

**Failure to Engage:  
Outreach at the Bosnian War Crimes Chamber**

**An honors thesis for the Department of Peace and Justice Studies**

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## ABSTRACT

Outreach is necessary to form an institutional link between war crime prosecutions and larger processes of societal reconstruction in a post-conflict society. Originally conceived at the International Criminal Tribunal for the former Yugoslavia (ICTY), ‘outreach’ was a response to lack of public knowledge and misinformation about the tribunal’s work in the former Yugoslavia. Outreach has since been expanded to include not only provision of information, but facilitating a “two-way communication” of engagement between the court and the public. In this thesis I focus on outreach at the War Crimes Chamber in Bosnia-Herzegovina (WCC). The WCC was established in 2003 to prosecute war crimes committed during the conflict in Bosnia from 1992-1995. A ‘hybrid’ court located in Sarajevo the WCC has a mixed international- national composition. Included in the establishment of the War Crimes Chamber was a Public Information and Outreach Section. This section was intended to foster a two-way communication between the court and the people of Bosnia-Herzegovina through a variety of outreach strategies. However, I find that the Outreach Section has not succeeded in engaging the public. Informed by analysis of the origin of outreach at the ICTY, theoretical models of outreach, and the implementation of outreach strategies at hybrid courts in East-Timor, Sierra Leone, and Cambodia, I identify the factors that have inhibited the implementation of outreach at the WCC. These factors are a lack of institutional commitment and the failure of the outreach program to develop a detailed and coherent strategy. After identifying these factors I recommend actions that could improve outreach at the WCC. In conclusion I expand my analysis to identify factors that should be considered in designing outreach strategies for future hybrid courts.

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## I. Introduction

Believe me that I am telling you what I feel because I was here during the war and I survived with my family . . . And I am telling you now as a human that people responsible, accountable and guilty for all those crimes should be held accountable for those crimes, because people need that.<sup>1</sup>

- Bosnian Muslim judge

War in the Balkans came to an end in 1995 with the negotiation of the Dayton Peace Accords. As the international community stood by, three years of genocidal warfare, rapes, crimes against humanity, and “ethnic cleansing” had engulfed the region. With the signing of the peace agreement, survivors began thinking about collecting the fragments of their lives, rebuilding their shattered homes, and reconstructing an existence.

Looming over the transition from war to peace is the issue of accountability. How can those who committed unspeakable acts of violence be held responsible? Most importantly, how can justice be made relevant to the victims of mass atrocity and in this context what does justice even mean?

A variety of processes exist to ensure accountability and can be implemented in post-conflict societies. In other countries, truth commissions, institutional reform, trials, and reparations have been initiated, all with the goal of justice. In the Balkans, accountability efforts are defined by criminal prosecutions. Before the conflict was over, the United Nations Security Council created the International Criminal Tribunal for the

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<sup>1</sup>Human Rights Center and the International Human Rights Law Clinic, University of California, Berkeley and Centre for Human Rights University of Sarajevo. *Justice, Accountability, and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors*, (May 2000), 25.

Former Yugoslavia (ICTY) to prosecute war criminals in the region. An unprecedented international institution, the ICTY was established in 1993 as an *ad hoc* tribunal in The Hague. Ten years later the process of accountability continued and a separate court was established to complement the work of the ICTY. The War Crimes Chamber was established as a permanent domestic institution within the State Court of BiH. Located in Sarajevo and operating under Bosnian law, the court was established to handle cases regarding crimes committed in Bosnia during the conflict. The WCC is a “hybrid court,” meaning it includes Bosnian and international judges, prosecutors, and staff. International presence at the WCC is temporary and is being phased out over a period of years. After the phase-out in 2009, the WCC will be a completely Bosnian institution with an unlimited mandate to prosecute war crimes.

The transitional context of Bosnia-Herzegovina affects the goals of post-conflict accountability processes. At both the ICTY and War Crimes Chamber the trials are not simply a legal exercise, but processes that are intended to have social and political consequences. This expectation is explicitly stated in the mandate of the ICTY, which states the tribunal was created to “contribute to peace and security” in the former Yugoslavia. Judge Antonio Cassese, an Italian jurist and first president of the ICTY explains how this relationship is thought to work:

Trials establish individual responsibility over collective assignments of guilt, i.e., they establish that not all Germans were responsible for the Holocaust, nor all Turks for the Armenian genocide, nor all Serbs, Muslims, Croats of Hutus, but individual perpetrators-although, of course, there may be a greater number of perpetrators; justice dissipates the call for revenge, because when the Court metes out to the perpetrator his just deserts, then the victims’ call for retribution are met; by dint of dispensation of justice, victims are prepared to be reconciled with their erstwhile tormentors, because they know that the

latter have now paid for their crimes, a fully reliable record is established of atrocities so that future generations can remember and be made fully cognizant of what happened.<sup>2</sup>  
- Antonio Cassese, ICTY Judge and first president of the ICTY

Furthermore, many thought the trials would have a healing effect on victims. Over the next few years the “healing effect” was often noted by international diplomats, legal scholars, and in statements from the ICTY.

In 1999, five years after the tribunal’s establishment, the ICTY was confronted with the reality of the situation on the ground. For many people in the Balkans the tribunal has little or no relevance to their lives. As one Bosnian Serb noted, “The future of the people in this area is not dependent upon the ICTY. The ICTY is not significant for the life of those people here.”<sup>3</sup>

Outreach was first conceived to address the problem of the court’s irrelevance to the war’s survivors. Despite the expectation that the ICTY would have an effect on social and political processes of reconstruction in the Balkans, the mechanics of how this influence was to be realized had not been addressed. The tribunal had made no effort to develop institutional ties with the social and political processes in the region.<sup>4</sup> The Outreach Programme was created to make international justice in The Hague relevant to the process of rebuilding societies in the Balkans.<sup>5</sup> The Programme is “dedicated to

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<sup>2</sup>Stover, Eric and Harvey Weinstein.” Introduction: conflict, justice and reclamation.” In *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, ed. Eric Stover and Harvey Weinstein, New York: Cambridge University Press, 2004, 4.

<sup>3</sup>Human Rights Center and the International Human Rights Law Clinic, University of California, Berkeley and Centre for Human Rights University of Sarajevo. *Justice, Accountability, and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors* (May 2000), 30.

<sup>4</sup>Fletcher, Laurel and Harvey Weinstein.” A world unto itself? The application of international justice in the former Yugoslavia.” In *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity*, 28-40.

<sup>5</sup>Vohrah, Lal and John Cina, “ The Outreach Program,” In *Essays on ICTY Procedure and Evidence in Honour of Gabrielle Kirk McDonald*, eds May et al. The Hague: Kluwer Law International, 2001.

explaining its [ICTY] work and addressing the effects of misperceptions and misinformation.”<sup>6</sup> Furthermore, the Programme “intended to engage local legal communities and non-governmental organizations, victims’ associations and educational institutions.”<sup>7</sup>

An outreach program can ensure trials are not operating in isolation from the population. With accurate information and knowledge of the available forms of participation, a population can be empowered to form opinions regarding how the trials fit into the larger process of reconstruction. Outreach is not intended to ensure the population is necessarily supportive of the tribunal. Nor should outreach be conceived as a public relations campaign. Rather, outreach is the institutional link necessary to allow for the potential impact of trials on the social and political processes of reconstruction.

It is my goal in this thesis to identify outreach strategies, factors that have undermined their impact in the past, and what can be done to make it more successful in the future. The underlying assumption is that war crime prosecutions can and should have an impact on the social and political processes of society in transition. Outreach is critical for the goals of the criminal trials to be realized.

My focus is the War Crimes Chamber in Bosnia and Herzegovina (WCC). A hybrid court, the War Crimes Chamber is located in Sarajevo and has a mixed composition of international and national judges, prosecutors and staff. The hybrid court structure was developed in part because of the limitations of the international tribunal model. The distant location and lack of national participation at the ICTY restricted the

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<sup>6</sup>United Nations Secretary General. *1999 Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991* (August 23<sup>rd</sup>, 1999) U.N. Document S/1999/846, para 150.

<sup>7</sup>Ibid.



impact the tribunal could have on the domestic situation regarding the development of legal institutions. Furthermore, the hybrid court structure was thought to facilitate the social and political goals of war crime prosecutions. It was also seen as an opportunity to help the society rebuild trust in the functioning of the judicial institutions.

Outreach was included in the original statute of the WCC. However, despite the existence of a “Public Information and Outreach Section,” the WCC has faced problems regarding public knowledge, participation, and support. It is clear from the experience of the WCC that recognizing the need for outreach is not enough to ensure it will be successful. The strategies employed and implementation of programs is central to making prosecutions relevant to affected populations. The WCC has failed to develop and implement coherent strategies of outreach. It is my intention in this thesis to examine why this happened. In order to do so I analyze WCC strategies of outreach, identify factors that have inhibited effective implementation, and suggest recommendations for improvement of the WCC outreach program.

Through this research process I have used many primary and secondary sources. A significant amount of information has come from directly from the ICTY, WCC, and other courts studied through their outreach material, press releases, and publications. In addition I draw upon personal interviews conducted with media representatives, WCC prosecutors/judges, and WCC outreach staff in the winter and summer of 2007 in Sarajevo, some of which have been updated in March 2009. Because these interviews are somewhat dated, I have only used them as they relate to general trends in the development outreach at the WCC and acknowledge they are not relevant to the current situation.

In order to understand the context of the outreach at WCC, Chapter I will provide a short history of the conflict in the Balkans. Chapter II will examine the origin and development of the ICTY outreach program. Chapter III will present two theoretical models of outreach and argue for an ‘engagement’ model of outreach. Chapter IV will analyze and compare outreach strategies of the hybrid courts in Timor-Leste, Cambodia, and Sierra Leone in order to identify the components of a successful outreach program and the major failures of outreach programs to date.

Next I will examine the case study of the WCC in BiH. Chapter V will provide background on the establishment, structure, and operations of the WCC and how these factors affect outreach. Chapter VI will document and analyze the activities of the Public Information and Outreach Program at the WCC. Chapter VII will identify the factors inhibiting the effective implementation of outreach at the WCC and provide recommendations for improvement.

The structure of a hybrid court facilitates effective implementation of outreach. Despite this advantage, the impact of outreach has not been realized at the WCC and other hybrid courts. In conclusion I identify general themes that have affected the implementation of outreach in hybrid courts. By identifying these elements, existing and future hybrid courts can recognize these themes when developing and implementing outreach strategies and avoid the outreach pitfalls of the previous hybrid courts.

## II. History of the Conflict in Bosnia-Herzegovina

### Roots of Conflict

Bosnia has a unique cultural and political history developed through hundreds of years of overlapping influences of the Ottoman and Austro-Hungarian Empires. Within the Balkans, Bosnia is the most ethnically diverse state, with a pre-war self-identified composition of 31.4% Serb, 17.3% Croat, and 43.7% Bosniak (Bosnian Muslim), and 5.5% Yugoslav.<sup>8</sup> For hundreds of years these groups have lived together peacefully, with occasional outbreaks of violence usually rooted in economic issues or outside military intervention.<sup>9</sup>

When attempting to understand the violence that overtook Bosnia in 1992, many fall back on a comfortable narrative of “ancient ethnic hatred.” The explanation given is that the people of the Balkans are predisposed to war and although abhorrent, brutal war is simply a fulfillment of destiny. Following this narrative, the break up of the former Yugoslavia is attributed to the death of Josip Tito, the authoritarian socialist leader that ruled the region from 1945- 1980. According to this theory, without the discipline of Tito’s regime, ethnic hatreds erupted and the region was ripe for conflict.<sup>10</sup>

In reality, the rise of nationalist party leaders was not simply the outgrowth of ancient hatred. However, the nationalism that developed was in part reflective of a

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<sup>8</sup>Rogel, Carole. *The Breakup of Yugoslavia and the War in Bosnia*. Westport: Greenwood P Guides to Historical Events of the Twentieth Century, 1998, 29.

<sup>9</sup>Malcolm, Noel. *Bosnia: A Short History*. New York: New York University Press, 1994: xx.

<sup>10</sup>*Ibid.*, xx.

tradition of ethnically exclusive parties and communities growing up side by side with somewhat separate cultural identities. Collective perception of historical events is a key difference between groups. For example, Serbs view the Ottoman period as occupation, while for Muslims it was a time of development and prosperity.<sup>11</sup> Extreme nationalist leaders took advantage of these historical perceptions and manipulated facts to sculpt ethnic identity.<sup>12</sup>

Nationalist identities began developing while Tito was still in power, but leaders did not become influential until the late 1980s.<sup>13</sup> Serb nationalism developed under the powerful leadership of Slobodan Milosevic. Ruthless and power seeking, Milosevic began building support around the idea of a “Greater Serbia,” in which all Serbs throughout the Balkans were united into one nation.

## **The War in Bosnia**

In 1991 Croatia declared independence. Soon after, violence began in the Krajina, a predominantly Serb area of Croatia. Local Serb paramilitaries aided by the Yugoslav’s Peoples Army (JNA), which was now under Serb control, began the forced evacuation of Croats in the region.<sup>14</sup> In 1992 attempts at maintaining a unified Yugoslav state proved untenable and Bosnia-Herzegovina also declared independence. Serbs responded by moving into Bosnia to take control of Bosnian Serb areas, considered a crucial land link in the creation of a unified Serbian state.<sup>15</sup>

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<sup>11</sup>Silber, Laura and Alan Little. *Yugoslavia: Death of a Nation*. New York: Penguin Books, 1995, 209.

<sup>12</sup>Malcolm. *Short History*, xxi.

<sup>13</sup>Ibid.,198-212.

<sup>14</sup>Silber and Little., *Death of a Nation*,171-172.

<sup>15</sup>Ibid.,203.

At the outbreak of war, Bosniaks were woefully unprepared to defend themselves. Serbs had control over the existing resources of entire JNA army, while the Bosniaks had almost nothing and would not be able to access arms because of the 1991 U.N. Arms Embargo.<sup>16</sup> Initially an alliance developed between the Croats and the Bosniaks, but it dissolved in 1992. Nationalist Croatian leader, Franco Tudjman, had similar territorial ambitions for a ‘Greater Croatia,’ and in 1992 the Croatian army also began attacks on Bosniaks in southern Bosnia. Unarmed and locked between enemies, Bosniaks were left to appeal to the international community for help.

## Violence

I am also at a loss. I had the key to my next-door neighbor’s [house] who is a Serb and he had my key. That is how we looked after each other. We visited each other for holidays. My best man at my wedding was a Serb. We were friends and he was the same one who threatened us. It is explicable what happened to those people. It was some kind of madness. I mean one did not know whom to trust any more and I do not have a word of explanation for that.<sup>17</sup>

– Hambo Kahrmanovic, witness at the ICTY

Hambo Kahrmanovic was responding to a question posed by ICTY Judge Gabrielle Kirk McDonald as to how the atrocities that occurred in Bosnia could happen in a society that was so intermingled. Hambo’s response reveals the confusion of many Bosnians, Serbs, and Croats. In reality, it was nationalists from outside that often worked with the few local radicals to divide communities. Through the spread of misinformation and fear by nationalist Serb paramilitary groups, local Serbs were convinced they were in serious danger. For example, one Serb woman had been told her town, Foča, was

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<sup>16</sup>Power, Samantha. *A Problem from Hell: America and the Age of Genocide*. New York: Harper Perennial, 2003, 249.

<sup>17</sup>Neuffer, Elizabeth. *The Key to My Neighbor’s House: Seeking Justice in Bosnia and Rwanda*. New York: Picador, 2001, 185.

intended to be the Mecca and the jihadists had lists of Serbs to be marked for death. She explained her fear: “My two sons were down on the list to be slaughtered like pigs. I was listed for rape.”<sup>18</sup> Supported by local media and politicians, Serb political leaders were able to frame the war as a fight for survival rather than a land grab.<sup>19</sup> The majority of Serbs were kept unaware, or fed propaganda that justified their knowledge, of the massive deportation, killing, rape, and torture of non-Serbs that would characterize the war in Bosnia.

### ***Siege of Sarajevo***

“We were there because we thought there was still time to change people’s minds, to save Sarajevo and Bosnia as a place where Muslims, Serbs and Croats could live together as they had for 500 years.”

- Samir Koric, demonstrator in a march for the “National Salvation Committee”<sup>20</sup>

In April 1992 thousands of Sarajevo citizens marched through the city to protest the escalating ethnic tensions. As they crossed a bridge, Serb paramilitaries began shooting. A month later Sarajevo was under a Serb blockade, utilities were cut, and access to food and medicine denied. The city became dependent on U.N. humanitarian airlifts through the Sarajevo airport. Positioned in the surrounding hills, Serb paramilitaries would attack the city with artillery, mortars, sniper rifles, and anti-aircraft guns. Daily routine in Sarajevo became life threatening, as attacks were indiscriminate. The siege would last until February 1996 and become the longest siege in the history of modern warfare.<sup>21</sup>

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<sup>18</sup>Malcolm Short *History*, 237.

<sup>19</sup>Silber and Little, *Death of a Nation*, 263.

<sup>20</sup>Ibid., 227.

<sup>21</sup>*British Broadcasting Corporation*, “1996: Siege of Sarajevo is lifted,” BBC On this day. [http://news.bbc.co.uk/onthisday/hi/dates/stories/february/29/newsid\\_4667000/4667292.stm](http://news.bbc.co.uk/onthisday/hi/dates/stories/february/29/newsid_4667000/4667292.stm).

## ***Ethnic Cleansing***

“ They [refugees] were not the tragic by-product of a civil war; their expulsion was the whole point of the war.”<sup>22</sup>

- Alan Little and Laura Silber in *Yugoslavia: Death of a Nation*

A tactic revealed first in the Serb take over of the Krajina, the term “ethnic cleansing” was euphemistically used to describe the Serb strategy of forcing non-Serbs to leave their homes, often under machine gun fire and accompanied by vicious campaigns of murder and rape.<sup>23</sup> This tactic characterized the war in Bosnia, as masses of non-Serbs were forced to leave in order to create and unify ethnically pure Serb areas. The goal of the ‘cleansing’ was to ensure the Bosniaks and Croats would leave and never return. Local leaders were often targeted and heinous acts of rape, murder, and torture were carried out with the intention of destroying the community.<sup>24</sup> By the end of 1992 almost two million Bosnians, about half the population, had lost their homes.<sup>25</sup>

## ***Detention Camps***

The men are at various stages of human decay and affliction; the bones of their elbows and wrists protrude like pieces of jagged stone from the pencil thin stalks to which their arms have been reduced... There is nothing quite like the sight of the prisoner desperate to talk and to convey some terrible truth that is so near yet so far, but dares not.

- Ed Vulliamy, reporter, *Seasons of Hell*<sup>26</sup>

First revealed in 1992, images of emaciated Bosnian prisoners shocked the world. During the war, several thousand Muslims and Croats were forced from their homes and held in detention camps. Inhumane living conditions, murder, torture, rape, and beatings were commonplace in these camps. The four largest detention camps, Trnopolje,

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<sup>22</sup>Silber and Little, *Death of a Nation*, 244.

<sup>23</sup>Power, *Problem from Hell*, 250-251.

<sup>24</sup>Silber and Little, *Death of a Nation*, 244.

<sup>25</sup>Ibid., 252.

<sup>26</sup>Vulliamy, Ed. *Seasons in Hell*, 1994.

Manjača, Omarska, Keraterm, were notorious for brutal conditions. Keraterm and Omarska were the worst; there is evidence that at these camps prisoners were being separated into categories. Those judged to be to leaders of the Muslim community or volunteers in Bosnian militias were generally killed.<sup>27</sup> At Omarska, groups of 10-15 prisoners were killed every few days.<sup>28</sup>

### ***International Involvement***

“ Until these folks get tired of killing each other, bad things will continue to happen.”  
- United States President Bill Clinton, 1993<sup>29</sup>

Despite the atrocities described above, the international community resisted serious militarily involvement to end the conflict in Bosnia. The international community expressed strong disapproval regarding the crimes, but their actions consisted of only of humanitarian aid through, economic sanctions, attempts at mediation, and eventually the establishment of U.N. “safe areas.” Accompanying this approach was a narrative that atrocities were being committed on “all sides.” This description of the conflict lessened the victimhood of the Muslims civilians and made it seem as though international action would be less decisive.<sup>30</sup>

It is true both Croat and Muslim forces committed war crimes. Croat paramilitaries attacked Bosniak villages and enacted a brutal policy of reverse “ethnic cleansing” against Krajina Serbs near the end of the war.<sup>31</sup> In the Čelebići detention camp outside of Sarajevo a few hundred Serbs were held under deplorable conditions and

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<sup>27</sup>Silber and Little, *Death of a Nation*, 250.

<sup>28</sup>Power, *Problem from Hell*, 272.

<sup>29</sup>Ibid., 307.

<sup>30</sup>Ibid., 307-310.

<sup>31</sup>Silber and Little, *Death of a Nation*, 355-357, 360.



subjected to torture, rape, and murder.<sup>32</sup> However, these crimes are not comparable to the scope or scale of the policies dictated by Serb commanders. Equalizing the blame does not portray an accurate representation of the conflict.<sup>33</sup>

### ***Srebrenica***

“ They took my husband away. And then my son Esmir...It is just so hard to talk about this, I can't, it just breaks my heart...I was holding him in my arms...we were hugging, but they...grabbed him and just slit his throat. They killed him.”

- Statement from a Muslim woman at a U.N. center after the fall of Srebrenica<sup>34</sup>

Although the international community was unwilling to engage in robust military action, in 1993 the U.N. declared six heavily populated areas of Muslims “safe areas” and sent U.N. peacekeepers to protect them. Peacekeepers could call on close air support from NATO if the U.N. or the safe areas were being fired on. Despite this arrangement, peacekeeping forces were unarmed and unprepared to defend the areas. In April 1994 Serbs attacked Safe Area Gorzade, the largest of the three eastern safe areas. When threatened with NATO airstrikes, Serb forces took 200 U.N. peacekeepers hostage.<sup>35</sup>

In July 1995, Commander of the Bosnian Serb Army Ratko Mladić moved to take the Srebrenica safe area, and again U.N. peacekeepers did nothing. Promised safety, men were separated from women and children over the course of the week. Taken in buses and unloaded in fields, schools, and abandoned sheds, approximately 8,000 men were slaughtered.<sup>36</sup> The atrocities at Srebrenica, an act of genocide, finally prompted robust

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<sup>32</sup>Neuffer, *Key to My Neighbors*, 44-46.

<sup>33</sup>Power, *Problem from Hell*, 307-310.

<sup>34</sup>Ibid., 302.

<sup>35</sup>Silber and Little, *Death of a Nation*, 326-328.

<sup>36</sup>Power, *Problem from Hell*, 392-394.

international action. In August 1995 NATO troops began bombing Bosnian Serb targets throughout the country, within weeks the Serb forces fell apart.<sup>37</sup>

### ***Dayton Peace Accords***

“ It seemed they thought it would be possible to sort things out with a huge meeting, as if the whole conflict were a personal squabble. In reality, huge cemeteries and great mounds of corpses divided us.”

- Alija Izetbegovic, President of Bosnia 1990-1996<sup>38</sup>

After years of failed peace talks and plans, an agreement was reached in November 1995. After a month of intensive negotiations led by Richard Holbrooke in Dayton, Ohio the Dayton Peace Accords was signed. The agreement was unique in that it was intended not only to end the violence, but also plan for reconstruction. 60,000 troops were sent to Bosnia in the Implementation Force (IFOR) and soon the threat of violence had subsided.<sup>39</sup> It was the civilian implementation of the agreement that proved to be more difficult.<sup>40</sup>

Annex IX of the Dayton agreement is a constitution for post-conflict Bosnia-Herzegovina. The constitution divides the country into two entities, the Republika Srpska that is predominantly Bosnian Serb and the Federation of BiH, which is composed of Bosniaks and Croats. The state-government structure was left weak, with an agreement of a rotating presidency between a Bosniak, Bosnian Croat and Bosnian Serb.

The Office of the High Representative (OHR) is an international institution created by the Accords to implement the civilian aspects of the agreement. These aspects

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<sup>37</sup>Ibid., 440.

<sup>38</sup>Silber and Little, *Death of a Nation*, 374.

<sup>39</sup>International Crisis Group. *Ensuring Bosnia's Future: A New International Engagement Strategy*. Europe Report No. 180 (February 15<sup>th</sup>, 2007),1.

<sup>40</sup>Silber and Little, *Death of a Nation*, 378.

include police, military and judicial reform, disarmament, refugee return, and human rights guarantees. Led by the position of High Representative, the OHR struggled with gridlock and uncooperative politicians in the years following the end of the war.<sup>41</sup> To deal with this situation the High Representative was granted “Bonn Powers” in 1997. “Bonn Powers” allowed the High Representative to impose law and remove politicians. These powers solidified international authority over Bosnia that continues to the present.<sup>42</sup>

### ***Post Conflict Reconstruction***

Bosnia has made some genuine progress toward the creation of a unified state, but is still largely dependant on the OHR and has failed to meet important requirements for the implementation of the Dayton Agreement. Intended to depart in 2007, the OHR’s mandate has since been extended. The European Union (EU) mission in Bosnia, led by the European Union Special Representative, is intended to take over leadership in Bosnia, hopefully steering it toward eventual EU membership.<sup>43</sup>

Since 2006 political tensions have been escalating with the election of nationalist leaders in both the Republika Srpska and the Federation. In the Republika Srpska, Prime Minister Milorad Dodick has openly called for an independent state and has threatened a referendum. In the Federation, Haris Silajdžić, the Bosniak member of the state presidency, demands the abolition of the RS and creation of a centralized government. According to interviews conducted by International Crisis Group, “national and

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<sup>41</sup>*Ensuring Bosnia’s Future*, 4.

<sup>42</sup>*Ibid.*

<sup>43</sup>International Crisis Group. *Bosnia’s Incomplete Transition: Between Dayton and Europe*. Europe Report No. 198 (March 9<sup>th</sup>, 2009),1.

international observers alike describe the mood as the worse since at least the immediate post-war period.”<sup>44</sup>

### *Accountability*

War crimes remain the central issue of society in Bosnia-Herzegovina. Over the period of three years, nearly two thirds of the population experienced a threat to their life.<sup>45</sup> 100,000<sup>46</sup> people were killed and thousands tortured, raped, and forced to leave their homes. The policy of Serb nationalist leaders like Milošević and Mladić did not exclude anyone. The nature of the atrocities demands accountability.

Ethnic cleansing was effective in relocating populations and creating homogenous Serb, Croat, and Bosniak towns where there were previously mixed populations. The new landscape reinforces ethnic divisions created during the war. These communities have differing perceptions of the conflict, mixed information about the crimes committed, and contrasting views of the key architects of the violence. Many Serbs still believe a narrative of victimization and regard Milošević as a hero.

In the Balkans different perceptions of history continue to fuel the development of separate identities, which can be vulnerable to nationalist manipulation. In this context accountability is necessary to create a common history, assign responsibility to those most responsible for the violence and remove them from society, and dispel nationalist myths. A legal process can contribute to this process by creating a court- sanctioned

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<sup>44</sup>Ibid., 2.

<sup>45</sup>United Nations Development Programme, Justice and Truth in Bosnia and Herzegovina: Public Perceptions, (2005), 14.

<sup>46</sup>Ahmetasevic, Nidzara. "Bosnia's Book of the Dead." Balkan Investigative Reporting Network BiH: Justice Report 20 June 2007, <http://www.bim.ba/en/68/10/3361/>. This figure was release in 2007 by the NGO Research and Documentation Center and is considered to be the accepted count. Previous estimates had ranged between 200,000-300,000.

version of specific events and removing collective guilt through holding individuals accountable. However, a legal process alone is limited and is open to manipulation. It is important that proactive measures are taken to ensure the process is not used to further solidify ethnic identities. In this regard an outreach program is a crucial component of post-conflict legal processes in Bosnia. An effective program can ensure the entire population has accurate information regarding the process, judgments, and facts established.

### **III. Origin of Outreach at the ICTY**

In 1993 the International Criminal Tribunal for the former (ICTY) was created by the United Nations (U.N.) to prosecute the crimes being committed in the Balkans. Five years after the tribunal was established, an Outreach Programme was created to explain the ICTY to the people in the former Yugoslavia. An unprecedented initiative, the Outreach Programme sought to provide accurate information to the region. Since its establishment, the Outreach Programme has gone through different stages; first being focused on basic issues such as translation and later tasked with preparing the regions courts for war crime prosecutions. The evolution of outreach at the ICTY is important in understanding the development and implementation of outreach at the War Crimes Chamber in BiH. The origin of outreach at the ICTY informed the development of strategies of outreach at the WCC. Furthermore, these institutions are intimately linked as international initiatives to prosecute war crimes in the Balkans. In many ways it was the limited impact of the ICTY that prompted the establishment and structure of the WCC. Finally, the history of the ICTY's relationship with people of Bosnia-Herzegovina is significant for understanding the context in which the WCC was established. Due to the similarities and connections between the institutions, perceptions of the ICTY colored the reaction and assumptions the Bosnian public held regarding the WCC.

Although established in 1993, the tribunal did not begin its first trial until May 7<sup>th</sup>, 1996. Highly anticipated, the trial of Duško Tadić was layered with symbolism. Tadić was charged with crimes against humanity, murder, and war crimes related to the transfer

of Bosniaks in Prijedor to detention camps. The trial was expected to make an impact. For international lawyers, it was the first time international humanitarian law would be put into practice. For the people in the Balkans, the trial was intended to have a healing impact on the victims of the conflict. As the ICTY press release announcing the trial states: “This date will also have special resonance for the victims of the war in the Former Yugoslavia. They will draw strength from the fact that the legal mechanism set up by the U.N. to vindicate their cries for justice is now fully functional.”<sup>47</sup>

However, the victims remained distant from the tribunal and were only afforded participation if they were flown to The Netherlands as a witness. For the majority of the population the trial was inaccessible. Although the Tadić case was available by satellite to the Muslim-Croat entity of Bosnia and part of the Serb entity, the trial was too slow, dense and confusing. For most, the trial had little relevance to their lives.<sup>48</sup>

When the Tadić trial started, the concept of “outreach” had not been developed at the ICTY. Outreach is a concept that evolved from the actual experience of the tribunal. Its development follows the shifting priorities of the ICTY as the importance of reaching out to the local population was recognized. The changing focus of the ICTY is reflected in both the activities that were categorized as public information and the attention placed on these activities. Over time the priorities of the ICTY went through several phases. In the first phase the tribunal was focused solely on legitimizing its existence within the international community. In the second phase the ICTY was faced with the reality that not only did the people in the Balkans lack information, many people believed

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<sup>47</sup>International Criminal Tribunal for the Former Yugoslavia“ The Tribunal’s first trial: another step in the fulfillment of the Tribunal’s mandate.” Press Release CC/PIO/070-E (May 6<sup>th</sup>, 1996) <http://www.icty.org/sid/7361>.

<sup>48</sup>Neuffer, *The Key to My Neighbor’s*, 182.

manipulated nationalist propaganda about the tribunal. In the third phase the Outreach Programme was established. During this period the Programme opened regional offices, translated ICTY documents and organized many conferences and visits to the tribunal. In the fourth phase the adoption of the ICTY completion strategy shifted the focus of the Outreach Programme to preparing national courts for war crimes trials.

### **Phase One: Legitimizing Existence**

In order to follow the evolution of outreach at the ICTY, it is necessary to understand the context of its establishment. Beginning in 1991, the violence in the Balkans presented the international community with reason to take action. However, despite growing evidence of atrocities and escalation of violence, the international community was unwilling to become seriously involved in the Balkans through military action.<sup>49</sup>

Amid growing public criticism of inaction, the United Nations Security Council established the International Criminal Tribunal for the former Yugoslavia in 1993. The mission of the tribunal was four-fold: to bring to justice persons allegedly responsible for serious violations of international humanitarian law; to render justice to the victims; to deter further crimes; and to contribute to the restoration of peace by holding accountable persons responsible for serious violations of international humanitarian law.<sup>50</sup>

At its establishment the ICTY was an unprecedented international institution and was met with much skepticism. Richard Goldstone, the first prosecutor of the ICTY recalls the situation surrounding his first press conferences:

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<sup>49</sup>Power, *Problem from Hell*, 281-288.

<sup>50</sup>U.N. Document S/Res/827, *Resolution 827* (May 25, 1993), available at, [http://www.un.org/icty/legaldoc-e/basic/statut/S-RES-827\\_93.htm](http://www.un.org/icty/legaldoc-e/basic/statut/S-RES-827_93.htm).



“ Both conferences proved a difficult start to my relationship with the international media, which effectively had written off the International Criminal Tribunal for the Former Yugoslavia (ICTY) as the “fig leaf” of the international community established to hide its shame for inaction in the former Yugoslavia, particularly Bosnia.”<sup>51</sup>

In addition, the ICTY faced many barriers to its operation; including undeveloped law, limited financial support, and the absence of enforcement agencies to support the Tribunal. The ICTY was dependent on state cooperation and NATO troops on the ground arresting suspected war criminals. Even after the end of the war, state cooperation remained weak and NATO often turned a blind eye to known suspects, not recognizing the arrests as part of their peace implementation mandate. As a result, war criminals such as Ratko Mladić, the commander responsible for Srebrenica, roamed free. Impunity reinforced ethnic divisions from the war, prevented the return of refugees, and entrenched organized crime. In 1997 NATO began making more arrests, but two of the most notorious figures in the war, Ratko Mladić and Radovan Karadžić, the political leader of the Bosnian Serbs during the war, remained at large. Without the indictees the ICTY was stuck waiting to start the trials. Many of the perpetrators that were initially prosecuted were lower-level perpetrators who lost power after the war.<sup>52</sup>

In this context, a significant amount of time was spent simply legitimizing the existence of the ICTY. Dependent on contributions from U.N. member states, the ICTY focused its energy on proving it could be a functioning institution. Additionally, the fact that the ICTY was created while the conflict was ongoing presented significant barriers to communicating with the people of the former Yugoslavia.

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<sup>51</sup>Goldstone, Richard. *For Humanity: Reflections of a War Crimes Investigator*. New Haven: Yale University Press (2000), 77.

<sup>52</sup>Zhou, Han-ru, “ The Enforcement of Arrest Warrants by International Forces: From the ICTY to the ICC,” *Journal of International Criminal Justice* 4 no.2 (2006), 215.

### ***1994-1999: World Opinion and International Lawyers***

In the 1994 ICTY Annual Report, the Press and Information Office is described as: “a key requirement of the Tribunal’s infrastructure.”<sup>53</sup> At this time, the Press and Information Office was conceived as a necessary response to the substantial media attention and requests for information the Tribunal was receiving. Therefore, the activity of the section was mainly focused on producing informative publications and analyzing the relationship between the activity of the tribunal, media coverage, and the image of the ICTY in the global community. Over the course of the next few years this attitude progressively shifted and focused increasingly on public interest and awareness. However, despite the broadening in scope and materials available, the information generally remained technical in nature and limited to a relatively specialized and predominantly legal community.

The focus of the ICTY in its early days is vividly illustrated through examination of the ‘public’ material it made available. In 1995 the section produced a *Tribunal Handbook*, *The Yearbook*, and a *Manual for Practitioners*.<sup>54</sup> *The Handbook* was a compilation of the tribunal’s basic texts and was intended to “provide the reader with a comprehensive set of materials on the structure and functioning of the Tribunal.” These documents were dense, legalistic and failed to explain the ICTY’s unprecedented

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<sup>53</sup>United Nations Secretary General. *1994 Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991* (August 29, 1994) U.N. Document S/1994/1007 <http://www.un.org/icty/rappannu-e/1994/AR94e.pdf>

<sup>54</sup>U.N. Document S/1995/728, *1995 Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991* (August 23<sup>rd</sup>, 1995, para. 124, available at, <http://www.un.org/icty/rappannu-e/1995/AR95e.pdf>.

structure, formation, and mandate.<sup>55</sup> *The Yearbook* documented all activity of the tribunal that year, including judicial orders, development/construction details, changes to the rules, cooperation of States in regard to implementing the Statute, and offers to hold convicts serving sentences.<sup>56</sup> The final publication was a *Manual for Practitioners*, intended for the specific audience of defense counsel appearing before the ICTY. All publications were made available only in English and French, further limiting how accessible these documents were to people in the Balkans.

Public information activities increased in the following years, including the creation of a website and new publication *The Bulletin*, but the target audience remained the international community and international legal scholars.<sup>57</sup> A palpable indication of this emphasis was the continued failure to make any resources available in Bosnia-Croatian-Serbian. All material was published exclusively in U.N. languages of English and French.

## **Phase Two: The Need for Outreach**

On May 7<sup>th</sup>, 1997 the verdict for Duško Tadić, the first defendant before the ICTY, was announced. The judgment was mixed. Tadić was found guilty on only eleven of the thirty-one counts he had been charged with, including persecution and crimes against humanity. For international lawyers the case proved that the ICTY could function. As Prosecutor Richard Goldstone remarked after the verdict, “International

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<sup>55</sup>Ibid., para. 125.

<sup>56</sup>Ibid. para 126-227.

<sup>57</sup>ICTY 1999 Annual Report.

trials can work.”<sup>58</sup> Furthermore the verdict was the first judicial condemnation of Serb paramilitaries’ ethnic cleaning policies. In this regard, the ICTY judges made specific efforts to document larger patterns of the war in the verdict, providing ample evidence against claims that Bosniaks had started the fighting in the town or that they had attacked themselves.<sup>59</sup>

However, there were no Bosnians in the courtroom to hear this historic judgment and accurate unbiased reports were hard to find in the Balkans. One Bosnian Serb news agency reported: “Since Dusan Tadić was completely acquitted from accusations of murders and serious crimes, the sentence to be announced would not be severe.”<sup>60</sup> Another newspaper in Serbia did not even mention that Tadić was guilty, but instead wrote that the judgment proved Milošević and his troops had not been involved in the Bosnian war.<sup>61</sup>

A few months later Judge Gabrielle Kirk McDonald, the presiding Judge of Tadić panel, announced the twenty-year sentence for Tadić with an emotional statement: “You must bear responsibility for your criminal conduct. To condone your actions even when committed in this context...is to give effect to a base view of morality and invite anarchy.”<sup>62</sup> However, despite this strong moral condemnation and extensive documentation of the facts surrounding the detention centers, the impact of the Tadić case in the Balkans was limited.

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<sup>58</sup>Pronk, Rochus and Brian Tittlemore, “ICTY Issues Final Judgment Against Dusan Tadic in First International War Crimes Trial Since World War II” *Human Rights Brief*, 4, no.2 (Spring 1997). <http://www.wcl.american.edu/hrbrief/v4i3/icty43.htm>

<sup>59</sup>Neuffer, *Key to My Neighbors*, 302.

<sup>60</sup>Ibid.

<sup>61</sup>Ibid.

<sup>62</sup>Ibid.

The disconnect between the ICTY and the people affected by the conflict was becoming clear. The physical distance of the tribunal, language barriers, and complex legal proceedings contributed to a perception that the ICTY was abstract.<sup>63</sup> Even more concerning, it was revealed to Judge McDonald that facts presented during the course of the trials were not contributing to historical clarification:

I was told by reports that, notwithstanding the 301-page Tadić judgment, including detailed description of the horrors of the Omarska and Keraterm camps, many in the region still believed that tale that these were, “collection centers.” Temporarily housing those who desired to leave the Prijedor area.<sup>64</sup>

In response Judge McDonald initiated efforts to address the tribunal’s isolation from the region. An “Outreach Symposium,” was organized with the non-governmental organization Coalition for International Justice to talk with legal and judicial professionals from the former Yugoslavia.<sup>65</sup> Later that year the tribunal sent staff to the region to conduct interviews with local/international governmental and non-governmental representatives, lawyers, and judge. These interviews revealed a perception that although the ICTY’s existence had become generally accepted; it was perceived as mysterious, far-removed, and too legalistic.<sup>66</sup>

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<sup>63</sup>Vohrah and Cina, *Essays on the ICTY*, 549.

<sup>64</sup>McDonald, Gabrielle “Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia” in *International War Crimes: Making a Difference?: Proceedings of an Interdisciplinary conference at the University of Texas School of Law 18-19*, eds. Steven R. Ratner & James L. Bischoff, (University of Texas at Austin School of Law 2004), 19.

<sup>65</sup>International Criminal Tribunal for the Former Yugoslavia. “Outreach symposium marks the first successful step in campaign for better understanding of the ICTY in the former Yugoslavia.” Press Release CC/PIU/355-E, October 20<sup>th</sup>, 1998.

<http://www.un.org/icty/pressreal/p355-e.htm>

<sup>66</sup>L. Vohrah and J. Cina, *Essays on the ICTY*, 552-554.

### ***Outreach and Social Reconstruction***

For the Tribunal's investigative and judicial work to have the desired effect, it must be known and understood by the people of the region...However, that cannot happen and the Tribunal cannot contribute to the goals of peace, justice and reconciliation if its work is not only not known in the region but also actively misunderstood.

-Judge Gabrielle Kirk McDonald, former president of the ICTY and founder of the Outreach Programme<sup>67</sup>

Established under a U.N. Chapter VII mandate to restore "peace and security" in the former Yugoslavia, the expectation that the ICTY would have an impact on the region was explicit. It was reasoned that by removing from the conflict those responsible for continuing the war, justice could facilitate the establishment of peace. In this regard the mandate of the ICTY made no overt references to the larger societal impact the justice process was intended to have. Unlike the International Criminal Tribunal for Rwanda, a U.N. tribunal established to prosecute crimes during the Rwandan genocide in 1994, there is no mention of the goal of national reconciliation within the ICTY mandate.

Regardless of this omission, there is evidence that the world leaders expected the prosecutions to have a social impact at the individual and national level. International diplomats, politicians, legal analysts, and statements by the ICTY echoed this sentiment.<sup>68</sup> For example, the press release announcing the Tadić case at the beginning of this chapter states that victims will "draw strength" from a functioning legal process. At the national level, many consider the ICTY a factor in developing the rule of law, establishing a historical record, and contributing to a collective memory of Bosnian society.

Despite the expectation that the ICTY would have these effects on the social

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<sup>67</sup>ICTY. "Outreach symposium."

<sup>68</sup>Human Rights Center and the International Human Rights Law Clinic, University of California, Berkeley and Centre for Human Rights University of Sarajevo. *Justice, Accountability, and Social Reconstruction: An Interview Study of Bosnian Judges and Prosecutors*. (May 2000), 11.

processes of rebuilding in the Balkans, the mechanics of how this influence was to be realized were not addressed. The tribunal made no effort to develop institutional ties with the social processes in the region. As the Tadić case demonstrated, limited efforts were taken to make the facts established in the trials known in Bosnia. The ICTY put minimal effort toward ensuring that NGOs and civil society groups in the region had accurate knowledge of its work.<sup>69</sup> Finally, no formal interaction existed between the ICTY and national legal professionals who were responsible for the ‘rule of law’ in Bosnia.

In 1999 it became clear the tribunal was not having the intended impact on the ground. Interviews conducted in the region expressed concern regarding how criminal trials actually could have a positive effect in the region and sought clarification on the “the gap between international mechanisms of justice and the rebuilding of societies.”<sup>70</sup> The assumed relationship between the prosecutions and social rebuilding in the former Yugoslavia was not being realized. For this reason, Judge McDonald deemed it necessary for an Outreach Programme to be established in order to institutionally link the tribunal to the social processes in Bosnia.

It was with the establishment of the Outreach Programme the goal of the ICTY to assist in ‘reconciliation’ was first officially articulated. The 1999 ICTY Annual Report explains the reasoning behind the creation of an Outreach Programme as follows:

The Tribunal was created by the Security Council to establish the legal accountability of those who committed crimes during the conflict in the former Yugoslavia. In so doing, the Tribunal is intended to contribute to the restoration of international peace and security. In the region, therefore, the Tribunal is a means to assist in *reconciliation* and to prevent the recurrence of conflict. The achievement of these objectives is dependent on the victims being aware of and understanding the war and its causes. It is, therefore, critical to the success of the Tribunal that the populations of the region are informed about the work of the Tribunal and understand its significance.<sup>71</sup>

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<sup>69</sup>Fletcher and Weinstein. “A world unto itself?”, 29-48.

<sup>70</sup>L. Vohrahand and J. Cina, *Essays on the ICTY*, 554.

<sup>71</sup>*ICTY 1999 Annual Report*, para 146. Emphasis added.

Reconciliation is a controversial term. The prominence it is given in the Annual Report and establishment of the original outreach program requires a discussion of what the term means and how it can and cannot be applied to outreach for criminal trials. Broadly, ‘reconciliation’ can be defined as: “a process by which peoples who were formerly enemies put aside their memories of past wrongs, forego vengeance and give up their prior group aspirations in favor of a commitment to a communitarian ideal.”<sup>72</sup> Reconciliation is often considered the goal of “restorative justice,” which is a process defined as “societal healing of damages resulting from past crimes.”<sup>73</sup> Restorative justice focuses on the relationship between victims and perpetrators rather than punishing the guilty. With this justice approach reconciliation often is associated with religious overtones of forgiveness and a restoration of cooperative relationships.

Clearly criminal trials are not a form a restorative justice and are instead a form of “retributive justice.” Retributive justice refers to a process of “transferring the responsibility for apportioning blame and punishment from victims to a court that acts according to the rule of law.”<sup>74</sup> With this form of justice reconciliation is a process of removing the desire for vengeance of victims or victimized groups by establishing individual guilt. According to this conception, once justice is served a victim will be satisfied and will reestablish relationships with the group whose member caused them harm. At a societal level, accountability will prevent collective guilt, allow the nation to build a new common identity, and prevent conflict in the future.

Despite the retributive form of criminal trials, many proponents of trials believe the

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<sup>72</sup>Ibid., 45.

<sup>73</sup>Stover and Weinstein. “Introduction” *My Neighbor, My Enemy*, 14.

<sup>74</sup>Ibid.



process will also have a restorative “healing” impact on individual victims. As mentioned earlier, world leaders, politicians, and ICTY officials often cite the “healing” component of reconciliation as a product of criminal trials. However, these assumptions are incorrect. A 1999 study by Stover and Weinstein, published a few months after the Outreach Programme was initiated, revealed the trials at the ICTY did not necessarily have a positive or “healing” impact on victims. The study showed that the relationship between trials and reconciliation is not universally positive. A Bosnian Serb explains, “When someone wants to forgive somebody, he’ll do it without a court. . . . The fate of those people here is not a matter of nationality or interest; it is not dependent upon some court. . . . If we are human, we don’t need a court.”

When thinking about the relationship between reconciliation, criminal trials, and outreach it is crucial to eliminate the assumption that a trial will have a healing impact on individuals. Given the healing and forgiveness connotations of the term reconciliation, it is not the best term to describe the social impact trials have the potential to make. Due to the confusion associated with the word ‘reconciliation,’ Stover and Weinstein introduce the concept of social reconstruction as a way to look at post-conflict societies where ethnic identity was an important factor in the violence. They define social reconstruction as:

A process that reaffirms and develops a society and its institutions based on shared values and human rights. It is a process that includes a broad range of programmatic interventions, such as security, freedom of movement, access to accurate and unbiased information, the rule of law, justice, education for democracy, economic development, cross-ethnic engagement, that work together and at multiple levels of society – the individual, neighborhood, community, and state to address the factors that led to the conflict.<sup>75</sup>

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<sup>75</sup>Stover and Weinstein. “Introduction” *My Neighbor, My Enemy*, 4.

Social reconstruction is a more accurate way to think about the impact a tribunal can have on a post-conflict society. Using the social reconstruction model, criminal trials have the ability to contribute to the process of affirming common values and human rights in a post-conflict society. Trials can be part of ensuring a society has ‘access to accurate and unbiased information’ by providing a legally sanctioned version of specific events and identifying the primary organizers of the violence. In addition, trials can contribute to a process of developing ‘rule of law’ by building functioning legal institutions and developing trust in the judicial process. However, it is important to recognize that criminal trials should be working in concert with other processes of social reconstruction and reflect the needs of the population affected.<sup>76</sup>

Recognizing that trials do have the potential to contribute to social reconstruction, Stover and Weinstein raise the question: “How then do we connect institutional mechanisms of justice with the myriad of processes of social repair as communities emerge from the ashes of genocide and other forms of mass violence?”<sup>77</sup> Their study found that the structure of the court and its interaction with the post-conflict communities had a strong influence on how communities perceived the work of the ICTY. It is possible these perceptions could inhibit the ability of the court to achieve its social goals of developing the rule of law, establishing a historical record, and contributing to a collective memory of Bosnian society.<sup>78</sup> If the tribunal lacks legitimacy and is perceived as removed, ethnically biased, or a forum for victor’s justice, the trials will not contribute to social reconstruction.

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<sup>76</sup>Ibid.,14.

<sup>77</sup>Ibid.,11.

<sup>78</sup>Ibid.,40.

Ideally, an outreach program can ensure trials are not operating in isolation from the population. With accurate information and knowledge of the available forms of participation, a population can be empowered to form opinions regarding how the trials fit into the larger process of reconstruction. Outreach is not intended to ensure the population is necessarily supportive of the tribunal; outreach is not a public relations campaign. Rather, outreach is the institutional link necessary to allow for the potential impact of trials on the social processes of reconstruction.

The Outreach Programme for the ICTY was established in this context. Although the term ‘reconciliation’ was used to explain the necessity of outreach, social reconstruction is a more accurate term to describe the goals of outreach. The Programme would be “dedicated to explaining its [ICTY] work and addressing the effects of misperceptions and misinformation.”<sup>79</sup> Furthermore, the Programme is “intended to engage local legal communities and non-governmental organizations, victims’ associations and educational institutions.”<sup>80</sup>

### **Phase 3: Informing the People in the former Yugoslavia**

The Programme was created as a separate entity within the Registry, the administrative organ of the ICTY, rather than as a sub-unit within the Public Information Services. The separation was reflective of the different function the Programme was intended to serve and the importance placed on its work. With the establishment of the Programme, the tone of the Public and Information Section shifts from strictly valuing

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<sup>79</sup>ICTY 1999 *Annual Report*, para 150.

<sup>80</sup>*Ibid.*

global opinion of the tribunal to focusing on the perception of the victim population. Outreach activities began in 2000 after a single staff member conducted an assessment of the region. After this assessment the Programme opened offices in Sarajevo and Zagreb, which acted as ICTY's main point of contact with the public in the region.<sup>81</sup> In 2001, the Programme opened offices in Pristina and Belgrade, and began making some documents available in Albanian.<sup>82</sup>

The Programme initially focused on creating and disseminating accurate information about the tribunal. The work of the Outreach Programme was complemented by the enhanced the capacity of the Public Information Services through the "systematic translation of relevant public information materials into Bosnian/Croatian/Serbian."<sup>83</sup> Finally, four years after the ICTY began its operations, translating documents became a priority. However, it is important to note that although making the public information accessible to the population in the Balkans was an important first step, translating legal documents did not make them more accessible to non-lawyers. Translation still left the majority of the population without easily understandable information.

In addition to translation, outreach officers began taking steps to increase the representation of the work of the ICTY in the media and other appropriate forums. Located in the former Yugoslavia and being fluent in the local language, outreach officers worked to provide support for accurate coverage and respond to media enquires

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<sup>81</sup>Kristen Cibelli and Tamy Guberek, Justice Unknown, Justice Unsatisfied?: Bosnian NGOs Speak About the International Criminal Tribunal for the Former Yugoslavia (December 2000), 19, <http://www.epiic.org/class/justicereport.pdf>.

<sup>82</sup>United Nations Secretary General, *2001 Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991* (September 17<sup>th</sup>, 2001) U.N. Document S/2001/865 <http://www.un.org/icty/rappannu-e/2001/index.htm>, para 225.

<sup>83</sup>*ICTY 1999 Annual Report*, para. 152.

through interviews. In addition, the Programme inserted the perspective of the ICTY into regional media coverage. For example, the Programme aided a group SENSE (South East News Service Europe) in broadcasting weekly 15-minute television programs about events at the ICTY.<sup>84</sup>

Although the primary focus of the Outreach Programme was on public information, several initiatives were implemented in conjunction with NGOs in the region to actively engage different populations through conferences and visits to the court. Starting in 2001 the Outreach Programme began working with various NGOs to fund trips for different groups to The Hague. Groups included women's victims associations, media from the region, and legal professionals.<sup>85</sup> These visits allowed leaders and representatives within the Balkans brief access to The Hague, but the majority of the population remained distant. Furthermore, the selection of who would be able to visit was dependent on funding available and what groups the NGOs prioritized.

Between 2000-2001 the Outreach Programme worked with various NGOs to hold two-day conferences: "ICTY: Facts and Models of Cooperation," for legal professionals, government officials, media, and NGO representatives. The conferences were held in cities throughout the region including Zagreb, Belgrade, and Pristina. Topics included an overview of the establishment, structure and organization of the tribunal and applicable law and jurisprudence.<sup>86</sup> These conferences are an example of a positive initiative that should have been implemented in the early stages of the tribunal's operations. It is

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<sup>84</sup>Ibid.

<sup>85</sup>International Criminal Tribunal for the Former Yugoslavia Outreach Programme, "Calendar of Visits," <http://www.un.org/icty/bhs/frames/outreach.htm>.

<sup>86</sup>International Criminal Tribunal for the Former Yugoslavia Outreach Programme, "Conferences," <http://www.un.org/icty/bhs/frames/outreach.htm>.

problematic that basic information about the ICTY was explained four years after the first trial began.

The Outreach Programme also organized a limited number of conferences for specific audiences such as media, NGOs, and legal professionals. For example, in 1999 the Programme held a “Media Symposium” at The Hague. In 2001 a “Roundtable with NGOs” was held at the ICTY in order to give the ICTY’s partner NGOs in the region an opportunity for dialogue. The most attention was given to professional development of the local legal community. Numerous conferences were held on specific aspects of the ICTY applicable law and jurisprudence such as the “Rules of the Road Process,” command responsibility, and strategies for defending war crime suspects.<sup>87</sup>

Audience specific conferences were beneficial in addressing particular concerns of many influential opinions in society. However, during this time little attention was given to how the ICTY could be made accessible to the more general public for example, victims’ groups and students.

#### **Phase Four: Outreach and the ICTY Completion Strategy**

The ICTY was not designed to work with legal professionals or the court system in the Balkans. Since the ICTY was established while the conflict was ongoing, regulations prohibited nationals from war-affected states from holding legal positions at the court to prevent against accusations of bias.<sup>88</sup> This decision may have been necessary, but it meant that those who would be prosecuting and judging the trials did not share

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<sup>87</sup>Ibid.

<sup>88</sup>Stover and Weinstein, “Introduction,” *My Neighbor, My Enemy*, 32.

citizenship, culture, traditions or language with the accused. Furthermore, the lack of participation contributed to the feeling of some Bosnian Serb and Croats of being abused by the international community.<sup>89</sup>

After the war ended interaction between the local courts and ICTY was limited to the “Rules of the Road Process.” The Rules of the Road process was established as a reaction to the many unwarranted and ethnically motivated arrests that took place immediately after the conflict ended. Under this process local prosecutors were required to submit any war crimes cases to the ICTY for review before an arrest could be made. Although intended as a cooperative measure to ensure fair and impartial trials, the process was slow and bred resentment from the local legal community. One Bosnian judge, expressing his frustration with the ICTY, said: “They came here at the end of 1995. They took the cases with them, and said that the criminals would be brought to justice, but nothing has happened.”<sup>90</sup>

In 2003 the ICTY modified its interaction with local courts through the adoption of a Completion Strategy. Motivated by the high cost, slow pace, and limited impact of the ICTY on the former Yugoslavia, the Completion Strategy reflected the international community’s waning commitment to the international tribunal model. The strategy included a timetable for the ICTY to complete all investigations by the end of 2004 and all work by 2010. A key element to ensuring the tribunal met its deadline was the transfer of lower level cases to competent national jurisdictions. Specific reference was made to the mixed international-national War Crimes Chamber in Bosnia, which is the focus of this thesis. To aid in the transfer the strategy “calls on the international

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<sup>89</sup>Ibid.

<sup>90</sup>Ibid.,14.

community to assist national jurisdictions, as part of their completion strategy in improving their capacity to prosecute cases transferred from the ICTY and ICTR and encourages ICTY and ICTR President, Prosecutors, and Registrars to develop and improve their outreach strategies.”<sup>91</sup>

The Outreach Programme was unofficially tasked with the responsibility of preparing the region for the transfer of cases. Given the establishment of the War Crimes Chamber, the Programme focused a substantial part of its outreach efforts on preparing Bosnia-Herzegovina for domestic prosecutions. The Programme approached the charge in two ways. First, the Programme worked to “assist the development of courts in the region capable of prosecuting war crimes fairly.”<sup>92</sup> Second, the Programme implemented a series of conferences targeting local communities and victims associations titled, “Bridging the Gap Between the ICTY and Communities in Bosnia and Herzegovina.”

Developing the region’s courts for the transfer of cases constituted the majority of the efforts of the Programme. Its responsibilities included tracking development and reform in the domestic criminal justice systems and running a series of training, educative, and consultative programs at The Hague and in the former Yugoslavia. For example, in May 2004 the Programme held a weeklong training seminar at The Hague for officials working for the Department of War Crimes at the Belgrade District Court.<sup>93</sup>

On the other hand, the “Bridging the Gap” conferences were an effort organized with the Helsinki Committee for Human Rights in Republika Srpska, a Bosnian NGO, to

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<sup>91</sup>U.N. Document S/RES/1503 (2003), *Security Council Resolution 1503 (2003)*: para. 1, available at, <http://daccessdds.un.org/doc/UNDOC/GEN/N03/481/70/PDF/N0348170.pdf?OpenElement>.

<sup>92</sup>United Nations Secretary General. *2003 Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991* U.N. Document S/2003/829. <http://www.un.org/icty/rappannu-e/2003/index.htm>, para 285.

<sup>93</sup>ICTY *2004 Annual Report*, para. 318.



reach out specifically to local communities. Taking place between 2004-2005, the conferences were held in Brčko, Foča, Konjic, Prijedor and Srebrenica. The conferences were structured to facilitate direct interaction between the public and the ICTY in the places where some of the most infamous crimes before the tribunal had been committed. At the conferences Senior ICTY staff explained both the cases relevant to the specific area, overall work of the tribunal, and the ICTY completion strategy to members of victims' associations, municipal authorities, judicial institutions and law enforcement agencies, as well as local politicians and civil society representatives.<sup>94</sup> The community events emphasized facts that had been proven beyond a reasonable doubt and sought to “promote better local visibility of justice served, to prevent historical revisionism, and to foster reconciliation.”<sup>95</sup> The events also explained the future of war crimes processing in regard to the ICTY Completion Strategy and introduced the War Crimes Chamber.

The final aspect of the Completion Strategy on outreach was a consolidation of the previously separate Public Information Sector and Outreach Programme. In 2005 these divisions were merged into the Communications Service. The service was then divided into two sections: Media/Outreach/Web and Publications/Tribunal/Visits.<sup>96</sup> Since 2005 the Service has continued to issue press releases, organize press briefings, arrange interviews, accommodate visits, and produce a variety of publications in BCS, English, French and some in Macedonian and Albanian.

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<sup>94</sup>International Criminal Tribunal for the Former Yugoslavia, “Latest Outreach Activities,” <http://www.icty.org/sections/Outreach/OutreachActivities>.

<sup>95</sup>United Nations Secretary General. 2005 Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia Since 1991 (August 15, 2005) U.N. Document S/2005/532. <http://www.un.org/icty/rappannu-e/2005/index.htm>. para, 207.

<sup>96</sup>*ICTY 2003 Annual Report*, para 201, 204.

## **Conclusion**

The development of outreach at the ICTY highlights important lessons for internationalized war crime prosecution initiatives and specifically the Bosnian War Crimes Chamber. Initially operating on the assumption that the trials would inherently have an impact on people and specifically the victims of the conflict, the tribunal was confronted with the reality that simply operating was not enough to have an effect. Furthermore, the ICTY demonstrates that war crime trials and international intervention can easily be politicized and manipulated in a post-conflict setting, strengthening rather than weakening divisions.

The experience of the ICTY demonstrated the limits of the international tribunal model. An unprecedented institution at its establishment, it was soon criticized for its limited impact on the region whose crimes it was prosecuting in regard to capacity building and social reconstruction. The experience of the tribunal informed two developments in internationalized prosecutorial initiatives that are the focus of this thesis. The first development is the hybrid court model and the second is the necessity of outreach for war crime prosecutions. These developments are both designed to maximize the impact war crime prosecutions can have on the social and political processes of a post-conflict society.

The establishment of the ICTY's Outreach Programme was groundbreaking. The Programme was a definitive step in acknowledging the intended social and political impact the tribunal was intended to make. The reasoning articulated in the establishing the Programme is specific to the ICTY and the U.N. mandate, but the broader concepts of reconciliation have served as the basis for outreach programs at other courts. In this

regard, although the ICTY used the term reconciliation, I argue Stover and Weinstein's concept of social reconstruction is a more accurate description of what the Outreach Programme was aiming to accomplish. The concept of social reconstruction is used to explain the necessity of outreach in this thesis.

Activities implemented by the Outreach Programme started with basic translation of documents and explanation of the Tribunal and eventually developed to interactive conferences with ICTY staff and local communities. Initiated as a crisis management program, the ICTY demonstrates the importance of early outreach and basic elements of accessibility, such as translation. These initiatives were crucial for later activities that involved more complex interaction.

Finally, the experience of the ICTY is intimately related to perceptions of the War Crimes Chamber in BiH. The ICTY and War Crimes Chamber are linked through the Completion Strategy and share many common features. Although the structure of the WCC is more conducive to making an impact, there are several other features the WCC has in common with the ICTY that require outreach. In addition, the experience of the ICTY in the region is crucial for understanding the public opinion context the WCC was established in. Despite the development of outreach, the Bosnian public remains largely removed and skeptical of international accountability processes, and Bosnian Serbs view the processes as ethnically biased against them. Given this situation, proactive outreach for the WCC is crucial in countering largely entrenched beliefs regarding accountability processes.

## IV. Models of Outreach

The creation of an outreach program at the ICTY was triggered by a crisis of legitimacy the tribunal was facing in the former Yugoslavia. Outreach has since been recognized as extremely valuable and subsequent courts have included outreach programs in their establishment. Informed by the experiences of outreach at the ICTY and the International Criminal Tribunal for Rwanda (ICTR)<sup>97</sup>, two models of outreach have been developed. The first part of this chapter will explain the two models of outreach: transparency and engagement. The goals, activities, benefits, and challenges of each model will be presented. I argue that an engagement model of outreach has been accepted as the necessary approach to outreach. In this regard, the second part will focus on theoretical guidelines for developing a strategy of engagement. Context is extremely important in designing a strategy, but there are several factors that should be considered for every outreach program. These factors are the structure of the court, organization of outreach section, guiding principles of the outreach program, audiences, partnership with civil society and the media, and funding.

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<sup>97</sup>The ICTR developed an outreach program shortly after the ICTY. These “twin” international tribunals faced many of the same issues regarding public perceptions and outreach. I choose not to go into detail about the ICTR because of limited space and focus of this thesis is on Bosnia-Herzegovina and hybrid courts.

## **Models of Outreach: Transparency and Engagement**

### ***Transparency***

Legal scholar Victor Peskin has identified two general approaches to outreach international criminal tribunals may pursue: transparency and engagement. Originally used to describe the outreach program of the ICTR, these approaches can be applied to outreach programs generally. A transparency model focuses on simply making the work of the tribunal accessible and open to the public on a basic level. This model describes a level of understanding that is often assumed to be present in a domestic legal system. However, given the sensitive nature of war crimes and the unprecedented institution, even basic levels of understanding and acceptance should not be assumed.<sup>98</sup> In the case of the ICTY/ICTR, the physical distance of the tribunal and the language barriers further complicated these issues. Tribunals can also be removed from the population even when they are located in country. Rural areas are often far from the cities that tribunals are located and in post-conflict developing countries, the links between areas are often few. For rural populations a tribunal located in a city may seem as distant as if it were in another country.

### ***Transparency Model Activities***<sup>99</sup>

There are many activities a transparency model of outreach can include:

- Translating decisions and relevant documents to local language(s)

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<sup>98</sup>Peskin, Victor, “ Courting Rwanda: The promises and Pitfalls of the ICTR Outreach Programme,” *Journal of International Criminal Justice* 3(2005), 954.

<sup>99</sup>Compiled from Peskin, *Courting Rwandan*; Vincent, Robin, *An Administrative Practices Manual for Internationally Assisted Criminal Justice Institutions*, International Center for Transitional Justice (2007), 84-97, <http://www.ictj.org/images/content/9/3/931.pdf>.

- Developing and maintaining the website with court documents, schedules, contact information, reports/establishing documents, etc.
- Facilitating media coverage of court proceedings
- Producing guidelines for accurate reporting of the institution
- Communicating with media regarding video clips, interviews, information regarding the cases
- Producing/distributing brochures on the basics of the Court
- Writing summaries of the judgments that are widely available and understood

A transparency model may include all or only a few of the components listed above. Some of these activities, such as writing summaries of judgments, are indicative of a comprehensive approach that could act as a bridge activity toward engagement. However, even if all of the activities listed above are implemented, this approach does not sufficiently promote accessibility or establish legitimacy.

### *Accessibility*

The first problem with transparency is that the approach does not necessarily guarantee information about the court will be accessible. If information is distributed using an inappropriate medium or is in a format that is not easily understood, it may remain unavailable to the majority of the population. Many courts advertise their website as excellent resources, but in many cases the majority of the population does not have access to Internet and has very low literacy rates. Furthermore, even if physical access to the information exists, the information can be presented in a way that remains inaccessible. Legal documents can be dense and difficult to understand, especially if a population has little experience with the legal framework and judicial system being used by the court.

A more advanced transparency model could address many of the issues of understanding by producing accessible summaries of the court's mandate, operations, judgments, and operations. This is the strategy that many tribunals pursue, focusing the majority of resources on distributing brochures and summaries.

### *Legitimacy*

The transparency model of outreach assumes that if enough information regarding the court's activity is known, the court will be an accepted institution by the population. International prosecutors and judges who are accustomed to their domestic legal system commonly adopt this reasoning. They believe the work of the court should stand on its own and does not need public relations.<sup>100</sup> Steven Ratner, a legal scholar, remarks, "I think because we are lawyers we have this sense of courts as absolutely essential institutions to what law is, and we fail to understand that so much of the enforcement and implementation of law takes place outside of courts."<sup>101</sup>

This response fails to take into consideration the special circumstances of the court and the inherently political nature of its work. Standards of what is fair are not established in a post-conflict environment and institutions are easily manipulated by political context. There are fundamental legitimacy problems an internationalized court faces. Challenges include "perceived challenges to state sovereignty, domestic conceptions of justice, and the belief of a government or society of its own innocence."<sup>102</sup>

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<sup>100</sup>Tolbert, David. "Reflections on the ICTY Registry" *Journal of International Criminal Justice* 2 (2004), 484.

<sup>101</sup>Ratner, Steven "Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia" in *International War Crimes: Making a Difference?: Proceedings of an Interdisciplinary conference at the University of Texas School of Law 18-19*, eds. Steven R. Ratner & James L. Bischoff, (University of Texas at Austin School of Law 2004), 158.

<sup>102</sup>Peskin, *Courting Rwanda*, 953.

Furthermore, there are operational aspects of war crimes prosecutions that can easily be perceived as contrary to justice. For example, the slow pace of the trials, closed sessions, sentencing procedures, and prosecutions of seemingly low-level defendants can seem to be in opposition to ideals of justice. Although often necessary, if not explained these processes can have a negative impact on public perceptions. For example, one witness described her feelings as judges walked past her to a closed session: “this is like putting the children out of the room when the adults do not want them to hear what we are talking about.”<sup>103</sup> It is not guaranteed that by giving more information, for example, the criteria used to determine whether a session is closed, will necessarily lead to public support. However, it does allow for an informed dialogue and debate.

### ***Engagement***

The second model of outreach is engagement. Engagement goes beyond providing information to facilitate extensive and frequent interaction, dialogue, and communication between the court and the people. With engagement the goal is not to simply inform, but establish an interaction that discusses the positive and negative aspects of the court. The engagement strategy is only possible if built on a successful transparency model, as it presupposes a basic knowledge and understanding of the tribunal’s work.<sup>104</sup>

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<sup>103</sup>McDonald, Gabrielle Kirk, *International War Crimes: Making a Difference?*, 27.

<sup>104</sup>Peskin, *Courting Rwanda*, 954.



## *Engagement Model Activities*<sup>105</sup>

Various activities can be part of an engagement strategy including:

- Establishing outreach offices in various locations to act as information centers
- Organizing town hall or community meetings that bring together court staff and citizens for an open forum, discussion, and question and answer session
- Sponsoring seminar discussions or conferences of recent judgments and legal issues with academics, international/domestic legal experts, legal professionals, and university students
- Showing video screenings for populations unable to attend trials
- Working with media on television or radio programs that give in-depth coverage of the court
- Developing specific programming initiatives targeting different groups, such as victims, police, women, and youth
- Training initiatives designed to teach willing individuals/ community leaders about the court so they can independently facilitate conversations
- Producing printed material including posters, booklets, leaflets, and copies of public court documents, and active distribution through civil society, outreach events
- Developing specific opportunities for the local population to work for and be involved in the actual court
- Training programmes for journalists and specific efforts to develop a cooperative relationship with the media
- Providing support for other groups programming for issues related to the courts work or related themes/issues
- Establishing partnerships with civil society, media representatives, victims associations, professional associations, and community organizations and maintaining partnerships with frequent consultation

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<sup>105</sup>Peskin, *Courting Rwanda*: 954-955; Vincent *Administrative Practices*, 88-91.

The engagement model has a broader conception of what can be included as outreach. In an engagement model, outreach is an important tool in ensuring that the tribunal leaves a positive impact on the affected community. The model requires a holistic approach that includes participation from actors within every section of the court. Outreach must be conceived as a broader commitment to public participation and as a contribution to social reconstruction. Outreach should not be confined to the specific outreach section of the court, but instead be integrated into the activities of every section. Using this broader conception of outreach, professional capacity-building initiatives can be part of outreach. Initiatives included judicial trainings, seminars on international law, or workshops for defense lawyers. Prosecutors, defense attorneys, and judges within the court best conduct these specialized initiatives, but outreach can help organize and plan the events.

### *Benefits of the Engagement Model*

Peskin describes an engagement model as one that “can become a productive forum where the court explains the complexities and challenges of the legal process not easily conveyed through the Tribunal’s public relations literature in the so-called transparency model.”<sup>106</sup> The engagement model is particularly necessary for international tribunals because given their structural impediments, the transparency model results in “opaqueness.”<sup>107</sup> Furthermore, interactions between court staff and the populations are beneficial not only for local population, but for the court staff. Through these

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<sup>106</sup>Peskin, *Courting Rwanda*, 955.

<sup>107</sup>*Ibid.*

interactions, court staff can better understand the perceptions of the local population and how to be more responsive to their needs.<sup>108</sup> This is particularly important when the international staff in tribunals may have a limited knowledge of the history of the conflict.

### *Challenges and Risks of Engagement*

Now again, the ICTY is a precedent in everything in later day modern justice. They realized in 1998 they needed to do something, tell the victims the court is working. For me, its really common sense, the problem is the court has to be run by legal people, and the majority of them fail to see the need.

- Nerma Jelacic, Director of Balkan Investigative Research Network, NGO in Bosnia<sup>109</sup>

A significant obstacle faced by the engagement model is the attitude of the personnel within the tribunals. At the ICTY and ICTR, many tribunal officials did not initially think community outreach or public information was the responsibility of the court. In some cases this has not only delayed outreach, but also undermined its implementation.<sup>110</sup> This response changed only after the legitimacy of the tribunals was called into question repeatedly by the relevant governments and populations and was to the point of harming the operations of the court.

It is possible that some aspects and activities of engagement can encourage negative interactions and undermine the goals of an outreach program. For example, opening up forums for discussion could give an opportunity for upset constituents to vent their frustration with the court in an unproductive and accusatory way. Even more dangerous, forums to talk about a specific trial have at times turned into arguments over

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<sup>108</sup>Ibid.

<sup>109</sup>Nerma Jelacic, Director of Balkan Investigative Reporting Network, Personal Interview (January 4<sup>th</sup>, 2007).

<sup>110</sup>Peskin, *Courting Rwanda*, 953; Tolbert, *Reflections*, 484.

whose fault the war is.<sup>111</sup> These unhelpful meetings do not help fulfill the goals of the program, reinforcing divisions rather than legitimate discussion. Actions can be taken to mitigate the risk by starting outreach events before the court has started operating, training outreach officers, conducting extensive consultations with community leaders, and being sensitive to the possibility of legitimate anger within the communities.

### *Acceptance of Engagement*

Despite the challenges of an engagement model there is ample evidence that significant actors such as leading NGOs and the U.N. have accepted the approach both theoretically and in practical application. Human Rights Watch, an international NGO believes, “effective outreach and communications requires meaningful dialogue and exchange with local communities and media.”<sup>112</sup> In a 2004 report on *Transitional Justice and the Rule of Law*, the United Nations Secretary General implicitly endorses the strategy through description of the benefits of a national court. Benefits include easier interaction with the population, accessibility for victims, and potential for capacity building. The report states, “Such benefits, where combined with specially tailored measures for keeping the public informed and effective techniques for capacity building, can ensure a lasting legacy in the countries concerned.”<sup>113</sup>

Furthermore, recent international courts have adopted the engagement model of outreach. For example, the International Criminal Court, which was established in 2002, describes outreach as:

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<sup>111</sup>Peskin, *Courting Rwanda*, 954-955.

<sup>112</sup>Human Rights Watch, Memorandum to State Members of the Assembly of State Parties (November 2005): 3 <http://www.hrw.org/en/news/2005/11/21/human-rights-watch-memorandum-fourth-session-international-criminal-court-assembly-s>.

<sup>113</sup>United Nations Secretary General, *United Nations Secretary General Report on the Rule of Law and Transitional Justice*, 2004, U.N. Document S/2004/616, para 44.

A process establishing sustainable, two-way communication between the Court and the 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 ICC Outreach aims to clarify misperceptions and misunderstandings and to enable affected communities to follow trials.<sup>114</sup>

The characterization of outreach as a “two-way communication” is a phrase that reflects an adoption of an engagement strategy. This idea has been echoed in the definitions of outreach of in the hybrid courts in Sierra Leone, Bosnia-Herzegovina and Cambodia. Outreach sections are dedicated to active communication and dialogue, rather than focusing on public information, as the ICTY outreach program was at first. The idea of information coming both in and out of the Tribunal is key to the engagement strategy and addresses many of the limitations of transparency. Two-way communication links the court to the social and political processes, allowing the public to discuss the merits and intentions of the process and how it may be relate to broader issues of human rights and rule of law.

## **Designing a Strategy of Engagement for Hybrid Courts**

The theoretical acceptance of an engagement model of outreach is not sufficient to ensure an effective engagement strategy. In designing a strategy, several factors must be taken into consideration. These factors are: the structure of the court, organization of outreach section, guiding principles of the outreach program, audiences, relationships with external networks/civil society, and funding. Robin Vincent, former Registrar for the Special Court for Sierra Leone and current Registrar of the Special Tribunal for Lebanon

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<sup>114</sup>International Criminal Court, “ICC Outreach,” <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Outreach/>.

addresses many of these factors in his *Administrative Practices Manual for Internationally Assisted Criminal Justice Institutions*. Published in 2007 by the International Center for Transitional Justice, Vincent's manual offers a "best practices" administrative guide based on a comparison of internationally assisted courts. Vincent includes a section on outreach that assumes an engagement model and addresses many of the factors necessary for designing a strategy. His manual is the main source of information regarding design of an outreach strategy and will be used extensively in this section.

### ***Structure of Court***

Outreach was developed partly to mitigate the negative impacts of the structure of the ICTY and ICTR. Both tribunals were located in foreign countries and were staffed entirely by internationals. The hybrid court structure, which is the focus of this thesis, addresses some of the challenges of the international tribunals. Since hybrid courts are located in country, it is possible for citizens to attend the trials and easier to plan interactive outreach sessions. Furthermore, the mixed international-national composition of a hybrid court could facilitate national ownership of the court. Having nationals within the court also mitigates language barriers, improves cultural competence and enables the court to be responsive to changes on the ground.

Variations in different hybrid court structures can have an impact on outreach. The legal framework, mandate, time frame, and the organization of international-national cooperation are important factors that can vary significantly between hybrid courts. For example, whether the hybrid court is part of national law or simply located in country can

have an affect whether government officials view the court as a national institution and how they present the court publically.

The hybrid court offers many advantages, but there is still a risk that without outreach it will be viewed as a completely international institution. Internationals tend to hold senior positions within the court and often receive substantial media coverage. Efforts must be made to publicize the interaction between international-national so the structure is clear. When designing an outreach strategy it is important to utilize aspects of the hybrid court structure to maximize impact. For example, visits to the court and information about how to attend proceedings can be made available.

### ***Organization of Outreach Program***

Vincent outlines several possible structures for an outreach program within the administrative structure of a tribunal. The first is to include outreach as a sub-unit within press and public affairs unit, with the press chief as superior to the chief of outreach. This arrangement is beneficial in creating an overall communication strategy for the court, but it is possible it might inhibit the independence of the unit and the ability of the unit to get beyond the literatures of the press office. The second option is to create an outreach section that is independent of the Press Office and reports to the registrar or other senior administrative official. This organization allows the outreach section sufficient independence, but may inhibit its ability to coordinate with the Press Office. Third, it is possible for the press offices and the outreach function within them to be split within the different parts of the court, giving the Office of the Prosecutor its own Press and Public Information section.<sup>115</sup> Vincent advises against splitting or replicating the

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<sup>115</sup>Vincent, *Administrative Practices*, 87.

outreach functions between sections of the court, such as the registry and prosecutors office. If the Registrar does not have control over the outreach program, it is possible that outreach efforts by the prosecution could dominate and sacrifice the independence of the program.<sup>116</sup>

The different structures described above have been used in at the ICTY and ICTR with varied results. At these tribunals, the Outreach Programmes were created as additions to the founding statutes of the tribunals. At the ICTY, the Outreach Programme was created as a separate unit within the Registry, the administrative structure of the tribunal. The Programme was established with its own coordinator and personnel. When the ICTR established an Outreach Programme, it was added to the duties of the Press and Information Section, which was not assigned new personnel. Peskin identifies the organization as one factor inhibiting outreach, as the program was not fully staffed and appropriate attention could not be paid to outreach.<sup>117</sup>

### ***Relationship to the Press and Public Information Offices***

The structures of outreach described above further enforce the acceptance of the engagement model of outreach. Vincent does not even describe the activities associated with transparency as outreach, but rather categorizes them as “Press and Public Affairs.”<sup>118</sup> This categorization supports Peskin’s assertion that an engagement model of outreach is dependent on existing transparency. By transferring the responsibility of transparency to Public Information, the specific outreach unit will have enough time and resources to develop a strategy of engagement.

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<sup>116</sup>Ibid, 85.

<sup>117</sup>Peskin, *Courting Rwanda*, 951.

<sup>118</sup>Vincent, *Administrative Practices*, 92- 97.



### ***Guiding Principles***

A coherent strategy is an important aspect of designing and implementing effective outreach. Vincent suggests four principal core values that should guide a program, one of them being engagement, again reinforcing the acceptance of the engagement strategy of outreach. The second value is accountability, meaning the program should be focused on providing accurate information rather than promoting the institution. The third value is neutrality, which Vincent defines as a “commitment to work with all parties.” Finally the fourth value is independence. The program should retain its independence when cooperating with other organs of the court, like the prosecutors office and office of defender, being careful to avoid being associated with either one.

These core values are important to consider and keep in mind when designing situation specific outreach strategies. They further reinforce the crucial point that outreach is not a public relations campaign, but an important mechanism with which to provide the population with accurate information and connect the tribunal to the larger process of social reconstruction.

### ***Audiences***

At a conference discussing the impact of international tribunals, researcher Timothy Longman shared the story of Esperance, a girl in Rwanda who had survived the genocide. Longman said:

If war crime trials are to contribute not simply to the development of international law, but to the processes of reconciliation and social reconstruction in countries affected by genocide and other crimes against humanity, then we must consider the impact that trials are having on survivors like Esperance' as well as on the people who kidnapped her, raped her, and killed her family, and on the communities where these people carried out their crimes.<sup>119</sup>

Longman illustrates the necessity of reaching out to the various audiences that have been affected by the conflict. Vincent also affirms the importance of designing strategies to inform different groups of people, who may have specific concerns or interests regarding the trial process.<sup>120</sup> These groups depend on the specific situation and nature of the conflict, but generally include the international community, national government officials, victims' associations, legal professionals, youth, and groups unsupportive of the court. The importance of reaching out to these various groups is best exemplified through the experience of the Bosnian War Crimes Chamber and case studies that will be discussed in chapter five, but brief descriptions will be presented here.

*International Community:* Composed of the U.N., international organizations, non-governmental organizations/foundations, and representatives from national governments, the international community is the main source of funding for a hybrid court. Funding is related to the donor community's perceptions of the court, how efficiently it is operating, and whether it is perceived to be making a difference. The funding dependency has in the past led to prioritizing the international community over the local. However, international donors are sensitive to local public opinion and it is beneficial for the court if it is able to demonstrate support of the population.

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<sup>119</sup>Longman, *Making a Difference?*, 34.

<sup>120</sup>Vincent, *Administrative Manual*, 89.

*National Government:* Government should be a source of support for post-conflict accountability efforts. A nation's leaders can have a significant role in fostering citizen support for the institution.<sup>121</sup> The hybrid court structure establishes a concrete relationship between a court and the government. However, the international component of the hybrid can introduce tensions, especially if the court is perceived as "imposed." Activities to reach out to government can include consultation, working on joint programs for employment of the populations, and inviting government recommendations. These activities are most appropriate for senior court officials to initiate and should not be conducted by the outreach program. In developing the relationship with government, it is important for the court to maintain its independence.

*Victims Associations:* The court is intended to serve justice for the victims of the war. However, this understanding ignores the complexity of the relationship between the court and the victims of the conflict. There exists a practical dependency of the court on victims as potential witnesses. This role requires the court makes itself known throughout victim populations, often through developing a relationship with victim associations. It also presents a unique relationship because victims are being asked not only to learn about the process, but also actively participate in it. In this context, the legitimacy of the court is influenced by factors such as witness protection and the actual experience in the courtroom. These aspects of the trial process require targeted outreach efforts, which could include specialized literature, programming, consultations, and

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<sup>121</sup>Peskin, *Courting Rwanda*, 953.

trainings for witnesses. In this regard, it is important to draw a distinction between outreach and a witness support section. The responsibilities of witness support and protection should not be put under the umbrella of outreach, but rather outreach should work with this section to support its activities.

*Legal Professionals:* A hybrid court structure facilitates outreach to local legal professionals, as they will be involved in the court. However, the number of professionals actually working for the court is most likely to be small, and further outreach is needed for the legal community that work outside of the court. Interaction can include training sessions, consultation, visits/exchanges, and partnerships with local bar associations/ legal professional networks and special invitations to observe the proceedings. Outreach is best conducted by prosecutors, judges and defense attorneys, but an outreach program can facilitate coordination of these activities. Outreach and professional training to potential/acting defense lawyers is particularly important because they often do not have the resources of the prosecutor's office and the lack of support can sacrifice the fairness of the trial.

*Youth:* Students are a crucial group to educate about the accountability process. Information and dialogue about human rights and accountability can help develop common values at an early age and encourage future participation in justice institutions. Furthermore, judgments and other information from the trials can be used to address the history of the conflict. Activities to reach out to youth can include student tours, visits by

senior court officials to schools, specialized material, and establishment of clubs or discussion groups for youth about the court and the larger concepts of human rights.

*Unsupportive/ Perpetrator Populations:* It is important for the court to have legitimacy among all survivors of the conflict. For this reason, outreach to communities whose members are likely to be or feel targeted by the prosecutions is crucial, but difficult. In many instances the court has already been cast as a tool of ‘victors justice’ and the media and politicians have begun a campaign against it. Propaganda from the war continues into the post-conflict period and information regarding crimes committed has been suppressed. It is important for outreach to start early, maintain an active presence, distribute court produced information and news briefs, engage with media when appropriate, and organize media trainings.

### ***Partnerships with Civil Society and the Media***

Partnerships with civil society and grassroots organizations are an important way to spread information and develop a connection with the social processes of reconstruction. An outreach office can develop strong relationships with specific leaders/organizations in the community and encourage these representatives to disseminate information among larger populations.<sup>122</sup> Activities conducted by civil society can be an important complement to an outreach program, but it is important to ensure they are not a substitute for active outreach by the court.<sup>123</sup>

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<sup>122</sup>Vincent, *Administrative Manual*, 90.

<sup>123</sup>Human Rights Watch, *Bringing Justice: The Special Court for Sierra Leone*, vol. 16, no 8a (September 2004), 30. <http://www.hrw.org/en/reports/2004/09/07/bringing-justice-special-court-sierra-leone-0>.

Working with the media is crucial for transparency, which is a necessary base for a successful engagement strategy. The media is often the most effective way to inform the public. However, in a post conflict environment, media and information infrastructure may be undeveloped or politicized. War crime prosecutions are complex legal proceedings that require a significant amount of background information to report accurately. In this regard it is to the benefit of the court to facilitate reporting by providing current information, details, and explanations of court proceedings. Furthermore an outreach program can go beyond transparency and develop proactive measures to develop reporting. For example, meeting with the media regularly to discuss cooperation and organizing training sessions.

### ***Funding***

Successful implementation of outreach activity is dependant on funding. Outreach should have a budget within the annual administrative budget of the court that reflects the importance of its activities. The office should be held accountable, but will also need a certain degree of flexibility in order to respond to unexpected events.<sup>124</sup> Preferably, funding for outreach activities would begin before the court starts its actual operations and will introduce and explain the institution to the population. Outreach offices should try to work with civil society and alternative forms of funding to help support its activities, but these outlets are not a substitution for sustained support from the court.

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<sup>124</sup>Vincent, *Administrative Manual*, 88.

## **Conclusion**

The engagement model of outreach requires two-way interaction between the court and the population. A two-way interaction is necessary to connect the trials to processes of social reconstruction. Through dialogue the court becomes part of a discussion of rule of law and human rights. Explanation and participation in the trial process facilitates a larger understanding of the justice process, rather than simply the names and crimes of the accused. Embraced as the most effective model of outreach, engagement has been incorporated into the mission statements of the outreach programs in the hybrid courts in Sierra Leone, Cambodia, and the War Crimes Chamber in Bosnia.

Several factors have been identified as necessary to consider when designing an engagement strategy. By identifying factors to be considered, I can look for these factors in the WCC and other hybrid courts that will be analyzed for comparison, recognizing which factors were taken into account and which were neglected. Having this model is a useful framework with which to examine outreach programs. However, it is not sufficient to understand the problems of implementation. Although a model of engagement can provide a blueprint for outreach, it is only through studying actual implementation of outreach that the factors inhibiting effective outreach can be understood. In the next chapter, the implementation of outreach at the hybrid courts in Timor-Leste, Cambodia, and Sierra Leone. Lessons learned from these case studies will inform discussion and recommendations for the Bosnian War Crimes Chamber.

## V. Case Studies of Outreach for Hybrid Courts

We need to think not only about concepts and principles of domestic involvement, but also about the actual nitty-gritty development and detail of how these processes are implemented and maintained over the life of the tribunals themselves.<sup>125</sup>

-Nehal Bhuta, researcher in Timor-Leste

The advantages of hybrid courts are often explained in terms of how they can bring victims closer to justice, facilitate public participation, make prosecutions part of national reconciliation, and build local capacity by training local judges, lawyers, court administrators. The structure of individual hybrid court differ, but they have several shared characteristics. Each is located in country, sometimes as part of the national justice system, and has a mixed composition of international and national personnel. A hybrid court facilitates many of the goals of outreach by making the court physically accessible, eliminating language barriers and employing nationals, contributing to the national justice system, and theoretically demonstrating a fair judicial process that will restore respect in the rule of law. A hybrid court will ideally be able to leave a positive impact on the populations whose crimes are being prosecuted.

Despite these promises, the in practice the operations of the hybrid courts in Timor-Leste, Cambodia, and Sierra Leone have varied in terms of relevance to the population. These case studies show that outreach still remains crucial in order to avoid the “spaceship phenomenon” which describes a court that arrives and leaves with limited

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<sup>125</sup>Bhuta, Nehal, *Making a Difference?*,132.



impact.<sup>126</sup> Timor-Leste, Sierra Leone, and Cambodia each offer important lessons regarding implementation of outreach. In Timor-Leste, an outreach program was never established and the court was dependant on an NGO to provide basic transparency. In Sierra Leone outreach was prioritized from the court's establishment and creative strategies were implemented to make the court accessible. In Cambodia an outreach program exists, but the majority of outreach is done independently by NGOs. Organized chronologically by the year the court was established, this chapter will analyze the outreach experience of three hybrid courts: the Special Panels for Serious Crimes in Timor-Leste, the Special Court for Sierra Leone, and the Extraordinary Chamber in the Courts of Cambodia.

## **The Special Panels for Serious Crimes in Timor-Leste**

Timor-Leste was occupied by Indonesia from 1975 to 1999. Human rights abuses, cruel military tactics, and repression characterized this period. Almost 200,000 Timorese died during this time, mostly at the hands of the Indonesian military and Timorese militia paid by the Indonesian military. In 1999, when a referendum resulted in an overwhelming vote for independence, the military responded with a scorched-earth campaign that left hundreds dead and 70% of infrastructure destroyed.<sup>127</sup>

In June 2000, the United Nations established special panels within the Timorese Judicial system, called the Special Panels for Serious Crimes (SPSC) to prosecute the

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<sup>126</sup>Tom Perriello and Marieke Wierda, *The Special Court for Sierra Leone Under Scrutiny* (March 2006) International Center for Transitional Justice, 2 <http://www.ictj.org/static/Prosecutions/Sierra.study.pdf>.

<sup>127</sup>Tom Perriello and Marieke Wierda, *The Serious Crimes Process in Timor-Leste: In Retrospect* (March 2006), International Center for Transitional Justice, 6-7, <http://www.ictj.org/static/Prosecutions/Timor.study.pdf>.

crimes following the referendum. The panels continued to operate until May 2005. While a number of cases were tried involving lower-level Timorese perpetrators, the Indonesian military generals most responsible remained at large and the court was plagued by incompetence and poor organization.

### ***Lack of Transparency***

The Special Panels did not have an outreach program or attempt any public information activities. The court had no system to provide the public access to court documents or judgments and failed to consistently translate the documents into the relevant languages.<sup>128</sup> Even if translated copies of the court materials existed, the majority of the population is rural and illiterate, leaving the decision effectively inaccessible. SPSC made no attempt to reach out to the Timorese and explain the trial process, even when court personnel were physically present in the communities. In some cases, communication was so minimal it undermined the functioning of the court. Nehal Bhuta, a researcher in Timor-Leste, explains the lack of communication: “Communities wouldn’t necessarily know if a case affecting them was coming to trial, or as happened quite often in the early stages, if one of their community members himself was required in court.”<sup>129</sup>

Communication problems persisted within the courtroom. Judicial System Monitoring Programme, and NGO monitoring the trials, described the lack of public participation in the trials:

Earlier this week, in the case of Public Prosecutor v Carlos Soares no Tetum translation was made for the public present in the court gallery. In this hearing, which was also presided by Judge Florit, closing statements for each of the parties were presented. To

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<sup>128</sup>ICTJ *Serious Crimes Process in Retrospect*, 6-7.

<sup>129</sup>Bhuta, *Making a Difference?*, 131.

save time, the Panel ordered the court translator to make a private translation to the accused rather than provide a general translation in the courtroom. This procedure excluded the public, particularly the family members of the accused who had travelled from out of Dili to attend the hearing.<sup>130</sup>

This example demonstrates how the SPSC often failed to meet even basic requirements of transparency, preventing public participation. The judges prioritized time over public participation. Communication improved in 2003 when a press officer was appointed and began producing regular fact sheets and reports.<sup>131</sup> However, it was only as the SPSC was closing in 2005 that it began its first outreach effort called, “Community Information Program.”<sup>132</sup> The program’s goals were to explain the mandate of the SPSC, why it was ending, the future of serious crimes processes, and highlight the work the court had done in relation to specific districts. Between April- May 2005 the court conducted five events in different areas of Timor-Leste. These events were criticized as being too late to be effective, too short, and not well publicized.<sup>133</sup>

### ***Dependency on a NGO: Judicial System Monitoring Program***

An independent NGO established in 2001, Judicial System Monitoring Programme (JSMP), attempted to fill the gap in regard to outreach activities. JSMP initially was aimed at publicizing the decisions of the accountability processes in Timor-

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<sup>130</sup>Judicial System Monitoring Programme “Special Panels for East Timor ignores the importance of public participation in Court proceedings,” Press Release (November 19<sup>th</sup>, 2003), [http://www.jsmp.minihub.org/News/News/19.11.03spscIgnorePublic\(e\)](http://www.jsmp.minihub.org/News/News/19.11.03spscIgnorePublic(e)).

<sup>131</sup>ICTJ *Serious Crimes Process in Retrospect*, 31.

<sup>132</sup>Judicial System Monitoring Programme “The Serious Crimes Unit Conducts Community Outreach Sessions,” Press Release (April 29, 2005), [http://www.jsmp.minihub.org/Press%20Release/2005/April/050429\\_JSMP\\_The%20SCU/050429\\_jsmp\\_SCU%20Comunity%20Outreach\(e\).pdf](http://www.jsmp.minihub.org/Press%20Release/2005/April/050429_JSMP_The%20SCU/050429_jsmp_SCU%20Comunity%20Outreach(e).pdf).

<sup>133</sup>Ibid.

Leste, but expanded to include training and workshops.<sup>134</sup> JSMP maintains a website with translated court documents, press releases, and thematic reports. JSMP is often critical of the panels and seeks to address the problem when appropriate. For example, JSMP arranged for representatives from each district to attend a conference that focused on the future of SPSC after May 2005. JSMP explains, “to date there has been little if any communal involvement in a process whose main function is to bring healing and reconciliation to the people of Timor-Leste.”<sup>135</sup>

The JSMP describes a sentiment that is also felt by local NGOs. The U.N. did not consult with local NGOs in the initial process of establishing the panels, nor did they reach out to them after. As a result, the SPSC alienated NGOs with access to expertise, community networks, information and documentation of abuses.<sup>136</sup> Lack of consultation strengthened perceptions of the process as an international and externalized institution.<sup>137</sup>

### ***Failed Justice: The Limits of Outreach***

The Serious Crimes Process in Timor-Leste has largely been considered a failed justice mechanism. It demonstrates how theories of localization, participation, and local ownership in relation to a hybrid structure can fall apart without resources and concerted, coordinated, and serious efforts to achieve these goals. The international community viewed the process as ‘national’ and was anxious to cut off funding. Lacking an outreach

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<sup>134</sup>Judicial System Monitoring Programme, “About Us.”

[http://www.jsmp.minihub.org/Language\\_English/aboutus\\_english.htm](http://www.jsmp.minihub.org/Language_English/aboutus_english.htm).

<sup>135</sup>Judicial System Monitoring Programme “Conference on the Future of the Serious Crimes Process for Timor-Leste.” *Press Release* (September 22, 2004),

[http://www.jsmp.minihub.org/Language\\_English/pressreleases\\_english.htm#2001](http://www.jsmp.minihub.org/Language_English/pressreleases_english.htm#2001).

<sup>136</sup>ICTJ *Serious Crimes Process in Retrospect*, 13.

<sup>137</sup>*Ibid.*, 31-32.

program, the SPSC failed to even meet the requirements of transparency. The Timorese knew little about the trials and viewed them as foreign justice.<sup>138</sup> When outreach events did eventually occur, the SPSC was often met with frustration. Community members were enraged that Indonesians were not being prosecuted and the process was closing down before all cases had been investigated. The experience of the SPSC shows that outreach is not a public relations tool. If the process being explained is flawed, it follows that the public will respond critically.

## **The Special Court for Sierra Leone**

The civil war in Sierra Leone lasted from 1991-2002 and was characterized by serious crimes committed against civilians and the systematic use of mutilation, abductions, sexual violence and murder.<sup>139</sup> The rebel groups, Revolutionary United Front (RUF) and Armed Forces Revolutionary Council (AFRC), committed most crimes. In 2000 the President of Sierra Leone requested U.N. assistance in prosecuting the crimes of the war. Established by treaty in 2002 between the Government of Sierra Leone and the U.N., the Special Court is located in Freetown and has international and government-appointed personnel. The court is temporary and is not part of the Sierra Leonean national justice system. The tribunal has a mandate to specifically try the leaders "bearing the greatest responsibility" for crimes committed between November 1996 and January 2002. This narrowly defined mandate means the court is only intended to

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<sup>138</sup> Ibid.

<sup>139</sup> Human Rights Watch. *Bringing Justice: The Special Court for Sierra Leone*, vol. 16, no 8a (September 2004),1

<http://www.hrw.org/en/reports/2004/09/07/bringing-justice-special-court-sierra-leone-0>.

prosecute a small number of cases. At present, it is likely that a total of 11 cases will be brought to trial, including the case of Charles Taylor, former President of Liberia.<sup>140</sup> The court is scheduled to finish its operations by December 2010.

### ***Outreach Unit: Coordination and Prioritization of Engagement***

The Special Court has been described as the best outreach program for any international or hybrid tribunal by multiple human rights NGOs.<sup>141</sup> Outreach activities started before the trial period of the tribunal and have continued to develop and expand since that time. Initially outreach was located in the Office of the Prosecutor and was staffed by three people.<sup>142</sup> The focus of the program was “town-hall meetings” in the districts of Sierra Leone, led by then Prosecutor David Crane and Registrar Robin Vincent.<sup>143</sup> These meetings were intended to explain the mandate of the court and allow an opportunity to ask questions.<sup>144</sup> These initial meetings indicated the outreach program would adopt an engagement approach.

In 2003 the Outreach Section was moved to the Registry, where it was independent, but coordinated with the Press and Public Affairs Unit. The section defines its mission as “fostering an environment of two-way communication between Sierra

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<sup>140</sup>ICTJ *Special Court Under Scrutiny*, 26.

<sup>141</sup>Human Rights Watch, *Justice in Motion: The Trial Phase of the Special Court for Sierra Leone*, vol. 17, no. 14(A), (October 2005), 28 <http://www.hrw.org/en/reports/2005/11/01/justice-motion>; ICTJ *Special Court Under Scrutiny*, 35.

<sup>142</sup>*First Annual Report of the President of the Special Court for Sierra Leone (2002-2003)*, 26, <http://www.sc-sl.org/Documents/specialcourtannualreport2002-2003.pdf>.

<sup>143</sup>International Crisis Group “The Special Court for Sierra Leone: Promises and Pitfalls of the New Model,” ICG Africa Briefing (August 2003),17, [http://www.crisisgroup.org/library/documents/report\\_archive/A401076\\_04082003.pdf](http://www.crisisgroup.org/library/documents/report_archive/A401076_04082003.pdf).

<sup>144</sup>Special Court for Sierra Leone, “Prosecutor for the Special Court Beings Hold Town-Hall Meetings.” Press Release, September 27<sup>th</sup>, 2002.

Leoneans and the Special Court.”<sup>145</sup> The complementary role of the Press and Public Affairs Office is “to ensure maximum transparency so people see that justice is being done.”<sup>146</sup> Outreach and the Press Office were meant to work together to provide both transparency and engage the population. In 2008 the Outreach Unit and the Press Office were merged in recognition of the winding down of the court’s work. According to the Special Court this change has not affected the activities of the outreach section.<sup>147</sup>

Since its establishment the Outreach Section has been staffed exclusively by Sierra Leoneans. An experienced Sierra Leonean activist initially led the section until she was appointed to be the Deputy Registrar of the court. The composition of the outreach team is beneficial because the employees speak the local language and are also able to understand context.<sup>148</sup> Furthermore five district officers have been placed throughout the provinces. These officers conduct community events, tap into community networks, and hold public discussions.<sup>149</sup>

In 2004 a Legacy Working Group was established in relation to the completion strategy of the SCSL with the goal to identify and implement projects that the court can use to contribute to a lasting legacy.<sup>150</sup> These themes and projects recommended overlap and further the aims of outreach. The Legacy Working Group is significant as it represents a strong institutional commitment to the impact of the tribunal and prioritization of the goals of outreach.

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<sup>145</sup>SCSL *First Annual Report*, 26.

<sup>146</sup>*Third Annual Report of the President of the Special Court for Sierra Leone* (2005-2006), 38.

<sup>147</sup>Pentelovitch, Norman. "Seeing Justice done: The Importance of Prioritizing Outreach Efforts at International Criminal Tribunals." *Georgetown Journal of International Law* 39, no. 3 (2008), 454.

<sup>148</sup>ICTJ *Special Court Under Scrutiny*, 36.

<sup>149</sup>HRW *Justice in Motion*, 29.

<sup>150</sup>Vincent O. Nmehielle and Charles Chernor Jalloh, “The Legacy of the Special Court for Sierra Leone.” *Fletcher Forum of World Affairs*, 30:2 (Summer 2006), 111.

### ***Engagement Activities***

The outreach section has engaged in a variety of activities to involve specific audiences including rural and illiterate communities, women, police, children/students, military, disabled, victims associations, and the Sierra Leonean Bar Association. Activities include town-hall meetings with staff from the Office of the Prosecutor, Office of the Defense, and Registry, radio programming, distribution of informational videos and TVs, printed brochures, posters, organizing visits to the tribunal, conferences, “training the trainer” programs, and working with a network of NGOs through the Special Court Interaction Forum.<sup>151</sup> By 2008 the section had organized “over 70 public lectures on international humanitarian law and human rights, 1,377 town hall meetings across Sierra Leone, 1,873 screenings of video summaries of judicial proceedings, and facilitated over 1,300 visits to school by district officers and partner organizations.”<sup>152</sup>

### ***Creativity in Reaching Audiences***

Almost 80% of the population of Sierra Leone is illiterate.<sup>153</sup> In order to interact with this population the outreach section has focused on radio programming, town-hall meetings, and pictorial representations of the court’s work. To facilitate media coverage of the court the press section has adapted to the available communication infrastructure of Sierra Leone by establishing a call-in telephone line with recorded news releases.

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<sup>151</sup>The Special Court for Sierra Leone, “Outreach and Public Affairs,” <http://www.sc-sl.org/ABOUT/CourtOrganization/TheRegistry/OutreachandPublicAffairs/tabid/83/Default.aspx>.

<sup>152</sup>*Fifth Annual Report of the President of the Special Court for Sierra Leone* (2007-2008), 11.

<sup>153</sup>ICG, *Promises and Pitfalls*, 2.



Journalists throughout the country, including the stations in the removed north of the country, are notified via text messaging of updates.<sup>154</sup>

Another example of creativity was the unit's reaction to the lack of military support. Staff put together material to respond to their fears of prosecution and controversy over some indictments. Special forums were held to speak to soldiers, allowing them to explain their concerns and have different members of the court respond. These forums did not necessarily lead to support for the tribunal, as there remained many legitimate differences of opinion. However, the forums did allow for a discussion about the court to take place and in this regard represent successful outreach.<sup>155</sup>

The court has faced difficulties reaching out to the Sierra Leonean Bar Association and judges from the national courts. Although judges are often invited to training sessions, they rarely attend. Human Rights Watch recommended starting a monthly discussion among legal professionals and trying to actively engage them in the programs.<sup>156</sup>

### ***Cooperative Relationship with Civil Society***

The Special Court has interacted with local/international NGOs since its establishment. Several groups were consulted during the initial U.N. planning mission, but many NGOs felt excluded from the negotiation process, which took place in New York.<sup>157</sup> Once the outreach section was established, a Special Court Interaction Forum was created to facilitate monthly meetings between civil society and the court. These meetings allowed the court to provide up-to-date information and allowed the leaders to

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<sup>154</sup>SCSL *Fifth Annual Report*, 53.

<sup>155</sup>ICTJ *Special Court Under Scrutiny*, 36.

<sup>156</sup>*Ibid.*, 39.

<sup>157</sup>*Ibid.*, 12-14.

share community concerns and questions. The outreach section has been responsive to concerns introduced by NGOs. For example, the unit increased outreach efforts to religious leaders after civil society leaders explained they were being excluded.<sup>158</sup>

### ***Successful Strategy of Engagement***

The Special Court for Sierra Leone demonstrates the impact of strong institutional commitment on outreach. Legacy was a concept continuously present since the establishment of the Special Court. The highest officials of the tribunal prioritized impact and outreach from the beginning. Furthermore, adequate staffing and qualified personnel worked to understand the audiences and needs of Sierra Leoneans and design strategies that met these needs. The court was able to work effectively with NGOs, but not rely on them to do the job of outreach. These efforts have been relatively successful, with a survey commissioned by the Special Court finding 79% of people understood the role of the court and 85% respondents indicated they could explain the court based on the outreach material. Finally, 90% of the respondents knew of the outreach section.<sup>159</sup>

### **The Extraordinary Chambers in the Courts of Cambodia**

The Khmer Rouge was in power from 1975 to 1979. During its regime unspeakable atrocities were committed throughout the countryside of Cambodia with an estimated three million people, predominately civilians, left dead. Following years of impunity, the U.N. began negotiations with the Cambodian government in 1993 regarding prosecutions of the senior leaders of the Khmer Rouge. After ten years, the

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<sup>158</sup>Pentelovitch, *Seeing Justice Done*, 458; HRW *Justice in Motion*, 30.

<sup>159</sup>Pentelovitch, *Seeing Justice Done*, 461.

Extraordinary Chamber was established as part of the Cambodian judicial system in 2004. The Chamber is divided into two independent units: the Cambodian and the United Nations. Personnel from both units are represented in the all organs of court. Each panel is composed of both international and Cambodian judges, with a majority of Cambodian judges.<sup>160</sup> The Extraordinary Chambers in the Courts of Cambodia (ECCC) began operations on February 17<sup>th</sup>, 2009 with the trial of Kaing Guek Eav, alias Duch.<sup>161</sup>

### ***Outreach: Late Start and Ineffective Initiatives***

The Public Affairs and Press Section is located within the administrative structure of the ECCC. Headed by three people, two Cambodians and one international, the section is responsible for all of the ECCC's communication. Duties are divided informally between media relations, outreach and public relations.<sup>162</sup> The failure to officially appoint an outreach officer has presented challenges in coordinating outreach activities. As of now the press section does not have a mission statement or stated strategy of communication, and their outreach efforts are mainly organized by NGOs.

The section has initiated a poster and radio campaign that is focused on four messages intended to create awareness of important aspects of the courts.<sup>163</sup> These posters, along with a 28- page booklet, *Introduction to Khmer Rouge Trials*, and stickers, hats, t-shirts with the text, " I support the Khmer Rouge Tribunal" are in the process of

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<sup>160</sup>Extraordinary Chambers in the Courts of Cambodia, "Introduction"  
[http://www.eccc.gov.kh/english/about\\_eccc.aspx](http://www.eccc.gov.kh/english/about_eccc.aspx).

<sup>161</sup>Extraordinary Chamber in the Courts of Cambodia. "First ECCC Trial On Crimes of the 1970s Khmer Rouge Regime Officially Open" Press Release  
[//www.eccc.gov.kh/english/news.list.aspx?attribute=&selector=&page=2](http://www.eccc.gov.kh/english/news.list.aspx?attribute=&selector=&page=2).

<sup>162</sup> Pentelovitch, *Seeing Justice Done*, 465.

<sup>163</sup> Messages are 1) Everyone can be involved, 2) Every decisions has to be agreed on by Cambodians and Internationals, 3) Its time for the record to be set straight, 4) Only the Senior Khmer Rouge Leaders: Publications, Extraordinary Chambers in the Courts of Cambodia,  
<http://www.eccc.gov.kh/english/publications.aspx>.

being distributed by throughout the different provinces of Cambodia.<sup>164</sup> When initially designed they received negative feedback from NGOs, being described as confusing. However, despite these criticisms the court has continued to print and distribute them unmodified.<sup>165</sup> Given the largely illiterate population of Cambodia, it is unclear how effective the booklets can be in conveying information. Furthermore it is unclear how distribution within the provinces will be handled and what assurance can be made that the booklets will be received by community members who can read and share the information.<sup>166</sup> Other press activities include monthly “Court Reports,” issuing press releases, and managing accreditation for the media coverage.<sup>167</sup>

Since 2008 efforts have been made to improve court-sponsored outreach efforts and an Information Centre was opened in the city of Phnom Penh. The Centre was said to “represent a new phase in making the ECCC more accessible to the public, with particular attention to the needs of victims.”<sup>168</sup> The Centre is intended to be an accessible place for discussion and seeking information about the ECCC and the role of the victim. During the pre-trial hearings of the Duch trial a free bus departed from the Centre to bring interested citizens to the courtroom.

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<sup>164</sup>Interactive Map with information regarding the number of booklets, stickers, posters distributed in each region and pictures available on the website: “Outreach Map” Extraordinary Chambers in the Courts of Cambodia, <http://www.eccc.gov.kh/english/outreach.map.aspx>.

<sup>165</sup>Pentelovitch, *Seeing Justice Done*, 485.

<sup>166</sup>Ibid., 466.

<sup>167</sup>Extraordinary Chambers in the Courts of Cambodia, “Press” <http://www.eccc.gov.kh/english/>.

<sup>168</sup>Visoth, Sean. *Remarks at the Viewing of the new information centre in the centre of Phnom Penh for the Extraordinary Chambers in the Courts of Cambodia* (April 21, 2008) <http://www.eccc.gov.kh/english/speeches.list.aspx>.

### ***Dependant and Uncoordinated Relationship with Civil Society***

Legal scholar Norman Pentelovitch describes the ECCC relationship to NGOs as one of "total dependence in regard to outreach"<sup>169</sup> Despite this reliance, the ECCC has not sought to coordinate or develop this relationship through consultation. A group of ten NGOs have largely organized outreach activities independent of the court, involving it occasionally. These NGOs are extremely effective at reaching out through existing networks to the rural and predominately illiterate populations. They have engaged in a range of activities including publications, community forums, youth/community leader training, radio programming and facilitating visits to the court.<sup>170</sup> These activities are all useful, but lack of coordination between NGOs had led to overlap and repetition in outreach efforts. For example, four different NGOs organize radio programmes with similar content. Coordination initiatives so far have not been effective and only include a few NGOs.<sup>171</sup>

### ***Outreach Strategies for Victims***

Victims have a unique opportunity for participation in the ECCC. In addition to being called as witnesses, victims can also file complaints or apply to be joined to cases as "civil parties."<sup>172</sup> This is the first war crimes tribunal to offer victims the ability to participate as a legally recognized party. In order for participation to be realized, extensive outreach is required explaining the role of victims and aiding in filling out the victim information forms. In this regard the Victims Unit has an outreach officer and the

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<sup>169</sup>Pentelovitch, *Seeing Justice Done*, 469.

<sup>170</sup>Ibid., 469.

<sup>171</sup>Ibid., 473.

<sup>S2</sup>SaCouto, Susana "The Role of Victims in Bringing Former Khmer Rouge Leaders to Justice in Cambodia" Open Society Justice Initiative (Spring 2006), 60.

court is currently looking to increase the number the outreach officers to three.<sup>173</sup> Outreach to victims is the most promising avenue for the ECCC to focus its outreach efforts. As a legal advisor for an NGO involved in victim participation outreach states, “Victim participation is important for the court’s legitimacy because it is the best way of making a few trials of a handful of persons relevant to survivors 30 years after the fact.”<sup>174</sup>

### ***Opportunity for Improvement***

Since the trial phase of the ECCC has begun, the court has an opportunity to increase its outreach efforts around specific cases and the trial process. However, limited funding makes it unlikely the press section will be able to pursue this option. Instead the ECCC demonstrates the need to work effectively with civil society. Failure to consult and design an outreach approach has led to underutilization of available networks and ineffective outreach methods.

### **Lessons for Outreach**

The case studies examined demonstrate a domestic location and hybrid structure are not sufficient conditions to ensure courts will be known throughout the population. Although each court is different in many significant respects, several common themes run

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<sup>173</sup> Pentelovitch, *Seeing Justice Done*, 468; Extraordinary Chamber in the Courts of Cambodia, *2005- 2009 Approved Budget*, 25, 85 [http://www.eccc.gov.kh/english/annual\\_reports.aspx](http://www.eccc.gov.kh/english/annual_reports.aspx).

<sup>174</sup> Wilkins, Georgia. “Victims in emotional, legal limbo over participation at the KR Trial,” *Phnom Penh Post* (September 11<sup>th</sup>, 2008) <http://ictj.org/en/news/coverage/article/1964.html>.

throughout their experiences with outreach. These themes are 1) developing a coordinated strategy, 2) working with civil society, 3) audience specific strategies, 4) institutional commitment, 5) limits of the trial process.

*Developing a Coordinated Strategy:* The importance of developing a coordinated strategy of outreach from the initial establishment of the tribunal was demonstrated positively by the efforts of the Special Court. When an outreach office is separated from the press office, as in Sierra Leone, it is important for these two sections to develop a communication strategy to ensure their messages are not contradicting. When press and outreach are in the same unit, it is important for outreach activities to be delegated to a specific person. The Extraordinary Chambers failure to officially appoint an outreach officer inhibited the ability of the office to work with external actor/other organs of the court.

*Working with Civil Society:* The difficulties of striking a balance between coordinating civil society and depending on civil society were shown through the experiences of the Serious Crimes Process and Extraordinary Chambers. Both courts depended on the NGOs to conduct outreach, yet failed to support or coordinate with them to maximize efficacy. In Cambodia, outreach has failed to take leadership and as a result there is overlap in outreach activities conducted by NGOs. The Special Court was able to work with civil society, demonstrating the benefits of early involvement by inviting consultations from NGOs regarding the initial establishment of the court. The Special Court continued to be supportive, providing material, participating in events, and acting a center of outreach and communication.

*Audience Specific Strategies:* In the cases examined each court needed to communicate with a largely rural and illiterate population. The Special Court demonstrates how effective strategies can be developed through understanding the context and working with civil society partners. In Cambodia the ECCC attempted to reach out to the rural populations of Cambodia, but did not respond to criticism regarding their messages and produced dense informational booklets for a largely illiterate population. The different outreach strategies of the SCSL and ECCC for rural/illiterate populations demonstrate that is not sufficient to identify audiences. In designing engagement outreach strategies, the needs and concerns of the audience must be taken into consideration.

*Institutional Commitment:* At the Special Court outreach was prioritized by senior officials from the initial establishment of the court. As a result, all organs of the court were active in participating in public events and defined these activities as part of their job. The Serious Crimes Process in Timor-Leste demonstrates the negative effect a lack of institutional support has on outreach. At that court public participation was prevented by the failure of judges to translate judgments or read them aloud.

*Limits of the Trial Process:* The limited mandate of all the tribunals to prosecute only the highest level of perpetrators disappointed many who had different expectations of justice. A narrow mandate is just one example of the many structural and operational realities of post-conflict justice that even if explained, may not lead to support. If a population has different priorities for justice, then outreach will not be able to convince a society that a court should be relevant to them. Legitimate differences of opinion are likely to exist and the aim of outreach is not to ensure all in the population are supportive



of the process. Instead, the aim of outreach is to ensure there is a space for dialogue regarding the process. Outreach should be conceived as prioritizing public participation at all stages in the courts operations. Through early consultations with civil society, victims associations, and other relevant groups about the establishment and structure of a court concerns can be addressed through the creation of an on-going dialogue.

These lessons are useful for analyzing the implementation of outreach at the War Crimes Chamber. A hybrid court, the War Crimes Chamber has the same structural advantages of domestic location and national participation as the hybrid courts in this chapter. The WCC has included a “Public Information and Outreach Section,” from its establishment, but has struggled in implementing effective outreach strategies.

## **VI. Origin and Structure of the War Crimes Chamber**

The War Crimes Chamber within the State Court of BiH (WCC) represents the most recent development in hybrid courts. Unlike other hybrid courts, the WCC is not the only institution responsible for prosecuting the crimes committed in the country. Rather, the WCC is designed to work as a complement to the International Tribunal for the Former Yugoslavia (ICTY). Furthermore, the WCC was established within Bosnian law and is a permanent institution without a definitive end. A unique feature of the WCC hybrid structure is the temporary nature of international involvement. International judges and prosecutors are scheduled to transition out of the court over a period of five years. After this period the WCC will continue functioning as a completely national institution. The hybrid structure of the court is designed to maximize local capacity building and national ownership of the process and act as an intermediary step in the creation of a domestic court capable of prosecuting war crimes.

This chapter will discuss the establishment, structure, cases and prosecutorial strategy of the WCC. These features of the court should be understood as processes rather than fixed elements of the court's structure and organization. If the fluid nature of these aspects is ignored, outreach is limited by operations of the court and can focus only on explaining the existing conditions. It is true that outreach, defined as an outreach or public information office, does not and should not have any impact on judicial proceedings. However, as will be demonstrated by the establishment process and development of a prosecutorial strategy of the WCC, the structure and operations of an

institution are not as concrete as they are often assumed to be. Using the engagement model, outreach is conceptualized as an attitude or priority that implies a value of genuine public participation and local ownership of war crimes prosecutions. Applying the engagement model, there are many opportunities for outreach within the structure and operations of the WCC. Without an institutional commitment to these ideas, it is easy to go through an establishment process without local consultation. Similarly, an institution may fail to prioritize the development of a prosecutorial strategy that can be explained and creates appropriate public expectation. Outreach is most effective if it is not just an office or collection of activities, but a guiding principle for the operation of an institution.

## **Establishment**

The WCC is a result of the Joint Conclusions between the ICTY and the Office of the High Representative (OHR) in January 2003. Motivated by pressure to implement a completion strategy for the ICTY, the working group focused on the development of Bosnia's capacity to prosecute war crimes. The group concluded that a specialized war crimes chamber should be established within the newly created State Court of BiH with a complementing section in the Prosecutor's Office of BiH. The chamber would be a permanent national institution, but would include a temporary international presence.<sup>175</sup>

The Office of the High Representative took the lead in developing a proposal for the War Crimes Chamber Project. According to the OHR project plan:

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<sup>175</sup>International Tribunal for the Former Yugoslavia, "OHR-ICTY Working Group on Development of BiH Capacity for War-Crimes Trial Successfully Completed," Press Release (February 21<sup>st</sup>, 2003) <http://www.icty.org/sid/8298>.

The philosophy of the War Crimes Chamber Project is that accountability for the gross violations of human rights that took place during the conflict is of concern to all of humanity but ultimately remains the responsibility of the people of Bosnia and Herzegovina themselves. Only the support and commitment of the people of Bosnia and Herzegovina can ensure the viability of the War Crimes Chamber of the Court of BiH and the success of this society in strengthening the values of justice.<sup>176</sup>

Despite this stated philosophy, the establishment of the WCC is a product of international initiative. Legally, the chamber is a result of an international agreement and domestic law. However, the domestic law establishing the State Court of BiH and later the law establishing the specialized chamber within the Court and Prosecutor's Office were both imposed by the Office of the High Representative.<sup>177</sup> The OHR's decision is reflective of political stalemate in Bosnia and resistance to the development of strong state institutions. However, it demonstrates a disconnect between the OHR's desire for support and commitment from the public and the reality of needing to impose the law.

Bosnian civil society groups and victims were not consulted during the process of establishing the court.<sup>178</sup> Bogdan Ivanisevic of the International Center for Transitional Justice, an international non-governmental organization, believes this omission has not hurt the legitimacy of the process. Ivanisevic arrives at this conclusion based on three facts. First, the Bosnian public is generally supportive of war crime prosecutions, second, it is accepted by the public that the ICTY will not be able to try all of the cases, and third,

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<sup>176</sup>State Court of Bosnia-Herzegovina, *Project Implementation Plan Progress Report* (March 2004), 4. <http://www.registarbih.gov.ba/index.php?opcija=sadrzaji&id=19&jezik=e>.

<sup>177</sup>Office of the High Representative, Decision Enacting the Law on the Prosecutor's Office of Bosnia and Herzegovina (August 6<sup>th</sup>, 2002) [http://www.ohr.int/decisions/judicialrdec/default.asp?content\\_id=27652](http://www.ohr.int/decisions/judicialrdec/default.asp?content_id=27652); Office of the High Representative, Decision Enacting the Law on Amendments to the law on Court of Bosnia and Herzegovina(August 6<sup>th</sup>, 2002) [http://www.ohr.int/decisions/judicialrdec/default.asp?content\\_id=27648](http://www.ohr.int/decisions/judicialrdec/default.asp?content_id=27648).

<sup>178</sup>Bogdan Ivanisevic, *The War Crimes Chamber in Bosnia-Herzegovina: From Hybrid to Domestic Court*, International Center for Transitional Justice (2008), 6 <http://www.ictj.org/en/where/region4/510.html>.

local trials previous to the establishment of the chamber have been biased. In this context, the creation of the War Crimes Chamber was not controversial.<sup>179</sup>

However, even if the existence of the WCC is publically accepted, the process of its establishment did little to foster a sense of Bosnian ownership or commitment from the public. As a prominent member of Bosnian civil society, Svetlana Broz explained to me: “In the ICTY versus the WCC, I think the internationals will not be repeating the same mistakes. They will make mistakes, but probably different mistakes.”<sup>180</sup> Her attitude exemplifies a common feeling that the WCC is another international initiative in Bosnia, likely to be ineffective, politicized, and lacking relevance to the general public.

## **Hybrid Structure: International Involvement**

The State Court of Bosnia- Herzegovina operates at the national level with jurisdiction over both entities of Bosnia: the Republika Srpska and the Federation. The court has three divisions: criminal, administrative, and appellate. Within the criminal divisions are three sections: Section I for War Crimes, Section II for Organized Crime, Economic Crime and Corruption, and Section III for all other criminal offences. In addition the court has a Common Secretariat and Registry for Sections I and II. The Registry is responsible for the administrative and legal support services and includes the following organizational units: Legal Department, Court Management Section, Witness Support Section, Public Information and Outreach Section, and Administration.<sup>181</sup>

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<sup>179</sup>ICTJ *WCC From Hybrid to Domestic*, 5-6.

<sup>180</sup>Svetlana Broz, Personal Interview, (January 2007).

<sup>181</sup>State Court of Bosnia Herzegovina, “ Jurisdiction, Organization, and Structure of the Court of Bosnia and Herzegovina,” <http://www.sudbih.gov.ba/?opcija=sadrzaj&kat=3&id=3&jezik=e>.

A hybrid national-international structure was developed for Section I for War Crimes with the intention to build local capacity to prosecute war crimes in compliance with international standards. International presence in the Judiciary, Registry, and Prosecutor's Office was designed to phase out over a period of five years. In the judiciary the chamber would begin operating with a composition of two international judges and one national judge. By 2008 the ratio would shift to one international and two national judges. Finally, by December 2009 the panels would be purely national. Similar transitions were planned for the Registry and Prosecutor's Office.

International presence within the chamber was intended to be relatively low profile; the goal was for the chamber to be seen as a Bosnian institution.<sup>182</sup> However, international presence within the WCC was still deemed necessary for two reasons. In the judiciary, internationals were seen as essential for independent and impartial trials. Previous trials at the cantonal/district level in post-conflict Bosnia had faced enormous obstacles including the loss of many skilled legal professionals, destruction of physical capacity, and a complicated and inefficient legal and political framework. In the post-conflict context prosecutors and judges were typically appointed on an ethnic and political basis, resulting in many arbitrary arrests, unfair trials, and a lack of public faith in the judicial system.<sup>183</sup> As Hajra Catic, President of the Association of Women of Srebrenica and Zepa, remarked in 2005, "Imagine having a Serb suspect and a Serb judge. There's no talk about a fair trial in such cases and vice versa."<sup>184</sup>

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<sup>182</sup>ICTJ *WCC From Hybrid to Domestic*, 11.

<sup>183</sup>OSCE Mission to Bosnia and Herzegovina, Human Rights Department, *War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina: Progress and Obstacles* (March 2005), 4, [http://www.oscebih.org/human\\_rights/warcrimes.asp?d=1](http://www.oscebih.org/human_rights/warcrimes.asp?d=1).

<sup>184</sup>Center for Investigative Reporting, "CIN Survey," (August 30<sup>th</sup>, 2005) [http://www.cin.ba/Stories/P3\\_Reconciliation/?cid=201.1.1](http://www.cin.ba/Stories/P3_Reconciliation/?cid=201.1.1).

It is hoped that international presence in the initial period would aid in establishing the legitimacy of the WCC and overcome distrust of the judicial process. However it is also important the international presence is only temporary. As another Bosnian judge explained, “It is good that nationals take responsibility...in the long term it is the only way to restore public confidence in the judiciary.”<sup>185</sup>

In the Prosecutor’s Office, international lawyers can also prevent against perceptions of bias. As David Schwendiman, Head of the War Crimes Section and Chief International Prosecutor explained:

I am not a Croat, Serb or Bosniak. I respect all three ethnic groups and I feel great sympathy for their sufferings. However, I do not belong to any of those groups. My decisions are free from ethnic or other prejudices or bias....I am not talking about what [ethnic bias] is happening in practice. I am talking about perception. I can say that none of the prosecutors in this Office will render a decision guided by his/her ethnic affiliation or intentional bias. However, perception is something else.<sup>186</sup>

In addition, international prosecutors can facilitate cooperation between the WCC and ICTY and provide training for international law and new criminal procedure. The ICTY has extensive resources and evidence for trials at the WCC, especially for cases it transfers. However, the majority of this material is in English and French and involves complex and recent developments in international law. For this reason, it is easier logistically for the international prosecutors to work on the transfer cases from the ICTY, which are generally the highest profile cases. This approach is more efficient, although it means that internationals are in charge of the higher-profile cases that are likely to get the most coverage.<sup>187</sup> Theoretically, international lawyers also provide training and on-the-

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<sup>185</sup>ICTJ, *WCC From Hybrid to Domestic*, 11.

<sup>186</sup>Ahmetasevic, Nidzara. “Interview: Schwendiman: International Prosecutors Must Stay On,” Balkan Investigative Reporting Network (September 19<sup>th</sup>, 2008) <http://www.bim.ba/en/133/10/13272/>.

<sup>187</sup>ICTJ, *WCC From Hybrid to Domestic*, 12.

job skill sharing. In practice, training is hard to implement amid busy schedules and pressure to move cases along. There are instances of national and international prosecutors working effectively together. For example the *Kravica* case, which involves indictments of genocide related to the Srebrenica massacre, is described as a case with close collaboration of national and international prosecutors.<sup>188</sup>

International judges and prosecutors are scheduled to leave at the end of 2009. However many key figures in the court think it will be too early. Both the President of the Court, Meddzida Kreso, and international Chief Prosecutor and Head of the War Crimes Section David Schwendiman, recommend international presence be extended for at least another two years. The extension is necessary to allow internationals to continue working on cases transferred from the ICTY and avoid disrupting the operations of the court.<sup>189</sup> An independent expert team, International Criminal Law Services, recently published a report supporting the need for internationals to stay on. The team emphasized public participation, commenting: “If the proposal is accepted and their mandate is extended, international donors must have a clear plan, which Bosnian authorities and the public can understand and respect.”<sup>190</sup> The role of internationals in the WCC is an important factor in public perceptions of the court and should be a focus of outreach efforts.

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<sup>188</sup> Human Rights Watch. *Narrowing the Impunity Gap: Trials before Bosnia’s War Crimes Chamber*. Vol. 19, No. 1 (February 2007), 6.

<sup>189</sup> Ahmetasevic, “Interview: Schwendiman.”

<sup>190</sup> Dzidic, Denis. “Publications: ICLS- International judges and prosecutions should remain in Bosnia until 2011.” *Balkan Investigative Reporting Network* (March 13<sup>th</sup>, 2009) <http://www.bim.ba/en/157/80/17359/>.



## Cases

“The main thing in terms of the work of the court is the trials. That is the way to gain confidence. In 2009 the internationals are going to leave and trials are the only thing.”<sup>191</sup>  
- Selma Hadzic, Public Information and Outreach Section of the WCC

The cases that come before the chamber will determine the impact of the WCC. First discussed in relation to the completion strategy of the ICTY, the WCC was originally intended to only prosecute a few cases. Under Rule 11*bis* of the ICTY’s Rules of Evidence and Procedure, cases with confirmed indictments can be transferred to national courts. Six cases with ten defendants have been transferred in accordance with this rule since the WCC began operating in 2005.

The scope of the WCC has expanded greatly since it was originally proposed. Several sources of potential cases exist in addition to the 11*bis* transfers. The first category is investigations the ICTY Prosecutor has not completed; approximately 40 individuals may fall in this category. Second, the WCC has jurisdiction over cases that were originally initiated by local courts through the Rules of the Road process.<sup>192</sup> The Rules of the Road process was established by the ICTY as a check against the unwarranted arrests prevalent in the initial years after the Dayton Peace Accords. Under the process, local prosecutors were required to submit any war crimes case to the ICTY for review. The ICTY would label the case ‘A’ if there was sufficient evidence for an indictment or arrest, ‘B’ if the evidence was insufficient, and ‘C’ if specific pieces of additional evidence needed to be collected and then the case resubmitted. Under this

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<sup>191</sup>Selma Hadzic , Press Officer in Public Information and Outreach Section State Court of BiH. Personal Interview (January 2007).

<sup>192</sup>See Chapter Three for description of Rules of the Road process and impact on relationship between ICTY and legal professionals in BiH.

process a total of 846 ‘A’ cases concerning 3,489 persons were referred back to the local courts. In 2005, only 54 of these cases had reached the trials stage.<sup>193</sup>

Since 2005 the State Court has taken over responsibility for the Rules of the Road process and all cases that were transferred back to the local level. The State Court is intended to prosecute the ‘highly sensitive’ cases of this group and send the ‘sensitive’ cases to the cantonal/district level courts for prosecution. Finally, the State Court will also be responsible for any investigations that start after March 2003.

## **Prosecutorial Strategy**

“ It’s the beginning of a very long process that will last for years.”  
-Behaija Krnji, BiH Prosecutor’s Office<sup>194</sup>

The greatest challenge to the WCC may be the thousands of potential cases expected to come before it. Unlike the Special Court for Sierra Leone or the Extraordinary Chambers for Cambodia, which were established to prosecute a limited number of the most serious crimes, the WCC has a broad mandate. Cases transferred from the ICTY under rule 11*bis* are prioritized, and the WCC has no control over these cases or the order they are transferred. In addition to 11*bis* transfers, there remain an undefined number of cases that fall outside this category. Given this uncertainty it is imperative for the Prosecutor’s Office to design a prosecutorial strategy.

Until recently the Prosecutor’s Office had not officially developed a prosecutorial strategy, but did consider several factors in determining the priority of the cases. These

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<sup>193</sup>OSCE *Progress and Obstacles*, 6.

<sup>194</sup>ICTJ, *WCC From Hybrid to Domestic*, 9.

factors included the sensitivity of the case, availability of suspects, strength of evidence, potential impact a conviction would have on return of displaced persons, and the availability of witnesses.<sup>195</sup> The Prosecutor's Office is organized geographically into five teams with a sixth team dedicated to Srebrenica. With this structure the Prosecutor's Office addresses crimes committed throughout the country against each of the three ethnic groups.

Unfortunately, the factors for determining case selection and the relationship between the different courts in BiH were not organized into a coherent plan until 2008. Announcements regarding the creation of a War Crimes Strategy have been made since 2006, but progress was limited. In September 2007 a working group was established consisting of representatives from the national justice institutions of Bosnia. In 2008 the Prosecutor's Office began a mapping exercise and 'Crime Catalog' to develop a realistic estimate of cases. The Crime Catalog, a two-year study unveiled in September 2008, summarizes each of the known war crimes committed in every municipality of Bosnia during every month of the conflict. Each regional prosecution team now has a list of 10-25 of the most serious incidents. In some instances these investigations have already led to indictments.<sup>196</sup>

In a press conference announcing the Crimes Catalog in September 2008 Chief Prosecutor David Schwendiman described how the prosecutorial strategy could reassure victims: "All victims of the war, their relatives and the public can be certain that the Prosecutor's Office is applying the same criteria and selects cases in the same way

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<sup>195</sup>ICTJ, *WCC From Hybrid to Domestic*, 10.

<sup>196</sup>Prosecutor's Office of Bosnia and Herzegovina "Representatives of the Special Department for War Crimes unveil the "Crime Catalog," Press Release (September 11<sup>th</sup>, 2008) <http://www.tuzilastvobih.gov.ba/?id=274&jezik=e>.

regardless of the ethnicity of the perpetrators, whether Bosniak, Croat, Serb or other.<sup>197</sup> When the Prosecutor made this statement over three years had passed since the WCC opened its doors. Since 2005, 48 cases involving 84 accused have come before the Chamber. Of these cases, there have been 32 trial judgments (many now in the appeals stage), 15 final convictions, and 5 acquittals.<sup>198</sup> During this period the mystery behind the case selection process contributed to confusion and negative public opinion. There exist many accusations from political leaders in the Republika Srpska, that the WCC is a “Serb Chamber.”<sup>199</sup> To help counter these perceptions and statements, NGOs and the Organization for Security and Co-operation in Europe (OSCE), an international organization monitoring the trials, have been pushing for the Prosecutor’s Office to develop and publicize clear criteria for case selection.<sup>200</sup> Other criticisms were launched at the Office for not prosecuting enough cases or ignoring certain regions. These criticisms were fueled by the failure of the prosecutors to articulate that they would not be able to prosecute all cases.<sup>201</sup> With the development of the strategy a more realistic approach to prosecution was publicized:

The catalogue gives us a much better idea of how the events were distributed per regions. I do not want to say one thing is more important than the other. Finding out when a person was killed, tortured, deported or when a church or mosque was demolished is of equal importance. [But although] we have great compassion for all those who had to live through that, we cannot do everything.<sup>202</sup>

- David Schwendiman, Head of War Crimes Section and Chief International Prosecutor

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<sup>197</sup>Ibid.

<sup>198</sup>ICTJ, *WCC From Hybrid to Domestic*, 10.

<sup>199</sup>HRW, *Narrowing the Impunity Gap*, 47.

<sup>200</sup>ICTJ, *WCC From Hybrid to Domestic*, 34.

<sup>201</sup>Ibid., 10.

<sup>202</sup>Ahmetasevic, “Interview: Schwendiman.”

The prosecutorial strategy is a positive development in addressing concerns of ethnic bias and case selection, but extensive outreach will be necessary to explain the strategy to the public. It remains unclear whether the effort is too far delayed to have a significant impact.

The establishment, hybrid structure and international involvement, cases, and prosecutorial strategy are all factors that affect the relationship between the public and the WCC. These factors are not influenced by the Public Information and Outreach Section, but require explanation. However, explanation is dependent on transparency and inclusion in process. If the officials, judges, and prosecutors responsible for these processes do not prioritize outreach and public participation, it will be difficult for the outreach section to provide information to the public.

## VII. Outreach at the War Crimes Chamber

Outreach was included in the initial War Crimes Chambers Project proposal by the Office of the High Representative (OHR). In the proposal, a Public Information and Outreach Section (PIOS) was created to provide information about the court to the people of BiH. Outreach was conceived of as necessary to address concerns voiced by local media and civil society that the War Crimes Chamber (WCC) could not operate effectively in post-conflict BiH.<sup>203</sup> In addition to the need for public information, the OHR considered the importance of creating a dialogue between the court and the public.

Although the benefit of implementing outreach before the court began operating was recognized in the OHR proposal, PIOS was only functional as a press office until 2006.<sup>204</sup> Outreach activities were not conducted prior to the beginning of the court's operations in March 2005 and there was limited public knowledge or support for the WCC's existence.<sup>205</sup> The ICTY Outreach Programme had organized public presentations, "Bridging the Gap," which brought senior ICTY staff to the places where the most serious crimes had occurred. At these presentations the continuation of the war crimes process at the WCC was discussed. Despite these events, a poll funded by the Center for Investigative Reporting, an NGO, and conducted by Prism Research in March 2005, revealed 72% of individuals surveyed were uninformed regarding the establishment of the WCC.

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<sup>203</sup>2004 *Project Implementation Plan Progress Report*, 4.

<sup>204</sup>Ibid.

The WCC was established in a climate untrusting of justice mechanisms. In 2005, the United Nations Development Programme (UNDP) conducted a public opinion survey on “Justice and Truth” in Bosnia. Conducted before the WCC had begun its first trial, the poll showed 64.9% of the population believed individuals who cause unjustified harm to others during the war should be held accountable without exception. Despite an overwhelming desire for accountability, opinions toward the different justice institutions were mixed. Opinions differed by regional entity in Bosnia about the ICTY. Although the majority of residents in the Federation, the Bosniak/Bosnian Croat entity, either approved or agreed the ICTY was necessary, less than half of the population in the predominately Bosnian Serb, Republika Srpska felt this way.<sup>206</sup> In regard to the new War Crimes Chamber there was not a significant difference between entities. Overall only 23.5% of the population thought the WCC would speed up the processing of war crimes and 33.2% did not think the WCC would make a difference. Attitudes toward the BiH judicial system were even more negative, with 47% of the population lacking confidence in either the laws or judges. The UNDP concluded that the WCC, “Clearly faces an uphill struggle gaining credibility.”<sup>207</sup> Given this context, an early and robust outreach strategy was particularly important and could have countered pessimistic opinions.<sup>208</sup>

### *Structure of Public Information and Outreach Section*

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<sup>206</sup>United States Development Programme, *Justice and Truth in Bosnia-Herzegovina: Public Perceptions, Early Warning System Special Report* (2005), 12.

<sup>207</sup>*Ibid.*, 16.

<sup>208</sup>Pentelovitch, *Seeing Justice Done*, 445-494.

PIOS was established as a section within the Registry. Designed to be staffed by five people, the office had an operating budget of 70,000 Euros in 2006.<sup>209</sup> In 2007, only three people staffed the office and there were no plans to increase personnel. Currently, two people staff PIOS: Selma Hadzic and Manuela Hodzic. Although activities are divided into two sections: Public Information and Outreach Section, in practice the functioning of these sections are not separated. A specific outreach coordinator does not exist. Instead, both employees of PIOS work on all activities.

#### *Prosecutor's Office Press Relations*

As of November 2005, the Public Information was further divided into separate offices for the State Court and the Office of the Prosecutor. The division of Public Information Sections is reflective of the different functions of the State Court and Prosecutor's Office, the importance of having the roles of these two sections clearly separated in the media, and the rules regulating what information can be released by each office.<sup>210</sup> The Prosecutor's Office maintains its own Press Officer, Boris Grubestic, who is also the official spokesperson for the office.<sup>211</sup> In mid-2007 another press assistant was hired to reflect the increased activity of the Prosecutor's Office and the corresponding demand on the Press Office. There is no clear budget for the Press Office; expenses are covered through the administrative budget of the Prosecutor's Office.<sup>212</sup> The lack of

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<sup>209</sup>Human Rights Watch *Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina* (February 2006), 35, <http://hrw.org/reports/2006/ij0206/ij0206web.pdf>.

<sup>210</sup>Boris Grubestic, Chief of Press Relations for the OTP, Personal Interview by Phone. (March 6<sup>th</sup> 2009).

<sup>211</sup>*International Support to Justice Institutions of Bosnia & Herzegovina War Crimes & Organised Crime Annual Management Information and Budgetary Control Report* (January 2005- December 2005), 27, [http://www.sudbih.gov.ba/files/docs/izvjestaji/annual\\_report\\_eng.pdf](http://www.sudbih.gov.ba/files/docs/izvjestaji/annual_report_eng.pdf).

<sup>212</sup>Boris Grubestic, Chief of Press Relations for the OTP Personal Interview by Phone. (March 6<sup>th</sup> 2009).



budget limits the amount and flexibility of activities the Press Office can plan and indicates a weak institutional commitment to press relations.

In his *Administrative Practices Manual*, Robin Vincent advises against splitting the duties of outreach between different sections of court. He warns that removing total control of the function from the Registry may allow the Prosecutor's Office to dominate the public sphere. At the WCC this fear has not been realized as the press officer is not a strong presence in the media. PIOS and the Prosecutor's Press Office report a good working relationship, specifically citing coordination of presentations for groups visiting the court.<sup>213</sup>

## Activities

According to the PIOS website:

The Public Information Section of the Court of Bosnia and Herzegovina enables communication with the media both national and international as well as with the general public. The main function of this Office is to enable two-way communication with the representatives of the BiH Public and to provide information from the Court of Bosnia and Herzegovina.<sup>214</sup>

The above mission statement of PIOS indicates an engagement strategy of outreach and communication with the media. According to Peskin's theory of engagement, transparency is the first requirement. Crucial for transparency is availability of information and the relationship the court has with the media. In order to analyze the level of transparency, I will first discuss public information and the media.

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<sup>213</sup>Boris Grubestic, Chief of Press Relations for the OTP, Personal Interview by Phone. (March 6<sup>th</sup> 2009).

<sup>214</sup>Court of Bosnia & Herzegovina, "Public Information and Outreach Section," <http://www.sudbih.gov.ba/?opcija=sadrzaj&kat=7&id=81&jezik=e>.

## Transparency: Public Information and Relationship with the Media

PIOS is responsible for handling the Court's relations with the media. The Office coordinates daily press releases and other publications, handles media requests for information and interviews, gives statement on behalf of the court and occasionally holds press conferences. The Press Officer for the Prosecutor's Office handles press releases, press conferences and information requests from the media regarding issues specific to the Prosecution, for example indictments and investigations.

PIOS is responsible for issuing press releases through the website, often issuing multiple releases per day.<sup>215</sup> Press releases are prepared by a Public Information Lawyer in the Court Management Section to ensure information is accurate and does not infringe on the rights of the suspect/accused.<sup>216</sup> PIOS produces "Weekly Activities" summarizing the events at the Court; these are also available on the website.<sup>217</sup> Weekly Activity summaries and press releases are sent out via email to a large network of interested parties including media, victims associations, and NGOs.<sup>218</sup> In addition, the office is responsible for a "Frequently Asked Questions" page on the court's website and brochure, *Court of Bosnia and Herzegovina- Registry Office 2007*, that can be downloaded from the website. Finally PIOS prepares information bulletins, which are

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<sup>215</sup>State Court of BiH Public Documents and Information, "Press Release Archive," <http://www.sudbih.gov.ba/?opcija=arhiva&jezik=e>.

<sup>216</sup>*Annual Management Information and Budgetary Control Report* (January 2005- December 2005), 27.

<sup>217</sup>Court of Bosnia and Herzegovina, "Weekly Activities (Archives)" <http://www.sudbih.gov.ba/?opcija=sedmicni&jezik=e>.

<sup>218</sup>Selma Hadzic, Press Officer for the Public Information and Outreach Section in WCC, Personal Interview. (January 2007).

updated every three to six months and sent out list of media/civil society organizations interested in the court.<sup>219</sup>

The Prosecutor's Office maintains its own website where press releases produced by the Prosecutor's Press Office are posted daily. The separation of websites is indicative of the different functions of the court and the prosecutor's office, but it could be confusing if the distinction was not known. There is a link to the prosecutor's office website under "Links" on the State Court's website.<sup>220</sup> Press releases are also sent out via email to a network of over 200 interested organizations.<sup>221</sup> Information regarding the different trials, organized by defendant can also be found on the website. Once a case is selected, a summary of the accused, documents related to the case, factual allegations of the indictment, and press releases related to the cases are available.<sup>222</sup>

Press releases are short and contain only the basic facts of the trial as they happened that day, with little explanation regarding the overall proceedings of the trials. It would be difficult to follow the progress of a case solely through the press releases. Human Rights Watch noted that press releases are usually posted a day late, causing a delay in public knowledge of the trials.<sup>223</sup> Summaries available about the individual cases are similar. For example, the case information page for Pasko Ljubicic, an *11bis* transfer case from the ICTY, says Ljubicic, a commander of the Croatian military in 1993, was

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<sup>219</sup> Prism Research. *Public Perceptions of the work of the Court and Prosecutor's Office of B&H*. commissioned by the Registry of the Court of B&H and the Registry of the Prosecutor's Office of B&H (July 2008). Of the 16 media representatives contacted for the qualitative part of this research, 9 refused to participate and two were too busy. Only seven of the invited media agencies participated, qualifying the results of this research, 19.

<sup>220</sup> The State Court of Bosnia and Herzegovina, "Links"  
<http://www.sudbih.gov.ba/?opcija=sadrzaj&kat=10&id=59&jezik=e>.

<sup>221</sup> Boris Grubescic, Chief of Press Relations for the OTP, Personal Interview. (March 6<sup>th</sup>, 2009).

<sup>222</sup> The Prosecutor's Office of BiH, "The Prosecutors Office of BiH,"  
<http://www.tuzilastvobih.gov.ba/?opcija=predmeti&id=37&jezik=e> (Accessed April 3<sup>rd</sup>, 2009)

<sup>223</sup> HRW, *Narrowing the Impunity Gap*, 48.

charged with including crimes against humanity, crimes against civilians, and war crimes. When describing the proceedings, the summary gives a timeline, ending with a plea agreement and ten year sentence. It is unclear whether Ljubicic pleaded guilty to all charges or what factors went into the sentencing decision. This information is available in the verdict, which can be downloaded, but it is buried within a twenty-six page technical legal document.<sup>224</sup> The information made available through the press offices is complete and accurate, but is limited to basic facts and remains inaccessible to the majority of the population.

The brochure, *The Court of Bosnia-Herzegovina: The Registry 2007*, was intended to serve as a background to the WCC. It is an 83-page document written to describe the activity of the WCC for 2007. Although it is useful for academics, journalists, international organization, and NGOs, it is cumbersome for the general public. Though the document is available for download from the website, it remains unclear what method exists for physical distribution of the brochure throughout Bosnia. In a recent survey commissioned by the Prosecutor's Office it was found that only 1.6% of the respondents receive information about the WCC from the website.<sup>225</sup> This statistic further calls into question the relevance of the brochure as an outreach tool for the general public and reinforces the idea it is best suited for specialized audiences.

Reporters or individuals looking for more detail regarding the trials can request photographs, videos, and audio recordings through the PIOS website. In addition, the Press Offices also have a phone number that reporters can call to request information

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<sup>224</sup>The Prosecutors Office of BiH, "Pasko Ljubicic Case Information"  
<http://www.tuzilastvobih.gov.ba/?opcija=predmeti&id=37&jezik=e>.

<sup>225</sup>*Prism Research*, 49.

about the court's proceedings.<sup>226</sup> According to Human Rights Watch, the primary interaction between the PIOS and the media is through phone calls; staff members reported received between 20-100 calls daily.<sup>227</sup>

Although both Press Offices have Press Officers with the responsibility of spokesperson, neither act as a recognizable spokesperson in the media. This role is performed mainly by the President of the State Court, Meddzida Kreso, who often gives public statements and makes public appearances. The PIOS section supports her, but it is not completely clear how this relationship is defined or if the President of the Court is intended to play the role of official spokesperson.<sup>228</sup> At this time PIOS does not hold regular press conferences. The Prosecutor's Office holds press conferences more frequently, estimating one per month. Press conferences are held for exceptional events outside the daily routine, for example a big police action or announcement of the war crimes strategy.<sup>229</sup>

### ***Communication Strategy***

The relationship between the media and the court has received positive and negative reviews. Representatives from PIOS and the Prosecutor's Office insist there exists a good working relationship.<sup>230</sup> Media and victims associations both use material produced by the court as their main source of information.<sup>231</sup> In 2008 the Prosecutor's Office and the Registry commissioned a study on public perceptions. Conducted by

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<sup>226</sup>Court of Bosnia & Herzegovina, "Public Information and Outreach Section," <http://www.sudbih.gov.ba/?opcija=sadrzaj&kat=7&id=81&jezik=e>. (Accessed July 25<sup>th</sup>, 2008).

<sup>227</sup>HRW *Narrowing the Impunity Gap*, 48.

<sup>228</sup>Ibid.

<sup>229</sup>Interview with Boris Grubestic, Chief of Press Relations for the OTP (March 6<sup>th</sup>, 2009).

<sup>230</sup>Ibid.; Nidzara Ahmetasevic "Court of BiH Criticized for poor public relations." Balkan Investigative Research Network (February 23<sup>rd</sup>, 2007) <http://www.bim.ba/en/51/10/2339/>.

<sup>231</sup>*Prism Research*, 18.

Prism research, the study included both a quantitative poll and qualitative discussion group. In a Prism Research discussion group of seven Sarajevo-based media agencies, many described the information from the court as generally useful, complete, timely and sufficient.<sup>232</sup> One representative described PIOS very positively:

I also follow the work of other courts, trials before other courts and I really want to say that the Court of B&H has taken a very important step forward compared to others. It is possible to find all necessary information, including public indictments, on their website. And also biographies of the judges, which I believe is highly important because people can see where they had worked before.<sup>233</sup>  
- Female representative of media

However other media representatives expressed frustration that the information the court provides is too general and incomplete.<sup>234</sup> Journalists in various articles and reports have expressed these concerns since the court establishment. For example, an article in the Balkan Investigative Reporting Network (BIRN) about the court's public relations strategy quotes Vera Bugarin, a journalist with the Glas Srpske: "When I request information, they never turn me down directly, but they give me brief details that I usually cannot use."<sup>235</sup>

In addition, some sources say there are often disagreements between the media and the court regarding access to information. When the media requests information, the judges of the respective trial make the decision regarding whether photographs, videos, and audio records can be made public.<sup>236</sup> Reporters have complained that this system is inefficient and inconsistent. For example, Erna Mackic, a reporter for the daily Dnevni List commented:

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<sup>232</sup>Ibid.,9.

<sup>233</sup>Ibid.,

<sup>234</sup>Ibid.,, 21-22.

<sup>235</sup>Ibid.

<sup>236</sup>Ahmetasevic "Court Criticized for public relations."

The problem is not only in the public relations office, but also in the entire court system. Five or six people must check every piece of information I request, and that takes a very long time. If I ask for something in the morning, it is certain that I will not receive it before the afternoon, if at all.<sup>237</sup>

Other reporters complain that access to information depends on which judge is asked. There are often disagreements between the media and the court regarding whether a piece of information should be made public. This complaint is more severe regarding the Prosecutor's Office. Although the journalists understand that limited information can be revealed during an investigation, they believe the Prosecutor's Office could provide more details than the press office does currently.<sup>238</sup>

The relationship between the court and the media could be improved if PIOS was able to articulate a clear communication strategy, making clear what information is public and what is confidential. Instead PIOS "applies internal rules established during daily work."<sup>239</sup> Furthermore, the lack of regular communication between the court and the media, through press conferences or an alternative form of media briefings is problematic. Representatives of the media and Human Rights Watch have recommended PIOS hold regular press conferences in their reports on the WCC in both 2006 and 2007. However, PIOS has not changed its approach. Furthermore, the 2008 Prism survey commissioned by the Registry and Office of the Prosecutor with the intention of informing changes to the court's communication strategy, also recommended more frequent press conferences. One reporter commented:

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<sup>237</sup>Ibid.

<sup>238</sup>*Prism Research.*, 24-25.

<sup>239</sup>Ibid.

In the beginning, the Public Information Office of the Court of Bosnia and Herzegovina organized many more press conferences. Unfortunately, that is no longer the case. It would be good if they did it more often.<sup>240</sup>

-Female representative of associations of war victims from Banja Luka

Another issue of communication between the WCC, prosecutors, and public is the availability of judges and prosecutors for interviews and interaction with the public. Many understand judges' unavailability because of the need for judges to remain isolated from public pressures. However, media and civil society has been critical of the failure of Prosecutors to be publically available:

Regardless of the fact that there is only a limited number of them and that they cannot achieve everything and that they are overworked, they should find time to travel around Bosnia and Herzegovina and meet with the citizens at least once every six months...We suggested that in a letter to the Court and the Prosecutor's Office of B&H, we told them that this would encourage citizens to accept them as someone who speaks for them and to support them. Just to provide a little encouragement. Why would they not organize public debates once every six months?<sup>241</sup>

-Female representative of association of war victims

Recently the Prosecutor's Office has undertaken a public campaign in relation to the announcement of the National War Crimes Processing Strategy. The Deputy Chief Prosecutor held events with the local prosecutors in Brčko, Banja Luka, Tuzla, Mostar and Sarajevo. Media and victims associations were invited for the unveiling.<sup>242</sup> The first of their kind, these events were considered a success.<sup>243</sup> Addressing many of the grievances of victim associations and civil society concerning direct contact with prosecutors, press conferences, and public events, this structure is a positive step in working toward public engagement.

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<sup>240</sup>Ibid., 19.

<sup>241</sup>*Prism Research*, 25.

<sup>242</sup>Prosecutor's Office of Bosnia and Herzegovina. "Representatives of the Special Department for War Crimes unveil the "Crime Catalog," Press Release (September 11<sup>th</sup>, 2008)

<http://www.tuzilastvobih.gov.ba/?id=274&jezik=e>.

<sup>243</sup>Email correspondence with Deputy Chief Prosecutor David Schwendiman (September 30<sup>th</sup>, 2008).



## *Engaging with Media*

There have been a few programs to develop the relationship between the WCC and the media. One initiative arranged an informal meeting with the media called “Breakfast with the Press” that included the Chief Prosecutor, Registrar, and President of the Court. The initial event was in April 2007 and, although designed to be a frequent event, was not repeated until February 2008.<sup>244</sup>

Other programs to work with the media have generally been initiated from civil society. In 2006, in conjunction with the Balkan Investigative Reporting Network (BIRN)<sup>245</sup>, a non-profit dedicated to the development of civil society and media, PIOS assisted in designing a curriculum for training of journalists in war crimes reporting.<sup>246</sup> BIRN also hosts monthly meetings of the Association of Court Correspondents, an organization of local reporters looking to improve cooperation between the court and the media.<sup>247</sup> However, PIOS has not been responsive to initiatives by the Association. For example, the Association has requested PIOS distribute a weekly summary of public documents available so journalists can request them. This request was supported by Human Rights Watch as something that can help the media better inform the public.<sup>248</sup> PIOS has developed such a list, but it is only used internally.<sup>249</sup>

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<sup>244</sup>State Court of Bosnia and Herzegovina, “ ‘Breakfast with Media Representatives,’ held” Press Release (April 5<sup>th</sup>, 2007) <http://www.sudbih.gov.ba/?id=399&vrsta=1&jezik=e>; State Court of Bosnia and Herzegovina “ ‘Breakfast with Media Representatives,’ held” Press Release (February 29, 2008) <http://www.sudbih.gov.ba/?id=723&vrsta=1&jezik=e>.

<sup>245</sup>For more information about Balkan Investigative Reporting Network, see their website, <http://www.bim.ba/en/160/>.

<sup>246</sup>HRW *Looking for Justice* Rights Watch, 37-38.

<sup>247</sup>Ahmetasevic “Court Criticized for public relations.”

<sup>248</sup>Ibid.

<sup>249</sup>ICTJ, *From Hybrid to Domestic Court*, 35.

In 2007, PIOS worked with Netnovinar<sup>250</sup>, a NGO providing educational resources for investigative journalists, to organize a series of workshops for journalists: “Analytical Reporting- Justice and Safety in BiH.” The workshop consisted of programs facilitating journalists/editors to come to the court and attend a presentation by Court Management Section, Legal Department, and Witness Support Section.<sup>251</sup> Through this program, visits and presentations for journalists were facilitated five times between April 2007 and February 2008.<sup>252</sup>

### **Coverage**

“But if you take any newspaper today you will see that it published at least three stories related to war crimes; one about mass graves, one editorial about political situation and so on.”<sup>253</sup>

- Female representative of media

Developments at the State Court are usually reported in news media, receiving daily coverage. Although reporters are often in the courtroom, coverage of the trials is usually short and fails to analyze a case in detail. Furthermore, despite the frequent coverage, media interest has overall been less than expected and there is some evidence it is declining.<sup>254</sup> For example, attendance at the monthly meetings of the Association of Court Correspondents started at twelve in 2006 and has since dropped to less than five in 2007.<sup>255</sup> Although perhaps not indicative of a drop in overall coverage, it is indicative of

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<sup>250</sup>For more information about Netnovinar and their resources for investigative journalism in the Balkans see their website: <http://www.netnovinar.org/netnovinar/compiled/p521.htm>.

<sup>251</sup>State Court of Bosnia and Herzegovina, “Analytical reporting: Justice and Safety in BiH,” Press Release (April 5<sup>th</sup>, 2007), <http://www.sudbih.gov.ba/?id=81&vrsta=1&jezik=e>.

<sup>252</sup>State Court of BiH Public Information Section, “Activities Archive,” Collection of Press Releases, [http://www.sudbih.gov.ba/?opcija=arhiva\\_aktivnosti&pocetak=1&jezik=e](http://www.sudbih.gov.ba/?opcija=arhiva_aktivnosti&pocetak=1&jezik=e).

<sup>253</sup>*Prism Research*, 37.

<sup>254</sup>ICTJ, *From Hybrid to Domestic Court*, 6.

<sup>255</sup>*Ibid.*

a decline in reporters interested in pursuing investigative stories that require increased cooperation from the court.

In this regard, Balkan Investigative Reporting Network (BIRN) stands as the exception, producing “Justice Report,” a specialized reporting program that focuses on coverage of the trials as well as analysis and commentary related to justice issues in Bosnia. Other activities of BIRN include the publication of a guide to the WCC (now in its second edition): *In Pursuit of Justice: Guide to the War Crimes Chamber of the Court of BiH vol. II*.<sup>256</sup> BIRN produced the guide initially in early 2006. Until PIOS released the brochure in June 2007, the guide was the only document available and designed to familiarize the public, civil society, international and media about the WCC.

Another instance of cooperation occurred in 2007 when PIOS coordinated with an NGO, the Helsinki Committee for Human Rights in Republika Srpska, to produce three T.V. shows on the Court of BiH, the Prosecutor’s Office, and the Registry that were broadcast on BN TV, the main television station in Bosnia. The President of the Court, Chief Prosecutor, and the Registrars were featured in their respective shows.<sup>257</sup> Considering 88% of respondents surveyed in the 2008 Prism Survey listed television as the most important source for information about the Court of BiH, this initiative is an example of a successful coordination with civil society.<sup>258</sup> Unfortunately that initiative has not been repeated since 2007.

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<sup>256</sup>Balkan Investigative Reporting Network BiH, “Justice Radio,” (June 18<sup>th</sup>, 2008) <http://www.bim.ba/?tpl=342>; Nerma Jelacic, Nidzara Ahmetasevic, Merima Husejnovic, *In Pursuit of Justice: Guide to the War Crimes Chamber of the Court of BH vol. II*, Balkan Investigative Reporting Network (BIRN). [http://www.bim.ba/apps/docs/in\\_pursuit\\_of\\_justice.pdf](http://www.bim.ba/apps/docs/in_pursuit_of_justice.pdf).

<sup>257</sup>State Court of Bosnia and Herzegovina “BiH Justice Institutions Serial at the BN TV” Press Release (May 23<sup>rd</sup>, 2007) <http://www.sudbih.gov.ba/?id=94&jezik=e>.

<sup>258</sup>*Prism Research*, 49.

## **Engagement: Outreach Activities**

PIOS has clearly met the requirements for transparency. The court is open and the public is allowed to attend trials, information on the website is accurate, all court documents are translated into Bosnian, Serbian, Croatian, and PIOS does respond to requests from the media. PIOS has recognized the need to build upon transparency and work towards engagement in their mission statement.

There are many possible target audiences for the WCC including lawyers and law students, victim's associations, civil society, international community, residents of the Republika Srpska, and youth. PIOS has focused on three audiences: 1) victims associations 2) law students and 3) Serbs and residents of Republika Srpska. In addition to informational publications and court visits, an innovative plan was designed to reach out to these audiences through the formation of a Court Support Network (CSN), a group of NGOs designed to provide the public with information about the court. However, the CSN failed in implementation. When it became apparent the CSN would not work as it was initially intended to, and it was transferred to the Witness Support Section.

In order to understand the failings of outreach, I will trace the design and implementation of the CSN. Next the methods used to reach each of the identified audiences will be analyzed.

### ***Court Support Network: Innovative Design***

The primary effort to actively reach out to the population is through the Court Support Network (CSN).<sup>259</sup> This network was hailed as an innovative design to work with local Bosnian NGOs through multiple “rings” in order to reach people around the

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<sup>259</sup>BIRN, *Guide to WCC*.

country. NGOs in the first ring would be information centers in the main cities around the country. Each center acts as a coordinator to establish a network of contacts within their geographical area of responsibility.<sup>260</sup> These centers were originally designed to be focal points for information about the WCC in two ways. First, the coordinators should disseminate information. Second, each center had a telephone number and operator assigned that was able to answer calls from the public regarding the work of the WCC. The second ring of NGOs would be coordinated by the first ring and reach further into the population.<sup>261</sup>

The four centers in the first ring received funding for their establishment and first six months of operation from the Registry. Coordinators were initially trained by the Registry on a variety of issues including implementation guidelines, scope of the work, different organs of the WCC, and media relations and communication skills.<sup>262</sup> After the initial training, coordinators were required to submit progress reports to PIOS every two months.<sup>263</sup>

The network, although supported by the Registry initially, was designed to act independently. After six months, the centers no longer received funding from the Registry and would be forced to maintain the projects on their own. In this regard, the

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<sup>260</sup>HRW *Looking for Justice*, 35-36.

<sup>261</sup>Ibid.

<sup>262</sup>A participant in the training gives a positive review of the process in the Prism Research Survey (18) “*Since we are members of the support network from the very beginning, we cooperate directly with the Office of the Registry. Initially we were informed through seminars they organized for us, for the activists. For people who will be directly involved. These (seminars) were very good. We were in position to get complete information; we were trained about communication, media and so on. Also, the Court of B&H provided us with brochures, which we distributed, to potential users and citizens. Also we receive regular reports by mail. We even get daily reports about ongoing trials. (Banja Luka, representative of associations of war victims, female)*

<sup>263</sup>HRW *Looking for Justice*, 35.

NGOs would be free to criticize the WCC, and all dissemination of information would be voluntary.<sup>264</sup>

### ***Court Support Network: Failed Implementation***

The project was introduced in January 2006, but the person in charge of the program, Refik Hodzic, left soon after and no one was ever appointed to replace him.<sup>265</sup> Later that year there were four centers operating in Sarajevo, Mostar, Tuzla and Prijedor and centers in Travnik, Bihac, Banja Luka, and Bijeljina were scheduled to be opened by the end of the year. In 2009, the ring is currently made up of five NGO centers: CCI (Mostar), Zene Zenama (Sarajevo) Helsinki Committee for Human Rights (Bijeljina), Forum Gradana Tuzla (Tuzla), and Izvor (Prijedor).<sup>266</sup> There are currently five of the eight planned NGO information centers and approximately 300 NGOs in the second ring.<sup>267</sup>

After the six months of funding were up, many of the NGOs had trouble securing continued funds for the projects and some of the activities, for example the phone lines for information, were discontinued. Communication between the first ring of NGOs in the CSN and the court declined. The Witness Support Office became the primary section of the court involved with the CSN. In June 2007, PIOS attempted a process of re-engaging with the first ring of coordinators. According to a Press Release issued by the Public Information section on June 7<sup>th</sup> 2007: “ the representatives of the Court Support

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<sup>264</sup>HRW *Looking for Justice*, 36.

<sup>265</sup>Mirela Huvovic Hodzic, “Justice far from public eyes” (December 25<sup>th</sup>, 2006) <http://www.bim.ba/en/43/10/2015/>.

<sup>266</sup>Public Information and Outreach Section (PIOS), “ Court Support Network” <http://www.sudbih.gov.ba/?opcija=sadrzaj&kat=7&id=83&jezik=e>.

<sup>267</sup>BIRN, *Guide to the WCC*.

Network and the Outreach Program of the Court of BiH met to discuss future activities of the CSN and the improvement of their cooperation with the Court of BiH.”<sup>268</sup> The outcome of this discussion is unclear, as is whether any progress was made. No meetings have taken place since 2007.

Witness Support Section remains, and is now officially responsible for, communication with the CSN. According to Human Rights Watch, although a relationship between the Witness Support Office and CSN is beneficial, the responsibility for the CSN should rest primarily with the PIOS. The outreach section maintains a relationship with the network by sending information and updates to all members of the CSN. As the 2008 Prism Research study showed, some members of the network continue to be satisfied with the relationship and the information they receive.<sup>269</sup>

However, other members believe the relationship has deteriorated. Some of the members in the CSN described being handed over to an “uninterested” Witness Support Section, which ended a cooperative relationship.<sup>270</sup> Edin Ramulic of the Izvor Association, an NGO intended to be one of the information centers in the first ring of the CSN, expressed dissatisfaction with the court’s outreach: “The Court does not convene round tables. It is not much present in the public, although it should be. I am afraid that their staff lack motivation.”<sup>271</sup>

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<sup>268</sup>State Court Bosnia and Herzegovina, “ Meeting between representatives of the Court Support Network and representatives of the Court of BiH.” Press Release (June 7<sup>th</sup>, 2007) <http://www.sudbih.gov.ba/?id=464&vrsta=1&jezik=e>.

<sup>269</sup>*Prism Research*, 4-5.

<sup>270</sup>Aida Alic, “ War-Crimes Trials ‘Bore’ Public in Bosnia,” Balkan Investigative Research Network (February 26<sup>th</sup>, 2009) <http://www.bim.ba/en/155>.

<sup>271</sup>*Ibid.*

## *Audiences*

Audience specific outreach is an important part of an engagement strategy. By considering the impact the trials are having on the variety of groups within the society, outreach can connect the WCC to broader processes of social reconstruction in Bosnia. In addition to the Court Support Network, PIOS has initiated some additional activities to reach specific audiences. These activities have focused on victims associations, Bosnian law students, and residents of the Republika Srpska and will be discussed in-depth below.

## *Victims and Survivors Associations*

“An effective Outreach Programme linking the prosecutors, local communities, and associations can help witnesses to overcome fear, lack of confidence and, as a result come forward to testify”

-OSCE BiH, *Justice Requires Outreach*<sup>272</sup>

Victims are the primary priority of outreach efforts at the WCC. Outreach in BiH is often conceptualized by both PIOS and civil society as a means to develop the public’s understanding of their role in the prosecution of war crimes. The most tangible and crucial form of participation is through testifying. Furthermore, the willingness for witnesses to testify is key for the court’s work. Reaching out to victims associations is prioritized as a necessity for the court to be functional.

In the early stages of the WCC’s operation the PIOS made specific attempts to facilitate visits with victims groups in order to familiarize them with the proceedings and promote direct contact between victims, prosecution officials within the Special Department for War Crimes, and other court staff. Between August and December of

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<sup>272</sup>George, Alexandra, “Justice Requires Outreach: A Vital Communication Took in Rendering Justice, “ Balkan Investigative Reporting Network (April 16th, 2007) <http://www.bim.ba/en/59/10/2632/>.



2005 twelve visits were made.<sup>273</sup> Furthermore, the Court Support Network was envisioned as a program to reach out to potential witnesses around the country and familiarize them with the process of testifying. For example, the Association of Detainees-Sanski Most is a part of the Court Support Network. Their president, Amir Talic, describes their role: “Our task is to help and to offer support to courts and prosecutors and to witnesses who have turned to us in preparing themselves for trials at the district and BiH levels.”<sup>274</sup> Recently, the 2008 Prism Research found that some victims associations believe more information about the Witness Support Section would be helpful:

I also like reports about rights of protected witnesses. Not enough attention has been given to it in brochures and other information materials issued by the Court of B&H, it has gotten the least attention; trust me, the Witness Protection Support Unit is a very important factor in the whole process.<sup>275</sup>  
- Female representative of an association of war victims

An important aspect of outreach to victims and survivors is ensuring they are informed of the trials relevant to them and aware of the ways to follow the trials, through media or in actual attendance. At present, the majority of trials before the WCC take place in empty courtrooms. Absent journalists and researchers, few affected victim-survivors or members of the public attend. Many associations attribute the missing presence to a lack of time, distance of the court, and lack of public knowledge about the judicial institutions.<sup>276</sup> PIOS stresses that all victims associations were introduced to the court and the option to attend trials through the initial series of visits. The specific function of visits by victims associations has since been taken over by the Witness

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<sup>273</sup>HRW *Looking for Justice*, 38.

<sup>274</sup>George, “Justice Requires Outreach.”

<sup>275</sup>*Prism Research*, 20.

<sup>276</sup>Alic, “War-Crimes Trials ‘Bore’ Public in Bosnia.”

Support Section.<sup>277</sup> However, PIOS has not developed a system to inform communities and associations of the specific cases relevant to them. All information is available through the website, but there are no efforts to customize information and encourage attendance of those particularly affected. Finally, all efforts are focused on facilitating victims/witnesses to come to the Court. No initiatives exist to engage people within their communities by bringing prosecutors and judges to talk at the sites where the crimes occurred.

Lack of information is not the only explanation for the empty courtrooms. It is often very difficult for victims and survivors to listen to the details of happened again and many feel disappointed after. Ljubinka Zivanovic, of the Association of Serbian Families of Missing and Killed Soldiers and Civilians from the District of Brčko says, “They [victims] feel mentally burdened because they cannot do anything. No punishment is adequate enough for a war crime. Sometimes victims are too afraid to become involved in the course of trials.”<sup>278</sup> Outreach to victims should not be expected to prevent these feelings, but the program should be aware of the concern. Outreach should do what is possible to create realistic expectations of the process and provide information about witness support.

In April 2006, barely a year after the court had been in operation, the first victim protest took place. Thirty women protested the work of the court so far, citing the unfair treatment of the defendants, appearance of a suspected war criminal as a witness, lack of support for witnesses, and lenient sentences. The protesters were able to meet with the

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<sup>277</sup>HRW, *Looking for Justice*, 38.

<sup>278</sup>Alic, “War-Crimes Trials ‘Bore’ Public in Bosnia.”

Prosecutor and the President of the Court, both promising to look into their concerns.<sup>279</sup>

In July 2007 another group, Izvor, protested the court. Izvor, an association of victims from Prijedor, was one of the members of the first ring of information in the Court Support Network. Leading a protest against the failure of the court to prosecute more crimes that took place in the Prijedor area, the protestors held banners saying, “You should be ashamed,” and “Prosecution of BiH violates the right to justice.” These groups also arranged a meeting with the Prosecutor and voiced their concerns.<sup>280</sup> Finally, in December 2008, more than one hundred women called for justice in front of the State Court. Holding pictures of the judges, the women demanded to speak to the President and Prosecutor, but press officers said they had not requested a meeting in advance. The protest ended with a boycott, the women announcing their refusal to respond to judicial summons until they started working in a “professional manner.” One woman explained, “We are here because of injustice. There were times when we thought that justice was with the court. We hope that this will bring some changes. If it was not for the hope, we would not be alive now.”<sup>281</sup>

### *Bosnian/Regional Law Students*

The WCC’s location in Sarajevo was intended to develop the capacity of BiH to prosecute war crimes. For this reason it is important for the entire legal community of Bosnia to be aware of the WCC and understand its proceedings. The WCC does offer

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<sup>279</sup> *Balkan Investigative Reporting Network*, “Victims Protest at the Court of BiH,” (April 21<sup>st</sup>, 2006) <http://www.bim.ba/en/8/10/855/>.

<sup>280</sup> *Balkan Investigative Reporting Network* “Remembering Prijedor,” (December 10<sup>th</sup>, 2007) <http://www.bim.ba/en/93/10/6851/>.

<sup>281</sup> *Balkan Investigative Reporting Network*, “Victims’ protest turns into boycott.” (December 22<sup>nd</sup>, 2008) <http://www.bim.ba/en/147/10/15729/>.

many internship opportunities to top law students around the country.<sup>282</sup> PIOS is not responsible for legal skills training, but the section has facilitated numerous visits of Bosnian law students. These visits are often initiated by an outside organization, for example, the American Bar Association Rule of Law Initiative. PIOS is responsible for the program while the students visit. A visit to the court usually includes a tour of the court, opportunity to watch an on-going trial or video of trials, presentation by PIOS, and meetings with representatives from Witness Support Section, Court Management, Legal Department, Library and the Office of the Prosecutor. Which sections of the court the students are able to meet with usually varies and is dependant on the availability of different staff. International prosecutors and judges for the most part do not meet with these law students, but they do often participate in presentations for graduate/law students from abroad.<sup>283</sup> The failure of international staff to prioritize meeting with local Bosnian law students is contradictory to ideas of local participation and capacity building.

Efforts to familiarize law students with the proceedings are limited to inviting students in. Often law students are not following the trials and are not informed about the cases before the WCC. A representative of PIOS laments: “ When groups of students from law schools visit the court, only a few of them know something about the Kravice trial, although it is about genocide and involves eleven defendants.”<sup>284</sup>

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<sup>282</sup>2004 *Project Implementation Plan Progress Report*, 37.

<sup>283</sup>For example, University of Buffalo students met with Judge John Fields and Prosecutor David Schwendiman while visits from the Law Faculties in Bosnia are described as only meeting with “representatives.”; State Court of Bosnia and Herzegovina “Students from the Law Faculty in Banja Luka visited the Court of BiH,” (March 28<sup>th</sup>, 2007) <http://www.sudbih.gov.ba/?id=76&jezik=e>; State Court of Bosnia-Herzegovina “ University of Buffalo students visited the Court and the Office of the Prosecutor of BiH.” Press Release (January 5th, 2009) <http://www.sudbih.gov.ba/?id=1105&jezik=e>.

<sup>284</sup>ICTJ, *From Hybrid to Domestic Court*, 33.

*Bosnian Serbs/ Residents of Republika Srpska*

Bosnian Serbs and residents of the Republika Srpska represent the most difficult audience for outreach to access. A poll conducted in 2005 indicated Serbs and residents of the Republika Srpska were more likely to be uninformed and pessimistic regarding the court.<sup>285</sup>

Despite the clear need for attention, PIOS has not developed a strategy to reach Serbs specifically. NGOs from the Republika Srpska were incorporated into the first ring of NGOs in the Court Support Network. Ideally these NGOs would help spread information throughout the region. However, the CSN never fully developed and by 2006 nationalist politicians were making negative statements publicly. In the run up to the 2006 elections, Milorad Dodick, Prime Minister of Republika Srpska threatened to withdraw the Republika Srpska from the court and stated: "We very much doubt the fairness of the prosecution's work."<sup>286</sup>

These statements were fueled by the undeniable fact that the defendants in the first two years of the court's operations were Serb.<sup>287</sup> Although this was not intentional and the Prosecution intends to prosecute perpetrators from all ethnicities, a clearly defined and publicly available war crimes prosecution strategy was not available to counter claims that the WCC was a "Serb chamber."<sup>288</sup> Furthermore, Branko Todorovic, president of the Helsinki Commission of RS, an NGO that is part of CSN, insisted that the Court and Prosecution take some responsibility for the political attacks:

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<sup>285</sup>Center for Investigative Reporting, "CIN Survey" (August 30<sup>th</sup>, 2005) [http://www.cin.ba/Stories/P3\\_Reconciliation/?cid=201.1.1](http://www.cin.ba/Stories/P3_Reconciliation/?cid=201.1.1).

<sup>286</sup>Milavic, Maja, "Court faces "political smears," *Balkan Investigative Research Network* (September 8<sup>th</sup>, 2006) <http://www.bim.ba/en/26/10/948/>.

<sup>287</sup>ICTJ, *From Hybrid to Domestic Court*, 33.

<sup>288</sup>HRW *Narrowing the Impunity Gap*, 45.

There is no longer cooperation with the media, non-governmental organizations and simple citizens. Because of this lack of information, people have the feeling that these institutions do not serve justice any more, which immediately gives politicians the opportunity to politicize information and use it for their purposes.<sup>289</sup>

Comments by Dodik and others were met without any official response from the court. It is the policy of the court not to respond directly to statements made by politicians or in the media. Although based on the concept that the court is an independent institution of law that should not engage in politics, this policy might have negative unintended consequences. It facilitates politicized media coverage, as politicians' statements are covered without a countering opinion from the court. Statements that are made on behalf of the court are from politicians in the Federation, further politicizing the issue.<sup>290</sup>

Milorad Dodik continued to criticize the court after he was re-elected Prime Minister in 2006. In August 2007 the President and unofficial spokesperson of the court, Meddzida Kreso released a statement denying all accusations of biased work.<sup>291</sup> Although the statement strongly affirmed the impartiality and fairness of the WCC, it did not address case selection criteria or supply specifics.

## Impact

"I don't know anything! I'm not interested!"  
-Woman from Sarajevo, December 2006<sup>292</sup>

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<sup>289</sup>Milavic, "Court faces "political smears."

<sup>290</sup>Ibid.

<sup>291</sup>State Court of Bosnia and Herzegovina, "Court of BiH Strongly Denies All Accusations of Biased Work," (August 13<sup>th</sup>, 2007) <http://www.sudbih.gov.ba/?id=494&jezik=e>.

<sup>292</sup>Mirela Huvovic Hodzic, "Justice far from public eyes," *Balkan Investigative Research Network* (December 25<sup>th</sup>, 2006) <http://www.bim.ba/en/43/10/2015/>.

After almost two years of operations at the WCC, the above survivor of the siege of Sarajevo exemplifies a common attitude within the Bosnian public toward war crime prosecutions. Despite a demand for criminal justice and accountability, the majority of the Bosnian public has little information about the trials and is satisfied with the level of knowledge they have. This was shown in the July 2008 Prism survey commissioned by the Registry and the Prosecutor's Office on public perceptions of the State Court.<sup>293</sup> Furthermore, the overarching conclusion is that the majority of the public is supportive of war crime prosecutions and designates the State Court as the most important institution in this process. However, the majority of people believe the court and the prosecutor's office are under political influence and have been unsuccessful in executing fair and unbiased trials.<sup>294</sup>

In 2009, the results of the survey demonstrate the difficult position of the WCC, but also offers room for improvements. This chapter has traced the strategies of the Public Information and Outreach Section. It is clear that although the WCC maintains transparency, an engagement model of outreach has not been implemented. While providing information to the media and public, the PIOS has failed to provide information in ways that act as necessary bridges to engagement. Press conferences, informal meetings with media, and interaction between the public and prosecutors and judges are examples of effective strategies PIOS has yet to deploy on a regular basis.

Attempts at engagement through the Court Support Network failed in implementation. Furthermore, organizations within the Court Support Network have not only criticized the Court, but two of organizations have organized protests against the

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<sup>293</sup>*Prism Research*, 6-7.

<sup>294</sup>*Ibid.*

WCC. Other engagement activities have been ad hoc and initiated from civil society. Visits to the WCC, facilitated by the PIOS, are important but limited in impact.

Despite these obstacles, it is reassuring that the Bosnian public remains supportive of prosecutions and recognizes the State Court as the most important institution. It is promising that with modifications, outreach strategies have the potential to be effective in BiH.



## **VIII. Improving Outreach at the War Crimes Chamber**

As outlined in the previous chapter, several problems are apparent in the outreach program of the War Crimes Chamber (WCC). Ranging from a dysfunctional relationship with civil society to a lack of regular press conferences, the WCC has maintained transparency but failed to design and execute an engagement strategy of outreach. Two underlying issues inhibit the effective implementation of outreach for the WCC. First, the court lacks an institutional commitment to outreach. From its establishment the WCC has not prioritized public participation. Outreach has been conceptualized as a section that operates in isolation, rather than a priority everyone working for the court is part of. The lack of commitment is seen in the structure of the court, the inconsistent participation of judges and lawyers in outreach and the insufficient resources provided to outreach. The second issue is the failure of PIOS to develop a coherent strategy for outreach. Broadly defined, this failure incorporates the neglect of outreach prior to the courts operations, failure to identify effective specialized strategies to reach out to key audiences, and the creation of a dependent rather than cooperative relationship with civil society.

This chapter will examine the manifestation and implication of these underlying issues in the WCC. Next, I will make recommendations for improvement of PIOS. These suggestions will be categorized as “bridge activities,” necessary for the transition from effective transparency to effective engagement and as general recommendations to implement an engagement model.

After providing suggestions I identify the potential challenges in implementing these recommendations. Challenges include developing an institutional commitment and mitigating the effects of the political situation in BiH. It must be acknowledged that the State Court is a domestic institution, affected by the politics and large processes of justice and reconstruction. Finally I analyze the implications for the impact of the WCC if changes in outreach are not made.

## **Issues Inhibiting Implementation of Outreach: Commitment and Strategy**

### ***Lack of Institutional Commitment to Outreach***

Despite the creation of an outreach program and recognition of the value of public support, outreach has not been a priority of the court and prosecutor's office. This is demonstrated by the neglect of public participation in structural aspects of the court, for example, the establishment process and development of a war crimes strategy. More tangible representations occur in the failure of judges, prosecutors, and court administrators to regularly participate in outreach events. Finally, the most palpable demonstration is the failure of the Registry to provide sufficient resources for the PIOS staffing and initiatives.

### ***Structure and Operations of the WCC***

Though the international community wanted to develop local ownership through the hybrid structure of the WCC, their intention did not include genuine participation in the process by civil society. The public was not consulted and a valuable opportunity to

include Bosnian civil society and victims associations in the discussions was neglected. After its establishment the Prosecutor's Office failed to acknowledge the importance of case selection in regard to public perception and expectations. Until recently, case selection criteria have been kept internal and a clear prosecutorial strategy did not exist. Meanwhile, the Prosecutor's Office remained ambiguous about the number of cases it would prosecute, raising expectations that it would prosecute all.<sup>295</sup> In addition, the cases that did come before the WCC in its first two years were mostly Serbs. This case selection prompted attacks from influential nationalist politicians in the Republika Srpska, hurting the WCC's legitimacy as an unbiased institution. Although public perception should not dictate the selection of cases, it is important for the Prosecutor's Office to recognize the potential controversy of case selection and make available a clear explanation of a prosecutorial strategy. Instead of preempting criticism with a coherent strategy, the office began promising selection criteria in 2006 but didn't produce anything until 2008.

### *Lack of Participation*

At the WCC, outreach activities are limited to the PIOS, Witness Support Section, Prosecutor's Office Press Office, and Court Management. In contrast, at the Special Court for Sierra Leone outreach is incorporated into the activities of each section of the court. For example, the 2008 Annual Report of the Special Court included the outreach activities the Prosecutor participated in under the summary of the progress of the Prosecutor's Office. Outreach was mentioned as a part of the duties of each part of the

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<sup>295</sup>ICTJ, *From Hybrid to Domestic Court*, 35.

court, including prosecutors, judges, and high level court officials such as the registrar.<sup>296</sup> The commitment of the senior officials at the Special Court was reflected by the inclusion of a budget for outreach and the high percentage of the population informed of the court.<sup>297</sup>

Unfortunately, outreach has not been integrated successfully into the operations and priorities of the WCC. For the past few years, judges, prosecutors and court officials have been overall neutral, if not resistant, to public engagement. International prosecutors and judges infrequently interact with the Bosnian law students, leaving outreach to the PIOS alone. Public participation and information is also a new concept for Bosnian judges and lawyers. Nerma Jelacic, the director of the Balkan Investigative Research Network (BIRN) explains: “The former Yugoslav system was a very closed up system, and to some extent it still is a very hard part of our [BIRN] job is to make the local judicial experts open up. They are better now, but not as good as we would like them to be.”<sup>298</sup> BIRN tried to organize public presentations of the judgments called “Justice Dialogue,” but canceled the initiative after judges refused to participate.<sup>299</sup> Even public information activities are limited as the prosecutors and president of the court infrequently hold press conferences, reserving them for major events related to larger issues of the court’s functioning.

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<sup>296</sup> *Fifth Annual Report of the President of the Special Court for Sierra Leone (2007-2008)* <http://www.sc-sl.org/DOCUMENTS/SpecialCourtAnnualReports/tabid/201/Default.aspx>.

<sup>297</sup> Pentelovitch, *Seeing Justice done*, 461.

<sup>298</sup> Nerma Jelacic, Director of Balkan Investigative Reporting Network, Personal Interview (January 4<sup>th</sup>, 2007).

<sup>299</sup> *Ibid.*

### *Insufficient Resources*

Since its establishment PIOS has been underfunded and understaffed. After six months the Court Support Network no longer received funds from the Registry. Many cite the failure of the CSN as a direct function of the termination of funding from the Registry. With more time to establish activities, develop relations, and secure funding for future projects the CSN may have been more successful.<sup>300</sup>

PIOS has a limited ability to improve and implement new initiatives due to funding constraints. Although funding for the program was increased in 2008, PIOS does not have enough staff to start new activities and press officers say there is not even enough office space to hire interns.<sup>301</sup> Lacking support from the Registry, PIOS activities have been funded from outside sources. At this time PIOS does not have a specific budget, but is covered under “Advertising and Public Information.”<sup>302</sup> Similarly, the Press Office for the Prosecutor is not given an actual budget and covered under “Administrative Costs.” Staffing has increased reflecting the increased activity of the WCC, but it is sufficient only to keep up with public information and ensure transparency.

### ***Failure to Develop a Coherent Strategy***

The lack of institutional support for outreach limits the range of activities PIOS is able to conduct. However, in this situation it could still be possible for outreach to have an impact, even without extensive resources. This requires a detailed and coherent plan

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<sup>300</sup>ICTJ *From Hybrid to Domestic Court*, 36.

<sup>301</sup>*Ibid.*, 35.

<sup>302</sup>*Special Departments for War Crimes and for Organised Crime, Economic Crime, and Corruption of the Prosecutor’s Office of Bosnia-Herzegovina Annual Registry Report (2007)*, 102.

that analyzes the context and identifies audiences, partnerships, and strategies to implement outreach effectively. Unfortunately, PIOS did not develop a strategy and instead worked haphazardly to implement outreach. This can be seen in the structure of PIOS and the failure to consider the existing conditions in Bosnia. Once established, PIOS made limited efforts to reach key audiences and failed to successfully implement a relationship with civil society through the Court Support Network.

#### *Late to Start*

Despite documented negative public opinions regarding the ICTY and domestic judicial systems, no outreach was conducted before the WCC began its operations. Although outreach was recognized as useful, a lack of institutional commitment prevented the realization of a coherent plan of outreach. Furthermore, the WCC missed an opportunity to inform the public of a basic understanding of the court's structure, operations, role of internationals, and prosecutorial strategy. Ideally these facts could have served as a strong base of knowledge to build on once trials started. An initial understanding could have familiarized the public with the complexity of the procedure and made the trials easier to follow.

#### *Structure of PIOS*

The structure of PIOS reflects the institutional limitations on the ability for the court to conduct outreach. Without appropriate resources, PIOS is unable to implement effective outreach. Within PIOS, the lack of resources is mirrored in the limited staffing and allocation of responsibilities to available staff. Unlike other outreach programs that are located within press relations offices, PIOS has failed to assign a particular staff

member the position of outreach officer. As a result, both PIOS staff members are focused on the public information aspect of the office, which consumes the majority of their time. Outreach is easily pushed to the side and addressed only when initiated from the outside, when NGO initiatives and events ensure that it cannot be ignored.

### *Limits of the Court Support Network*

What they (PIOS) decided was to design a mechanism, an outreach program for the court done by NGOs. I was very surprised by this stupid idea. It's not my job. I'm not a legal expert and I can't describe legal issues as well as someone from the court. NGOs should definitely be involved and have their own programs of raising awareness and getting involved, but the Court should have occasional outreach. The court made the Court Support Network, it didn't succeed.<sup>303</sup>

- Nerma Jelacic, Balkan Investigative Reporting Network (BIRN)

The Court Support Network was an original ideal to create a relationship between civil society and the court. However, the Court Support Network became the definition of outreach, rather than part of a coherent plan to engage the population. PIOS failed to develop a coherent plan to identify and engage specific audiences and the public more generally. Instead of developing a strategy to work together with civil society, PIOS established a relationship of dependency. The court transferred the responsibility for outreach to members of the Court Support Network as a substitute for genuine engagement with the public. Perhaps as a result of this shift, PIOS did not take the time or have the resources to assess the public opinion context and develop smart strategies to maximize the impact of limited resources. For example, the brochure that was produced for distribution through the network is long and inaccessible.

When the Court Support Network started to fall apart and was transferred to Witness Support, outreach more generally also dissolved. Without any overarching

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<sup>303</sup>Nerma Jelacic, Director of Balkan Investigative Reporting Network, Personal Interview (January 4<sup>th</sup>, 2007).

strategy guiding activities, it was difficult for PIOS to be flexible and reassess their approach. Furthermore, they lacked funding or staff to do the needed restructuring.

## **Outreach Improved**

Given that the citizens of BiH are supportive of war crimes prosecutions and there is a public recognition of the State Court as the most important institution in this process, there is space for improvement in outreach and communication strategies.<sup>304</sup> Although a key window of opportunity was missed in the initial years of the WCC's operations, there are changes that can be made to address the underlying issues restraining effective outreach. First, PIOS and the court more generally must prioritize implementing a genuine two-way interaction with the public. In order for this to happen, high-level WCC officials, such as the President of the Court and Chief Prosecutor need to make public announcements and apply internal pressure. Secondly, PIOS needs to develop a proactive strategy of engagement. If institutional support is increased, this strategy may include substantial reform such as the appointment of new staff, opening of new offices, and creative public presentations. However even if institutional support continues to lag, there are a few simple, low-cost actions that could make a difference. In this section I draw on the current context of BiH and experiences of the ICTY and hybrid courts in Sierra Leone, Cambodia, and East Timor to recommend new outreach strategies for the WCC.

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<sup>304</sup>*Prism Research*, 4-5.



### ***Genuine Two-way interaction***

Crucial to changing outreach is a shift in institutional attitude. The court needs to prioritize genuine two-way interaction, in both the information and outreach component of their public relations. Recently, positive developments have been made. The Prism Research public perceptions survey, commissioned in order to inform public relations strategies, was released internally in July 2008.<sup>305</sup> The survey showed that the majority of the population supported prosecutions, but had little information about the WCC and viewed the court as completely under political influence. Now it is time for PIOS and other sections within the court to use the data to make changes. Unfortunately, as of April 2009, few changes have been made. PIOS has been inconsistently responsive to criticisms and various actors have suggested unrealized recommendations over the past few years. On the other hand, a constructive program of public outreach was implemented in the Prosecutor's Office. In the fall of 2008 the Prosecutor's Office organized a series of public presentations of the War Crimes Strategy around Bosnia. Plans to conduct similar presentations are promising, but it seems this change is isolated.

In order for movement to be made toward improvement, high-level court officials need to draw attention to the issue of outreach. Pressure from the President of the Court, the Chief Prosecutor, Court Management, and judges and prosecutors can create the energy to prioritize outreach. If recommendations from the discussion group of media and victims associations are implemented, PIOS will begin the transition from a strategy of transparency to engagement. In this regard, there are "Bridge Activities," that can facilitate the development of a full strategy of engagement.

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<sup>305</sup>2007 Registry Annual Report, 77.

### ***Bridge Activities***

- Organize weekly press conferences
- Establish a working group to reinvigorate the Court Support Network
- Distribute summaries of the Prism Research Public Perceptions survey within the court
- Recruit an outreach officer or assign a current member of PIOS the responsibility of outreach
- Include outreach activities under the progress reports for each section of the court and prosecutor's office
- Increase number of interviews for television and news stations
- Create short documents available on website that explain key issues such as case selection, plea bargaining, and sentencing
- Update the website with accurate information regarding Witness Support and PIOS

### ***Proactive Detailed Strategy***

While a few key changes can create renewed energy toward outreach and develop institutional support, comprehensive reform is also needed. First, PIOS must design a strategy of proactive engagement informed by the public perceptions survey. This strategy should include an assessment of audiences, effective sources of information, and identification of partners. Specific strategies should be designed to respond to the needs of victims associations and Serbs/residents of the Republika Srpska. Efforts to reach

specific audiences can be developed through consultation with civil society. PIOS should re-engage the Court Support Network and work to develop policies and events. Finally, the PIOS can be creative and identify methods of outreach and new audiences, such as youth.

Reflecting on the past experiences of the WCC, ICTY and the hybrid courts, there are several possible activities, ranging in feasibility, which could be implemented to improve outreach. These activities will be organized as general outreach and audience specific programs.

### ***General Outreach***

- Identify films/documentaries that have been made about the WCC and could be an effective basis for a public showing/ discussion
- Produce a short documentary explaining the WCC
- Prepare short 1-2 page engaging summaries of the trials/ select witness statements for the website and distribution. Perhaps unpaid Bosnian/international interns could be recruited to aid in this process
- Create and distribute short guides at universities to facilitate public attendance and launch public information campaign encouraging visits
- Design a series of public events around the issue of the mandate of international judges/prosecutors, prosecutorial strategy and recent judgments
- Facilitate regular bi-yearly meetings of senior officials with victims associations, civil society, and the media

## *Audience Specific*

### Residents of the Republika Srpska

- Target information for the Republika Srpska regarding trials prosecuting crimes committed against Serbs
- Establish an official PIOS office in Banja Luka, the capital of the Republika Srpska and recruit an outreach officer for the entity

### Youth

- Coordinate with youth and student groups, like Youth Initiative for Human Rights to design events and visits
- Sponsor student essay/art competitions related to ideas of justice, human rights, accountability
- Organize visits of senior officials, judges, prosecutors to middle/high school classrooms

### Victims/Witness Associations

- Produce video/film to explain the process of testifying
- Re-engage the Court Support Network, possibly change name to something more cooperative and demonstrate leadership with victims associations concerns

## **Challenges for Improvements**

The activities recommended above are specific measures that could be taken to improve PIOS outreach strategies. However, without institutional support these recommendations will be untenable. If additional funding and staff are not added, then the range of actions PIOS can take are limited. There are a few low cost changes that

could make a substantial difference including press conferences, additional information on the website regarding witness support, re-engaging the court support network, and a clearly defined publically available communication strategy. Simple measures such as perhaps changing the name of the “Court Support Network,” to something more cooperative could be useful in renewing enthusiasm.

In order for more comprehensive improvements to be made, changes must be made at the institutional level. If high-level court officials, prosecutors, and judges do not prioritize outreach, changes will be shallow. However, it will be difficult to facilitate this shift. The changes needed require an alteration of institutional culture that contradicts many long held notions of how a court should operate. Most importantly, the unique function of war crime prosecutions must be recognized. In a normal court or judicial institution outreach is not necessary, but the intended social implications of war crime prosecutions require public knowledge be a priority. Unfortunately, outreach is a new concept that is difficult to ingrain within a court if a commitment does not already exist from high-level court officials. All people within the court, and especially prosecutors and judges, are extremely busy and under enormous pressure to move trials along and start new investigations. Given these conditions, adding new responsibilities to these professionals is complicated. Some policies that could help develop a commitment might include a mandatory outreach training session for all WCC employees, a document addressing the operational problems negative public opinion can have on the court, and the inclusion of each section’s outreach activities in annual reports. Although these actions may have a limited impact on individuals, they would reflect an overarching shift in institutional attitude.

Furthermore, improvements in outreach are governed by the context the court is operating in. Outreach is always limited by the institution it is attempting to explain. The objective issues of the number of indictments, who is indicted, the time it takes to prosecute, and the length of the sentences are all factors by which the WCC is judged. In this regard, the efficacy of the War Crimes Processing Strategy will be an extremely important influence on future opinions of the WCC. Other factors include quality and resources available for the defense, departure of international judges and prosecutors, prosecutions at lower level courts, the arrest of suspects, and prison conditions for convicts. Outreach has no control over these elements, and can only explain the process behind them.

Finally, the operations of the WCC and outreach will be shaped in part by the overarching political context of Bosnia. Related judicial issues such as police reform, corruption, organized crime, and entity-state level power struggles will have an influence on the context in which the court is operating. Even more broadly the upcoming 2010 elections, departure of the Office of the High Representative, and European Union accession are larger political issues that will influence the court. All of these components of developing rule of law are interrelated and will have an effect on the lens through which the public views the court. On a more practical level, although the majority of the budget still comes from international donors, the State Court is dependent on funding from the BiH Parliament.<sup>306</sup> As the court becomes a completely national institution this dependency will increase and the WCC will be less immune to unsupportive politicians.

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<sup>306</sup>State Court of BiH, “Frequently Asked Questions”  
<http://www.sudbih.gov.ba/?opcija=sadrzaj&kat=7&id=15&jezik=e>.

## Implications for the future

The public is not much oriented towards accepting the facts. It is often not very well informed in the beginning. Many are not even interested in learning about the facts, which may interfere with their prejudices and what they think they know about the war.<sup>307</sup>

-Andras Riedlmayer, Balkan historian

Currently, public opinion of the court is generally unfavorable. The general public has little information and perceives the WCC as politically influenced. Many victims associations are unsatisfied and in some instances have protested and boycotted the court. A majority of residents in the Republika Srpska believe that the court is ethnically biased against Serbs.<sup>308</sup> Time should help the WCC as it refines procedures and prosecutes cases. However, if changes to the public relations strategy are not made, further positive developments in the WCC could go unnoticed or even worse, be manipulated.

Negative public perceptions undermine the court's ability to leave a positive legacy on the BiH. Unless changes in outreach are made, the WCC will miss a potential opportunity to build public trust in the judicial system. Furthermore, if the court is not seen as legitimate and unbiased, its judgments will not contribute to an official or sanctified version of the truth. In this regard residents of the Republika Srpska present an especially difficult concern. Without substantial outreach efforts to legitimize the court, the judgments and evidence revealed during the trials may be ignored. Even worse, it is possible the WCC and its operations can be used to reinforce a Serb national identity and

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<sup>307</sup>Alic, " War-Crimes Trials 'Bore' Public."

<sup>308</sup>*Prism Research*, 4-5.

narrative of victimhood at the hands of the international community. In this case, war crimes prosecutions could be manipulated to perpetuate divisions rather than facilitate social reconstruction.



## IX. Conclusion

We could hear shooting from automatic guns, machine guns, and then we heard screams. All that was coming from the direction of hall number 3. The morning after, we saw bodies being loaded onto a truck covered with a yellow awning. Blood was dripping from the truck.<sup>309</sup>

-Witness K08, testimony during the Mejakic et al or “Prijedor Four” trial

The facts revealed during the trial of the “Prijedor Four,” Zeljko Mejakic, Momcilo Gruban, Dusan Fustar, and Duško Knezevic, at the War Crimes Chamber in Bosnia deserve to be known. The international media first exposed the conditions and crimes committed in the Omarska and Keraterm detention camps in 1992. At this time evidence of inhuman conditions, physical and sexual abuse, and mass murder were denied. During the trial, a video of a Serbian state television story included a statement by Mejakic, one of the accused and former commanders of the Omarska detention camp. Mejakic denied the conditions at the camp: "From May 27, 1992 Omarska was an investigation centre and there were no wires or minefields in it. After they were examined, all people were transferred to Manjača and Trnopolje."<sup>310</sup>

Over ten years have passed since these detention camps were in operation, but testimonies of the atrocities that happened inside continue to be slowly pieced together through trials. Like the trials for genocide at Srebrenica, rape in Foča, murder and torture in Čelebići, and numerous other war crimes committed throughout Bosnia, the justice process is complicated, confusing, and prolonged. These trials are intended to have an

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<sup>309</sup>Alic, Aida, “Horrors of Omarska and Keraterm,” *Balkan Investigative Reporting Network* (December 3<sup>rd</sup>, 2007) <http://www.bim.ba/en/92/10/6712/>.

<sup>310</sup>“Mejakic et al: Video Recordings from Inside Camps” *Balkan Investigative Reporting Network* (October 31<sup>st</sup>, 2007) <http://www.bim.ba/en/87/10/5445/>.

impact that goes beyond building legal jurisprudence and contribute to a process of social reconstruction. For this to be possible the War Crimes Chamber must take proactive efforts to link the court to these processes through outreach. Outreach should first ensure that the facts, testimonies, and judgments of the cases are made known throughout Bosnia. Furthermore, outreach should contribute to a dialogue relating trials to larger issues of human rights, rule of law, and accountability.

It was my goal in this thesis to explore the problems of implementing outreach for the War Crimes Chamber in the State Court of BiH. Through analysis of the structure, establishment, organization, and operations of the WCC it became evident that although an outreach section was established, it was isolated from the rest of the court. Public information and involvement were not prioritized for key processes, such as the establishment of the court and the prosecutorial strategy of the Prosecutor's Office. The Public Information and Outreach Section (PIOS) became functional in 2005 when the court began its operations. The mission statement of PIOS called for an engagement strategy, which entails both transparency and creating a two-way interaction with the public. To this end PIOS designed a network of NGOs and community organizations called the Court Support Network. This network was intended to reach out to the population, provide information, and create a structure for feedback.

Despite an abstract commitment to engagement, the Court Support Network and outreach activities at the WCC have been limited in implementation. Examination of the design, activities, and impact of the PIOS reveal two underlying factors inhibiting implementation. The first is a lack of institutional commitment from the WCC and second is a failure to design a coherent strategy. Lack of institutional commitment is

evident in the failure of the court to incorporate outreach into structure and process, the lack of participation by those most involved with the court and cases, and insufficient resources. At the strategic level, PIOS failed to articulate a coherent strategy of engagement, developed a dependant rather than cooperative relationship with civil society, and neglected to reach key audiences.

By identifying the underlying issues inhibiting the implementation of engagement at the WCC, recommendations for improvements can be suggested at both the institutional and strategic level. Although some strategic improvements can be made with little or no additional cost, if the WCC is to truly implement the necessary engagement strategy of outreach, institutional support will be essential.

After four years of operations it is clear the Public Information and Outreach Section has not been successful. The majority of the population in Bosnia has limited information about the court, is not particularly interested in knowing more, and believes the WCC is politically influenced. Victim's associations frequently protest the court, and in December 2008 one group announced a boycott. In the Republika Srpska, the majority of residents believe the court and prosecutor's office is biased against Serbs.

However, the majority of the population in the Republika Srpska and Federation continues to support prosecutions for the crimes committed during the war. This support allows for the possibility that increased outreach could improve public perceptions of the process. Recently, the Prosecutor's Office has taken positive steps toward developing the institutional commitment necessary for outreach improvements. The commission of a survey of public perceptions, development of a War Crimes Processing Strategy and the series of public presentations explaining the strategy are a series of positive

developments. In order to have an impact, the public perceptions survey must be used as a basis for outreach reform, which must include a commitment from the highest court officials, judges, and prosecutors.

The value of this analysis goes beyond the recommendations outlined for the WCC. Comparison of the WCC to other hybrid courts revealed several common themes that affected the implementation and design of outreach. These themes occur on two levels. First, there are factors that affect overarching implementation of outreach. These factors concern the entire court as an institution, not only outreach programs. Second, there are factors that affect the design and implementation of specific aspects of an engagement model. These factors are of relevance to outreach programs that are developing and implementing engagement models of outreach.

In conclusion, I identify these themes in the hope that they may be useful not only for the WCC, but for the recently operational Extraordinary Chambers in Cambodia, and possible future hybrid courts, such as the proposed War Crimes Chamber in Burundi.

## **Considerations for Outreach in Hybrid Courts**

The most important factors affecting the implementation of outreach pertain to the overarching approach rather than specific technical details. These factors center on the recognition and prioritization of outreach by those most involved in the actual trials. First, assumptions about the inherent impact of a hybrid court due to its structure can inhibit early and robust outreach activities. Second, institutional commitment from senior officials within the court determines the resources and priority given to funding and participation in outreach activities. Third, recognition that it is the trials and operations of the court that will ultimately determine the impact of prosecutions. It is crucial that the

trial, process, and rules guiding the operations of the court to be clear and accessible. In particular, a clearly defined and publically understood prosecutorial strategy is necessary to manage expectations of the trials and deflect perceptions of ethnic bias.

### ***Assumptions Regarding the Impact of Hybrid Courts***

“Just because an institution is international does not mean that local populations necessarily think its better or that it has an enhanced moral authority to punish wrongdoing in the place in question.”<sup>311</sup>

-Mark Drumbl, legal scholar

The structure of the hybrid court is intended to combine the benefits of an international tribunal and national prosecution. However, assumptions regarding the efficacy of this model are dangerous. Domestic location and national participation do not necessarily translate into genuine national ownership of the process. International involvement may lend legitimacy to the process, but it may also separate the court from the population. The process of establishing a hybrid court can be an opportunity for early outreach. Civil Society, victims associations, and the general public can be invited to review drafts, submit comments, and participate in discussions. It may not be appropriate to include these actors in the final discussion process, but the act of consultation is beneficial and can establish a basis for future engagement. The Special Court for Sierra Leone consulted civil society and although not without criticism, the discussions were an indicator of the court’s priorities.

Even if local consultation is part of the establishment of a hybrid court, it is important to realize that the domestic location of a court does not necessarily mean the court is accessible to the majority of the population or information regarding its

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<sup>311</sup>Drumbl, Mark, *Making a Difference?*, 32.

operations will be available. In Sierra Leone, the limits of the hybrid structure were recognized and early outreach initiatives were taken. In Bosnia, the potential legitimacy issues of the hybrid court were acknowledged, but no outreach efforts were implemented.

### ***Institutional Commitment***

“I fear that some of us working in this field become so fascinated with developing international humanitarian law that the purpose of this jurisprudence is forgotten.”<sup>312</sup>

- Judge Gabrielle Kirk McDonald, Former President of the ICTY

Participation in outreach activities by high-level court officials and the people most involved in the trials is crucial. Actual interaction with prosecutors, judges, and senior officials such as the registrar can build public trust, develop human interest in the trials, encourage victims to come forward as witnesses, and counter biased information. Furthermore, participation of these figures in public outreach events demonstrates the court prioritizes victims. In Sierra Leone the registrar and prosecutor began a series of public events throughout the country even before the court’s operations began. The ICTY also arranged a few events where judges and prosecutors travelled to towns in Bosnia to explain the trials related to crimes in those areas. On the other hand, the courts in Cambodia, Timor-Leste, and Bosnia have had limited participation and organization of public events.

On a more practical level, institutional commitment is necessary to provide sufficient funds for outreach efforts. Unlike the international tribunals, many of the hybrid courts depend on funding from international donor committees. Because of their dependence on yearly renewal of funds, it is easy for outreach to be pushed aside for more tangible items related to the court’s functioning. If officials representing the court

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<sup>312</sup>McDonald, Gabrielle Kirk, *Making a Difference*, 15.

at donor conferences do not prioritize outreach, it is likely outreach will remain unfunded. In fact, the majority of funding for outreach is usually provided by private sources.<sup>313</sup> This arrangement may have advantages given limited funding. In this case, strong institutional support can help in soliciting donors, drawing attention to the importance of the issue.

### ***Importance of Trials and Process***

“Justice is not only in the end result. It is also in the process.”<sup>314</sup>  
- South African Supreme Court Justice Albie Sachs

Ultimately, it is the trials that define the court. Case selection should never be influenced by public pressure, but the public deserves to know the criteria with which cases are selected. It is important both for effective functioning and outreach that institutions develop and make public the process. A clearly defined prosecutorial strategy is important in creating realistic expectations, relieving potential fears, and defending the trials and the court from political manipulation. At the Special Court and Extraordinary Chambers, the prosecutorial strategy is clearly defined by “those bearing the greatest responsibility,” and has been the focus of outreach efforts. On the other hand, in Timor-Leste, the panels didn’t have access to those most responsible and instead prosecuted a few mainly lower-level Timorese. Finally, the Bosnian WCC was late in developing and publicizing a prosecutorial strategy, opening the door for criticism of ethnic bias. Only recently has a strategy been adopted and it is too early to assess the impact.

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<sup>313</sup>The ICTY and ICTR Outreach Programmes were never included in the budgets of the tribunals. The ICTY’s outreach has been funded by the European Union consistently for years. Similarly, PIOS receives significant contributions from the Government of Japan. In Sierra Leone outreach is funded in part by the European Commission, but also receives money from the Court’s budget.

<sup>314</sup>Victims’ Rights Working Group, “VRWG Flyer,” (2000)  
[http://www.vrwg.org/VRWG\\_Documents.html](http://www.vrwg.org/VRWG_Documents.html).

In addition to case selection, there are other elements of the trial process that must be explained. Sentencing procedures, plea-bargaining, confessions, civil compensation, cross-examination, and the rights of the accused are a few of the aspects of trial procedure that are particularly charged in relation to war crimes. Furthermore, many of these concepts may be new and completely different from previous legal systems. Outreach is crucial to explain these processes and limit negative perceptions that may stem from confusion. However, outreach can't be expected to hide flaws in the system. Nerma Jelacic explains the limits of outreach: "We had plans for a justice dialogue, which would be to go after judgments delivered by the court to the town the verdict was related to and hold a public meeting there and have judges and lawyers explain what happened. This didn't happen because we didn't have the final judgments, and even when they came they needed to do a re-trial. Trying to explain all these things might do more damage than good."<sup>315</sup> Outreach is dependent on the operations of the court. It is the facts and evidence found in trials that is the basis for outreach, if they are unavailable or a result of a flawed process without legitimacy, the potential impact of outreach will be limited.

### **Implementing an Engagement Model of Outreach**

The factors discussed above function as a necessary basis for a comprehensive engagement strategy of outreach. If these overarching conditions are not met on the institutional level, the impact of any outreach strategy will be limited. Shifting to the more technical elements of outreach, there are several factors that can be pulled from the

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<sup>315</sup>Nerma Jelacic, Director of Balkan Investigative Reporting Network, Personal Interview (January 4<sup>th</sup>, 2007).



experiences of the hybrid courts. Factors to consider in designing a strategy of engagement for hybrid courts were introduced in chapter four. However, the case studies revealed that many of these factors were often considered, but still failed to translate into effective outreach. There are five factors that should be considered for implementation of an engagement strategy of outreach. First, a detailed strategy for engagement must be designed for outreach in order to have the most impact. Second, an engagement strategy must form a cooperative and not dependant relationship with civil society. Third, proactive efforts should be made to engage the media. Fourth, engagement requires audiences be identified and specific strategies developed to meet their needs. Finally, creative outreach activities, such as the use of film, can be very effective methods of outreach. In identifying these factors it is important to consider that they are only common features of outreach and context will alter the relevance of specific factors.

### *Necessity of a Detailed Strategy*

Outreach originated as a reaction to the reality that the majority of the population of the former Yugoslavia was uninformed or misinformed regarding the ICTY's work. Ideally, outreach should prevent that situation from developing. This requires not only establishing an outreach office and recognizing that an engagement model of outreach is necessary, but also developing a detailed plan for outreach activities. Vague references to "two-way communication," like in the WCC's outreach section, are not useful in developing effective strategies. Identifying civil society actors as partners is not enough to establish a cooperative relationship, as exemplified by the Court Support Network. A detailed strategy will go beyond identification to include a process of interaction and a

form of assessment. This type of interaction should be developed based on the context the hybrid court is operating in. A public perceptions survey measuring attitudes toward accountability is helpful in informing the development of strategies. Other key indicators such as literacy rates, main sources of information, geographic distribution and rural accessibility are important factors to be considered in designing a strategy.

### ***Cooperation versus Dependency on Civil Society***

“What is missing is input from the court. Even with all the goodwill, these people (*NGOS*) can’t do the job of the court. They are not legally trained to transfer this information to the community.”<sup>316</sup>

- Nerma Jelacic, Balkan Investigative Reporting Network

It is difficult for outreach programs to share the responsibility of outreach with civil society. In most cases, the court relies on NGOs to conduct the majority of outreach activities. In Timor-Leste, the NGO Judicial System Monitoring Programme was the main form of outreach. Cambodia has seen a substantial amount of NGO activity outreach, but the majority of initiatives have taken place uncoordinated and independent from the Extraordinary Chambers’ outreach program. At the WCC, a network of NGOs designed to develop a cooperative relationship instead became the definition of outreach. It was left unsupported by the court and eventually fell apart. By shifting the responsibility, outreach programs are preventing the implementation of a cooperative relationship. Dependency usually occurs because an outreach program lacks the resources to support the outreach activities and has failed to take leadership. An effective

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<sup>316</sup>Nerma Jelacic, Director of Balkan Investigative Reporting Network, Personal Interview (January 4<sup>th</sup>, 2007).

relationship with civil society is therefore greatly influenced by appropriate institutional support and a detailed strategy.

### ***Engaging the Media***

Working with the media is crucial for transparency and is often the most effective way to inform the public. However, in a post-conflict environment media and information infrastructure may be undeveloped or politicized. Furthermore, the prosecutions are new and complex legal proceedings that require a significant amount of background information to report accurately. In order for effective implementation of an engagement model, the outreach program should go beyond transparency and develop proactive measures to assist reporting. For example, meeting with the media regularly to discuss cooperation and organizing training sessions.

### ***Identifying and Reaching Out to Audiences***

“The most effective [method of outreach] was speaking to high school students directly. I would never cancel an event with a high school.”  
- Alex Milenov, former ICTY outreach coordinator for Serbia<sup>317</sup>

Outreach to victims' associations is crucial and usually the main function of an outreach office. It is important not to assume victims will be supportive and willing to participate in prosecutions. Outreach officers and the institution as a whole must not ignore the trauma witnesses are required to recall and be sensitive to their needs. Specific strategies should explain the process of testifying and witness support services available. However, it is important for outreach to avoid being defined by victims associations and

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<sup>317</sup>Alex Milenov, former ICTY Officer for Serbia, telephone conversation with author, (March 13<sup>th</sup>, 2009).

witnesses or used only as a tool to encourage potential witnesses to testify, as has been the case at the WCC.

An important lesson learned from the outreach in the former Yugoslavia is the necessity of proactive outreach and response to perpetrator communities or groups unsupportive of the prosecutions. The WCC has failed to respond to the spread of misinformation and political attacks by Serbs, instead maintaining a neutral position. On the other hand the Special Court applied this lesson and organized specific public forums for the military, which was unsupportive of the court. These forums did not necessarily lead to changed opinions, but allowed for accurate presentation of information and the opportunity for dialogue.

In a divided society, a focus on youth can help develop uniform facts about the conflict that may prevent manipulation in the future. For this reason, outreach to youth is an important, but often neglected, strategy of outreach. Reaching out to students and youth groups, designing materials to be used in school, facilitating visits to the court, and arranging visits of court officials to schools can be very effective. The Special Court has been most active in this regard, although a few activities have been initiated by the Extraordinary Chambers.

### ***Creative Approaches***

Many successful outreach strategies have used creative formats and media to convey information and encourage discussion. Film and other multi-media presentations are an effective way to familiarize populations without easy access to the court with the proceedings and provide information that would be impossible to convey or easy to ignore in a brochure or media reports. The head of the NGO Republika Srpska Helsinki

Committee described the reaction of a predominately Serb audience doubtful of the crimes prosecuted at the ICTY when the statement of a rapist of a twelve-year old girl was screened: “All of them were petrified when faced with this cruel truth.”<sup>318</sup> For that audience, it became difficult to deny that heinous crimes had been committed.

Finally, creativity should be used as a guiding principle to respond to unexpected developments and challenges presented by context. The Special Court had a range of creative solutions that were able to maximize the resources available, for example a call-in telephone line and text message news updates.

## **Conclusion: Limits of Outreach**

There were four notorious detention camps in Prijedor. Keraterm is known worldwide. These people should have been punished for what they did, instead of being rewarded. In ten years he will be released. When will my son come out of the grave? Never. I paid for his school and I raised him. And, unfortunately, I am not the only one. There are thousands people like me. How can he sit there and laugh when the verdict is read in the courtroom.

- Halil Slijivar, protester at the court after the verdict for the “Prijedor Four”<sup>319</sup>

On May 30<sup>th</sup>, 2008 the verdict for the “Prijedor Four” was announced. A few weeks earlier one of the accused, Dusan Fustar, had reached a plea agreement with the Prosecutor. The agreement included statements of remorse, but when the announcement was made it concerned only the remaining three accused. Mejakic was sentenced to twenty-one years, Gruban eleven, and Knezevic thirty-one. The announcement of the verdict was accompanied by protest by about fifty people from Prijedor. Edin Ramulic, President of Izvor, an NGO that is in the Court Support Network, explained their presence: "We are here due to the eventual releases which might happen in the future, as

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<sup>318</sup>George, “Justice Requires Outreach.”

<sup>319</sup>Husejnovic, Merima, “Victims dissatisfied with Bosnian Court’s decisions,” *Balkan Investigative Reporting Network* (May 30<sup>th</sup>, 2008) <http://www.bim.ba/en/117/10/10610/>.

a result of settlements, concluded with the exclusion of the victims, because the victims have not been informed that those people expressed regrets...."<sup>320</sup>

The protest demonstrates both the inherent limits and potential of outreach. It is clear that information was not provided and the process was not explained regarding Fustar's plea agreement. Other protestors were frustrated the prosecution called only 30 of the 800 people Izvor registered as willing to testify, demonstrating that perhaps further explanation by the prosecutor's office may be helpful. Ultimately however, dissatisfaction derives from the prison sentences and the inherently inadequate justice a trial can render given the crime committed. In this regard outreach is limited.

Outreach should not be conceived as public relations to improve the court's image. Outreach can provide citizens with accurate information about the court and the trials and opportunities for interaction with the court. Ideally information will lead to support, but it is not the role of outreach to force this connection. Outreach will always be limited by the actual operations of the institutions and the trials. An effective outreach program will give citizens the court's perspective, facts, and opportunities for discussion in order to inform opinions and maximize the potential impact of the prosecutions.

In Bosnia-Herzegovina, the War Crimes Chamber has failed to engage with the population. Isolated from the public, the Chamber risks becoming a legal process that makes no contribution to larger processes of social reconstruction. If conditions continue to deteriorate in Bosnia, the Chamber may become a tool for furthering ethnic divisions. A revised outreach strategy may be able to connect the trials to the societal processes of rule of law, justice, and historical clarification. However, this relationship is not

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<sup>320</sup>Ibid.

guaranteed. Trials are not inherently part of a social reconstruction, nor can outreach ensure that a connection is made. For the WCC, an engagement strategy of outreach can only create the channels of communication necessary for a connection to be made.

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