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INTERNATIONAL COURTS AND TRIBUNALS

INTERNATIONAL CRIMINAL COURTS AND TRIBUNALS:
SYMPOSIUM ON RESILIENCE AND THE IMPACTS
OF HYBRID COURTS

An educational legacy: Exploring the links between education and resilience at the ECCC

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Abstract

About half a million Cambodians have attended hearings or outreach activities about the Extraordinary Chambers in the Courts of Cambodia (ECCC) since public hearings began in 2009. Countless more have watched the trials unfold on television, and increasingly on social media. To date, the majority of conversations around the legacy of the ECCC have come from international scholars focusing on the legal impact the trials may have. This article instead presents the often-missing views of Cambodian youth about the Tribunal. It also, more broadly, explores the ECCC's impact on education and young people's understanding of history. Based on research carried out with university students, this article argues that the contribution of the ECCC to education has often been overlooked and is in fact one of its most significant legacies. In Cambodia, government and non-government organizations, as well as academic institutions, have the unique opportunity to incorporate testimony, footage, and documents from the ECCC into their programmes, greatly adding to the existing repertoire of Khmer-language resources dealing with the past. The result is a more well-rounded programme of transitional justice and reconciliation than the court alone could have provided, and certainly a higher level of external resilience than would have occurred had the court been located outside of Cambodia.

Keywords: Extraordinary Chambers in the Courts of Cambodia; history education; hybrid tribunal; resilience; transitional justice

1. Introduction

On 2 June 2015, Seang Sovida¹ spoke before the trial chamber at the ECCC in Phnom Penh. Addressing the two elderly men on trial, she explained her reason for participating as a civil party:

The Khmer Rouge leader[s] made a propaganda that they wanted to save the nation and the people, however upon gaining the victory they did the contrary . . . I'd like them to answer in detail about the reasoning behind this *so that the young Cambodians and the next generation will understand their motive[s]*.²

This desire to find out what happened, and to pass this understanding on to the next generation, has been echoed by other civil parties and witnesses who have appeared before the ECCC. In

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¹Cambodian names are traditionally written with the surname first. In this article that order is preserved, however in footnotes they are written in reverse order to be consistent with Western names.

²*Prosecutor v. Khieu and Nuon*, Transcript of Trial Proceedings on the Substance of Case 002/02, Case No. 002/19-09-2007-ECCC/TC, 2 June 2015 (emphasis added).

addition to seeking justice and accountability after periods of violent conflict and mass atrocity, survivors also often seek answers. Although established as a court of law rather than a truth commission, the ECCC has nevertheless contributed to this search for answers both for survivors and the younger generation who did not live through the conflict. This article will explore the links between the ECCC and education, and what this means for resilience in Cambodia.

It took 30 years from the end of the Democratic Kampuchea period for a judicial mechanism to be established.³ This has meant that history is effectively baked into the mandate of the tribunal. In a country where almost two thirds of the population are under the age of 30, the ECCC represents a distinct source of information about a period of their nation's history they did not witness first hand. Not only are testimonies accessible in their mother tongue, but the courtroom is open to the public and has seen record numbers of Cambodians visit to observe proceedings.

The presence of the ECCC in Cambodia's capital of Phnom Penh, and the fact that proceedings are all held in or translated into Khmer language, are two elements of the tribunal's 'hybrid' nature. The rise of 'hybrid tribunals' in the early 2000s was partly an effort to balance the localized benefits of domestic prosecutions with the increased resources and capacity of an international trial. Another benefit was they are cheaper than the *ad hoc* tribunals of the 1990s. To some, hybrids represented the promise of a marriage of truth-seeking and accountability, important and inter-linked ingredients in seeking to emerge from periods of conflict and create more resilient societies.

In this article the concept of resilience is understood to mean the recovery from conflict in such a way that inoculates society against future similar shocks.⁴ This understanding of the concept imbues it with a necessary understanding of the past. It is impossible to promise 'never again' without understanding how past atrocities were able to occur in the first place. In its engagement with young people and its *ad hoc* links to formal, non-formal, and informal educational programmes, this article argues that the ECCC is contributing to the resilience of Cambodia through improved understanding of the past.

The literature around the 'legacy' of the ECCC is rich,⁵ however it is mainly focused on three elements: the tribunal's contribution to capacity-building among the Cambodian judiciary and legal profession; its impact on civil society; and reparations and victim participation.⁶ Often missing from this debate is the tribunal's significant impact on education and to passing on an understanding of the past to the younger generation. The voices of young Cambodians too are often missing from discussions about the ECCC, which is typically dominated by foreign voices. This article attempts to address this gap.

This article will begin by providing some background to the ECCC, its mandate and achievements or 'legacy' to date, then it will tease out some of the links between education and resilience. The ensuing Sections 3 and 4 will draw on research into the views of Cambodian university students about the ECCC and history education more broadly, demonstrating that young people value the educational impact of the ECCC perhaps more than any other impact. Section 5 looks at what has been learned as a result of the proceedings at the ECCC, then Section 6 outlines a range of formal, informal and non-formal educational outlets available to the Cambodian population,

³In the immediate aftermath of the conflict, in 1979 a 'People's Revolutionary Tribunal' was established and sentenced two men – Pol Pot and Ieng Sary – to death in absentia, however this has been dismissed as a show trial. S. Ly, *Reconciliation Process in Cambodia: 1979-2007, Before the Khmer Rouge Tribunal* (2017), at 53–9; J. Ciorciari and A. Heindel (eds.), *On Trial: The Khmer Rouge Accountability Process* (2009), at 40.

⁴See E. Wiebelhaus-Brahm, *The Concept of Resilience and the Evaluation of Hybrid Courts*, in this issue, doi:10.1017/S0922156520000400.

⁵V. Dittrich, 'The Legacy of the ECCC', in S. Meisenberg and I. Stegmiller (eds.), *The Extraordinary Chambers in the Courts of Cambodia* (2016); UNOHCHR, *Rule-of-law tools for post-conflict states: Maximizing the legacy of hybrid courts* (2008), UN Doc. HR/PUB/08/2; J. Oeung et al., *Implementation of the ECCC Legacies for domestic legal and judicial reform* (2013), available at www.kas.de/c/document_library/get_file?uuid=aec3ff67-c25c-f9ce-ad9f-5bf783081df4&groupId=252038.

⁶Dittrich, *ibid.*; C. Sperfeldt, 'Collective Reparations at the Extraordinary Chambers in the Courts of Cambodia', (2012) 12 *Int'lCLR* 457.

and how each relates to or has been influenced by the ECCC. Finally, the article explores the relationship between education and judicial proceedings, and the contested role history has in the courtroom.

2. Background

2.1 The ECCC

Beginning operations in 2006, the ECCC is a hybrid or ‘internationalized’ tribunal, established by agreement between the United Nations and Royal Government of Cambodia to try ‘senior leaders’ and ‘those most responsible for the crimes’ that took place in the territory of Democratic Kampuchea (DK) between 17 April 1975 and 6 January 1979, during which it is estimated that between 1.7 and 2.2 million people died.⁷ As a hybrid, the tribunal is located in the country in which the atrocities took place, has a mix of Cambodian and international personnel, and proceedings are simultaneously translated into Khmer, English, and French. These three elements make the ECCC more easily accessible than tribunals that are geographically or linguistically isolated from the affected population, like the *ad hoc* International Criminal Tribunal for Rwanda (ICTR) or the former Yugoslavia (ICTY).

To date, the ECCC has sentenced three men to life imprisonment in two separate trials: Kaing Guek Eav, alias Duch in *Case 001*, and Nuon Chea and Khieu Samphan in *Cases 002/01* and *002/02*.⁸ The death of Nuon Chea on 4 August 2019, while he was appealing the verdict in *Case 002/02*, has left some uncertainty over the status of this conviction, which his defence team has sought to clarify.⁹ A further four individuals have been investigated in *Cases 003* and *004*, however uncertainty over the future of these cases persists.¹⁰ If these cases do not progress to the trial stage, proceedings at the ECCC will likely end with an appeal judgment in *Case 002/02*, anticipated to be handed down in 2022.¹¹

The ECCC has received its fair share of criticism. Before it was even established, the composition and functioning of the ECCC was heavily scrutinized. Some civil society groups raised criticism of perceived judicial bias and political interference by the Cambodian government.¹² Other

⁷E. Tabeau and T. Kheam, ‘Demographic Expert Report: Khmer Rouge Victims in Cambodia, April 1975–January 1979. A Critical Assessment of Major Estimates’, (30 September 2010), D140/1/1, at 19; 2003 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, 2329 UNTS 41723.

⁸*Prosecutor v. Kaing*, Supreme Court Chamber, Case 001 Appeal Judgment, Case No. 001/19-07-2007-ECCC/SC, 3 February 2012. *Prosecutor v. Khieu and Nuon*, Supreme Court Chamber Case 002/01 Appeal Judgment, Case No. 002/19-09-2007-ECCC-SC, 23 November 2016. *Prosecutor v. Khieu and Nuon*, Trial Chamber Case 002/02 Judgment, Case No. 002/19-09-2007/ECCC/TC, 16 November 2018. For the specific charges being tried in *Case 002/02* see, *Prosecutor vs. Khieu and Nuon*, Decision on Additional Severance of Case 002 and Scope of Case 002/02, Case No. 002/19-09-2007-ECCC/TC, T.Ch., 4 April 2014.

⁹*Prosecutor vs. Khieu and Nuon*, *Urgent Request Concerning the Impact of Appeal Proceedings on Nuon Chea’s Death Prior to the Appeal Judgment*, Case No. 002/19-09-2007-ECCC/SC, 6 August 2019.

¹⁰See, for example, K. Naren, ‘Hun Sen Warns of Civil War If ECCC Goes Beyond “Limit”’, *Cambodia Daily*, 27 February 2015.

¹¹ECCC, *Completion Plan. Revision 25*, 30 June 2020, available at www.eccc.gov.kh/sites/default/files/Completion%20Plan%20rev%2025.final_.pdf.

¹²Open Society Justice Initiative Press Release: ‘Cambodian Prime Minister Must Halt Interference in Khmer Rouge Tribunal’, 27 October 2010, available at www.opensocietyfoundations.org/press-releases/cambodian-prime-minister-must-halt-interference-khmer-rouge-tribunal; Human Rights Watch, ‘Cambodia: Stop Blocking Justice for Khmer Rouge Crimes’, 22 March 2015, available at www.hrw.org/news/2015/03/22/cambodia-stop-blocking-justice-khmer-rouge-crimes.

groups focused their critique on legal decisions made by the tribunal, or else have found issue with the cost or perceived long duration of the trials to date.¹³

To be sure, there are high expectations placed on tribunals no matter what the context, but particularly when there has been such a long wait around the establishment of one. It is easy to fall into the trap of wanting the tribunal to be all things to all people. Some prioritize the tribunals' contribution to international jurisprudence, while others seek reparations or recognition of victims and survivors. Some want retribution, while others are focused on the practicalities of rebuilding a post-conflict legal and judicial system. No hybrid, no matter how well-funded and well-intentioned, could have equal success in all of these areas, and the ECCC is certainly no exception.

Assessing the legacy of the ECCC, or its contribution to resilience, is challenging for several reasons. Firstly, it is too soon to make such an assessment with any sort of confidence. Cases before the ECCC are still pending and an appeal process underway. It will only be possible to assess the full legacy of the tribunal with the benefit of hindsight. Secondly, the question of how to measure resilience or legacy is fraught.¹⁴ Finally, it is impossible to measure the effect of the ECCC in isolation from the rest of society, and thus claims of ECCC impact can be as broad or minimal as the claimant wishes. Nevertheless, it is instructive for future tribunals to dwell on the contribution of the ECCC to historical understanding among young people in Cambodia.

As early as 2008, researchers from the University of California, Berkeley, saw the potential for the ECCC to have an educational impact in Cambodia when they recommended that the tribunal appoint an 'education liaison officer' to work with donors, non-government organizations (NGOs), and the government.¹⁵ Unfortunately no such appointment was ever made, and budgetary restrictions in other departments make it seem unlikely there would have been funds to cover such a position. Lack of long term, reliable funding is an issue that constantly plagued the ECCC and has hampered long-term strategic planning.¹⁶

Nevertheless, as Rachel Hughes notes: 'The historical record established by the ECCC has been seized upon as of significant potential use in educational domains.'¹⁷ Although this use of the ECCC for educational purposes has largely been *ad hoc*, actors in civil society, government and educational institutions have still managed to take ECCC examples and create interesting programmes aimed at engaging young people with their country's past. Looking back now, it is interesting to imagine how different things would have been had an official liaison role existed to manage more active collaborations between the tribunal and external actors.

2.2 Education and Resilience

Cambodian Prime Minister Hun Sen famously declared in 1993 that it was time to 'dig a hole and bury the past and look ahead to the 21st century with a clean slate'.¹⁸ In his view, it seems, society will be more resilient if it forgets about the past and moves on from dark periods in history. While

¹³An example of legal critique can be found in D. Cohen, M. Hyde and P. Van Tuyl, *A Well Reasoned Opinion? Critical Analysis of the First Case Against the Alleged Senior Leaders of the Khmer Rouge (Case 002/01)* (2015), and broader critique of the cost and duration of the tribunal is exemplified in the media in S. Mydans, '11 years, \$300 million and 3 convictions. Was the Khmer Rouge Tribunal worth it?', *New York Times*, 10 April 2017.

¹⁴T. Bialek, 'Legacy at the Extraordinary Chambers in the Courts of Cambodia: Research Overview', *Documentation Center of Cambodia*, 2013, available at d.dccam.org/Tribunal/Analysis/pdf/Legacy_FINAL.pdf.

¹⁵Pham et al., 'So We Will Never Forget: A Population Based Survey on Attitudes about Social Reconstruction and the Extraordinary Chambers in the Courts of Cambodia' (2009), *Human Rights Center Report*, at 5.

¹⁶Dittrich, *supra* note 5; Open Society Justice Initiative, 'Recent Developments at the Extraordinary Chambers in the Courts of Cambodia', (2013) Briefing Paper, available at www.justiceinitiative.org/uploads/7e67a3bd-4ff7-44c8-9ebb-1643081be4af/eccc-report-20130322_0.pdf.

¹⁷R. Hughes, 'Justice Processes and Discourses of Post-Conflict Reconciliation in Southeast Asia: The Experiences of Cambodia and Timor-Leste', in A. McGregor, L. Law and F. Miller (eds.), *Routledge Handbook of Southeast Asian Development* (2018), at 102.

¹⁸S. Mydans, 'Cambodian Leader Resists Punishing Top Khmer Rouge', *New York Times*, 29 December 1998.

actively ‘burying’ the violence of the past can be a way for a traumatized population to try and cope in the short-term, research from other countries has found that this is only a temporary solution and can lead to higher chance of the reoccurrence of violence.¹⁹ There are also clear political benefits for some of those in power if their past actions are not scrutinized. The argument to ignore the past does not carry much weight in contemporary scholarly literature. Put simply, ‘if society does not address the origins of the conflict effectively, they tend to be the bases of future instability and conflict’.²⁰

One of the main attributes of resilient systems in general is having strong ‘institutional memory’ which allows them to draw on past lessons to avoid future conflicts.²¹ Institutional memory directly relates to the ‘adaptive capacity on a community level’ of any system. In the case of nation-states, a knowledge of history allows for communities to learn from past mistakes and adapt to become stronger as a result. As Seang Sovida said in June 2015, young people need to know the ‘motives’ of those in charge during the DK period, in order to ensure history doesn’t repeat itself, refuting the idea of ‘burying the past’.

The question of *how* to teach history can be contested in countries emerging from periods of armed conflict, where opposing sides usually compete to tell the dominant narrative, holding up some events as critical while marginalizing others.²² These debates are most heated when it comes to deciding how to teach dark periods of national history. What comes out of the literature is that it is not only *what* is taught, but *how* it is taught that matters. As a United Nations Children’s Fund report argues: ‘Critical historiographic skills are essential . . . Only when young people realise that histories are constructed rather than given, can they even begin to contemplate challenging and changing the behaviour that poisons inter-group relations.’²³ Thus both the content and pedagogy of education systems can have an impact on resilience in post-conflict settings.

To be sure, education can also be politicized and used to fuel violence rather than mitigate it. Bush and Salterelli describe this as the ‘two faces’ of education, and emphasize the need to ‘disarm history’ so that students can learn about their own identity and their place within the national community.²⁴ These authors argue for local inputs into education to make it most effective as a peace-building tool. Although they do not use the term ‘resilience’, Bush and Salterelli’s definition of peacebuilding education as nurturing tolerance within students, allowing them to ‘articulate, accommodate and accept differences between and within groups’ – in other words to make them more resilient. The Cambodian experience with formal, informal, and non-formal education has been largely at the local level or through collaborations between foreign donors and local actors, using Khmer language and stories.

3. Methodology

In addition to existing literature on the topic, this article draws on field research on the views of Cambodian youth on the ECCC, which was conducted by the author as part of a project for the

¹⁹M. Gellman, ‘Teaching Silence in the Schoolroom: Whither National History in Sierra Leone and El Salvador?’, (2015) 36 *TWQ* 147, at 150.

²⁰E. Cole and J. Barsalou, ‘Unite or Divide? The Challenges of Teaching History in Societies Emerging from Violent Conflict’, United States Institute of Peace Special Report 163, 2009, available at www.usip.org/sites/default/files/sr163-Unite-or-Divide.PDF, at 5.

²¹P. Longstaff et al., ‘Building resilient communities: A preliminary framework for assessment’, (2010) VI *Homeland Security Affairs* 1, at 7; A. Bujones et al., *A Framework for Resilience in Fragile and Conflict-Affected Situations* (2013).

²²A. Freedman et al., ‘Teaching History after Identity-Based Conflicts: The Rwanda Experience’, (2008) 52 *Comparative Education Review* 663.

²³K. Bush and D. Saltarelli (eds.), ‘The Two Faces of Education in Ethnic Conflict: Towards a Peacebuilding Education for Children’, UNICEF *Innocenti Research Centre Study*, at 20, 2000, available at www.unicef-irc.org/publications/pdf/insight4.pdf.

²⁴*Ibid.*, at 19.

Cambodia Programs of the WSD HANDA Center for Human Rights and International Justice at Stanford University (Handa Center).²⁵ The research sought new insights into views of Cambodian youth on the ECCC, as well as to gather information on existing educational initiatives in Cambodia. Between July and October 2017, eight focus group discussions were held with Phnom Penh-based university students (83 in total), and 16 interviews with experts and practitioners. Findings were disseminated in January 2018 in the report: *'So We Can Know What Happened': The Educational Potential of the ECCC*.²⁶

The research was carried out by the author and three locally-based colleagues from the Handa Center; two of whom are Cambodian. Only Cambodians were interviewed for this study and Khmer was the primary language used.²⁷ Of the 83 university students who participated in the focus groups, 32 (39 per cent) were male and 51 (61 per cent) were female. Students ranged in age between 18 and 34 years and studied a variety of disciplines.²⁸ The participating students studied at four different universities and chose to join the focus group discussions after information about the research topic was circulated by academic staff. Thus, the research findings represent the views of a small sample of Phnom Penh-based individuals and cannot be extrapolated to represent all young Cambodians. As students chose to join the focus groups after receiving information from their professors, it is likely they already had an interest in or opinion about the topic prior to the focus groups. Nonetheless, the findings of this research shed much needed light on young voices which, despite comprising the majority of the Cambodian population, are often overlooked in discussions about the ECCC and its contribution to society.

In addition to focus groups, 16 interviews were carried out in Phnom Penh with educators, academics, government representatives, and members of civil society.²⁹ Interviewees were all Cambodian and were given the choice to speak in Khmer or English. Interviews were then conducted by a native speaker of the chosen language. The purpose of these interviews was to inform a summary of existing educational activities and ascertain the degree to which these activities have engaged with the work of the ECCC. By contrasting the views of these experts and practitioners with those of the students, the research findings also illuminate some interesting differences in perceptions of the current state of education initiatives on the ground.

4. Findings

The Handa Center's study adds to the under-researched field exploring the educational legacy of the ECCC. The research findings support the argument that the ECCC has made an educational contribution to post-conflict Cambodia, particularly from the perspective of the young generation. It is likely that the trials' educational legacy would not have been as significant had the trials been conducted either domestically or entirely outside of Cambodia.

²⁵The WSD Handa Center for Human Rights and International Justice, previously known as the University of California, Berkeley's War Crimes Studies Center, was established in 2000 by Professor David Cohen. Through research and international programmes, the Handa Center supports and helps improve the work of domestic courts, international tribunals and human rights commissions around the world. The research cited in this article also received financial support from the British Embassy in Phnom Penh, with additional support from the East-West Center in Hawai'i.

²⁶C. McCaffrie et al., "'So We Can Know What Happened': The Educational Potential of the Extraordinary Chambers in the Courts of Cambodia', *Stanford Center for Human Rights and International Justice*, 24 January 2018, available at humanrights.stanford.edu/publications/so-we-can-know-what-happened-educational-potential-eccc.

²⁷All focus group discussions were run in Khmer by Cambodian Handa Center consultants. The discussions were transcribed live with the help of simultaneous translation into English. Transcripts were later checked against the audio recordings of the discussions for accuracy.

²⁸54% were law students, 23% studied media, 12% studied English, and 11% business.

²⁹In total, seven members of civil society working in education were interviewed, five representatives of government and four educators and academics.

Among the 65 university students who provided written responses during focus group discussions, most identified the tribunal's educational legacy as its most important, ranking this higher than any legacy of justice, capacity-building or reconciliation.³⁰ Overall, education was listed as a legacy 79 times (29 per cent), and 32 per cent (21 of 65) of respondents identified it as the most important legacy.³¹ These findings indicate that accountability or 'justice' may not be the priority for the young generation, and that it is worth refocusing debates around the ECCC on its educational potential. This interest on the part of young people in the past has been reflected elsewhere. A report on memory initiatives in 2012 found that older Cambodians preferred projects that focused on healing and commemoration, whereas young Cambodians were more interested in hearing explanations about why things happened in the past.³² As young Cambodians now make up the majority of the population, it is crucial to take their perspectives into account.

Experts and practitioners interviewed most commonly identified the tribunal's contribution to documentation and archives as its biggest legacy.³³ In contrast, student respondents were less interested in documents. Many referred to a common belief that young Cambodians do not like reading. This female law student's response was typical: 'I think student attendance [at the ECCC] is better than reading. When I see, I remember more easily. There are books about testimonies, but how many Cambodians read those books?'³⁴ When asked, a number of students recommended educators create online or audio-visual materials rather than using written documents in order to better engage with the young generation. Examples of informal education projects creatively using audio-visual materials from the ECCC as teaching tools are explored further in the next section.

Those students who did view documents as important emphasized the value in translating or creating new Khmer-language documents, rather than English-language documents which dominate much of the academic literature to date. Students in the study tended to express the desire for Khmer-language documents for reasons of accessibility, for example: 'For me, if I want to learn more, I search online. But most of the documents are in English and my English is not good. I want to see the documents in Khmer.'³⁵ Educators also raised the lack of current Khmer-language sources, however, more often framed the suggestion in terms of national pride and identity-building, like Tuol Sleng Genocide Museum Director Chhay Visoth who said: 'I think it [is time] for Cambodians to write about our own history.'³⁶ This sense of local ownership of the process is part of the appeal of hybrid tribunals, which is strengthened by the use of local language and the accessibility of proceedings.

The contribution of the ECCC in terms of documenting Khmer-language testimonies and, indeed, adding to the Khmer legal vocabulary, is often overlooked, yet constitutes a hugely valuable resource for educators and researchers alike.³⁷ David Ayres and Henri Locard have each argued that many important documents did not survive the DK regime due to neglect, which

³⁰Focus group discussants were asked to freely write down their own views on legacy; they were not provided with multiple choice options. Discussants were then asked to rank the legacies they had written down from most to least important. After the discussions, the researchers grouped responses by key words and theme.

³¹The next most commonly listed legacy responses were: 'to provide justice for victims' (39 times or 14%), 'to address suffering of the past' (28 times or 10%), 'to prevent repetition of crimes' (22 times or 8%) and 'prosecute and/or punish Khmer Rouge leaders' (19 times or 7%). Students could list as many legacies as they chose and were not provided with pre-arranged options.

³²K. Chhim, *Pacifying vindictiveness by not being vindictive: Do memory initiatives in Cambodia have a role in addressing questions of impunity?* (2012), at vii.

³³McCaffrie et al., *supra* note 26, at 20.

³⁴*Ibid.*, at 16.

³⁵*Ibid.*, at 20.

³⁶*Ibid.*, at 31.

³⁷For example, an English to Khmer legal glossary and glossary of terms related to Democratic Kampuchea was created by the Asian International Justice Initiative and is available at krtmonitor.org/2013/10/24/aiji-glossary-english-to-khmer/.

means there are few primary resources for educators to draw upon today.³⁸ As Burcu Münyas found in a 2005 study, ‘disbelief’ among young Cambodians decreases as they are presented with more and more evidence about past events, whether that be at sites of memory or in original documents.³⁹

Khmer-language documentation is a hugely significant contribution of the ECCC that would have been dramatically less accessible had the ECCC not been located in Cambodia. Several repositories for documents and other resources exist in Phnom Penh, including the recently inaugurated Legal Documentation Centre related to the ECCC (LDC) which plans to house all public legal documents from the tribunal after it has concluded its operations.⁴⁰ Again, the location of the LDC in the capital of Cambodia makes it an important resource that is a direct result of the presence of the ECCC in-country, making its findings more accessible to students, survivors and members of the general public. Archives themselves can contribute to non-repetition through awareness-raising and creating dialogue.⁴¹

5. What have we learned?

At this point it is worth providing some examples of what specifically has been learned as a result of the tribunal’s operations. First, the notorious S-21 Security Center, which is now the site of the Tuol Sleng Genocide Museum, was the main focus of *Case 001* and one of a number of crime sites in *Case 002/02*. As a result, a great deal of attention was paid to existing prisoner lists in order to ascertain the most precise list possible of people who entered that prison. In 2009 the Office of the Co-Prosecutors published a revised prisoner list of 12,273 names they had found to have entered the prison.⁴² Then, in March 2016, the Office of the Co-Investigating Judges produced an updated list of 15,101 people.⁴³ For families searching for news of missing relatives or friends from the DK period, the additional names on this list could provide some much needed closure that may not have occurred without the resources the ECCC was able to devote to this task.

Further, contemporaneous documents have resurfaced as a result of the high profile of the ECCC. In December 2016 the ECCC received an original 250-page logbook containing the names of approximately 4,000 people detained at S-21 over a period of eight months in 1977, as well as a number of photographs, which had been taken to Germany from Cambodia by East German filmmaker Professor Heynowski when he produced his 1981 documentary *Die Angkar*.⁴⁴ It was noted by the prosecution at trial that 36 names written on the photographs did not appear in the latest prisoner list, and that therefore it was possible these newly uncovered photographs were the only

³⁸See D. Ayres, *Anatomy of a Crisis: Education, Development and the State in Cambodia 1953-1998* (1993), at 126; H. Locard, *Draft Report on Higher Education in Cambodia, Phnom Penh – Canberra* (unpublished UNESCO paper 1995).

³⁹B. Münyas, ‘Genocide in the Minds of Cambodian Youth: Transmitting (Hi)stories of Genocide to Second and Third Generations in Cambodia’, (2008) 10 *Journal of Genocide Research* 421.

⁴⁰The Legal Documentation Center already houses the full public case file from *Case 001* in all three official languages of the ECCC. The Civil Party Lead Co-Lawyers have requested the Legal Documentation Center be recognized by the ECCC as a reparations project in *Case 002/02*, see *Prosecutor v. Khieu and Nuon*, Civil Party Lead Co-Lawyers’ Final Claim for Reparation in *Case 002/02*, Case No. 002/19-09-2007-ECCC/TC, T.Ch., 30 May 2017.

The Center was recognized as a reparations project with the passing of the Trial Judgment in *Case 002/02* on 16 November 2018.

⁴¹U. Lühe, *Atrocity’s Archives: The Role of Archives in Transitional Justice* (2018).

⁴²*Prosecutor v. Khieu and Nuon*, Co-Prosecutors’ Submission regarding Office of the Investigation Judges combined S-21 Prisoner List, Case No. 002/19-09-2007-ECCC/TC, T.Ch., 19 May 2009.

⁴³The updated list is not yet publicly available.

⁴⁴Oral arguments over the inclusion of the logbook sent by Professor Heynowski are summarized in KRT, ‘Case 002/02. Trial Monitor. Hearings on Evidence week 73’, 5–9 December 2016, available at krtmonitor.org/2016/12/16/krt-monitor-case-00202-issue-73-7-11-november-2016/, at 6–7; KRT, ‘Case 002/02. Trial Monitor. Hearings on Evidence week 76’, 9–11 January 2017, available at krtmonitor.org/2017/02/09/krt-monitor-case-00202-issue-79-9-11-january-2017/, at 5.

evidence of these people's entrance into the prison. Douglas similarly described the impact of documentary discovery of the Nuremberg trials as 'massive' and argued that without these, '[m]any important histories of the Holocaust . . . could not have been written'.⁴⁵

The ECCC has also been a means of hearing the voices of some minorities which have not traditionally been heard in the debates on the DK regime. Although not initially included in the charges, after much pushing from civil society, crimes of sexual violence eventually made it onto the radar and the crime of regulating marriages was tried in *Case 002/02*.⁴⁶ These hearings went some way to dispelling the common misconception that sexual violence was not a problem under the DK regime. Findings of genocide in *Case 002/02* related to the experience of the Cham Muslim and ethnic Vietnamese minorities during DK. Hearings on this segment were heard in 2017, elevating the voices of these groups which are often marginalized in contemporary Cambodia.

It is also important to also recognize the limitations of what we have learned from the ECCC. The limited geographical and temporal scope of the mandate of the tribunal means that questions about what occurred before or after 17 April 1975 to 6 January 1979, or outside of DK territory, will not be answered in this forum. Further, by only trying 'senior leaders and those most responsible', the spotlight is focused on high-level decision-making rather than low-level actions that were the experience of many survivors. When witnesses come to court wanting answers about what happened to specific family members or friends, these questions often go unanswered. However, for Seang Sovida, mentioned above, her desire for young people to know the 'motives' of the senior leaders may well be addressed at least in part by the judgment in *Case 002/02*.⁴⁷

6. Existing Initiatives

The DK regime was characterized by secrecy, meaning many of those who lived through that period emerged with a lot of questions.⁴⁸ In the years after the regime, education about that period was either highly politicized or absent.⁴⁹ DK history was removed from the curriculum in the early 1990s and it was not until 2007 that a dedicated history textbook on that period was published and became part of the official high school curriculum.⁵⁰ This meant that: '[a]n entire generation of young Cambodians has been brought up without a formal understanding of the conditions surrounding the darkest period in their country's history'.⁵¹ This lack of understanding can have worrying consequences. One study found that gaps in formal history education in Cambodia meant youth mostly learn about DK from personal accounts of teachers or family members, which 'produce fear, anger, disbelief or denial in many Cambodian youth'.⁵²

The existence of the ECCC in Phnom Penh opened up a space to discuss the past publicly that did not exist previously, and contributed to education in Cambodia in the formal, informal, and non-formal spheres.⁵³ This section will explore each of these realms in more detail. First, the link between the ECCC and formal history education in the classroom; then the informal education spaces of museums and the courtroom itself; and finally through non-formal outreach and NGO

⁴⁵L. Douglas, *The Memory of Judgment: Making Law and History in the Trials of the Holocaust* (2001), at 2.

⁴⁶E. Palmer and S. Williams, 'A "shift in attitude"? Institutional change and sexual and gender-based crimes at the Extraordinary Chambers in the Courts of Cambodia', (2017) 19 *International Feminist Journal of Politics* 22.

⁴⁷*Prosecutor v. Khieu and Nuon*, Judgment, Case No. 002/19-09-2007-ECCC/TC, T.Ch., 16 November 2018.

⁴⁸*Ibid.*, at 176–250; D. Chandler, *Voices from S-21: Terror and History in Pol Pot's Secret Prison* (2000).

⁴⁹R. Gidley, 'The Political Construction of Narrative and Collective Memory in Cambodia', (2017) 10 *Situations* 99.

⁵⁰K. Dy, *A History of Democratic Kampuchea (1975-1979)* (2007).

⁵¹Inter-Agency Network for Education in Emergencies, 'Education and Fragility in Cambodia' (2011), at 46.

⁵²Münyas, *supra* note 39, at 413.

⁵³J. Dosch, 'The Role of Civil Society in Cambodia's Peace-building Process', (2012) 52 *Asian Survey* 1067; M. Bellino et al., 'Working through Difficult Pasts: Toward Thick Democracy and Transitional Justice in Education', (2017) 53 *Comparative Education* 313.

programmes. In each case, language and place – core elements of the court’s hybridity – are the foundation of the educational activities. Further, had the crimes of the DK period been tried in Cambodia’s domestic judicial system rather than in an internationalized setting, the funding they received would have been negligible by comparison. International donors fund the vast majority of both the court’s activities and the activities of NGOs working on ECCC-related activities.⁵⁴

6.1 Formal education

In Cambodia, from the official end of the DK regime in 1979 until 1989 the Vietnamese-backed People’s Republic of Kampuchea government taught about the DK period in such a way that focused responsibility for atrocities solely with the ‘Pol Pot-Ieng Sary clique’ alone.⁵⁵ DK history was later removed from textbooks following UN-backed elections in 1993.⁵⁶ In 2005, Burcu Münyas surveyed 102 Cambodian youth and found that, although the ‘overwhelming majority of youth in the study stated that they have little understanding of [DK] history’, over three quarters expressed a desire to learn more about history at school.⁵⁷

The creation of the new Khmer-language history textbook on the DK era by Dy Khamboly of the Documentation Center of Cambodia (DC-Cam) in 2007 was an important turning point in the formal teaching of Khmer Rouge history. More than 50 Cambodian and foreign experts made up the consultation team that developed the text, produced under DC-Cam’s ‘Genocide Education Project’ which it has run since 2004. To date over one million copies of the Khmer-language textbook have been distributed to 1,700 schools, and the programme has trained more than 5,000 history teachers in how to teach the curriculum.⁵⁸ The textbook comprises 11 chapters and a conclusion, and has a corresponding teacher manual, with interactive lesson plans, discussion questions, and international comparisons.⁵⁹

As the textbook was published in 2007, it did not originally include any information about the ECCC, which was yet to commence public hearings at that time. However, the timing of its release coincided with the beginning of the tribunal’s operations and marked a real sea change in the official value placed on history education. An additional chapter on crimes covered in *Case 002/01* was added to the teacher’s handbook as part of the reparations awarded in *Case 002/01*.⁶⁰ Teacher training in history education has been proposed as a reparations project in *Case 002/02* and has been recognized by representatives of the Ministry of Education, Youth and Sport as a priority.⁶¹ Including more testimony from and information about the ECCC would be a worthwhile complement to the existing textbook if any further revisions are planned.

Six of the 16 practitioners interviewed by the Handa Center identified the inclusion of DK history into the formal education curriculum as having had a positive impact on the level of students’ knowledge of this period.⁶² Some interviewees who had taught DK history identified the twin challenges facing Cambodian history educators: those old enough to have lived through the regime struggle to teach the subject in a neutral way or without reliving their own trauma, whereas those too young to have experienced the regime first hand can struggle to be seen as legitimate

⁵⁴Ibid.

⁵⁵T. Clayton, ‘Reorientations in Moral Education in Cambodia since 1975’, (2005) 34 *Journal of Moral Education* 505, at 506.

⁵⁶For detailed summaries of the history of education in Cambodia see Ayres, *supra* note 38; Inter-Agency Network for Education in Emergencies, *supra* note 51, at 21.

⁵⁷Eighty-eight of the 102 (86.2%) expressed a desire to learn more history at school, Münyas, *supra* note 39, at 437.

⁵⁸Documentation Center of Cambodia, ‘Genocide Education in Cambodia: Khmer Rouge History Education’ (2016), available at dccam.org/posters/genocide-education-january-13-2016.

⁵⁹P. Chea and C. Dearing, *Teacher’s Guidebook: The Teaching of A History of Democratic Kampuchea (1975-1979)* (2009).

⁶⁰*Prosecutor v. Khieu and Nuon*, Civil Party Lead Co-Lawyers Annex 2: Overview of Civil Party Reparation Requests in Case 002/01, Case No. 002/19-09-2007/ECCC/TC, T.Ch., 4 April 2014.

⁶¹McCaffrie et al., *supra* note 26, at 24.

⁶²Ibid., at 21.

sources of knowledge. A textbook can only go so far to addressing the needs of the former group, however for the latter group it was recognized a very useful legitimating tool. This was one instance where contrasting the views of youth with those of practitioners illuminated an interesting disparity. In focus group discussions, a relatively low number of students identified high school as their source of knowledge about the DK period. Of those who responded to the question of where they learned about DK history, the highest number (19) said they learned about DK through family, 15 identified high school, and 12 said university. Although the age of the students suggests that most would have attended high school in the years since the textbook had been published, many explicitly said they had not studied this part of Cambodian history during their high school education. This implies either that teachers are neglecting the topic or students are not following the classes closely. A similar finding was made in 2011 research carried out by Shay Galto which found that only six of 20 history teachers interviewed had seen DC-Cam's history textbook – five years after its initial circulation.⁶³

The argument for building a common understanding of the past through history education is an intuitive and appealing one for those seeking to bolster national resilience.⁶⁴ However, in many post-conflict countries, national education systems face resource and staffing challenges that mean they are limited in the number of students they can reach and the quality of the education they can impart. Nonetheless, teaching 'official' national history in educational institutions is important as it can shape the sense of national identity in those students who can access schooling. It is too early for any assessment of the long-term impact of Dy Khamboly's textbook to be made, however there is clearly more work to be done in maximizing the potential of the textbook as an educational tool.

6.2 Informal education and sites of memory

Formal education cannot always reach all potential students in a society and so a range of sources of knowledge are crucial. Even if students are able to attend school, being able to consult a range of sources is very valuable in the development of their critical thinking skills. Visits to crime sites such as Tuol Sleng or Choeung Ek, or indeed the location of the ECCC, complement other sources of learning to form a more nuanced understanding of the past, while helping to shape national identity construction.⁶⁵

6.2.1 The ECCC

Being located in situ means the ECCC, unlike other *ad hoc* tribunals, can act as a physical site of learning. Students in the Handa Center study generally reported positive associations with visiting the ECCC in person. For example, one student reported: 'My experience [of] when I [went] there is that I see there is a difference between what is studied in the book and the lecture and the reality of the court. So, listening and reading is not enough.'⁶⁶ All students in the study who had attended the court had done so as part of an organized school excursion. The Public Affairs Section which arranges these excursions has also produced other informational materials, such as posters, flyers and short explanatory videos in Khmer to increase awareness about trial proceedings. This direct access to the courtroom and associated testimonies and materials, in the local language, is unarguably one of the main benefits of the tribunal being located in Cambodia. However, to date no

⁶³S. Galto, *Education as a Form of Reconciliation or Recognition: Teachers' Perspectives on Genocide Education in Cambodia* (2012), at 86.

⁶⁴M. Gellman, 'Teaching Silence in the Schoolroom: Whither National History in Sierra Leone and El Salvador?', (2015) 36 *TWQ* 147, at 150; Longstaff et al., *supra* note 21.

⁶⁵Bellino et al., *supra* note 53.

⁶⁶McCaffrie et al., *supra* note 26, at 16.

data is available that assesses the impact of these visits, and the Public Affairs Section has been criticized by some for not seeking feedback on their programmes.⁶⁷ An assessment of how these visits, or the ECCC's broader outreach programme, has affected awareness or interest in proceedings among rural communities or student groups would be very informative and would contribute to the development of strong, effective public affairs and outreach sectors at future hybrid tribunals.

The fact that young Cambodians are able to sit in the courtroom in Phnom Penh and listen to testimony in their native language is very powerful. Data from the tribunal's Public Affairs Section, which co-ordinates most of the ECCC's outreach efforts together with the Victim's Support Section, indicate that 390,000 people have visited the ECCC and a further 100,000 have benefited from provincial outreach in communities, schools, and universities.⁶⁸ These numbers dwarf the statistics from the ICTR and ICTY, and even other hybrids.

6.2.2 *Choeung Ek and Tuol Sleng Genocide Museum*

Students taking part in the Handa Center study also expressed value in visiting sites of memory, such as Choeung Ek (also referred to as 'The Killing Fields'). As one student in a focus group said: '[You should] include educational [institutions] from [the] earliest levels in this. Because when I was young, the school took me to *Choeung Ek* and I saw th[e] evidence. So it should be included in early education.'⁶⁹ This is supported by a 2005 study by Burcu Münyas, which found that: 'For the children of survivors, disbelief seems to disappear as they are exposed to more info and evidence through genocide memorials, neighbours' stories and films.'⁷⁰ The most infamous site of memory in Cambodia is the Tuol Sleng Genocide Museum, the former S-21 Security Center, located in central Phnom Penh. The museum has close connections to the ECCC, not only as a crime site that has formed part of both *Cases 001* and *002/02*, but also because the Public Affairs Section includes a visit to the museum in its day-long study tour for public visitors. Since 2014 the museum's director Chhay Visoth has led the museum in a more educational direction, creating temporary exhibitions on topics such as the sexual and gender-based violence or the experience of children, and holding art competitions and youth peace-building events.⁷¹

6.3 *Non-formal education and civil society programmes*

Civil society programming has flourished alongside the functioning of the ECCC. Due to funding challenges facing the tribunal's Public Affairs Section, many NGOs stepped in to fill perceived gaps in outreach and awareness-raising programmes which reach the public directly.⁷² As Christoph Sperfeldt notes, more than a dozen NGOs have been involved in tribunal-related outreach over the years, 'often modifying their existing programs to engage in ECCC-related outreach'.⁷³ The informal relationship between NGOs and the ECCC has led to an *ad hoc* 'complementarity and mutual reinforcement' of activities, which has been observed in surveys of survivors who have interacted with the ECCC.⁷⁴ All but one civil society employee interviewed by the Handa Center identified the proliferation of NGO-led projects focusing on this period of

⁶⁷N. Pentelovitch, 'Seeing Justice Done: The Importance of Prioritizing Outreach Efforts at International Criminal Tribunals', (2009) 39 *Georgetown JIntL* 445, at 469.

⁶⁸Visits to the courtroom are often organized in collaboration with a visit to the Tuol Sleng Genocide Museum or Choeung Ek Genocidal Center in Phnom Penh. The Victim's Support Section of the ECCC also organizes some outreach activities.

⁶⁹McCaffrie et al., *supra* note 26, at 30.

⁷⁰Münyas, *supra* note 39, at 421.

⁷¹McCaffrie et al., *supra* note 26, at 30.

⁷²C. Sperfeldt, 'Broadcasting Justice: Media Outreach at the Khmer Rouge Trials', (2015) 115 *Asia Pacific Issues* 1, at 8.

⁷³*Ibid.*, at 5.

⁷⁴T. Williams et al., *Justice and Reconciliation for the Victims of the Khmer Rouge? Victim Participation in Cambodia's transitional justice process* (2018), at 7.

history as a direct legacy of the ECCC. This fits with lessons learned from other hybrid tribunals about their impact on the strength of civil society, which can in itself be said to strengthen the resilience of a post-conflict society.

There have been many innovative history education projects created recently in Cambodia. For example, in July 2017 the Bophana Center released a mobile phone app to engage young Cambodians nationwide in learning history in an interactive, fun way. The app, titled 'Khmer Rouge History', consists of 12 chapters on topics including the fall of Phnom Penh and treatment of minorities, all of which feature a mix of text, photographs, and film footage. Keo Duong, from the Bophana Center, explained:

Cambodian students don't much like reading, but [in the app] they can also watch, listen, see photos. This is the strong point of the app, which is stronger than the textbook. The text itself, we try to keep it short.⁷⁵

The app incorporates documents and trial footage taken from the ECCC, as well as other material produced by different NGOs. History lecturer from the Royal University of Phnom Penh, Vong Sotheara, said he encouraged his students to download the app and saw the online tool as complementary to his classroom-based education. Another successful NGO-led education initiative from recent years that has incorporated ECCC content is the project 'Voices from Ethnic Minorities' of local NGO *Kdei Karuna*. *Kdei Karuna* holds mobile exhibitions across the country illuminating issues faced particularly by the Cham Muslim and ethnic Vietnamese minorities in Cambodia. The exhibits collate oral histories, footage from the ECCC and other documents to present an overview of the minority experience.⁷⁶

These are just two examples of the many NGO projects using the ECCC as a starting point for their work. The above two projects not only incorporated ECCC elements but also applied to be officially recognized by the tribunal as reparations in *Case 002/02*.⁷⁷ The ECCC was the first hybrid tribunal to enact its reparations mandate, which permits it to award 'collective and moral' reparations to civil parties should an accused person be convicted.⁷⁸ Further, both of the above projects, and four more, recently received additional funding to continue and expand their work, indicating their success at engaging with the public.⁷⁹

Backed by both the Cambodian Government and the United Nations, the ECCC represents a 'legitimate' source of information for those wanting to discuss potentially contentious or controversial topics. Thus, educators or other groups working on such topics can feel more confident using ECCC texts and testimony as an entry point to debate.

Despite the large number of existing initiatives, the Handa Center study found that students had a generally low level of awareness about existing programmes they could access to learn more about the ECCC or DK. When asked for recommendations, several students suggested ideas for programmes which already exist, such as establishing documentation centres or streaming ECCC hearings online.⁸⁰ A more co-ordinated, well-publicized and open effort, which makes the most of

⁷⁵McCaffrie, *supra* note 26, at 29.

⁷⁶Raising Awareness of Cham and Vietnamese Experiences During the Khmer Rouge Period', *Kdei Karuna*, available at www.kdei-karuna.org/.

⁷⁷Civil Party Lead Co-Lawyers, *supra* note 60.

⁷⁸Reparations are provided for in Internal Rule 23: 2015 Extraordinary Chambers in the Courts of Cambodia. Internal Rules (Rev. 9), at rule 23. For more information on reparations at the ECCC see C. Sperfeldt, 'Collective Reparations at the Extraordinary Chambers in the Courts of Cambodia', (2012) 12 *IntlCLR* 457.

⁷⁹*Prosecutor v. Khieu and Nuon*, Civil Party Lead Co-Lawyers' Supplemental Submission on Funding Issues Related to Reparation Projects in Case 002/02 and Request for Guidance, Case No. 002/19-09-2007-ECCC/TC, T.Ch., 30 November 2017.

⁸⁰A number of documentation centres exist in Phnom Penh, including DC-Cam, the Legal Documentation Center related to the ECCC and Bophana Center. DC-Cam is also planning to open a new resource centre in Phnom Penh named the Sleuk Rith Institute. The ECCC streams hearings online and promotes them on its social media accounts.

online platforms available, would go a long way to addressing this awareness gap and to increasing youth engagement with existing programmes. Some practitioners recommended that a database or online platform be created to enable the sharing of educational resources on topics related to the ECCC or DK history more generally.

While NGOs have contributed significantly to the ECCC outreach landscape in Cambodia, their role as external actors to the tribunal, as well as their limited resources should be taken into account.⁸¹ An opportunity was missed by not formalizing their relationship with ECCC outreach organs from the beginning. More open and regular discussions between NGOs and the ECCC could also have increased collaboration among institutions. Indeed, with the sheer number of NGOs working in this field, some form of liaison officer could have assisted in co-ordination and avoiding overlap. Nevertheless, the proliferation of educational programmes in tandem with the ECCC's operations since 2006 demonstrate that the population saw a gap that needed filling and went about filling it. The recent indications that six of the reparations projects submitted in *Case 002/02* have been extended due to perceived benefit to the community is a welcome sign.⁸² The success of many of these programmes even without co-ordinated cross-sectoral sharing shows great potential for future similar tribunals.

7. Education and the [hybrid] courtroom

The links between education and formal justice processes have been the focus of much scholarship over the years. The premise of an educational legacy arising from a judicial institution is open to criticism. It is important to remember Richard Wilson's point that '... courts of law produce mediocre historical accounts of the origins and causes of mass crimes'.⁸³ The above examples of formal, informal and non-formal education activities demonstrate that the ECCC has become a source of knowledge and awareness raising about the past, even if this was perhaps unintentional or incidental. A wide range of actors have sampled the most interesting or dramatic parts of the cases before the ECCC and incorporated them into their programmes, adding to their perceived legitimacy and their broader appeal without detracting from the legitimacy of the cases as they progress. The accessibility of the courtroom both physically and linguistically has increased its impact in this way.

It is interesting to position the ECCC within the broader conversation about transitional justice mechanisms. In 2007 Elizabeth Cole identified the link between education and transitional justice processes as one that deserved more close scrutiny and research, saying that a 'strong argument can be made for the promotion of closer collaboration between transitional justice actors and educators'.⁸⁴ The use of tribunals and trials to generate interest among the public about historical events is not new. When the trial of Adolf Eichmann was televised in April 1961 it was described as 'one of the first global media events on television' and has been said to have 'revived' the study of the history of the Holocaust in the United States.⁸⁵ Lawrence

⁸¹For more on the role of civil society organizations in conducting court-related outreach for the International Criminal Court see E. Evenson, 'Making Justice Count: Lessons from the ICC's Work in Cote d'Ivoire', *Human Rights Watch*, 4 August 2015, available at www.hrw.org/report/2015/08/04/making-justice-count/lessons-iccs-work-cote-divoire.

⁸²Civil Party Lead Co-Lawyers, *supra* note 60.

⁸³R. Wilson, *Writing History in International Criminal Trials* (2011), 1.

⁸⁴E. Cole, 'Transitional Justice and the Reform of History Education', (2007) 1 *IJTJ* 115.

⁸⁵J. Keilbach, 'The Eichmann Trial on East German Television: On (Not) Reporting about a Transnational Media Event', (2014) 3 *Journal of European Television History and Culture* 17; D. Schwartz, "'Who Will Tell Them After We're Gone?': Reflections on Teaching the Holocaust', (1990) 23 *The History Teacher* 98. All 27 episodes of *Duch on Trial* and 53 episodes of *Facing Justice* are available on the Handa Center's website at www.krtmonitor.org.

Douglas described the Eichmann trial as helping to ‘remove an episode of unprecedented atrocity from the silences of shame . . . and transform it into an episode of world significance and collective meaning’.⁸⁶

However, the overlap between judicial processes and education has also been criticized. Most famously, Hannah Arendt argued strongly against the use of tribunals for education:

The purpose of a trial is to render justice, and nothing else; even the noblest of ulterior purposes . . . can only detract from the law’s main business: to weigh the charges brought against the accused, to render judgement and to mete out due punishment.⁸⁷

Arendt is not the only scholar to dismiss the possibility of trials used for education. Others see a trial as inherently limited by legal terminology and scope that restricts a full and balanced understanding of history, while others still cite the tedium of extended hours of courtroom proceedings as being anathema to historical debate.⁸⁸

These three arguments need to be addressed in turn. Arendt’s claim that it necessarily detracts from the legitimacy of proceedings to expect a trial to create a historical record has been eloquently disputed by Lawrence Douglas in his book *The Memory of Judgment*.⁸⁹ Douglas sees no reason that justice and history need be mutually exclusive. Richard Wilson builds on Douglas’s critique in his own work, arguing instead that justice and writing history can coexist at trial:

Without a doubt, there have been times when historical testimony is irrelevant, defective, and even positively scurrilous, but such evidence has not in itself cause a legal travesty . . . The guilt or innocence of the accused has not to my knowledge hinged entirely on a matter of historical import, in the absence of other incriminating or exculpatory evidence.⁹⁰

Wilson goes even further to say that it is impossible to remove historical context from international trials due to the nature of analysing international crimes. Historical factors have been raised often by both sides of the courtroom at the ECCC. As already noted, history is inherent in the mandate of the ECCC purely by virtue of the trial taking place so long after the alleged crimes. In *Eichmann in Jerusalem*, Arendt notes that the majority of those present to watch the trial of Adolf Eichmann were survivors who ‘new by heart all there was to know’ about the Holocaust.⁹¹ This perhaps contributes to her view that teaching history through trials undermines their integrity. Indeed, maybe Arendt’s view would have been different if the gallery at the Eichmann trial were full of the children of survivors.

Turning to the second argument – that history gleaned from courtrooms is inherently limited by legal and procedural restrictions. As Seeta Scully observes: ‘A court’s version of history will inevitably be insufficient and fragmentary from a historian’s perspective – due to the limitations placed on judges to only refer to facts that are legally relevant.’⁹² Nonetheless, in 2011, after the end of the Duch trial, Scully identified the creation of a commonly understood domestic understanding of DK history as one of the six ‘successes’ of the ECCC.⁹³ While the version of history that

⁸⁶Douglas, *supra* note 45, at 6: Douglas emphasized the role of the Eichmann trial in producing a historical record and encouraging survivors to speak out, increasing awareness of the atrocities of the Holocaust.

⁸⁷H. Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (1963), at 233.

⁸⁸These arguments are well summarized in Wilson, *supra* note 83, at 6.

⁸⁹Douglas, *supra* note 45.

⁹⁰Wilson, *supra* note 83, at 19.

⁹¹Arendt, *supra* note 87, at 6.

⁹²S. Scully, ‘Judging the Successes and Failures of the Extraordinary Chambers in the Courts of Cambodia’, (2011) 13 *Asian-Pacific Law and Policy Journal* 340.

⁹³*Ibid.*, at 338.

emerges from any tribunal or court of law will be limited by the scope of the charges and identity of the accused, it can nonetheless be a starting point for debate and discussion, as it has been in Cambodia with some of the examples above. In instances where history can be controversial or contentious, using testimony or findings from a tribunal as a launching pad for discussion can be a safer way to begin the debate.

Finally, to address the argument that courtroom proceedings are too tedious to be engaging, we can again turn to the examples given above of creative uses of testimony in non-formal education activities. There is no need for the public to sit in the courtroom for days on end in order to gain an understanding of what is going on. In Cambodia, the NGO sector has been particularly strong in taking samples from different segments of the trials – usually the most interesting, dramatic or emotional testimony – and incorporating that into their existing programmes. In fact, as shown above, the existence of the trial was credited by many students as legitimizing what they had learned about the past. The tribunal was seen as a more neutral institution as the witnesses and civil parties are allowed to talk about what happened to them – albeit within the legal context of the case. This was noted by Douglas in reference to Nuremburg when he wrote of '[t]he power of criminal trials to galvanize collective interest in the past'.⁹⁴

Thus, increasingly, scholars recognize that tribunals serve a broader social purpose than the strict provision of justice. A tribunal's ability to contribute to the wider resilience of the post-conflict nation through not only the healing associated with holding perpetrators to account, but also the educational value they bring from testimonial and documentary evidence, is highly significant. Hybrid tribunals located in country and in the local language can have an even stronger impact. Caitlin Reiger argues that a tribunal's success should be measured by: 'The extent to which they have contributed to public perceptions and debates about events that took place during the conflict.'⁹⁵ This is visible in Cambodia through both increased donor funding to reconciliation, healing and education-based projects focusing on DK, and also in the number of people engaging with these programmes.

Responding in the local press to the release of the Handa Center's report in January 2018, Nuon Chea's international defence counsel Victor Koppe said that: 'Explaining this history was indeed the sole reason for Nuon Chea to keep participating in these extremely flawed proceedings until the end and for me not to withdraw as his lawyer.'⁹⁶ The International Co-Prosecutor expressed a similar view on the importance of the trials for understanding the past, albeit without endorsing the defence's particular presentation of history. In local newspaper *The Phnom Penh Post*, prosecutor Nicholas Koumjian said that: 'A critical legacy for all international criminal courts . . . is to contribute to greater understanding of the truth about momentous historical events.'⁹⁷

While this article focuses on the views of young people, it is important to remember that the secretive nature of the DK regime means that many survivors themselves also still have questions and can benefit from learning more about the past. Due to the prevalence of forced relocation and prohibitions on communication during the DK regime, many of those who lived through it had little knowledge of what was going on anywhere else in the country. Hearing from others testifying about their experience and seeing how it compared to your own could benefit survivors just as the young generation could benefit from hearing information that is new to them.

⁹⁴Douglas, *supra* note 45, at 4.

⁹⁵C. Reiger, 'Where to Here for International Tribunals? Considering Legacy and Residual Issues', *ICTJ*, 25 April 2011, at 5 available at www.ictj.org/publication/where-here-international-tribunals.

⁹⁶E. Handley, 'Students see Khmer Rouge tribunal as educational tool', *The Phnom Penh Post*, 26 January 2018, available at www.phnompenhpost.com/national-kr-tribunal/students-see-khmer-rouge-tribunal-educational-tool-study. Issues of historical narrative were regularly raised at trial, particularly during *Case 002/02*. In the Nuon Chea 550-page Closing Brief his lawyers devote significant space to telling Nuon Chea's historical narrative, which they refer to as: 'The Crocodile: What Really Happened Before, During and After the DK Period'; see *Prosecutor v. Khieu and Nuon*, Nuon Chea's Closing Brief in *Case 002/02*, Case No. 002/19-09-2007-ECCC/TC, 2 May 2017, at 42.

⁹⁷*Ibid.*

8. Conclusion

Passing on an understanding of the past to the next generation is one of the greatest challenges facing post-conflict societies, but is an important factor in embedding resilience within these societies as they rebuild. Had the ECCC not been located in Cambodia and held in Khmer, its ability to contribute to the next generation's understanding of the past would have been significantly limited. Instead, the tribunal has influenced formal, informal and non-formal educational activities over the past decade and a half. Although it is hard to measure the impact of these activities, at the very least, they reflect Seang Sovida's desire to pass on an understanding of what happened to the next generation.

In contrast to popular opinion, there appears to be a thirst for knowledge about the past among Cambodia's young generation. The fact that young people most commonly identified the educational potential of the ECCC as its main legacy indicates the value they place in learning about the past. As a hybrid tribunal held in the local language and located in the country in which crimes took place, the ECCC has more opportunity than other tribunals to inspire debate. The three-decade wait between the crimes in question and the prosecution of alleged perpetrators makes the ECCC a special case among hybrid tribunals. It is likely that this passage of time contributed to a shift in priorities for the general population, away from accountability and toward education. Other hybrid tribunals established in the immediate aftermath of violent conflict may not require a focus on education to the same degree.

It is important that we do not expect hybrid tribunals to be all things to all people. They simply cannot deliver meaningful justice to all while simultaneously educating a population, providing reparation or reconciliation to affected communities and training local legal capacity. Each hybrid tribunal is as unique as the society within which it is located, and those planning for future hybrids should consider the needs of their community and how important education is. For those established a significant amount of time after the crimes in question, the ECCC provides instructive examples of how a hybrid tribunal can have an educational impact. Language and place are critically important factors in building an educational legacy. Further, having some form of liaison officer or co-ordinator to facilitate interactions between the different education actors and the tribunal would likely have led to a smoother and more cohesive set of complementary programmes.