

# On the Residual Functions of the Extraordinary Chambers in the Courts of Cambodia

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## 1. Introduction

The Extraordinary Chambers in the Courts of Cambodia ('ECCC') was established at the turn of the millennium to prosecute leaders of the Khmer Rouge regime responsible for some of the large-scale atrocities in the twentieth century.<sup>1</sup> The ECCC commenced its residual functions in 2023, immediately following the Supreme Court Chamber's issuance of the appeal judgment in Case 002/02.<sup>2</sup> Since then, academic and media coverage of the ECCC has declined considerably, suggesting limited awareness of its residual functions.

Residual functions are typically seen as administrative, focusing on managing archives, tracking fugitives, and enforcing sentences while retaining some judicial features.<sup>3</sup> However, the ECCC's residual functions, scheduled to run until the end of 2025, represent a novel approach by redefining how courts operate after litigation, aiming to bridge the conventional gap between judicial institutions and the public through outreach and extra-judicial projects.

As a former United Nations ('UN') consultant at the ECCC during the beginning of its residual functions, I will focus on activities *outside* the courtroom.<sup>4</sup> I suggest that these functions are an emerging model of court institutions that extend beyond criminal adjudication, reflecting the importance of not equating the court solely with its judicial proceedings.<sup>5</sup> The residual functions implant the ECCC within the fabric of Cambodian society, enabling public-facing projects that engage society at large beyond judicial proceedings.

Rather than providing a value judgment on the effectiveness of different approaches to residual functions, this brief highlights how the ECCC departs from the formal role typically associated with international criminal tribunals ('ICTs'). It demonstrates the potential for residual functions to expand their impact and examines the purpose, strategic impact, and evolving roles of ICTs in post-conflict societies. As Asia's first post-war ICT, the ECCC offers a different model for residual functions oriented towards broader social processes.

## 2. Purposes and Functions: Residual Functions in International Criminal Tribunals

ICT residual functions encompass a range of activities that ensure the

court's legacy, continuity and administrative closure. Like other *ad hoc* tribunals such as the International Criminal Tribunal for the former Yugoslavia ('ICTY') and the International Criminal Tribunal for Rwanda ('ICTR'), residual functions were not stated in their founding statutes, but were introduced later during their operational lifespans.<sup>6</sup> These functions have traditionally included appeals, preserving legal records, managing witness protection, enforcing sentences, and facilitating public access to archival materials.

Madoka Futamura coins the concept of 'strategic purpose' in understanding the purposes and impacts of ICTs.<sup>7</sup> Strategic purpose extends beyond the immediate goals of criminal prosecutions to include broader aims such as fostering peace, promoting justice, and facilitating post-conflict societal transformation. These purposes provide a critical framework for assessing the goals of ICTs like the ICTY, ICTR and ECCC, not only in completing their judicial mandates, but also their contributions to contested landscapes of reconciliation and stability in post-conflict societies. However, while Futamura and other scholars extensively analyse the goals of ICTs, discussions rarely address the influence of residual functions and the broader institutional architecture of ICTs after litigation.<sup>8</sup>

For the ICTY and ICTR, the UN Security Council ('UNSC') explicitly linked their creation under Resolution 827 to the "restoration and maintenance of international peace and security".<sup>9</sup> This dual purpose – restoration as a short-term response to conflict and maintenance as a long-term process of peacebuilding – indicates how ICTs are tasked with roles beyond criminal adjudication. As Futamura notes, ICTs are tasked with fulfilling multiple, and at times potentially conflicting, objectives. These include ending impunity, delegitimizing violent regimes, documenting history, ensuring fair trials, addressing victims' interests, institutional reform and facilitating reconciliation.<sup>10</sup> The strategic purposes stemming from 'peace through justice' shows how the ICTs were envisioned not purely as institutions of retributive justice, but also catalysts for broader social processes.

To manage the closure of the ICTY and ICTR, the UNSC established the International Residual Mechanism for Criminal Tribunals ('IRMCT') in 2010 through Resolution 1966.<sup>11</sup> As a separate UN organization located in Arusha and The Hague, the IRMCT's mandate includes appeals, sentence enforcement, fugitive tracking, witness protection, and record preservation with some activities such as irregular educational events. This streamlined structure enables the IRMCT to discharge court operations while minimizing resource demands. However, its approach reflects a longstanding convention of residual functions being primarily administrative aimed more

<sup>1</sup> The ECCC was established under Cambodian law following the promulgation of the Law on the Establishment of Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea ('ECCC Law') on 27 October 2004 (<https://www.legal-tools.org/doc/9b12f0/>). The ECCC became operational in 2007.

<sup>2</sup> ECCC, Supreme Court Chamber, *Case 002/02*, Appeal Judgment, 23 December 2022, Case No. 002/19-09-2007/ECCC/SC (<https://www.legal-tools.org/doc/409scyke/>).

<sup>3</sup> Huw Llewellyn, "The Residual Phase", in *id.* (ed.), *An Institutional Perspective on the United Nations Criminal Tribunals*, Brill, Leiden, 2021, pp. 305–398.

<sup>4</sup> Susan Lamb, "Reconciliation v. Accountability: The Extraordinary Chambers in the Courts of Cambodia", *Policy Brief Series*, No. 34 (2015), Torkel Opsahl Academic EPublisher, Brussels, 2015, p. 1 (<https://www.toaep.org/pbs-pdf/34-lamb/>).

<sup>5</sup> Emilie Evrard and Tine Destrooper, "Learning from the Past? How the Khmer Rouge Tribunal, Civil Society Initiatives and Survivor Stories Shape Young Cambodians' Understanding of Non-Recurrence", in *The International Journal of Human Rights*, 28 December 2024, pp. 1–27.

<sup>6</sup> ICTY, "What Next?" (available on its web site).

<sup>7</sup> Madoka Futamura, *War Crimes Tribunals and Transitional Justice: The Tokyo Trial and the Nuremberg Legacy*, Routledge, London, 2008, pp. 3–6.

<sup>8</sup> Stuart Ford, "A Hierarchy of the Goals of International Criminal Courts", in *Minnesota Journal of International Law*, 2018, vol. 27, no. 1, pp. 179–244.

<sup>9</sup> UNSC Resolution 827 (1993), UN Doc. S/RES/827 (1993), 25 May 1993, para. 7 (<https://www.legal-tools.org/doc/dc079b/>).

<sup>10</sup> Cassandra Steer, *Translating Guilt: Identifying Leadership Liability for Mass Atrocity Crimes*, vol. 9, T.M.C. Asser Press, The Hague, 2017, p. 22.

<sup>11</sup> UNSC Resolution 1966 (2010), UN Doc. S/RES/1966 (2010), 22 December 2010, para. 1 (<https://www.legal-tools.org/doc/e79460/>).

at wrapping up operational duties, and limited engagement with society at large.

Residual functions hold significant potential in advancing the *strategic purposes* of ICTs, but the IRMCT has limited mechanisms for ongoing engagement with victim communities, extra-legal stakeholders, and the public. This reflects a narrow interpretation of residual functions' potential to address broader societal and transitional justice objectives.

On the contrary, the ECCC's residual functions challenge the notion that an ICT's work is ever truly 'completed' by not only addressing the past but also being forward-looking. These functions engage previously uninvolved groups – including post-Khmer Rouge generations, civil society, and non-parties to litigation – as key stakeholders in how the court conceptualizes 'victims' for deciding who the court is targeting.

The ECCC's residual functions adopt a new strategic purpose by reducing the distance between the court and affected communities, keeping locals informed through active outreach and fostering reconciliation. Unlike other ICTs often situated far from the sites of the crimes, the ECCC's continuous presence in Cambodia allows locals to observe proceedings firsthand, supporting direct engagement. Its in-country operations facilitate quicker access to information about burial sites and the whereabouts of those killed, enabling closure, mourning, and opportunities for local reparations.

This localized approach contrasts with ICTs reliant on international evidence-transfers and back-and-forth processes. By transforming from a distant legal institution into an accessible civic actor, the ECCC's residual functions promote public understanding and build a shared foundation for collective memory rooted in Cambodia's lived realities, supporting social and cultural needs within larger reconciliation processes both during and after litigation.

### 3. A New Posture: The ECCC Residual Functions

Article 2 of the Addendum to the UN-Royal Government of Cambodia Agreement ('Addendum') states that the ECCC shall "provide for the protection of victims and witnesses; [...] disseminate information to the public regarding the Chambers; and monitor the enforcement of reparations awarded to Civil Parties, as required".<sup>12</sup>

The design of the ECCC's residual functions was shaped by Cambodia's unique historical experience with the Khmer Rouge and the need for a justice process that resonates with the local population. In preparation for the conclusion of judicial proceedings, a high-level workshop was convened to explore victim-related activities within the residual mandate.<sup>13</sup> This workshop brought together civil society organizations, academics, survivor-victims, civil parties, and both local and international lawyers. It was held in response to an advisory report prepared by the co-rapporteurs for residual functions, which established the guiding principles for the ECCC's residual functions.<sup>14</sup>

The provision to "disseminate information" is particularly noteworthy. The non-prescriptive provision has enabled a broad interpretation, allowing the ECCC to decentralize its presence into a portable entity and develop information-design initiatives, large-scale outreach projects, and public-facing innovations. This programming engages with key themes of acknowledgment, recognition and public awareness – values that many stakeholders emphasized during the scoping of the residual functions. Importantly, the ECCC's efforts resound with the concept of post-memory, addressing how cohorts – including younger generations with no lived experience of the Khmer Rouge era – grasp and engage with historical atrocities through collective memory-mediated experiences rather than direct experience.<sup>15</sup> The ECCC information dissemination goals aim to ensure that narratives of resilience and accountability endure, facilitating a connection between past and present in Cambodia's societal fabric.

This aspect of the Addendum connects to the often-sought but ambiguously defined concept of 'reconciliation' frequently associated with international criminal law. Reconciliation broadly involves two key processes:

<sup>12</sup> Addendum to the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea on the Transitional Agreements and the Completion of Work of the Extraordinary Chambers, 26 August 2021, Article 2 (<https://www.legal-tools.org/doc/jm6h0k/>).

<sup>13</sup> David Cohen, Daniel Mattes and Sangeetha Yogendran, *Workshop Report On Victim-Related Activities During The Implementation Of The ECCC's Residual Mandate*, ECCC, Phnom Penh, 15 July 2022.

<sup>14</sup> You Ottara and Claudia Fenz, Co-Rapporteurs of Residual Functions Related to Victims, *Advisory Report: Victim-Related Activities of the ECCC During the Residual Phase*, ECCC, Phnom Penh, 1 December 2021.

<sup>15</sup> Stephen Frosh, *Those Who Come After: Postmemory, Acknowledgement and Forgiveness*, Palgrave Macmillan, London, 2019.

reflecting on the past and being forward-looking by exploring future steps toward progress.<sup>16</sup> Defining reconciliation is further challenging due to the difficulty in determining when it is fully achieved and because different groups often hold varying ideas on what reconciliation entails.

The ECCC differs from the constituting instruments of other ICTs, where there is no express mandate for residual functions to engage in outreach to affected communities.<sup>17</sup> Notably, the annual reports of UN residual bodies infrequently mention such activities. In contrast, the ECCC's annual reports actively highlight these efforts, with the broad interpretation of "disseminate information" supporting other residual functions while positioning the court as a pedagogical actor within Cambodia's popular imagination.<sup>18</sup>

Examining non-judicial projects under the ECCC's residual functions is particularly relevant given the substantial resources allocated to these initiatives, despite the limited judicial scope that remains. The only living convicted individual at the outset of 2025, Khieu Samphan, is over 90 years old and currently serving his sentence, appeal proceedings are extremely unlikely. Unlike the IRMCT, the ECCC has no fugitives or cases pending trial. Yet, the ECCC retains a roster of part-time, remotely working co-prosecutors and judges, with majority of the ECCC's day-to-day operations discharged by the Office of Administration ('OA').<sup>19</sup> This context reflects the posture of the ECCC's residual functions – pivoting towards actively engaging with stakeholders outside the courtroom as integral activities of the court.

The ECCC's residual functions can be seen as 'wayfinding', a concept used for design and navigation. In this context, wayfinding refers to accessible and clear pathways that enable the public to engage with information-rich environments like international criminal law.<sup>20</sup> By using wayfinding strategies, the ECCC reduces barriers to information, ensuring that survivor-victims, younger generations, and broader society can access resources that explain the court's operations and preserve its legacy. The residual functions help individuals 'find their way' to an understanding of the ECCC that is both meaningful and culturally relevant.

Wayfinding offers a pedagogical framework, positioning the ECCC as an active actor within Cambodian society. By establishing multiple touchpoints – spanning physical, non-physical, formal and informal spaces – the court connects with communities in ways that extend far beyond the courtroom.<sup>21</sup> These touchpoints include outreach programmes in provincial villages, educational activities in schools, interactions in local markets, and presence in culturally significant locations. Such initiatives allow the ECCC to embed the civic and legal concepts of justice and historical accountability into the routines and memories of everyday life, fostering a deeper and more lasting societal engagement with its work.

This nationwide programming reflects the ECCC's ability to capitalize on its physical presence in Cambodia. These unique residual functions shift public perceptions of the ECCC from a far away, Phnom Penh-centric, and elite-dominated project of international law to a dynamic institution engaging with broader societal needs of the community, fostering a sense of shared ownership over the court's legacy. By incorporating principles of spatial cognition, the ECCC positions itself within Cambodia's physical and cultural landscape. Wayfinding strategies provide tangible pathways for individuals to connect with and 'experience' the court's legacy.

### 4. Some ECCC Residual Activities

The ECCC's residual functions encompass diverse activities, including out-

<sup>16</sup> Caleb H. Wheeler, *Fairness and the Goals of International Criminal Trials: Finding a Balance*, Routledge, London, 2023, p. 100.

<sup>17</sup> Llewellyn, 2021, pp. 340, see *supra* note 3.

<sup>18</sup> ECCC, *The Court Report 2023*, ECCC Resource Centre, Phnom Penh, 2023, p. 27 ('*The Court Report 2023*') (<https://www.legal-tools.org/doc/wfqj8o08/>).

<sup>19</sup> As of 2025, the ECCC operates with an approved subvention of USD 1,954,400, a reduction from the USD 2,216,700 authorized for 2024, supplemented by voluntary contributions of USD 400,400. The UN covers the international component through subventions approved by the General Assembly, while Cambodia funds the salaries of Cambodian judges and local personnel. The initial residual functions phase is projected to conclude by 2025. See UN General Assembly, Report on the Use of the Commitment Authority and Request for a Subvention to the Extraordinary Chambers in the Courts of Cambodia: Twenty-Fourth Report of the Advisory Committee on Administrative and Budgetary Questions, UN Doc. A/79/7/Add.23, 14 November 2024, paras. 1–3, 18–24, 29 ('Twenty-Fourth Report of the Advisory Committee') (<https://www.legal-tools.org/doc/hjsr4rrw/>).

<sup>20</sup> David Gibson, *The Wayfinding Handbook: Information Design for Public Places*, Princeton Architectural Press, New York, 2009.

<sup>21</sup> Margaret Hagan, "A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Interventions to Make Courts User-Friendly", in *Indiana Journal of Law and Social Equality*, 2018, vol. 6, no. 2, p. 199.

reach and technology-enabled practices. Implementing partners such as the Transcultural Psychosocial Organisation and the Bophana Center enable the ECCC to operate effectively within Cambodia's unique demographics, characterized by one of Southeast Asia's youngest populations and high digital penetration.<sup>22</sup> This digital ecosystem includes the widespread use of e-commerce, QR code technology, and digital media, supported by a growing presence of Cambodian pop culture artists and cultural exports.<sup>23</sup> The 2024 UN subvention document states that the residual functions "will take into account the local Cambodian context, reflecting a demographically young population predominantly reliant on smartphones, laptops and interactive content for information".<sup>24</sup>

These local dynamics shape how Cambodians interact with international criminal justice processes, displaying the importance of digital and innovative wayfinding methods that facilitate information processing and knowledge acquisition of the ECCC's work.

#### 4.1. The Bus Project

Designed to bring the Court's work directly to communities, particularly in rural and remote areas, the ECCC Bus demonstrates the ECCC's aspirations to embed itself in Cambodian society.<sup>25</sup> The bus invites Cambodians to 'get on board' – both literally and metaphorically – inviting them to engage with the ECCC's legacy.

The ECCC Bus makes structured trips to villages, markets, educational institutions, and other public spaces across all Cambodian provinces, bringing the court's legacy directly to the public. Between 2023 and September 2024, the bus reached 32,967 individuals through 54 trips, highlighting its extensive community outreach.<sup>26</sup> On each journey, the ECCC Bus engages with thousands of people, providing an accessible platform for participants to learn about the judicial proceedings, ask questions, and interact with ECCC representatives.

Equipped with visual displays, augmented reality features, mobile exhibition panels, and informational materials, the bus translates the court's operations and jurisprudence into accessible and culturally relevant resources, making the ECCC a portable, tangible institution, unlike most ICTs which are seen as abstract or distant.

#### 4.2. Computational Media

The ECCC's new web site highlights the importance of a well-designed online platform as a channel for the public to access information and justice.<sup>27</sup> Through an interactive experience that documents the ECCC's operational and jurisprudential features within the broader context of international criminal law, the site supports the residual functions. Key features such as an interactive crime map, glossary, virtual courtroom, and searchable archives enable diverse audiences to engage with the court's processes and legacy. The web site's intuitive and visually engaging design plays a crucial role in shaping user engagement.<sup>28</sup> Among its features, the ECCC's trilingual glossary in Khmer, English and French provides a critical resource with over 1,600 legal phrases. Expanding Khmer legal vocabulary is especially significant given the country's historically limited legal education and public awareness.<sup>29</sup>

The ECCC's *TikTok* account, with over 280,000 followers, is an example of the residual functions' entrepreneurial posture, engaging Cambodia's Gen Z.<sup>30</sup> The younger generation, who have limited direct links to the Khmer Rouge era, is critical for sustaining historical memory, which raises important questions about the evolving role of ICTs. As the only ICT using *TikTok*,

<sup>22</sup> *The Court Report 2023*, p. 14, see *supra* note 18.

<sup>23</sup> United States Department of Commerce, "Cambodia Country Commercial Guide: eCommerce", 22 February 2024 (available on the International Trade Administration's web site).

<sup>24</sup> Report on the Use of the Commitment Authority and Request for a Subvention to the Extraordinary Chambers in the Courts of Cambodia: Report of the Secretary-General, UN Doc. A/79/519, 15 October 2024, para. 23 (<https://www.legal-tools.org/doc/mxe2o2fl/>).

<sup>25</sup> Anton L. Delgado, "Cambodia's Khmer Rouge Museum on Wheels Brings History to Rural Villages", *The New York Times*, 24 August 2024.

<sup>26</sup> ECCC, "Quarterly Progress Report: July–September 2024", 2024 ("Quarterly Progress Report") (<https://www.legal-tools.org/doc/30ksqr9g/>).

<sup>27</sup> See the ECCC's official web site.

<sup>28</sup> Rodrigo Sandoval-Almazan and J. Ramon Gil-Garcia, "Understanding e-Justice and Open Justice Through the Assessment of Judicial Websites: Toward a Conceptual Framework", in *Social Science Computer Review*, 2020, vol. 38, no. 3, pp. 334–353.

<sup>29</sup> Rachel Killean, Rosemary Grey, Jinhyun Cho and Ludmila Stern, "Translating Atrocity at the Khmer Rouge Tribunal", *New Mandala*, 17 January 2024.

<sup>30</sup> See the ECCC's *TikTok* account, @eccckh.

the ECCC leverages the platform's short-form videos, trendy audio, and interactive comments. This approach adapts legal communication to digital habits, making historical knowledge and civic education more engaging and culturally relevant, transforming the ECCC from a static information repository into a participatory social media platform, acting as a gateway, encouraging young Cambodians to explore its broader functions by visiting court premises, attending outreach events, and engaging with court technologies. This digital strategy illustrates how ICTs can bridge the gap between formal legal processes and the communities they serve, cultivating a more resilient public memory of justice.

#### 4.3. Outreach Campaigns

The ECCC has organized large-scale outreach campaigns particularly aimed at students and younger generations. During the residual phase from 2023 to September 2024, its outreach efforts engaged 12,372 individuals through 60 study tours and 597 educational group visits.<sup>31</sup> School trips to the ECCC and historically significant sites such as the Tuol Sleng Museum and the Win-Win Monument provide students with hands-on learning experiences about the Khmer Rouge era and international law. These excursions are paired with tailored educational programming, including distributing booklets, informational sheets and textbooks.

The ECCC has also undertaken targeted outreach to civil parties and witnesses, a defining feature that allowed victims to participate as direct parties to litigation alongside the prosecution and defence. This approach, influenced by the French legal system, marks a first among ICTs. The OA's Victim Support Section ('VSS') facilitates integrational dialogue by organizing civil party and witness speakers at school events where educational outreach occurs. When attendance is not feasible, VSS representatives travel to civil parties' or witnesses' residences to acknowledge their contributions to the ECCC's work.<sup>32</sup> As of September 2024, the ECCC reached 64 out of 196 registered witnesses, with 33 percent receiving direct or indirect notifications.<sup>33</sup>

Similarly, civil party notifications have seen substantial progress. Out of 3,867 civil parties in Case 002, the ECCC successfully notified 3,497 individuals, representing 90 percent coverage.<sup>34</sup> Provinces like Kampot, Sihanoukville, and Kampong Speu achieved near-complete notification rates, while Phnom Penh, Koh Kong, and the international diaspora saw lower engagement levels.<sup>35</sup> Notably, 10 percent of civil parties remain unreachable, highlighting the need for continued outreach efforts despite logistical and operational barriers.

While this outreach is commendable, it is crucial to distinguish between victim and witness outreach and victim participation. Longstanding criticisms of the ECCC's ability to engage civil parties and witnesses meaningfully during legal proceedings persist.<sup>36</sup> Without revisiting these past challenges, the outreach initiative demonstrates a commitment to sustained efforts.

In addition, the VSS provides certificates to civil party members and witnesses, recognizing their participation in the criminal proceedings. This act of social affirmation likely fosters participants' sense of validation and recognition.

#### 4.4. Archives

The ECCC's archives play a central role in its residual functions. Unlike the IRMCT, which operates a selective, inquiry-based system requiring users to actively request access through multiple steps and formal inquiries, the ECCC reduces barriers to access by making all declassified materials from Case 002/02 accessible online through an intuitive, open-access repository. This milestone marks the first fully declassified and archived case, with similar work on Case 004/02 and related cases anticipated to commence in 2025. By providing access to declassified filings from chambers, co-prosecutors, and other court actors, the ECCC aims for a widely accessible legacy – not just to well-resourced legal researchers.

#### 5. Some Lessons Learnt for the Future

While the Supreme Court Chamber narrowly defined genocide to specific crimes against the Cham and Vietnamese minorities in Cambodia, this technical determination holds lesser significance in public memory. While the

<sup>31</sup> Quarterly Progress Report, see *supra* note 26.

<sup>32</sup> Email correspondence with the author, Intern, ECCC, 12 November 2024.

<sup>33</sup> Quarterly Progress Report, see *supra* note 26.

<sup>34</sup> *Ibid.*

<sup>35</sup> *Ibid.*

<sup>36</sup> Megan Hirst, "Withdrawal as International Civil Party Lead Co-Lawyer", Letter to the Supreme Court Chamber of the ECCC, 16 June 2022 (<https://www.legal-tools.org/doc/basxo79n/>).

judgment is undeniably significant, the Khmer public discourse on ‘genocide’ recognizes a shared recognition of widespread suffering, rather than focusing on its strict legal definition.<sup>37</sup> By addressing these narratives through its residual functions, the ECCC resonates with public understandings of loss and resilience. This approach allows community members to witness firsthand the ECCC’s efforts to facilitate reconciliation both inside and outside the courtroom.

While its judicial outcomes are significant, the ECCC’s enduring achievements are legacy-building and fostering post-memory. Two key take-aways emerge:

(1) The ECCC demonstrates that ICTs can create a tactile, accessible experience for survivors, younger generations, and those not directly involved in proceedings. Through large-scale outreach, interactive exhibits, and multimedia resources, the court translates the abstract concept of international law into something tangible, making justice visible, touchable, and emotionally resonant. A total of 750 in-country travel days are planned for 2025 to continue provincial outreach across all Cambodian provinces; and

(2) While the ECCC’s residual functions may not be closely replicated due to the shift toward permanent institutions like the ICC – which lacks a comparable residual mandate – their nationwide programming offers valuable lessons. As domestic prosecutions of international crimes increase and state-led policy programmes address mass atrocities, the ECCC’s approach demonstrates how courts can integrate legacy-building, information dissemination, and public engagement into their mandates.

Yet, several questions remain, spanning issues of sustainability regarding the next steps for the ECCC’s programming and mandate:

(1) The UN and the Cambodian Government have yet to finalize a transition plan as the ECCC nears the end of its initial three-year residual mandate. The UN and the Cambodian Government are consulting on the residual functions beyond 2025. As of writing, no publicly available details have emerged from these discussions, apart from the Cambodian Government’s plan to establish an “autonomous and permanent public institution” to “promote the work done by the ECCC”.<sup>38</sup> There has been no explicit confirmation regarding whether the residual mandate will be extended. Should the current residual mandate not be extended, the transition must be carefully managed to avoid the risk of discontinuity. The ECCC’s hybrid structure supports a phase-out strategy aimed at fostering national ownership and integrating residual functions into Cambodia’s government institutions. However, managing the transition effectively is critical to safeguarding the court’s legacy, maintaining institutional knowledge – including transferring archive responsibilities and continuity of outreach programs, and preserving the technical expertise needed to sustain and expand its impact for future generations; and

(2) The sustainability of the ECCC’s programmes remains uncertain due to its reliance on voluntary contributions and international partnerships. Persistent funding shortfalls have historically led to staff resignations, delayed proceedings, and instances where civil party lawyers worked *pro bono* or fundraised independently. Despite the General Assembly’s continued authorization of subvention funds since 2014, reliance on this strategy has increased amid declining donor contributions. The General Assembly’s subvention for 2025 amounts to USD 1,954,400, a 12 percent decrease from the 2024 subvention of USD 2,216,700, while anticipated voluntary contributions have dropped sharply to USD 400,400 – a 50.6 percent decline from the 2024 level of USD 810,600.<sup>39</sup> Donor fatigue and shifting international priorities risk has led the ECCC to adopt cost-saving measures. Therefore,

<sup>37</sup> Rachel Killean, “Symposium on the ECCC: The Case 002/02 Appeal Judgment’s Implications for Genocide Recognition in Cambodia”, *Opinio Juris*, 31 October 2022.

<sup>38</sup> Extraordinary Chambers in the Courts of Cambodia, Revised Budget for 2024-2025, endorsed by the Group of Interested States on 11 November 2024, Phnom Penh, 19 August 2024, p. 3.

<sup>39</sup> Twenty-Fourth Report of the Advisory Committee, para. 11, see *supra* note 19.

expectations must be carefully managed with stakeholders, including civil society and survivor-victim groups, and the court’s limited resources are strategically directed toward its core legacy objectives.

A major challenge for the ECCC is how to persuade external donors of the value of the residual mandate, which may appear less immediate or high-profile compared to more visible outcomes, such as securing convictions in court. Residual functions are inherently less tangible and measurable, complicating efforts to define a clear return on investment for funding these initiatives.

## 6. Conclusion

The ECCC is an experiment among ICTs, achieving several ‘firsts’.<sup>40</sup> It is Asia’s first post-war ICT, the first to introduce victim participation through civil party status, and the first hybrid tribunal combining international and domestic court personnel. The ECCC also advanced jurisprudence on critical issues, including former head-of-state liability, forced marriage as a crime, and the definition of genocide against minority groups, attracting extensive scholarly debate.

Similarly, the ECCC’s residual functions probably mark another ‘first’ in their agility and innovation. They redefine how ICTs can position themselves in society, becoming portable and accessible across the country, adopting roles as civic institutions. By engaging younger generations and stakeholders who were not parties to the proceedings, the ECCC raises important questions about the evolving strategic goals of ICTs in post-litigation contexts.

At the same time, it is important not to oversell the ECCC’s promises, especially given ongoing challenges to Cambodia’s rule of law, including democratic backsliding, declining press freedom, and corruption in the judiciary.<sup>41</sup> These broader issues temper claims about the ECCC’s impact on capacity-building and institutional reform, which should not be automatically conflated with legacy-building. Notwithstanding important criticisms, it is important to recognize that, as a temporary institution with limited resources, the ECCC cannot meet all expectations.

While systemic issues persist, the ECCC’s residual functions deserve recognition for their engaging Cambodian society writ large. By promoting *visibility* through legacy-building projects, these functions help bridge the gap between affected communities – moving away from the traditionally formal and distant nature of ICTs. These functions actively contribute to Cambodia’s reconciliation efforts and reinforce a broader recognition of who the court is ultimately meant to serve. The ECCC’s approach shows how ICTs can remain engaged in social processes even after litigation concludes, addressing the long-term effects of mass atrocity violence.

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<sup>40</sup> Andre Kwok, “Testimonial Therapy: Buddhism’s Influence in the Aftermath of the Khmer Rouge Tribunal”, *The Interpreter*, Lowy Institute, 18 September 2023.

<sup>41</sup> Astrid Norén-Nilsson, “Civil Society and Development in Cambodia: Challenges and Opportunities for Anti-Corruption”, *U4 Blog*, 29 August 2024.



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