

OUTREACH AT THE HYBRID TRIBUNALS:
THE CASES OF THE SIERRA LEONE AND CAMBODIA

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INTRODUCTION

Outreach efforts are essential to the marketing of the legitimacy of these tribunals and play a key role in allowing them to contribute to transitional justice in their communities. After a general discussion of the importance of outreach in international justice, I argue that there are three significant components to an effective outreach program: impartiality, accessibility, and interactivity. Impartiality refers to the content of the messages given out to the public – do they reflect a neutral point of view or do they present views that are perceived as biased? Accessibility refers to breadth of the distribution of materials as well as their ability to communicate to the public. Finally, interactivity involves the ability of the public to participate in outreach processes, helping to shape the messages that the outreach program gives. After laying out these three aspects of outreach, I examine the outreach programs of two of the highest profile hybrid courts: The Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Special Court for Sierra Leone (SCSL), alongside some of the empirical research on their effectiveness.

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KEYWORDS: Outreach, Hybrid Tribunals, International Criminal Justice

Outside of what takes place within the courtroom itself, the most important element of any international tribunal must be its *outreach* program.¹ The ability of a tribunal to communicate to the broader public regarding its procedures, activities, and findings is essential to the tribunal's ability to serve its social function: providing some kinds of justice to populations that have undergone the trauma of political oppression or mass violence and helping prevent future violence. Regardless of how sound its procedures or how compelling its findings of fact, without access to the public, it is unlikely that an international tribunal will fulfill this broader purpose. Given that the international justice system does not have a "built in constituency," that is, international justice is not linked with the broader institutions of any state, outreach effectively stands as the voice of justice.² This is particularly the case with the so-called "*hybrid*" or "*mixed*" tribunals operating in various states around the globe. While these tribunals produced a number of failures and disappointments in the last decade, they are experiencing something of a renaissance, as they are being discussed in a number of different states and alternatives, particularly the ICC continue to face strong political headwinds in Africa.³ All of this means that it is crucial to think about the nature of these institutions and their contribution to global justice so that they may prove more effective in the future.⁴

¹ Following the ICC, I will define outreach as: '[A] process of establishing sustainable, two-way communication between the Court and communities affected by the situations... and to promote understanding and support of the judicial process... as well as the different roles of the organs of the [tribunal]. Outreach aims to clarify misunderstandings and to enable affected communities to follow trials.' Norman Pentelovitch, Note, *Seeing Justice Done: The Importance of Prioritizing Outreach Efforts at International Criminal Tribunals*, 39 GEO. J. INT'L L. 445, 446 (2008).

² See Miriam Abaya, *Ordinary Citizen: The Hope for International Criminal Justice in Africa*, 23 U.C.L.A. J. INT'L L. & FOR AFF. 1, 3-4 (2019).

³ *Id.* at 3, 6.

⁴ Harry Hobbs, *Hybrid Tribunals and the Composition of the Court: In Search of Sociological Legitimacy*, 16 CHI. J. INT'L L., 482, 482 (2016).

While some scholars reject either the normative significance of outreach, or do not feel that outreach is an important component of transitional justice, I will not directly engage with that debate here.⁵ Rather, I will argue here that the *character* of outreach, that is the methods and forms of discourse deployed to engage with the public are significant, and that outreach skeptics do not fully understand the nature and purpose of outreach or its role in shaping public perceptions. Communicating with the broader public is important, but equally important are the messages that are communicated by a tribunal. If messages are poorly crafted or outreach is not communicated in a thoughtful way, no outreach program will likely be effective. Effective outreach not only reaches out to stakeholders, it further frames the conflict in a manner that is more conducive towards reconciliation and the rule of law – or so I shall argue here. While it is important for all transitional justice institutions, outreach is particularly important for the hybrid tribunals. Because these tribunals rely on a combination of domestic and international personnel and apply both domestic and international legal norms, they operate from a unique political and sociological position.⁶ The nature of their proceedings are often alien to domestic constituents who are usually unfamiliar with the procedural norms of these institutions and may be unfamiliar with the broader principles upon which they are based.⁷ Further, many of the countries where these tribunals are created often have little built-in faith in institutions of justice. In their experience,

⁵ Stuart Ford, *A Social Psychology Model of the Perceived Legitimacy of International Criminal Courts: Implications for the Success of Transitional Justice Mechanisms*, 45 VAND. J. TRANSNAT'L L. 405, 408–09 (2012).

⁶ Hobbs, *supra* note 4, at 490–92.

⁷ “Because the social norms of the Western nations in which the relevant criminal standards were incubated are often strikingly different from those of the societies that transitional justice seeks to impact, these ‘universal’ mechanisms have often been unresponsive to the needs of societies recovering from mass violence.” Jaya Ramji-Nogales, *Designing Bespoke Transitional Justice: A Pluralist Process Approach*, 32 MICH. J. INT'L L., 1, 3 (2010).

these institutions of justice have often served as the tools corrupt or tyrannical governments.⁸ It is not a stretch to believe that little or no faith in local government can adversely affect one's views of international governance. Finally, the conflicts that generated the need for the tribunals can leave the public riven with deep disagreements about who is ultimately at fault.⁹ As Hobbs puts it, "[T]he total breakdown of civic trust, both horizontally and vertically, that characterizes states transitioning from authoritarianism or mass atrocity severely weakens the prospect of acceptance of authority – particularly where a sizeable number of people may disagree with the court's judgment."¹⁰ Thus, there are good reasons for widespread popular skepticism and confusion on the part of such tribunals' domestic audiences. Therefore, there is little likelihood that the judgments of such institutions would be taken at face value without the benefit of serious public relations.

In this paper I will argue that hybrid tribunals must use certain outreach techniques to be effective. However, at the outset we should note that the precise meaning concept of 'effectiveness' in the study of international criminal institutions is unclear. Unlike domestic justice institutions, it is probably too much to ask international courts to have any serious deterrent effect on future international crime, as this justice "system" such as it is remains an incomplete patchwork of laws and tribunals that must cherry pick cases based on a variety of criteria. While criminal tribunals can contribute to the broader process of transitional justice in a society, it is just as likely that criminal prosecutions for key actors in a conflict can undermine stability as the prosecutions alienate partisans for one side or another. These processes are obviously very difficult to measure. Even measuring the effectiveness of a tribunal simply based upon the number of prosecutions undertaken or convictions

⁸ Hobbs, *supra* note 4, at 487.

⁹ Ford, *supra* note 5, at 459–61.

¹⁰ Hobbs, *supra* note 4, at 495.

secured overlooks the fact that in situations of mass conflict the number of people who are prosecuted and convicted is dwarfed by the numbers of crimes committed by militants, partisans, and ‘grunts.’ All sides are criminally liable for crimes – far more than could ever be prosecuted by any tribunal. All of this entails that “*effectiveness*” for a tribunal is a murky concept that eludes a straightforward exposition. Nonetheless, regardless of the metric used, it is clear that an outreach program is an essential part of any criminal tribunal involved in international justice.

I. OUTREACH IN CONTEXT

Hybrid tribunals represent a “fourth generation” of international tribunals.¹¹ After the post-war tribunals in Nuremberg and Tokyo, there were the two ad hoc tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), and then the International Criminal Court (ICC).¹² Each of these generations occupied a different position in the global consciousness and faced different challenges.¹³ The Nuremberg and Tokyo tribunals garnered a great deal of attention and support because of the horrific nature of the Second World War and the near absolute defeat of the Axis powers.¹⁴ Further, there was little sympathy for the defendants, regardless of the reservations some political elites had about the idea of such an international tribunal functioning as a tool of legalized vengeance.¹⁵ The latter ad hoc tribunals received less attention, being absorbed in lower-profile crimes in a more crowded international public

¹¹ Dustin N. Sharp, *Interrogating the Peripheries: The Preoccupations of Fourth Generation Justice*, 26 HARV. HUM. RTS. J. 149, 152–53 (2013).

¹² *Id.* at 154, 156.

¹³ *Id.* at 152–56.

¹⁴ William J. Bosch, JUDGMENT ON NUREMBERG: AMERICAN ATTITUDES TOWARD THE MAJOR GERMAN WAR-CRIME TRIALS 233 (1970).

¹⁵ *Id.*

sphere.¹⁶ The ICC has faced a great deal of criticism, first from the USA which distrusted its claims to govern sovereign states, and later from African states who have charged that its solitary focus on African offenders has been unfair to the nations of the continent. Several states, most notably South Africa, have to withdraw from the tribunal's jurisdiction as a result.¹⁷ After Nuremberg, most of these institutions were mired in political controversy from which they have struggled to extricate themselves.¹⁸

One of the most significant reasons why these institutions have failed to garner support from their domestic constituencies, as well as from the broader global public, is poor public relations.¹⁹ While they were open to the public and later proceedings were broadcast over the internet (and significant developments were discussed in the media), there was little organized effort to make the proceedings available to domestic audiences until it was too late to substantially shape public opinion.²⁰ This left these institutions at the mercy of highly mobilized critics.²¹ As Klarin put it in his study on the ICTY:

According to the latest survey conducted by the Belgrade Center for Human Rights published in 2007, only 7% of Serbian citizens polled believed that the ICTY was unbiased when it tried Serbs. As many as 63% thought there were 'too many' Serb indictees (compared with other ethnic groups).²² In addition, their trials are widely believed to be unfair and the sentences they receive are considered much harsher

¹⁶ Sharp, *supra* note 11, at 162–163.

¹⁷ *See id.* at 170–71.

¹⁸ *Id.* at 162–63.

¹⁹ Mirko Klarin, *The Impact of the ICTY Trials on Public Opinion in the Former Yugoslavia*, 7 J. INT'L CRIM. JUST., 89, 90 (2009); Victor Peskin, *Courting Rwanda: The Promises and Pitfalls of the ICTR Outreach Programme*, 3 J. INT'L CRIM. JUST. 950, 952–53 (2005); Michael P. Scharf & Ahran Kang, *Errors and Missteps: Key Lessons the Iraqi Special Tribunal Can Learn from the ICTY, ICTR, and SCSL*, 38 CORNELL INT'L L.J. 911, 916–17 (2005).

²⁰ *See* Scharf & Kang, *supra* note 19, at 917.

²¹ *Id.*

²² *See* Klarin, *supra* note 19, at 92.

than those imposed on the accused of other ethnic backgrounds.²³

The ICTY set up its outreach program in 1999 (six years after the tribunal began) and the ICTR formed its program between 1998 and 2000, four years after the tribunal was founded.²⁴ The fact that the tribunals themselves were located outside of the countries where the conflicts took place – Arusha was over 700 miles from Kigali, the capital of Rwanda, and The Hague over 1500 miles from the former Yugoslavia only compounded this public relations problem.²⁵

II. LEGITIMACY AND TRANSITIONAL JUSTICE

Because the hybrid courts exist *between* the large-scale international courts and traditional domestic courts, they face unique public relations issues and threats to their legitimacy. While they may carry the imprimatur of an international court, insofar as they formed with the cooperation of the United Nations or other international partners, this does not immediately guarantee a significant amount of public support from the local population.²⁶ In many societies, locals see these actors as foreign interlopers in domestic conflicts, particularly when these same international actors were largely absent when the conflict was taking place. On the other hand, the fact that most of the tribunals stand as part of the existing

²³ Similarly, Shulz argues that, “[O]utreach activities by the ICTR did not significantly contribute to positively shaping the perception regarding the criminal tribunal and its contribution to reconciliation, and did therefore not promote reconciliation within Rwanda’s society. Throughout society, increased outreach activities cannot be correlated with increased awareness, positive perceptions and better attitudes towards the ICTR’s contributions to reconciliation. Likewise, amongst its participants, outreach activities did result in a greater understanding amongst its participants.... In brief... outreach activities by the ICTR were initiated too late with too little resources to have the capabilities to have an impact on reconciliation.” Philipp Schulz, *OUTREACH AND THE ICTR: ASSESSING THE IMPACT OF OUTREACH ACTIVITIES BY THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA (ICTR), HOLOCAUST AND GENOCIDE STUDIES WORKING PAPERS SERIES 8* (2012).

²⁴ Peskin, *supra* note 19, at 953, 956.

²⁵ *Id.* at 950–51.

²⁶ See Phillip Rapoza, *Hybrid Criminal Tribunals and the Concept of Ownership: Who Owns the Process?*, 21 AM. U. INT’L L. REV. 525, 530, 534–35, 539 (2005).

government (although separate from traditional judicial authorities), or as part of the judicial wing of a UN transitional government with a similar duality – local actors are more in touch with domestic concerns but may also be perceived as biased or politically motivated.²⁷ This means that such bodies carry both the positive and negative dimensions of local governance, they can promote ownership,²⁸ but as many people in the local population are dubious of their own governments, this skepticism can easily bleed into the hybrid tribunals. Thus, both the international and domestic components of the hybrid tribunals present potential advantages and disadvantages for the hybrid courts.

Developing outreach programs is one way to address these concerns, enhance the legitimacy of the tribunals, and improve its overall effectiveness regarding hybrid justice. By organizing a body within the tribunal itself that is tasked with public engagement, these institutions can get ahead of their critics and bolster their own legitimacy within the public consciousness. Equally important, they can foster a sense of ownership over the tribunal and its proceedings – as different stakeholders feel that the tribunal in some sense represents them.²⁹ To this extent, the outreach programs are not neutral: They are agnostic about the outcome of any particular trial, but are committed to the tribunal as an institution and to its role in transitional justice.³⁰ Moreover, outreach programs are essential because they inform the general public about the existence of the tribunal, which in some states may not

²⁷ *Id.* at 531.

²⁸ Defined as, “The degree to which the national and international components ‘buy in’ to the process [of criminal justice].” *Id.* at 526.

²⁹ *See id.* at 530.

³⁰ To this extent, some international criminal justice scholars are skeptical regarding the outreach obligations of international tribunals. As Emily Calmeyer puts it: “Outreach delegitimizes the ICC because it threatens the view of the Court as neutral and non-political, it sets up incomplete systems across nations, and creates unsustainable expectations that do not demand national-level leadership.” Emily Calmeyer, *Outreach and the ICC [International Criminal Court]: A Losing Battle*, ICC FORUM (Feb. 9, 2015), <http://iccforum.com/forum/permalink/97/4398>.

otherwise reach the public consciousness. As Lincoln puts it in relation to the Sierra Leone Tribunal, “The *presence* of the Court often gave it greater acceptance in the country than did its *modus operandi*.”³¹ That is to say that, by making the public aware of the existence of a hybrid tribunal, the outreach programs have already helped advance the goals of transitional justice.

Legitimacy means different things for different stakeholders in a conflict, as all affected by violence have different normative expectations from a transitional justice process.³² Following Parmar,³³ we can say the most significant collection of stakeholders (which she describes as “the primary stakeholder”) are those affected by the conflict itself, including, “overlapping subgroups, each of which is a stakeholder in its own rights, with specific perspectives and aspirations.”³⁴ These include victims of violence, partisans of all sides of a conflict, as well as those who actually participated in the violence itself (some of whom may wind up as defendants in a hybrid court).³⁵ Pulling back from the conflict itself, other stakeholders include various non-governmental actors, including international legal elites, human rights activists, and other international professionals.³⁶ Further, governments and international organizations (most notably the UN) have a material as well as political interest in these trials as they often must ‘foot the bill’ for the various hybrid courts.³⁷ Finally, there are future generations whose lives could be profoundly affected by the outcomes of these trials and the precedents that they set. If a tribunal is not perceived as legitimate by posterity, it is

³¹ JESSICA LINCOLN, TRANSITIONAL JUSTICE, PEACE AND ACCOUNTABILITY: OUTREACH AND THE ROLE OF INTERNATIONAL COURTS AFTER CONFLICT 8 (2011).

³² See UNITED NATIONS CHILDREN’S FUND, CHILDREN AND TRANSITIONAL JUSTICE: TRUTH-TELLING, ACCOUNTABILITY AND RECONCILIATION 49 (Sharanjeet Parmar et al. eds., 2010).

³³ *Id.*

³⁴ *Id.* at 49–50.

³⁵ *Id.* at 50.

³⁶ *Id.* at 251.

³⁷ *Id.* at 51.

unlikely to hold much precedential weight. Each of these stakeholders must be engaged by outreach in different ways.

Powerful criticism of these assertions has been put forward by Ford,³⁸ who has argued that legitimacy has no impact on the sociological literacy of international tribunals. He argues that the groups' identifications of various members of the public is of far more importance than any other factor.³⁹ "When the court's indictments and prosecutions conflict with a group's dominant internal narrative about responsibility for the conflict, members of the groups are likely to perceive the court as biased and unjust, which allows the group to discount the indictments and preserve its internal narrative. This can lead directly to lower perceptions of the court's legitimacy." While Ford raises some powerful points about the weaknesses of formal legitimacy to overcome the barriers of identity politics, he does not deeply address the issue of outreach.⁴⁰ "Outreach efforts," he argues "are unlikely to overcome this fundamental ignorance."⁴¹ Nonetheless, this claim lacks empirical depth and is conceptually confused. Unlike other attempts to establish legitimacy of the hybrid tribunals, outreach is sociologically, not philosophically grounded. It is a key point to this Article to argue that outreach, when performed with sociological and psychological sophistication, embodying the values of impartiality, accessibility, and interactivity, can indeed be perceived as legitimate by the public and contribute to transitional justice.

Further, Ford does not adequately address the issue of *ownership* which is central to the hybrid tribunals.⁴² Unlike other international tribunals, the hybrid courts seek to develop a sense of ownership on the part of the public through their institutional structures. By including a domestic presence in the chambers, in the Prosecutor's office, and in

³⁸ Ford, *supra* note 5, at 409.

³⁹ *Id.* at 409–10.

⁴⁰ *Id.* at 410, 412.

⁴¹ *Id.* at 409.

⁴² *See generally id.*

the other staff, the hybrid courts challenge the notion that the tribunals represent the interests of one group at the expense of others, much less that it is simply a group of outsiders.⁴³ They may vary in their ability to convince partisans of one side or another to perceive themselves a part of the transitional justice process, but the aim of these bodies is not solely to ascribe blame to individuals, much less to collectivities.⁴⁴ Rather, they seek to reframe the conflicts and “shuffle” the identity politics of a region. If all groups are a part of the transitional justice process and if this is done effectively, the justice process belong to all. This reorienting of the identity politics that the hybrid tribunals strive for is a key part of the outreach programs of the tribunals.

III. IMPARTIALITY, ACCESSIBILITY, AND INTERACTIVITY

For outreach to be relevant, it must have embodied three different values, each of which has different features. I will describe these different dimensions as accessibility, impartiality, and interactivity. These values are not exclusive (and as we will see, they each depend on adequate resources), but they are the primary features of effective outreach. Equally important, these different dimensions are context-dependent: certain features will be more significant in some situations and others in different situations (depending on the nature of the conflict that preceded transitional justice and on the nature of country where the institutions must operate).⁴⁵ Nonetheless, they all must be present for public outreach to make a meaningful contribution to the sociological legitimacy of the tribunals. In this section of the Article, I will examine these three features.

⁴³ Aaron Fichtelberg, *Hybrid Tribunals: A Comparative Explanation*, SPRINGER SERIES ON INTERNATIONAL JUSTICE AND HUMAN RIGHTS 48 (George Andreopoulos, ed., 2015).

⁴⁴ *Id.* at 181.

⁴⁵ *Id.* at 29–30.

First, outreach efforts must be *accessible*. Accessibility means that outreach material (such as printed material, videos, as well as updates about activities at the tribunal) must be available to the various target audiences and to different stakeholders.⁴⁶ These audiences vary, and each is important in its own way. The most important audience are the primary stakeholders: combatants and partisans on all sides of a conflict, as well as civilian bystanders and victims.⁴⁷ These are the primary audience for the tribunals as they are the ones who must reconcile themselves to living with their former enemies and seeking to build new political institutions with those who once exploited them.⁴⁸ To the extent that these tribunals contribute to transitional justice in their societies, it is essential that the public understand their structures, proceedings, and their factual findings. Thus, accessibility is essential to the tribunal's outreach mission as well as to its transitional justice functions.

However, it is a mistake to think that this local audience is the only relevant stakeholder that the tribunal must reach. Tribunals have other important audiences that run further afield. These include the states and international organizations that provide political and financial support for the tribunals – they must engage with and be aware of the tribunal's activities.⁴⁹ Academics, NGOs, and other international actors also have an investment in the tribunal's operations and are essential to a tribunal's broader historiographic mission.⁵⁰ That is, its effort to provide a credible examination of the historical events that led to the criminal tribunal as well as the acts that were committed in the conflict under scrutiny.⁵¹ Further, scholars and legal elites allow the tribunal's legal and factual findings to have a

⁴⁶ *Id.* at 76–77.

⁴⁷ *Id.* at 180–82.

⁴⁸ *See id.* at 97–98, 101, 110, 113.

⁴⁹ BJÖRN ELBERLING, *THE DEFENDANT IN INTERNATIONAL CRIMINAL PROCEEDINGS: BETWEEN LAW AND HISTORIOGRAPHY* 201 (2012).

⁵⁰ *Id.*

⁵¹ *Id.* at 200–01.

broader impact in the broader international justice discourse – other courts in different contexts will be able to use the tribunal’s findings in their own proceedings. If such experts cannot find information about a tribunal, if its rulings are not easily available electronically or on paper, it is likely to limit the tribunal’s broader impact beyond the primary stakeholders.

Accessibility can mean many different things and usually has both quantitative and qualitative elements. In its most simple form, it means providing access to the physical spaces of the tribunal – allowing the public to observe the tribunal’s proceedings first-hand, providing tours of the facilities, and meeting with various tribunal personnel. Further, the tribunal’s outreach program must provide information (in the form of printed or digital material) in a form that is accessible to its target audiences, providing details about the structure of the tribunal as well as some of its most important activities.⁵² Outreach programs make these materials available in print form as well as digitally (in the few countries that have reliable, high-speed internet access).⁵³ As in many places, much of the tribunal’s local audience is illiterate; it is important that the outreach efforts discuss the tribunal’s activities in audio and video formats.⁵⁴ This can be challenging in places without radio or television. Thus, accessibility includes not only the breadth of access, but also the form of access – the materials must be widely available but also available in a form that is comprehensible to a public that may lack the education.

First, accessibility must be understood longitudinally as well synchronically. Because these institutions serve an important historiographic function,⁵⁵ it is essential that

⁵² *Id.* at 90.

⁵³ See Parmar, *supra* note 32, at 351.

⁵⁴ Fichtelberg, *supra* note 43, at 81.

⁵⁵ DONALD BLOXHAM, GENOCIDE ON TRIAL: WAR CRIMES TRIALS AND THE FORMATION OF HOLOCAUST HISTORY AND MEMORY 17 (2001).

outreach continue after the lifespan of the tribunal itself. Electronic archives and published material, not to mention meetings and mass media projects, must continue for decades after a tribunal has exhausted its operations so that future generations may be able to use the materials for articulating their own collective memory around large-scale conflicts.⁵⁶ *Transitional* justice is a process that takes place across generations and historical conflicts are always subject to legitimate and suspect reinterpretations.

Along with providing material in a way that is accessible, outreach programs must present material in a way that public would perceive as *impartial*. Relying on the literature from Alternative Dispute Resolution (ADR) and Mediation, we can define impartiality as “freedom from favoritism and bias in word, action, and appearance” and includes “including communication (both spoken and unspoken), the way questions are asked and positions and interests are reframed, the use and arrangement of furniture, seating arrangements, and methods to greet the participants as they arrive for the mediation.”⁵⁷ That is to say that the tribunal’s outreach efforts cannot reflect a bias against any particular group or be perceived as reflecting such a bias in the preceding conflicts. This is why it is essential that the outreach program be situated in one of the neutral sections of a tribunal, in most cases the registry. Registry officials have no overt adherence to any particular outcome.⁵⁸

As with accessibility, impartiality is not as simple as it may seem – as different parties to a conflict may view their circumstances in starkly different ways. Since conflicts often are based upon different interpretations of political reality, it is unsurprising that these different interpretations about who is to blame persist after the conflict has concluded. As a

⁵⁶ *Id.* at 223.

⁵⁷ Susan Nauss Exon, *The Effects That Mediator Styles Impose on Neutrality and Impartiality Requirements of Mediation*, 42 U.S.F. L. Rev. 577, 581 (2008).

⁵⁸ See David Tolbert, *Reflections on the ICTY Registry*, 2 J. INT’L CRIM. JUST., 480, 480 (2004).

result, it is very difficult to talk about such conflicts, even in the most general ways, in a fashion that does not alienate or anger one side or another. Actors can contest even the most putatively neutral terms to describe features of a conflict. Further, individuals charged before criminal tribunals are often seen as proxies for the larger groups that they represent and many in the public identify and support these criminal defendants.⁵⁹ All of this means that impartiality as a value cannot be seen as a simple, unbiased attitude, but must reflect a set of deeper outreach practices.

Impartial outreach is often sharply challenged by some criminal defendants during their trials as well as by their supporters in the public sphere.⁶⁰ Such defendants (and their attorneys) have sought to delegitimize the criminal tribunals as such, rather than simply seeking to prove that their defendant is not guilty.⁶¹ By deed and word, they seek to disrupt the trial and prevent it from properly functioning, thereby making a mockery of the hearings.⁶² As Scharf has observed:

Unlike other forms of acceptable political expression, a disruptive defendant or defence lawyer who interferes with the ‘grandeur of court procedure’ (as Hannah Arendt once described the judicial process) threatens the proper administration of criminal justice in several fundamental ways. First, disruptive conduct renders it more difficult for the defendant and any co-defendants to obtain a fair trial. Second, it hampers the court’s ability to facilitate the testimony of victims and other witnesses. Third, it undermines the public’s confidence in and respect for the legal process.⁶³

⁵⁹ Michael P. Scharf, *Chaos in the Courtroom: Controlling Disruptive Defendants and Contumacious Counsel in War Crimes Trials*, 39 CASE W. RES. J. INT’L L., 155, 156 (2007).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 156–57.

⁶³ *Id.* at 157.

Such strategies seek to show that the tribunal itself is illegitimate and therefore any prosecutions that it undertakes do not merit cooperation or public support.⁶⁴ These do not generally work within the courtroom itself, but their ability to disrupt ordinary proceedings can impact on the broader credibility of the tribunal by politicizing it.⁶⁵ This, then creates a unique challenge to impartiality in outreach.

For the outreach program, which is tied to the institution itself and dedicated to supporting its proceedings, to be 'neutral' on the question, would make it neutral on the legitimacy of the tribunal (and therefore, ironically, to the legitimacy of the outreach program).⁶⁶ It is impossible for the outreach program to be neutral on such existential questions, but such issues would remain a challenge for the tribunals. Regardless, outreach programs can, and should, acknowledge the concerns regarding the legitimacy of the tribunals themselves. Rhetorically, it would undermine the legitimacy of the outreach program for outreach efforts to ignore these objections, which undoubtedly have adherents among the public. Nonetheless, outreach cannot be impartial about the tribunal's legitimacy without falling into self-contradiction.

While impartiality is an important value in outreach, it should not be misapplied. Epistemologically, impartiality in outreach does not advocate a "view from nowhere," to use Nagel's ⁶⁷ term. This is both philosophically unsound and is likely to prove unconvincing to stakeholders. However, outreach programs can strive for impartiality in several different ways. Impartiality can be bolstered linguistically by the ever-important terms used to describe the defendants ("the accused," "the alleged leader of the militia," "the organization that called itself") and by perfecting a neutral, even bland tone of voice.⁶⁸ This disposition is what

⁶⁴ *Id.* at 156–57.

⁶⁵ Scharf, *supra* note 59, at 156.

⁶⁶ See Peskin, *supra* note 19, at 953.

⁶⁷ THOMAS NAGEL, *THE VIEW FROM NOWHERE* (1986).

⁶⁸ See Exon, *supra* note 57, at 581.

significantly distinguishes an impartial outreach program from a propaganda tool. One of the key distinctions that distinguishes a legitimate tribunal from a 'show trial' or a purely political legal proceeding is the use of such terms to describe the actors.⁶⁹ To use one formulation of impartiality in such a context:

A sense of impartiality helps underwrite a framework of mutual negotiation and cooperation between and within these different ethical and normative orders, but it too has to emerge and be crafted out of the available practical, normative, institutional and affective materials. But it remains a form of political impartiality, and therefore must be seen to be rooted in politics itself, and not allowed to drift too far from these moorings. Securing the capacities for individuals and groups to express their opposition to existing norms and institutions promotes the conditions in which disagreements over justice can be seen to be handled fairly, and in ways that do not entrench the domination of majorities over minorities (or minorities over majorities).⁷⁰

All of this is to say that impartiality is not the same as neutrality, nor is it a false objectivity. It simply seeks to avoid overtly taking any individual side in a conflict.

One important way that tribunals can bolster their impartiality is by allowing representatives of different sides of a conflict to participate in the outreach programs. Not only does such participation allow for more interactivity (discussed below),⁷¹ but further, these people can help prevent the tribunal from making assumptions that only reflect the views of one side of a conflict. This process can include hiring partisans of different sides of a conflict to work on outreach that explains the tribunal to the public, and includes those

⁶⁹ Fichtelberg, *supra* note 43, at 29.

⁷⁰ DUNCAN IVISON, *POSTCOLONIAL LIBERALISM* 109 (2002).

⁷¹ Pentevolich, *supra* note 1, at 455.

members of the public that were partisans of different sides of a conflict. Since impartiality does not entail ignoring the views of different sides of a conflict or of a trial, it can only gain from allowing representatives of different sides explain the tribunal. Moreover, these actors can help separate contentious issues from uncontroversial ones, allowing the different sides to help preventing the tribunal from inadvertently presenting one-sided perspectives on facts.

International courts are often caught in the middle of complex political situations that have sometimes developed over centuries, and many local political actors have little interest in portraying international institutions as impartial.⁷² It is simply a fact that many partisans of either side will view the tribunals as biased regardless of the whether they operate fairly – there are too many deeply felt political commitments on the part of many actors to change entrenched attitudes on who is to blame in any particular conflict.⁷³ Only those who are open to having their minds changed or who lack a strong opinion on the subject are going to be impressed with an impartial outreach program. While an impartial outreach program can seek to counteract some of these attempts to paint the tribunals as biased ‘witch hunts’ against the members of one side of a conflict, there is not much reason to believe that they can completely shift entrenched public perceptions of a tribunal, much less change the public’s opinions regarding the underlying conflicts that the tribunal is tasked with overcoming.⁷⁴

The final crucial element of effective outreach is *interactivity*. By interactivity I mean a two-way outreach program where various stakeholders are allowed to communicate with the tribunal’s various parties, including the prosecutors, the defense council, the bench, and even the

⁷² Hobbs, *supra* note 4, at 491.

⁷³ Peskin, *supra* note 19, at 953.

⁷⁴ *Id.*

outreach program itself.⁷⁵ Following Peskin, we can say that an effective outreach is an *engaged* outreach – an approach that “moves beyond public relations and information dissemination toward contact and dialogue with Rwandans about the Tribunal's shortcomings as well as achievements.”⁷⁶ Further, the ICC Monitoring and Outreach Programme has argued for an outreach program that is a “participatory dialog.”⁷⁷ To this extent then, interactivity and impartiality are crucial to each other. If the tribunals must craft their outreach programs in ways that are impartial, they must be aware of the different points of views of different stakeholders. This can only be achieved by gathering as much material and insight from stakeholders as possible. If impartiality requires a constant calibration of different points of view, it follows that the outreach program must solicit different points of view as much as possible. Interactivity is essential for effective outreach for several reasons.

Interactivity is essential for effective outreach for several reasons. First, interactivity promotes “buy in” among various stakeholders. That is, when one feels that one is involved in a process, even if that involvement is minimal, it nonetheless allows one to feel a sense of ownership over the tribunal. Second, interactivity allows for the tribunal to craft its proceedings towards the demands of the public: focusing on the issues that they are concerned about in the cases. As Peskin puts it, “These sessions may also help Tribunal officials better understand how the court and the outreach programme are perceived domestically and what steps can be taken to improve the Tribunal’s responsiveness.”⁷⁸ Despite

⁷⁵ See LAWYERS COMMITTEE FOR HUMAN RIGHTS, EFFECTIVE OUTREACH FOR THE INTERNATIONAL CRIMINAL COURT (2004).

⁷⁶ Peskin, *supra* note 19, at 954.

⁷⁷ CLARA RAMIREZ-BARAT, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, GUIDELINES ON DESIGNING AND IMPLEMENTING OUTREACH PROGRAMS FOR TRANSNATIONAL JUSTICE STRATEGIES IN INTERNATIONAL AND HYBRID COURTS 14 (2011).

⁷⁸ Peskin, *supra* note 19, at 955.

the importance of this, many international tribunals suffer from a distance from the local population:

Despite a widespread understanding that it is the poor and disempowered who constitute the majority of victims of conflict, a sustained engagement with such constituencies has not been part of the mainstream practice of transitional justice. Transitional justice processes and the mechanisms through which they work tend to be top-down. They are created by elites – often those involved in the conflict that preceded the transition – and supported by an international community remote from the context and from indigenous understandings of the conflict. In many cases processes of consultation with victims and communities are cursory.⁷⁹

Further, interactivity must lead to changes in the way that the tribunal operates – the tribunal outside of the outreach program must be willing to change its *modus operandi* in response to public input and concern.⁸⁰

One key element of interactive outreach is the recruitment of witnesses to testify in hearings. There are numerous tribunals that use outreach programs to help witnesses and victims of crimes come before the tribunals to testify about their experiences.⁸¹ Victimological literature has consistently shown that empowering victims and witnesses in the criminal justice process enhances a sense of ownership over proceedings and outcomes which can

⁷⁹ It is worth noting, as Robins does, that many of the international justice institutions are responding to the normative demands of the international community as much as they are any domestic call for justice. Simon Robins, *Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal*, 5 INT. J. TRANSITIONAL JUST. 75 (2011).

⁸⁰ This can present an institutional challenge as the outreach programs are often part of the registry, not the prosecutor or judiciary, which means that it has no direct say in how prosecutorial strategy is developed or how the tribunal judges operate. For interactivity to matter to tribunal operations, these other bodies must be open to criticism from the public, most often filtered through the tribunal's outreach operations. See Peskin, *supra* note 19, at 959.

⁸¹ Patricia Wald, *Dealing With Witnesses in War Crime Trials: Lessons from the Yugoslav Tribunal*, 5 YALE HUM. RTS. & DEV. J., 219–21 (2002).

obviously amplify its ability to promote transitional justice.⁸² By giving victims some voice in the operations of a tribunal its legitimacy and effectiveness can be enhanced regardless of whether such interactions have a profound impact on the overall outcome of a single trial.

As with neutrality and accessibility, there are some significant issues to keep in mind when considering the interactive nature of international criminal justice in the hybrid court context.⁸³ Allowing the public a meaningful say in the proceedings of a tribunal can provide a useful tool for promoting the tribunal, it can also lead to a great number of misunderstandings.⁸⁴ Criminal justice in general, and international criminal justice in particular are “elite” discourses that require a great deal of expertise and understanding to properly discharge their duties.⁸⁵ While an outreach program’s relations with the public must be meaningful and truly interactive, its proceedings cannot be dictated by popular anger or resentment.⁸⁶ If one of the goals of criminal justice is to promote the rule of law in places where it was sorely lacking, there is an ever-present danger that too much public input in the tribunal’s proceedings can undermine the tribunal’s impartiality and objectivity.⁸⁷

A further concern about interactivity is that it is likely to lead to unrealistic expectations on the part of criminal victims. In situations of mass atrocity and collective violence, it is likely that there are thousands, if not millions of people who can reasonably claim to be a victim.⁸⁸ Going beyond those

⁸² See generally Nils Christie, *Conflict as Property*, 17 *Brit. J. Criminology*, 1 (1977); See Wald, *supra* note 81, at 219, 238.

⁸³ Olivia Kaguliro Mulerwa, *The Hybrid Court Model and the Legitimacy of International Criminal Justice in Africa*, 40–42 (2013).

⁸⁴ See Peskin, *supra* note 19, at 954.

⁸⁵ Robins, *supra* note 79, at 76.

⁸⁶ Jonathan Doak & David O’Mahony, *The Vengeful Victim? Assessing the Attitudes of Victims Participating in Restorative Youth Conferencing*, 13 *INT. REV. OF VICTIMOLOGY*, 157, 158 (2006).

⁸⁷ *Id.*

⁸⁸ See WORLD HEALTH ORGANIZATION, *WORLD REPORT ON VIOLENCE AND HEALTH* 217–18 (2002).

who are victims, other immediate stakeholders, such as partisans of different sides of a conflict could expand that number significantly further.⁸⁹ Simply put, there are insufficient resources to allow every person to interact with the outreach program in a meaningful way – particularly if that includes actually attending the hearings and interacting with the defendants.⁹⁰ The outreach program interacts with the public, and it must be responsive to public concerns and interests.

Moreover, the precise role of the victim in western criminal justice systems is not unproblematic. Victims have very real interests in the criminal justice process, but they may not necessarily be the best judges of either the guilt or innocence of the defender, much less the appropriate form of punishment for convicted offenders.⁹¹ As Doak and O'Mahony put it, "Emergent international norms dictate that criminal justice ought to be participatory and reparative, but should nonetheless be subject to state oversight, due process and proportionality."⁹² Many principles of criminal punishment are not victim-centric, while many principles of transitional justice are – a tension that can make victim participation and interactivity more generally problematic.⁹³ Further, there is some evidence in the restorative justice literature that many criminal victims have no real desire in many cases to see their abusers punished.⁹⁴ The point here is that the interests of victims in criminal trials can run counter to other goals and other ideals of criminal justice.

Interactivity can also extend beyond the primary stakeholders to include the broader international community. Legal and political experts should have some roles to play in

⁸⁹ RACHEL KERR & JESSICA LINCOLN, LONDON UNIV., DEP'T OF WAR STUDIES, THE SPECIAL COURT FOR SIERRA LEONE-OUTREACH, LEGACY, AND IMPACT 3, 16, 25 (2008).

⁹⁰ *See id.* at 12, 18.

⁹¹ Doak & O'Mahony, *supra* note 86, at 158.

⁹² *Id.* at 173.

⁹³ *See id.* at 159–60.

⁹⁴ Heather Strang & Lawrence W. Sherman, *Repairing the Harm: Victims and Restorative Justice*, 15 UTAH L. REV. 15, 18 (2003).

interacting with the outreach program. To this extent, meetings of experts and conferences (formed alongside academics and NGOs) – these groups have a great deal to offer hybrid tribunals and they would be fools to refuse to allow these groups to play a meaningful role in how the tribunals operate. Such conferences are essential to the fostering of an epistemic community that can help disseminate the legal norms and principles beyond the tribunal itself as well as allow such experts to contribute to the improvement of an operating tribunal. In short, the broad community of international justice professionals is important for improving the functioning of the tribunal and ensuring its broader impact.

IV. OUTREACH AT HYBRID TRIBUNALS

Every hybrid tribunal has incorporated some sort of outreach program, but these programs differ dramatically. One key factor that shaped the different outreach programs was the amount of resources given to the tribunal and how much of this was allocated to outreach.⁹⁵ Those tribunals that had funds for outreach were obviously able to do more to get the message of the tribunal's proceedings out to the various stakeholders.⁹⁶ They can make promotional materials, advertise on radio and television, set up user-friendly websites that can promote aspects of the court to the public, and even hold academic conferences to debate aspects of the court's operations.⁹⁷ Those without such resources were forced to make do with what they had and to collaborate with international NGOs in order to better promote their messages.⁹⁸ Money has been a crucial factor in the ability of

⁹⁵ Schulz, *supra* note 23, at 89–90.

⁹⁶ KERR & LINCOLN, *supra* note 89, at 11–12.

⁹⁷ *Id.*

⁹⁸ Christoph Sperfeldt, *Cambodian Civil Society and the Khmer Rouge Tribunal*, 6 INT. J. OF TRANSITIONAL JUST. 149, 158 (2012).

tribunals to penetrate the consciousness of their target audiences.

A further issue that distinguishes the outreach programs were the differing characters of the countries and their conflicts. Many states where large scale conflicts take place have little experience with a western-style rule of law and so there was naturally a great deal of skepticism about the value of such institutions.⁹⁹ This, along with intranational cultural and linguistic barriers (not to mention a lack of communications and transportation infrastructure), made it extremely challenging to connect with a broad swath of the public.¹⁰⁰ Cambodia is a relatively homogeneous population (approximately 98% Khmer) and Sierra Leone is shot through with ethnic, linguistic, and tribal divisions.¹⁰¹ The Khmer Rouge were largely a spent force at the time of the ECCC's founding.¹⁰² Their leader, the infamous Pol Pot (a.k.a. Saloth Sar) died in ignominy in 1997, over a decade before the first defendant, "Comrade Duch," was prosecuted and the movement had very little remaining support.¹⁰³ On the other hand, Sierra Leone was still quite fractured at the end of the war in 2002, and the first round of indictments came in 2003.¹⁰⁴ While there were some Cambodians who did not appreciate the prosecution of the Khmer Rouge leadership, there were far fewer partisans for its cause than there were for Foday Sankoh and the RUF at the end of the war. In both cases, however the nation's infrastructure had been

⁹⁹ Ramji-Nogales, *supra* note 7, at 3.

¹⁰⁰ KERR & LINCOLN, *supra* note 89 at 15.

¹⁰¹ *Cambodia*, THE WORLD FACTBOOK, CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html> (last visited Oct. 30, 2019); *Sierra Leone*, The World Factbook, CIA, <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/sl.html> (last visited Nov. 1, 2019).

¹⁰² PHUONG PHAM, ET.AL., UNIVERSITY OF CALIFORNIA BERKELEY SCHOOL OF LAW, AFTER THE FIRST TRIAL: A POPULATION BASED SURVEY ON KNOWLEDGE AND PERCEPTION OF JUSTICE AND THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA 9 (2011).

¹⁰³ *See id.* at 11.

¹⁰⁴ NATALIYA PUSHAK & VIVIEN FOSTER, THE WORLD BANK, SIERRA LEONE'S INFRASTRUCTURE: A CONTINENTAL PERSPECTIVE 7 (2011); TOM PERRIELLO & MARIEKE WIERDA, THE INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, THE SPECIAL COURT FOR SIERRA LEONE UNDER SCRUTINY 27 (2006).

demolished by decades of mismanagement and conflict.¹⁰⁵ In short, getting the message out to Sierra Leoneans was much more challenging than it was in Cambodia.

Outreach at the SCSL was described by some supporters as the “Crown Jewel” of the tribunal – though it faced an inauspicious start.¹⁰⁶ Many Sierra Leoneans questioned the need for the tribunal as well as the decision to focus on only the highest profile defenders, as many people who had committed crimes were still in the communities where they had killed, murdered, and robbed.¹⁰⁷ These offenders were overlooked as the SCSL was statutorily limited only to “persons who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law.”¹⁰⁸ Further, the logistical challenges of setting up and staffing the tribunal as well as the horrendous shape of the Sierra Leonean infrastructure meant that there were a great number of challenges to overcome and in such circumstances outreach at times appeared more as a luxury than a necessity.¹⁰⁹ Finally, there were a great number of financial problems in outreach. As Ford has shown in his detailed breakdown of the tribunal, the financial backing for outreach was largely external to the tribunal, originating largely from European sources.¹¹⁰ The initial outreach office was set up by the registrar’s office and the Office of the Prosecutor in August 2002 and continued to operate through its transition to a residual body in 2013.¹¹¹

Despite these early challenges, starting with a “listening tour” in late 2002 (prior to the issuance of indictments), the SCSL was able to engage in certain forms of outreach early in

¹⁰⁵ PUSHAK & FOSTER, *supra* note 104, at 1.

¹⁰⁶ Stuart Ford, *How Special is the Special Court’s Outreach Section?*, in *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW* 513 (Charles Chernor Jalloh ed., 2014).

¹⁰⁷ KERR & LINCOLN, *supra* note 89, at 20.

¹⁰⁸ See Scharf & Kang, *supra* note 19, at 919.

¹⁰⁹ KERR & LINCOLN, *supra* note 89, at 12.

¹¹⁰ See Ford, *supra* note 5, at 510.

¹¹¹ See KERR & LINCOLN, *supra* note 89, at 11.

its operations.¹¹² Initially these efforts were conducted through the Special Court Working Group and later through the Office of the Prosecutor and the Outreach program.¹¹³ (See more on this distinction below). As Kerr & Lincoln describes the activities of the SCSL outreach program, they were involved in a variety of different activities over the course of the Tribunal's operational life:

As well as distributing booklets describing the Court, outreach relies on oral and visual communications such as radio and televised panel discussions and screening of trials, televised weekly summaries of court proceedings, poster campaigns, and theatre. Dedicated programmes are aimed at certain sectors of society, including women, children and disabled people. Outreach conducts 'Training the Trainer' workshops around the country and has developed a training manual resulting in the formation of School Human Rights and Peace Clubs. Children also participate through 'Kids Talking to Kids' radio programmes. Quiz and debating competitions are organised within schools. In addition, 'Accountability Now' clubs have been established.¹¹⁴

All of these activities were part of the program's self-proclaimed goal:

To promote understanding of the SC and respect for human rights and the rule of law in Sierra Leone, to disseminate information and encourage dialogue, to foster two-way communication between the SC and Sierra Leone and to facilitate the participation of all Sierra Leone nationals in the judicial processes of the SC based on equality and mutual respect.¹¹⁵

Accessibility at the SCSL faced several challenges including a largely illiterate population with many different

¹¹² LINCOLN, *supra* note 31, at 85.

¹¹³ *Id.*

¹¹⁴ KERR & LINCOLN, *supra* note 89, at 11.

¹¹⁵ *Id.* at 11.

languages (English, Krio, Mende, and Temne) spoken in different parts of the country.¹¹⁶ Further, Sierra Leone's communications and transportation infrastructure was undeveloped prior to the start of the lengthy civil war, but was decimated by the conflict itself.¹¹⁷ These challenges created a number of difficult hurdles for the SPSC.¹¹⁸ As Lincoln points out, 'The low levels of literacy and education in Sierra Leone meant that Outreach faced a significant challenge in communicating the work of the Court.'¹¹⁹ Various approaches were adopted... to overcome these challenges, such as community discussions and forums, and pictorial descriptions of the work of the court¹²⁰ Among these innovations was the formation of regional outreach offices to have better access to the more remote parts of the country.¹²¹ These challenges were compounded when the tribunal moved to The Hague for the trial of former Liberian president Charles Taylor and the trial created both audio and video summaries for West African audiences and held local screenings in both Sierra Leone and Liberia and the BBC reported on the trials. (There was an attempt to live stream the Taylor proceedings, but it ran into technical difficulties).¹²²

Given the fact that the conflict in Sierra Leone was heavily bound up with ethnic and tribal conflicts, it is perhaps inevitable that many local stakeholders would succumb to intergroup bias when thinking about the tribunal, making impartial outreach particularly difficult.¹²³ There were two different branches in the SCSL's outreach program and these represented a challenge to the tribunal's outreach efforts to

¹¹⁶ *See id.* at 9, 30.

¹¹⁷ PUSHAK & FOSTER, *supra* note 104, at 1.

¹¹⁸ KERR & LINCOLN, *supra* note 89, at 9.

¹¹⁹ LINCOLN, *supra* note 31, at 85.

¹²⁰ *Id.*

¹²¹ KERR & LINCOLN, *supra* note 89, at 11.

¹²² HUMAN RIGHTS WATCH, EVEN A "BIG MAN" MUST FACE JUSTICE: LESSONS FROM THE TRIAL OF CHARLES TAYLOR 41–43 (2012).

¹²³ Ford, *supra* note 5, at 444–45.

promote itself as an impartial entity.¹²⁴ On one hand, outreach was run out of the prosecutor's office and the first prosecutor, the American David Crane conducted a 'listening tour' around the country, engaging with the local population as a prosecutor – an actor with an obvious interest in a particular outcome.¹²⁵ Crane's prosecutorial outreach, coupled with his somewhat flamboyant personality (and the fact that he was a US military veteran) undoubtedly furthered the challenge of presenting the tribunal as an impartial body.¹²⁶ This problem was remedied in 2003 when outreach was moved from the Office of the Prosecutor and placed under the authority of the Registry.¹²⁷ Nonetheless, as Kerr and Lincoln point out, the public sphere in Sierra Leone, such as it is, provides few reliable sources of information and the tribunal faced withering criticism in the press.¹²⁸ "Coverage in the domestic news media has been largely hostile, regularly making allegations of unfair trials and ill treatment of detainees," a problem which was only exaggerated when a high-profile defendant, Sam Hinga Norman (the pro-government militia leader) died under somewhat mysterious circumstances in February 2007.¹²⁹ In short, there is little evidence that, despite its efforts, the tribunal's outreach was seen as impartial by much of the Sierra Leonean public and was therefore able to promote the image of the tribunal as a fair and impartial body.

Interactivity was also limited by the logistical and financial challenges faced by the SCSL. Very few people in the country could make the trek to Freetown to see the tribunal in operation, much less participate in the outreach program's activities a problem that was compounded when the Taylor trial was moved to The Hague.¹³⁰ One of the key sources of

¹²⁴ See LINCOLN, *supra* note 31, at 85.

¹²⁵ KERR & LINCOLN, *supra* note 89, at 11.

¹²⁶ LINCOLN, *supra* note 31, at 85.

¹²⁷ *Id.*

¹²⁸ See KERR & LINCOLN, *supra* note 89, at 16–17.

¹²⁹ *Id.* at 5, 17, 22.

¹³⁰ See *id.* at 22, 23.

information, radio, did provide some opportunities for the broader Sierra Leonean public to interact with the outreach efforts, as the office sponsored radio shows that allowed individuals to call into the station to express their views, including a “kids talking to kids” program aimed at Sierra Leonean Youth.¹³¹ They did hold a Victim’s Commemoration Conference in 2004 where survivors of the conflict could interact with the tribunal and make suggestions for improving its operations.¹³² Further, the eventual transition to an all Sierra Leonean outreach program clearly assisted in the ability of average Sierra Leoneans to understand and follow the proceedings, as such agents were better able to communicate with average Sierra Leoneans.¹³³

As with the SCSL, the ECCC’s outreach efforts are two-fold, though the division of labor is divided in a different fashion in Cambodia than it was in Sierra Leone.¹³⁴ Interfacing with the public is the charge of both the Public Affairs Section (PAS) and the Victim Support Services (VSS), though each does so differently.¹³⁵ The PAS describes itself as “the external face of the ECCC and works to support and coordinate the public representation of all Organs of the ECCC,”¹³⁶ while the VSS has a much more limited mandate: aiding victims who wish to participate in the proceedings as civil plaintiffs.¹³⁷ Further, NGOs played a support role for these official organizations, particularly at the beginning when the tribunal did not prioritize outreach efforts.¹³⁸

¹³¹ *Id.* at 11.

¹³² Ford, *supra* note 5, at 509.

¹³³ KERR & LINCOLN, *supra* note 89, at 21.

¹³⁴ *Introduction to the ECCC*, EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (2019), <https://www.eccc.gov.kh/en/introduction-eccc>.

¹³⁵ *Public Affairs Section*, EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (2019), <https://www.eccc.gov.kh/en/public-affairs-section>; *Victim Support Section*, EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA, (2019), <https://www.eccc.gov.kh/en/victims-support-section>.

¹³⁶ *supra* note 135.

¹³⁷ *Victim Support Section*, EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA (2019), <https://www.eccc.gov.kh/en/victims-support-section>.

¹³⁸ Sperfeldt, *supra* note 98, at 150–51.

During the ECCC's signature trial, the court, Case 001, the court focused its efforts on "organizing public visits, live video feeds, assisting in production of weekly TV shows, uploading transcripts of the daily proceedings on the ECCC website, and holding weekly press briefings."¹³⁹

Accessibility at the ECCC has been plagued by a number of different problems over the last several years and the tribunal's status has been hurt by this.¹⁴⁰ As with Sierra Leone, Cambodia is a largely rural society and few Cambodians have access to a television or a radio, much less a newspaper or the internet.¹⁴¹ To compound matters, the PAS was not considered a high priority for the court and so it did not receive the attention and support that other aspects of the tribunal did.¹⁴² Much of this slack was initially taken up by NGOs, but there was a lack of coordination between the PAS and Cambodian civil society NGOs, which hindered its ability to project a consistent message regarding the tribunal.¹⁴³ While the PAS and VSS had important roles to play in the tribunal, much of the outreach was left to the various NGOs such as the Documentation Center for Cambodia (DC-Cam) and the Khmer Institute of Democracy (KID) which held a series of public workshops on the tribunal.¹⁴⁴ In 2009, there was an additional influx of funding which allowed the ECCC to improve its own outreach programs.¹⁴⁵

Impartiality at the ECCC has had different problems than those faced in Sierra Leone.¹⁴⁶ The tribunal itself has

¹³⁹ CLARA RAMIREZ-BARAT & MAYA KARWANDE, INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, OUTREACH STRATEGIES IN INTERNATIONAL AND HYBRID COURTS 9 (2010).

¹⁴⁰ *Id.* at 5.

¹⁴¹ CIA WORLDFACT BOOK, *supra* note 101.

¹⁴² Sperfeldt, *supra* note 138, at 158.

¹⁴³ *Id.* at 152–53.

¹⁴⁴ Cristoph Sperfeldt, *The Role of Cambodian Civil Society in the Victim Participation Scheme of the Extraordinary Chambers in the Courts of Cambodia*, in VICTIMS OF INTERNATIONAL CRIMES: AN INTERDISCIPLINARY DISCOURSE 345, 349 (Thorsten Bonacker & Cristoph Saffering eds., 2013).

¹⁴⁵ Sperfeldt, *supra* note 98, at 156.

¹⁴⁶ Carolyn Kenney & John Norris, *International Justice on Trial? Taking Stock of International Justice Over the Past Quarter Century*, CENTER FOR AMERICAN PROGRESS,

not suffered from a lack of legitimacy because of a perception that it is partial to one side in the Cambodian conflict.¹⁴⁷ Rather, it has struggled to free itself of political interference from the existing government and the perception that the tribunal's Cambodian personnel have done the bidding of Cambodian president Hun Sen.¹⁴⁸ As a report to the Secretary General stated, the tribunal faced “suspicions of governmental interference in the judicial process and allegations of corruption” which required outreach to remedy.¹⁴⁹ As another report put it:

Because so many government personnel had ties with the Pol Pot regime, it is not unreasonable to believe that the Cambodian government has a strong interest in the ECCC investigations and the outcome of the trials. It is likely that facts could surface that could prove embarrassing to such individuals or their friends.¹⁵⁰

A further complaint was that the defendants, high profile Khmer Rouge leaders, did not deserve due process.¹⁵¹ As one Cambodian put it, “If everyone knows they are guilty, why do you need to have a trial?”¹⁵²

Given this challenge, the ECCC's outreach program initially struggled to communicate to the public in an

(Mar. 28, 2018),

<https://www.americanprogress.org/issues/security/reports/2018/03/28/448415/international-justice-trial/>.

¹⁴⁷ *Special Tribunal for Cambodia*, GLOBAL POLICY FORUM, <https://www.globalpolicy.org/international-justice/international-criminal-tribunals-and-special-courts/special-tribunal-for-cambodia.html> (last visited Oct. 24, 2019).

¹⁴⁸ Robert Carmichael, *Khmer Rouge Tribunal Judge Resigns Citing Political Interference*, GLOBAL POLICY FORUM (Oct. 11, 2011), <https://www.globalpolicy.org/component/content/article/163-general/50830-khmer-rouge-tribunal-judge-resigns-citing-political-interference.html>.

¹⁴⁹ U.N. Secretary-General, *Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms*, ¶ 11, U.N. Doc. A/62/304 (Aug. 27, 2007).

¹⁵⁰ CHRISTOPHER DEARING, AN ANALYSIS OF CORRUPTION, BIAS, AND THE HIGH PRESUMPTION OF IMPARTIALITY IN THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA 6 (2010).

¹⁵¹ See RAMÍREZ-BARAT & KARWANDE, *supra* 139, at 6.

¹⁵² *Id.*

impartial fashion.¹⁵³ This problem was only compounded after a series of high profile resignations among the international staffing of the tribunal, some of whom left in disgust at political interference from the Cambodian government.¹⁵⁴ The tribunal has crafted an impartial message and has had limited success in convincing the Cambodian people that the tribunal is not at the mercy of the Cambodian government.¹⁵⁵ While NGOs have been interested in helping the PAS reach out to the Cambodian public about the tribunal, they have not been hesitant to criticize the court when they believed its personnel have succumbed to the imperatives of politics, which, ironically could be seen to undermine the tribunal (though perhaps rightly so).¹⁵⁶ The Open Society Foundation reported in 2014 that support for the tribunal diminished over time due to a lack of access to the tribunal's proceedings as well as political meddling from the Cambodian government and revelations of corruption within the Cambodian side of the tribunal.¹⁵⁷

The interactivity of the PAS is conducted largely through the civil society groups who work with the tribunal to get the message out about the tribunal.¹⁵⁸ As Sperfeldt points out, there have been a number of missed opportunities for the PAS to interact with civil society groups in a way that would make their message better suited to the Cambodian and international public:

The absence of a joint outreach strategy developed by the ECCC and civil society has been a challenge to developing consistent messages about the scope of the Court's mandate. This in turn has added difficulty to the complex task of ensuring a proper understanding

¹⁵³ See OPEN SOCIETY JUSTICE INITIATIVE, PERFORMANCE AND PERCEPTION; THE IMPACT OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA 52 (Open Society Foundations, 2016).

¹⁵⁴ Kenney & Norris, *supra* note 146, at 28.

¹⁵⁵ OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 153, at 12.

¹⁵⁶ Kenney & Norris, *supra* note 146, at 27–28.

¹⁵⁷ Press Release, Jonathan Birchall, Open Society Justice Initiative, Khmer Rouge Tribunal Urged to Step Up Outreach (Mar. 10, 2014).

¹⁵⁸ *Public Affairs Section*, *supra* note 136.

about the role and the limitations of the ECCC among the public and survivors and managing their expectations.¹⁵⁹

It was not until 2010 that coordination between the PAS and civil society groups began in earnest, which represented a significant loss of the ECCC outreach program's interactivity.¹⁶⁰

While the PAS has struggled to interact with the public beyond interested civil society groups and international NGOs, the tribunals VSS program deserves high marks for promoting the tribunal's interactivity.¹⁶¹ Unlike the SCSL, the ECCC's allows individuals to participate in the tribunals proceedings by entering civil complaints against the defendants.¹⁶² This has allowed victims an unprecedented role in shaping the operations of the tribunal.¹⁶³ Operating under the title "Cambodian Human Rights Action Committee" several NGOs aided the VSS in finding and signing up civil parties, who were then allowed to participate in the trials – a total of 90 were allowed to participate in the actual proceedings, providing at times moving testimony about the impact of Duch and the larger Khmer Rouge government on their lives.¹⁶⁴ Though these plaintiffs could not expect to receive any material benefit for their injuries, as none of the defendants before the court have a fraction of what would be necessary to compensate even a single victim of the Khmer Rouge, the participation of these civil plaintiffs was very important for the public relations of the tribunal.¹⁶⁵ Further research suggests that such participants had a more positive feeling towards the tribunal than before their

¹⁵⁹ Sperfeldt, *supra* note 98, at 152–53.

¹⁶⁰ *Id.* at 153.

¹⁶¹ *Id.* at 158.

¹⁶² Fichtelberg, *supra* note 43, at 80.

¹⁶³ *See generally* Sperfeldt, *supra* note 98, at 151, 160.

¹⁶⁴ Fichtelberg, *supra* note 43, at 82, 121.

¹⁶⁵ *Id.* at 121.

experience.¹⁶⁶ By allowing these victims to participate in the hearings, the VSS allows at least some stakeholders to engage with the tribunal, which in turn helps promote its legitimacy as an institution of transitional justice.¹⁶⁷

Measuring the effectiveness of a tribunal is a difficult project and determining whether or not the outreach programs at the SCSL or ECCC have promoted the tribunals and allowed their proceedings to make a meaningful contribution to transitional justice is even more difficult to measure. Some empirical evidence suggests that the tribunals have penetrated the Cambodian and Sierra Leonean consciousness.¹⁶⁸ In their study of the ECCC, the Human Rights Center found an increasingly level of awareness of and support for the tribunal's proceedings.¹⁶⁹ On the other hand Sesay argues that, "With its limited funding and its mainly Sierra Leonean staff, the outreach section of the SCSL has done more than its predecessors – the ICTY and ICTR – to disseminate information and maintain awareness about the proceedings of the Court," but concedes that "much more could have been done."¹⁷⁰ Similarly, Ford's analysis of empirical data of the SCSL outreach program gives it a mixed review, arguing that its contribution to the rule of law in Sierra Leone was, to the extent that it is measurable, weak.¹⁷¹ While there was nearly universal awareness of the SCSL among Sierra Leoneans, "that probably cannot be attributed to the work of the Outreach Section."¹⁷² Given the financial, logistical, and political challenges facing the SCSL, however, it is surprising that they accomplished anything at all.

¹⁶⁶ Phuong N. Pham et al., *Victim Participation and the Trial of Duch at the Extraordinary Chambers in the Courts of Cambodia*, 3 A.J. HUM. RTS. PRAC., 264, 283 (2011).

¹⁶⁷ *Id.* at 275–77.

¹⁶⁸ *See generally* PHOUNG PHAM, ET AL., AFTER THE FIRST TRIAL: A POPULATION-BASED SURVEY ON KNOWLEDGE AND PERCEPTION OF JUSTICE AND THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA 3, 29 (2011).

¹⁶⁹ *Id.* at 5.

¹⁷⁰ ALPHA SEESAY, SUCCESSES AND FAILURES OF THE SPECIAL COURT ON SIERRA LEONE'S OUTREACH PROGRAMME 7 (Osisa Mar. 12, 2012).

¹⁷¹ STUART FORD, HOW SPECIAL IS THE COURT'S OUTREACH SECTION? 25 (2012).

¹⁷² *Id.* at 27.

CONCLUSION: OUTREACH AND EFFECTIVENESS

The point of this paper has been to argue that the effectiveness of a tribunal is closely tied to its ability to reach a broader public outside of the courtroom. However, this outreach must be structured in specific ways with the three values of accessibility, impartiality, and interactivity guiding its operations and messaging. Most scholars have focused on the question of whether outreach is necessary for transitional justice or criticized the international institutions for failing to engage in outreach in a timely and effective way. Here I have argued that the nature of the outreach is in many ways important for understanding whether outreach will be effective. Even timely outreach will not be effective if it is not constructed properly.

Of course, underlying all these values is the matter of *resources*. All the tribunals have struggled with funding issues of some kind or another – most of the countries that have had such tribunals are poor and have had to rely on the generosity of wealthier states or the United Nations to operate. In other cases, critics have charged that the tribunals are beholden to their financial backers. To develop an effective outreach program requires funds for the crafting and distribution of materials as well as salaries for competent communications personnel.

The goal of outreach is not simply to inform the domestic and international public about the workings of the tribunal, its trials, or its findings. Rather, it is to change public perceptions of the tribunal to change public perceptions of conflict. Public attitudes towards conflicts are often heavily entrenched and difficult to dislodge – partisans of all sides have a great deal of personal stake in adhering to a narrative of events that is flattering to them. As Ford has effectively

shown, there are deep psycho-social incentives for observers to avoid unpleasant revelations that international tribunals can bring forth.¹⁷³ By changing narratives and framing these conflicts in a way that thwarts these incentives, tribunals can change public perceptions and thereby help promote transitional justice. Hybrid tribunals, because of their unique construction and the use of domestic personnel are in a unique position to do this, but they can only do it if they effectively engage with the public through an accessible, impartial, and interactive outreach program.

¹⁷³ Ford, *supra* note 5, at 427.