt, deference and “vagabondage” for boys and girls*, 276 *LES CAHIERS D’OUTRE-MER* 97, 115 (2017).

¹³⁶ The latter is necessary for successful TJ processes. See Ramírez-Barat, *ICTJ Guidance*, *supra* note 105, at 11.

Rouge history¹³⁷—but norms around student outspokenness. As such, the ECCC has employed a concerted effort to cut through existing academic norms. From the moment students enter classrooms and sit down, ECCC outreach members ask those students to swap seats, so boys and girls are sitting interspersed. Students laugh, but the underlying aim is to signal that these activities are unlike traditional academic classes.¹³⁸ During the actual presentation of information, every effort possible is made to affirmatively encourage student engagement: encouraging students to stand up, read aloud off slides, answer questions in groups.¹³⁹ In particular, a deliberate emphasis has been placed on gender dynamics, which looks both like discomfort, in cold-calling female students to speak into a microphone, and supportiveness, in leading the class in clapping for each student who finishes speaking.¹⁴⁰ These decisions center an objective of framing classroom sessions away from traditional rural Cambodian schooling, and toward deeper, gender-aware forms of engagement with the memory of the Khmer Rouge.¹⁴¹

Through these efforts, the Court has grappled with the limitation of the lack of long-term interaction. Particularly given limited opportunities to reinforce these lessons both in school and

¹³⁷ Boravin Tann & Khuochsopheaktra Tim, *'Duty Not to Forget' the Past? Perceptions of Young Cambodians on the Memorialization of the Khmer Rouge Regime*, SWISSPEACE WORKING PAPER, at 22 (Mar. 2019).

¹³⁸ See, e.g., Nathan Thomas & Patrick Thorne, *The Extraordinary Bus: Shifting Gears in International Criminal Law*, ECCC (Nov. 11, 2024), <https://eccc.gov.kh/en/resources/news-and-outreach/driving-change-the-eccc-mobile-resource-centres-journey-to-connect-cambodias-past-and-present> (photos of mixed-gender seating).

¹³⁹ Ramaswamy & Sivasankar, *supra* note 128.

¹⁴⁰ Note that the ECCC tracks gender statistics for each school visit. See, e.g., ECCC, FACEBOOK (Nov. 26, 2025), <https://www.facebook.com/ecccckh/posts/pfbid06iFm5tLVRtZ8UhKwAQKSvYyzBCg5tD4t2dzgNsWXMRAF4HXCFUR5gy68KkgLg5cTl>.

¹⁴¹ Post-conflict TJ processes require gender-aware interventions. See Tine Destrooper and Stephan Parmentier, *Gender-Aware and Place-Based Transitional Justice in Guatemala: Altering the Opportunity Structures for Post-Conflict Women's Mobilization*, 27 SOC. & LEGAL STUD. 323, 325–326 (2018) (containing a literature review).

out, a single day of programming might leave minimal lasting impact on rural students. The Mobile Resource Center has adopted two strategies to mitigate this challenge. First is curation of content intended to evoke deep student emotions, including the “My Story” survivor documentaries and the invitation of Civil Parties to speak on their experiences as survivors.¹⁴² Second, students are provided with physical materials, including guide booklets and intergenerational dialogue kits, that explicitly encourage sustained conversations with family members and other survivors in their communities.¹⁴³ While the efficacy of such efforts over a longer time series remains to be studied, these design choices underscore a broader principle of the ECCC’s outreach model: to build sustained engagement with archival materials in rural communities beyond the moment of dissemination. Taken together, this case is useful for two reasons. First, it demonstrates an approach to archival dissemination that’s responsive to the local context of the target audience. Second, it highlights both challenges and potential solutions to the lack of sustained student engagement endemic to any education project.

5.4. National Archives of Cambodia Partnership

Finally, the ECCC has working relationships with other domestic archival institutions, most notably including Cambodia’s National Archives. The National Archives, attached to the Cambodian government, include a collection of records from the French colonial period, the post-colonial Cambodian government, and the Khmer Rouge period.¹⁴⁴ The archive contains antiquated record-keeping

¹⁴² Ramaswamy & Sivasankar, *supra* note 128.

¹⁴³ Rasul, *supra* note 125.

¹⁴⁴ Included within this collection are original documents regarding the 1979 People’s Revolutionary Tribunal, organized by the Vietnamese occupying government, which convicted and sentenced Pol Pot and Ieng Sary to death. See Peter Arfanis, *Introduction to the National Archives of Cambodia*, CENTER FOR KHMER STUDIES, at 1–2 (June 8, 2013).

infrastructure, and the majority of documents have not been digitized, a task made more difficult by the challenges of digitally scanning Khmer script.¹⁴⁵ To help mitigate these challenges, the ECCC has partnered with the National Archives to both assist with scanning documents and to more broadly provide archival training and modernization assistance.¹⁴⁶

This case is particularly illustrative in demonstrating how tribunals can utilize judicial archives to engage not only with individuals but also with institutional stakeholders, with the ultimate objective of strengthening institutional transparency in post-conflict societies. Nearly all of the academic scholarship surrounding the ECCC's political nexus is negative; such concerns are valid.¹⁴⁷ But far less has been written about the potential positive transitional justice implications of the ECCC's role as an internationalized tribunal with direct ties to the domestic government.¹⁴⁸ The ECCC archive is the first and only archival institution in Cambodia to receive international certification, on the basis of its open access to information and high-quality records management.¹⁴⁹ This makes sense: while the Khmer Rouge ripped apart Cambodia's domestic archival ecosystem,¹⁵⁰ the

¹⁴⁵ Chea Sameang, *Cambodia Is Losing Its Memory – A Digital National Archive Can Save It*, CAMBODIANESS (Nov. 30, 2025), <https://cambodianess.com/article/cambodia-is-losing-its-memory-a-digital-national-archive-can-save-it>; National Archives of Cambodia, FACEBOOK (Feb. 21, 2022), <https://www.facebook.com/photo.php?fbid=408823447679583&id=107336851161579&set=a.125060286055902> (describing a set of archival documents as “worryingly fragile”).

¹⁴⁶ See ECCC, *Korea Records & Archives Program (Digital Website)*, *supra* note 59.

¹⁴⁷ See, e.g., Torrens, *supra* note 69, at 72.

¹⁴⁸ van Zyl, *supra* note 58, at 211–212.

¹⁴⁹ ECCC Archive Awarded ISO Certification, *a First for Cambodia*, KHMER TIMES (Sept. 1, 2025), <https://www.khmertimeskh.com/501749139/eccc-archive-awarded-iso-certification-a-first-for-cambodia/>.

¹⁵⁰ Michelle Caswell, *Archiving the Unspeakable. Silence, Memory, and the Photographic Record in Cambodia*, at 83 (2014).

ECCC was built with international investment, and archival materials are stored according to international risk management standards.¹⁵¹

Given these circumstances, the most relevant design choices center on the details of the ECCC-National Archives relationship. It is immediately clear that this relationship features a very wide scope of capacity-building. The Court's Records and Archives Unit (RAU) has organized and facilitated a wide series of technical trainings for the National Archives and various other Cambodian institutions, spanning all aspects of archival management.¹⁵² As the first international tribunal to digitize all of its archival evidence,¹⁵³ the ECCC has further engaged the National Archives in digitization training and the scanning of over 100,000 pages of physical Khmer Rouge commercial documents currently in the government's possession.¹⁵⁴ Particularly notable is how the ECCC has leveraged its international vantage point. RAU's 2022 facilitation of an International Council on Archives (ICA) training was the first time any ICA training had been administered in Cambodia, and it was the first instance in which the National Archives received ICA accreditation.¹⁵⁵ The ECCC's 2025 translation of the Universal Declaration on Archives to Khmer, too, serves as an attempt to anchor the domestic archival ecosystem

¹⁵¹ ECCC, *Court Report 2023*, *supra* note 1, at 20–23.

¹⁵² ECCC, *ECCC Conducts Records Management Training with Institutional Partners*, FACEBOOK (Feb. 28, 2022), <https://www.facebook.com/eccckh/posts/pfbid0Gmz33cg5F8GYH5X5NpxtKe33trvGdK84gcIsTvhsz8VvH8ZQCvrXsaktm9fh17Xgl>; National Archives of Cambodia, *The ICA online learning course "Introduction to Records Management"*, FACEBOOK (Feb. 23, 2022), <https://www.facebook.com/nationalarchivesofcambodia/posts/pfbid02NrWjGc4QayKxUMfAPGq3gXUAnUikzr8vCqTuzKDeqgXDiXrdCkc8DPNmD8VnQVtl>.

¹⁵³ Nasa Dip, *After Khmer Rouge tribunal, Cambodian archivists preserve a brutal history*, SOUTHEAST ASIA GLOBE (Mar. 27, 2023), <https://southeastasiaglobe.com/khmer-rouge-tribunal-archives/>.

¹⁵⁴ ECCC, FACEBOOK (Aug. 28, 2024), <https://www.facebook.com/eccckh/posts/pfbid08E4VjJRvWohn5GMwFxlzLGivgcw2x86GNMBnrVMPsrxs4KAeekfmk5dEeciiUuaYl>; Arfanis, *supra* note 144, at 2.

¹⁵⁵ ECCC, *Records Management Training (Facebook)*, *supra* note 152.

in international standards for transparency and long-term public access, even after the tribunal itself concludes its residual mandate.¹⁵⁶ Whether the ECCC's archival practices will spill over to other Cambodian institutions remains to be seen. Cambodia faces limited public access to information,¹⁵⁷ and recent crackdowns on journalists provide a potentially bleak outlook for the future of government transparency.¹⁵⁸ Even so, recent developments indicate that broader Cambodian archival practices are developing, both within and outside of the judiciary. For example, in late 2025, the Cambodian Supreme Court—which includes four former or sitting ECCC judges—digitally published judicial decisions for the first time; this judicial transparency is a novel development for the domestic legal system.¹⁵⁹ And, in November 2025, Cambodia's Permanent Deputy Prime Minister Vongsey Vissoth spoke about the initiation of a government project to modernize and digitize the National Archives; in doing so, he explicitly cited the ECCC archive's cooperation and ISO certification as foundational bases for the state archival project.¹⁶⁰

¹⁵⁶ ECCC, FACEBOOK (Feb. 17, 2025), <https://www.facebook.com/ecccckh/posts/pfbid02LmWUZHTDo2gbsjLjLHg3gnD7Awaf6YQNGTArBnsxMChN74b3Zo7mZDUCAKJE52SNl>.

¹⁵⁷ UNCAC, New Civil Society Report on Cambodia: Stronger enforcement efforts, more transparency and de-politicisation of key institutions needed to advance anti-corruption efforts, ASSOCIATION FOR THE IMPLEMENTATION OF THE UN CONVENTION AGAINST CORRUPTION (24 Nov. 2021), <https://uncaccoalition.org/new-civil-society-report-on-cambodia-stronger-enforcement-efforts-more-transparency-and-de-politicisation-of-key-institutions-needed-to-advance-anti-corruption-efforts/>.

¹⁵⁸ IFJ, *Cambodia: Two journalists charged with treason for border conflict reporting*, INT'L FED'N OF JOURNALISTS (Sept. 16, 2025), <https://www.ifj.org/media-centre/news/detail/category/press-releases/article/cambodia-two-journalists-charged-with-treason-for-border-conflict-reporting>.

¹⁵⁹ See Supreme Court of Cambodia, *Civil Judgment*, <https://supremecourt.gov.kh/en/civil-judgement> (last visited Dec. 5, 2025).

¹⁶⁰ Ben Sokhean, *National Archives to be modernised ahead of centennial*, KHMER TIMES (Nov. 13, 2025), <https://www.khmertimeskh.com/501788602/national-archives-to-be-modernised-ahead-of-centennial/>.

This case is particularly useful because it explores the breadth of potential value that tribunal archives bring to domestic institutions. Even setting questions of historical narrative aside, the Cambodian case demonstrates how judicial archives are intrinsically positioned to influence broader practices of records upkeep and archival transparency in post-conflict states.

6. Looking Ahead

The preceding case studies demonstrate that the Court has articulated a novel approach to curating and disseminating a “living memory” archive. This paper aims to extract generalizable principles from how the ECCC has navigated its archival project. Case Studies 1 and 2 illustrate the Court’s approach to curating archival narratives: oriented toward presenting a comprehensive account of the Khmer Rouge period, tethered to judicial findings, and facing real or perceived political influence. Case Studies 3 and 4 illustrate the Court’s approach to disseminating archival narratives: aimed at engaging both local communities and national institutions, grappling with cultural context, and challenged by a lack of long-term engagement.

Here, I distill these observations into four design principles relevant to future post-conflict tribunals seeking to activate their archives. *First*, curating archival materials with close fidelity to judicial findings can mitigate risks of political capture and preserve the credibility advantage associated with legal judgments, even when those judgments are contested. *Second*, dissemination strategies can benefit from aligning outreach methods with local context, whether through active, personalized engagement in receptive environments

or alternative digital strategies in areas of localized distrust.¹⁶¹ *Third*, short-term archival projects can be strengthened when designed to enable sustainable, longer-term investment, including through prompting self-reflection and active community dialogue. *Fourth*, tribunals can take advantage of their institutional positions to collaborate with key stakeholders—both political and civil society—to support broader capacity-building efforts.

These considerations reflect the most generalizable patterns that emerge from the ECCC’s experience navigating post-conflict archival work. Evaluative studies of the ECCC have largely failed to engage with the Court’s archival programming. Yet, as the terrain of international criminal law swings back from large comprehensive courts to smaller, more targeted judicial mechanisms—in Kosovo,¹⁶² Ukraine,¹⁶³ and the potential of Syria and beyond¹⁶⁴—there is increasing value in descriptive study of the ECCC’s participation in Cambodia’s broader transitional justice project. This paper makes a case for the adoption of a “living memory” model of judicial archives, and it provides the basis for archival design choices as these tribunals grapple with their archival responsibilities.

¹⁶¹ For example, it would be challenging to implement a ground-based dissemination strategy in Kosovo, where the KSC has been forced to limit or cancel in-person speaking engagements due to threats of violence. See Perparim Isufi, *Kosovo War Crime Court President Suggests KLA Leaders’ Trial is Near*, PRISHTINA INSIGHT (Sept. 21, 2022), <https://prishtinainsight.com/kosovo-war-crime-court-president-suggests-kla-leaders-trial-is-near/>.

¹⁶² Maria S. Cataleta, *The Kosovo Specialist Chambers, an International Tribunal inside the National Judicial System*, 3 J. INT’L CRIM. L. 1 (2022).

¹⁶³ Milena Sterio, *The Ukraine Crisis and the Future of International Courts and Tribunals*, 55 CASE W. RES. J. INT’L L. 479, 499–501 (2023).

¹⁶⁴ *Promoting Criminal Accountability and Transitional Justice in Syria: The Role of the EU*, EUR. CTR. CONST. & HUM. RTS., at 4–5 (Oct. 2025).