



Outreach Strategies in International and Hybrid Courts

Report of the ICTJ-ECCC Workshop,
Phnom Penh, March 3-5, 2010

Research Unit
International Center for Transitional Justice

April 2010

Making an Impact: Designing Effective Outreach Programs for Transitional Justice

In late 2009, the Research Unit of ICTJ began a new project to examine in detail outreach initiatives for prosecutions, truth-telling, and reparations programs, with the aim of providing practitioners help in designing effective outreach strategies for transitional justice measures. The central aim of the project is to produce tools and usable knowledge in order to make outreach programs more sophisticated and sensitive to the challenges of current transitional justice processes. The project will also seek to reflect further on the general importance of outreach as a component of transitional justice initiatives. The project is managed by Clara Ramírez-Barat, who is currently a Research Fellow in the Research Unit at ICTJ thanks to the support of the Spanish Ministry of Science and Innovation and the Fulbright Scholarship Program. For more, visit <http://www.ictj.org/en/research/projects/research8/index.html>

About the Authors

This report has been compiled by Clara Ramírez-Barat and Maya Karwande using notes, and recorded audio from the workshop. Additional information has been complemented using the information provided at the workshop by the Public Affairs Section and the Victims Support Section of the ECCC, and an internal ICTJ report on the ECCC outreach program prepared by Mychelle Balthazard. The views expressed in this report do not necessarily reflect those of ICTJ.

Acknowledgements

The authors wish to thank Allison Corkery, Roger Duthie, Caitlin Reiger, Mychelle Balthazard and Pablo de Greiff for revision and comments on the document. ICTJ would like to thank the International Development Research Center of Canada (IDRC) whose financial contribution made this workshop possible, and the ECCC Public Affairs Section for hosting it.

About ICTJ

The International Center for Transitional Justice works to redress and prevent the most severe violations of human rights by confronting legacies of mass abuse. ICTJ seeks holistic solutions to promote accountability and create just and peaceful societies. To learn more, visit www.ictj.org.

Introduction

In collaboration with the Public Affairs Section of the Extraordinary Chambers in the Courts of Cambodia (ECCC), the Research Unit of the International Center for Transitional Justice (ICTJ) organized a three-day workshop as part of the research project, *Making an Impact: Guidance on Designing Effective Outreach Programs for Transitional Justice*. The overarching objective of this meeting was to create a space for a small but diverse group of experts on outreach to exchange ideas and reflect on the design and implementation of successful outreach programs, with the hope that some of the emerging insights might be of use to the ECCC's current outreach efforts.

The workshop took place at the ECCC from March 3-5, 2010. The group of around 25 participants brought together: staff from the ECCC, including members of the Public Affairs Section (PAS), the Victims Support Section (VSS), the Office of the Co-Prosecutor (OCP), the Office of the Co-Investigating Judges (OCIJ), the Defence Support Section (DSS), the Office of the Administration (DOA) and the Witness and Expert Support Unit (WESU); representatives of three local NGOs, the Center for Justice and Reconciliation (CJR), Khmer Institute for Democracy (KID) and Transcultural Psycho-social Organization (TPO); ICTJ staff and consultants; and three international experts, Wanda Hall, Refik Hodzic and Mohamed Suma, with collective experience working in many countries including Bosnia and Herzegovina, Sierra Leone, Lebanon, Rwanda, Central African Republic and the Democratic Republic of the Congo.

Aiming to facilitate mutual learning among participants, while providing a coherent framework for the discussion, the workshop was composed of four types of activities: five presentations, two working group discussions, two working group follow up discussion sessions, and two general discussion sessions. In order to cover a broad and structured set of issues important for outreach—to be considered from a comparative perspective, but also to contribute to the current outreach efforts of the ECCC—these topics were selected according to three criteria: country cases that provide opportunities for comparative learning; general thematic discussions on selected topics; and discussion groups on both lessons learned and ways forward.

This document presents a non-exhaustive summary of some of the topics discussed at the workshop with the ECCC. It first provides a general overview of the ECCC functions and outreach activities. Thereafter, it highlights the main themes that were raised in the presentations and discussion sessions. When referring to the ECCC, the information here compiled, reflecting the scope and the date in which the workshop was conducted, refers primarily and foremost to the outreach efforts currently carried out by the Court. Accordingly outreach activities conducted by NGOs are beyond the scope of this report.¹

¹ ICTJ organized an additional workshop in collaboration with the Cambodian Human Rights Action Committee (CHRAC) in the afternoon of, March 2010, which gathered a broader group of Cambodia based NGOs conducting outreach activities around the Court. Although that workshop is not covered here, the discussions held at that meeting have also informed the analysis and conclusions of this report.

1. Background

After several years of difficult negotiations between the UN and the government of Cambodia, the agreement to establish the ECCC was finally adopted in May 2003 to “bring[ing] to trial senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations of Cambodian penal law, international humanitarian law and custom, and international conventions recognized by Cambodia, that were committed during the period from April 17, 1975 to January 6, 1979.”² Among the International or Hybrid Criminal Tribunals, the ECCC has, so far, involved the longest lapse of time between the atrocities committed and the start of prosecutions.

The ECCC officially started its work in February 2006.³ Four years after its inception only two cases have been confirmed. The trial in Case 001, for which Kaing Guek Eav (alias Duch) faced charges related to his position as Secretary of the S-21 prison, started on February 17, 2009. The case is now awaiting a verdict. In Case 002, the four alleged most senior remaining leaders of the Khmer Rouge regime have been indicted for serious international crimes (including genocide). Nuon Chea, Ieng Thirith, Ieng Sary and Khieu Samphan were detained in 2007, and the trial is not expected to commence before early 2011. While two further potential cases are awaiting judicial investigation, the Court is at this moment in a period of limited visible activity, pending the verdict of the Duch trial and the commencement of Case 002.

Operating as a hybrid tribunal within the Courts of Cambodia, the ECCC—or Khmer Rouge Tribunal (as it is popularly known)—is split administratively and financially between two different sides, one Cambodian and one international. It has both national and international staff in all its different offices or sections, and draws its mandate from legislation that takes into account both the international and Cambodian national legal systems. The Court does not have a Registrar or President, and is divided between the Chambers and Judicial Offices (including the Office of the Co-Prosecutor and the Office of the Co-Investigating Judges), and the Office of Administration. The Office of Administration in turn is divided between the Director of the Office of Administration (under which is the Public Affairs Section) and two administratively related, although independent units: the Defence Support Section and the Victims Support Section (formerly known as the Victims Unit).

Rooted in the French based Cambodian legal system, one of the most innovative features of the court is that victims of the crimes can participate in the proceedings in two different ways: “they can submit *complaints* to the Co-Prosecutor, who takes the interests of the victims into account when considering whether to initiate an investigation or a prosecution. Victims may

² The Draft Agreement Between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea was approved by the General Assembly on May 13, 2003 UN Doc. A/RES/57/228B, p. 2. It was signed on June 6, 2003.

³ The ECCC was established in February 2006 when the Director and Deputy Director of the Administration commenced their work. The judicial work of the ECCC began in July 2006 with the swearing of the judicial officials (see http://www.eccc.gov.kh/english/news.view.aspx?doc_id=20).

also participate as *civil parties*. In this capacity, they are recognized as parties to the proceedings and are allowed to claim collective and moral reparations.”⁴

Taking into account the role that victim participation has in the Internal Rules of the ECCC, there are two different units that deal with outreach activities: the Public Affairs Section (PAS) and the Victims Support Section (VSS). PAS, which has conducted the bulk of the Court’s outreach activities, is in charge of providing information regarding the ECCC to the public at large.⁵ VSS, in turn, provides information and support to victims and especially civil parties.⁶

This separation has also contributed to a broad differentiation of audiences in terms of outreach, which to date has mainly been limited to what has within the court been called the *macro* and *micro* approaches. The former, conducted by PAS, has the broader public as its core audience (including media, diplomatic corps and donors). The second, the so-called *micro* approach, refers to the role of VSS to provide a more specific one-to-one support to complainants and civil parties, relating to the status of their file, legal information and rights, and so on. Additionally, VSS has to fulfill another set of tasks relating to victims’ participation in the trials (processing applications, support of legal representatives, non-legal measures,⁷ and so on) and so, as it was explained at the workshop, faces the daunting task of having to deal with such issues as security, confidentiality and psychological stress while fulfilling its mandate.

Several issues have been challenging for the Court in terms of outreach. For example, the fact that the tribunal has two sides, one national and one international has created some confusion in the past. Also, the Court has faced public challenges to its legitimacy in the wake of “suspicions of governmental interference in the judicial process and allegations of corruption”.⁸ Finally, and due mainly to budgetary constraints, the ECCC has strongly relied on NGOs to conduct outreach activities to the date. Around 15 different NGOs have been directly involved in outreach activities in connection with the court since its inception, implementing a wide range of programs and contributing significantly to reaching out to rural communities. Although independent, these NGOs work in varying degrees of collaboration with the court, especially in relation to the work developed by the VSS to assist victims. This cooperation, it is acknowledged, will be even more important in the future.

⁴ http://www.eccc.gov.kh/english/victims_unit.aspx, visited on March 25th 2010, emphasis added.

⁵ ECCC: Internal Rules, Rev 5, 9th February 2010, p. 10. PAS conducts also media relations and public information.

⁶ Following the Internal Rules (see n. 5), VSS has, among other tasks, the obligation to “provide general information to victims, specially, civil parties”, and “in consultation with the Civil Party Lead Co-Lawyers and the Public Affairs Section, where appropriate, undertake outreach activities related to victims, especially Civil Parties” (p. 13). VSS is thus tasked with ensuring that “the role of the unit and the rights of victims are explained in outreach events through Cambodia” (http://www.eccc.gov.kh/english/victims_unit.aspx, visited on March 25th 2010).

⁷ Since February 2010 the VSS “Shall be entrusted with the development and implementation of programs and measures other than of a legal nature addressing the broader interests of victims. Such Program may, where appropriate, be developed and implemented in collaboration with governmental and non- governmental entities external to the ECCC”.⁷ ECCC: Internal Rules, Rev 5, 9th February 2010, p. 14.

⁸ Report of the Secretary-General on the Khmer Rouge trials, UN Doc. A/62/304, 27 August 2007, p. 4.

2. Current Challenges for Outreach at the ECCC

The ECCC is at a unique moment for outreach. With a new budget for 2010 that provides a substantial increase in resources, PAS has an opportunity to sustaining the momentum created from the Duch trial through to Case 002. Furthermore, the break in trial activity provides PAS, VSS, and the institution as a whole an opportunity to develop a unified message and plan for outreach. As PAS works to plan activities and devise a strategy, it is faced with many challenges, including:

- Sustaining public interest during the coming months of minimal trial activity and demonstrating that the court is “still working.”
- Giving visibility to the work of the judicial offices while maintaining confidentiality.
- Maximizing human resources.
- Producing public information tools in a timely manner.
- Coordinating between PAS and VSS and between the ECCC and NGOs.
- Preparing for the verdict of Case 001.

VSS has identified as its current main challenges:

- Sustaining one-to-one relationships with larger numbers of victims in Case 002.⁹
- Dealing with financial uncertainty.
- Meeting other non-outreach responsibilities: processing applications, support of legal representatives, and new “non-legal measures.”

Other challenges that were identified during the workshop include:

- Balancing the portrayal of the defense and prosecution in the public arena: Many people in Cambodia often ask, “If everyone knows they are guilty, why do you need to have a trial?” To further explain the need for defense is difficult. Some efforts have been undertaken with the Office of the Co-Investigating Judges and Defence Support Section.
- Preparing for Case 002: In many ways Duch’s trial was unique because of the level of remorse he demonstrated and the specific personality of the defendant, which created public interest in the trial. Case 002 will be more complex and antagonistic. Unlike Duch’s trial in which, and as a result of his admission of many of the charges, the defense strategy was not confrontational, in Case 002 four different legal teams will be actively contesting the prosecution’s case. PAS has an opportunity over the next few months to prepare outreach material and begin preparing the public for the trial, as well as preparatory work with the Office of the Co-Prosecutors and the DSS/defense teams regarding how to explain legal technicalities that are likely to arise during the trial and which may be difficult for the public to understand.

⁹ While in Case 001, there were a total of 94 applicants; for Case 002, the number has reached 3,982.

- Managing victims' participation and expectations: Opportunities for victim participation tend to raise expectations about the nature of that participation and the results it might lead to, both in terms of affecting the judicial process and specially the possibility of receiving reparations. Bringing victims into this process is important, not only in terms of justice considerations, but also because it increases possibilities of engagement and success. In doing so, however, it is important to facilitate a realistic discussion about options available and the realities of the decision making process.

3. Themes Discussed

A. Definition of Outreach

At present a widely agreed upon definition of outreach does not exist. Indeed, a recurring topic of discussion at the workshop was what the term means and how it should be defined. Several different definitions of outreach emerged.

At the ECCC outreach activities are divided between the mandates of PAS and VSS. The mission of the former, acting as the court's external face, is to provide information on the activities of the court to the general public and build confidence in the judicial process. The latter has a more specific focus on outreach to civil party applicants and complainants. While the objectives of PAS include raising awareness of the ECCC among the general population, in order to win support and encourage participation in court proceedings, VSS works more specifically on a one-to-one basis with victims, especially civil party applicants and complainants, to explain and guide them through the judicial process.

Wanda Hall, of Interactive Radio for Justice, identified four levels of outreach for international tribunals, in pursuit of which a wide range of activities may be undertaken:

- 1) The court is presented in a positive way and its priorities are well understood by target communities (populations targeted by the investigations, the general public in country, donor countries and the UN).
- 2) The court provides sufficient information to priority groups so that they cooperate with the court as needed. These include witnesses and victims, media, donor organizations or governments. In the case of witnesses and victims, outreach should work to empower them to be able to actively participate in the court.
- 3) The presence of the court strengthens national and regional courts.
- 4) The presence of the court strengthens civil society and public consciousness about the law and civil rights.

In practice, many international courts define outreach as the objectives under public information (level 1). A more expansive definition of outreach (levels 2-4) requires consistent and interactive dialogue between the court and the public—dialogue that goes beyond a mere unidirectional transfer of information and that assures the public that the court is responsive to

people's real concerns and questions. Hall stressed that for her project it is important for all questions to be answered from the highest relevant level of the institution in order to promote an open and inclusive dialogue. Furthermore, every segment of the population (victims, perpetrators, youth, minority groups, and so on) should be included. Understood this way, outreach can be thought of as a *relationship* between the court and the people (its constituency) that, while difficult as all relationships are, should be based on an honest dialogue and mutual respect.

As Refik Hodzic highlighted, outreach is an integral part of a court's mission. This mission, while different in each context, cannot be achieved if the people do not understand the court's work, or feel it is irrelevant for them, or do not think the court carries out its work on their behalf. A court has to be accountable to the people and understand the impact of its work on them (in terms of legacy, capacity building, and so on). With the understanding that people have a stake in ensuring that a court achieves its goals, outreach should work to contribute to developing a sense of *public ownership* of the process.

Outreach in these terms becomes an integral element of the court's work. As one participant said, outreach is present in every action of the court, including how victims are treated and how the court responds to people's concerns. Accordingly, it is necessary for the highest officials to show leadership and set outreach as a priority for every level of the court's actions.

B. Approach to Outreach

Designing an Strategy

Drafting a strategic plan is fundamental in organizing and implementing outreach activities. A *strategic plan*, which includes clear goals and a corresponding action plan, should be differentiated from a policy document, which is a more general guiding document about the mandate of the institution.

Refik Hodzic highlighted several key areas that should be included in such a plan:

- Analysis of the context in terms of key audiences and messages of the institution.
- Design of multiple messages that reflect and clearly respond to the concerns of the population, differentiating among audiences.
- Establishment of short-, medium- and long-term attainable and realistic goals (both institutional goals and priorities of different sections of the court) that take into account different audiences and ways to reach them.
- Design, accordingly, of a comprehensive *action plan* for what should happen in the short-, medium- and long-term; determination of the methods to achieve these goals.
- Establishment of an institutional framework: who is doing what and with which support.
- Inclusion as early as possible of considerations on legacy.

- Inclusion of a monitoring and evaluation process, to identify challenges and adapt to changing needs and circumstances.

A strategic document is important in several ways: first, as a guiding document it helps build a proactive approach (identifying audiences, priorities, messages, resources, and so on); second, it creates a core document that can be followed in a coherent and reliable manner by different persons and at different points in time in the life of the institution; third, in differentiating duties and assigning tasks within the institution it helps coordinate efforts; finally, it can also be useful in terms of planning future activities and fundraising.

Additionally, a good strategic plan should be transparent, public and flexible. In order to enhance collaboration with external partners and share lessons learned, it is useful to publicly identify the aims and objectives of the institution in terms of outreach. Likewise, it is important to allow for changing conditions and periodic review of the work, so that it can be adapted according to new circumstances.

Institutional Commitment

Although a strategic plan is important, institutional commitment will be crucial to the actual implementation of outreach activities. Support from the upper echelons of the institution is fundamental to guarantee that collaboration among units does not only depend on the good will of individuals. A strategy is an institutionally integrated policy in terms of common and shared goals, which in turn vests people with responsibility for assigned tasks.

For the ECCC, it is important that the strategic plan not be limited to efforts by the public affairs and outreach or victims sections, and to include all sections of the institution in different degrees and ways. It is recommended that principals from each section of the institution be involved in the creation of the strategy, after which they should continue to act as outreach liaisons or appoint individuals from their sections to continue to work with public affairs.

C. Outreach Activities

Designing and conducting outreach activities requires financial support, a commitment from outreach staff and flexibility. Given the shortage of resources, there are strong incentives to work creatively to design activities that maximize efforts and materials (by creating products that can be later reused, for example). When planning activities it is also important to think about different audiences. Methods to reach them should be interesting and engaging and conducted in a participatory and interactive manner so as to avoid monotony.

At the ECCC, PAS has focused its outreach efforts in the past year on facilitating public access to the Duch trial through different activities such as organizing public visits, live video feeds, assisting in production of weekly TV shows, uploading transcripts of the daily proceedings on the ECCC website, and holding weekly press briefings. Notably, PAS facilitated an impressive

total of 31,349 individuals to attend the trial; an average of 407 people each day of the trial.¹⁰ Innovatively, PAS has used several social networking tools such as *Facebook* and *Twitter*, and has created a *Flickr* page, from which people can access free, up-to-date images from the court.

Now that the Duch trial is over, PAS is focusing on raising awareness about the benefits of public participation in the judicial process and on promoting public support for the progress in the court. PAS organizes “Khmer Rouge Trial Study Tours,” which bring villagers to the Tuol Sleng Museum in the morning and then to the court in the afternoon, where there is a presentation and opportunity for questions. Other activities have included the production of a documentary on public participation in the Duch trial and the screening of two additional documentaries produced by the Bophana Centre and TPO. PAS is developing an “ECCC briefing” for schools, for which it is seeking endorsement from the Ministry of Education.

In addition to facilitating visits to the court, PAS makes trips to the provinces, visits schools, and participates in public forums, often organized by NGOs. At all events PAS distributes booklets in Khmer, as well as posters, t-shirts and stickers.

At the workshop, experts shared their experiences with different outreach activities in various countries, such as town-hall meetings, journalist trainings, radio programs, and film screenings. Interactive Radio for Justice, for example, gathers questions about justice from members of the community. These are then answered by relevant authorities and pieced together to produce a show for broadcast. The potential of this type of activity for the ECCC was discussed, as a way to offer variety to the current call-in style of Q&A programming used by some radio programs on the ECCC.

D. Working with Civil Society

Civil society organizations and other external actors often conduct outreach activities independent of the official outreach program of a court. In some instances, such as Sierra Leone, strong civil society exists from the beginning of the transitional justice process. In Sierra Leone, civil society groups organized themselves into the Special Court Working Group, which maintained a secretariat in Freetown to coordinate activities by organizations around the country. This regionalized organization was fundamental in a country whose infrastructure was destroyed after the war. As Mohamed Suma highlighted, this mobilization was key to further transitional justice developments. Civil society groups worked on outreach, monitoring and reparations. In particular, they promoted and facilitated the inclusion of victims in the process.

Given their shared objectives and the fact that they generally operate in the context of scarce resources, it is important that courts explore possibilities for coordination with civil society organizations (and other external actors) in order to maximize resources and prevent

¹⁰ Out of 31,349 people that attended the trial proceedings, 27,709 were public visitors—for which PAS also provided transportation—while the remaining number were journalists. This in turn implies that the average number of people attending the trials per day was 360.

duplication of efforts. Civil society organizations are uniquely placed to conduct outreach activities. Because they usually have local networks they are able to reach a broader number of people. Also they have an ongoing local presence and have usually spent substantial time working with communities to develop relationships of trust (whereas a court usually builds this presence intermittently). Finally, as independent groups, NGOs have more space for creativity, and accordingly they are able to take risks in planning outreach activities that courts cannot.

However, collaboration with civil society organizations should also be carefully evaluated. NGOs, as independent institutions, have their own goals and mandates and their own resource constraints, which are not always easy to coordinate. Independent NGOs also play an important oversight role for the court. So while generally supporting the institution, they also have to make a critical assessment of its work, inevitably leading to tensions. Finally, it is important to bear in mind that there are certain tasks that cannot be left to civil society groups alone. In many instances, for example, the people want to hear directly from the court. Issues of confidentiality and security when reaching specific audiences, are also very important in this respect.

Taking into account both the opportunities and the challenges, while at the same time recognizing the need to work with civil society to maximize efforts and avoid duplication, it is important for courts to develop methods of coordination and collaboration around common goals. Cooperation is often similarly crucial for the civil society organizations, which need information and resources from the court. This relationship should be based on coordination rather than dependency, although a leading role from the court is important.

In the past, the hybrid courts in Bosnia and Sierra Leone have developed methods of coordination with civil society. At the Special Court for Sierra Leone, the “Special Court Interaction Forum” was established as a regular monthly meeting between the court and civil society. Court principals would have open meetings with members of civil society to receive feedback and answer questions.

At the War Crimes Chamber (WCC) in Bosnia, a “Court Support Network” was developed as a way to disseminate information and receive feedback from civil society. An NGO from each of the five geographic regions of Bosnia was chosen to act as a central point of dissemination to local groups. These organizations were given money for the first six months of the program, and then left to find independent funding. The organizations were the primary partners of the WCC, were given training and had access to the court. As central points of contact, they disseminated information based on community interests, operated a phone-line for information on testifying, and provided witness support. In the end, lack of funding and shifting priorities of the WCC, among other factors, inhibited the ability of this network to reach its full potential.

At the ECCC, civil society groups have been conducting extensive outreach efforts for the past several years. However coordination between NGOs and the court has been somewhat limited. Out of necessity, the closest cooperation and coordination has been between VSS and NGOs. For example, NGOs were responsible for facilitating 84% of the victim information forms for

complaints and civil parties collected as of the time of this writing. Likewise, NGOs did the follow up with most civil parties in Case 001, and organized a network of civil parties representatives in Case 002. Regular meetings organized by NGOs have taken place between PAS and NGOs, but they are usually focused more on reporting than planning. Lack of coordination has resulted in problems with the development of messages about the court. NGOs often produce their own messages, because of a lack of consistent leadership from the court, specifically around issues of civil party applicants and protective measures. As a result there is a risk that understandings of victims' participation differ in the community, sometimes creating expectations that cannot be met.

E. Working with Media

International courts are often difficult for local journalists to report on and access. For example, the Special Court for Sierra Leone had a small pressroom that was not very supportive for journalists. Special efforts can be taken to assist in reporting on issues at the court and using existing resources. In Sierra Leone, training in the use of resources—for example the www.charlestaylor.org website—has been very useful. However, journalist training is not something that makes sense in every situation. In the Former Yugoslavia, the ICTY invested in intensive efforts to facilitate coverage by local journalists. A group of journalists was housed in The Hague, allowing a constant presence in the courtroom, but coverage of the ICTY often remained intensely biased and political. It was only once the political situation changed that the media coverage changed. In this example, the political agenda of the media could not be altered. This presents the court with the dilemmas of how to respond to the media and whether it is worthwhile responding to everything. In some situations, it may be better to have court officials writing articles and putting their perspectives out into the media as an independent source of information, rather than as a response.

Media work at the ECCC is carried out by PAS, which monitors media coverage of the court on a daily basis, issues press releases, gives interviews and organizes press conferences (weekly during hearings). Additionally it also produces briefings of the procedures, circulates court materials, and facilitates interviews with court officials. The court provides adequate facilities for the press, with a media room with live feeds during the trial and another room with computers and Internet access. In Cambodia, reporting on the court is very positive overall, although sometimes there are factual mistakes. For example, there is often confusion between co-prosecutor and co-investigating judges, or misquotes, and PAS responds to these. In addition to reporting, the live feed of the trials is very important. The Cambodian public wants to see the trial as it is happening.

F. Outreach and Victim Participation

Victim participation, beyond their role as witnesses and in providing evidence, is a new development for international courts. It presents substantial outreach issues in regard to making information available to the population about the opportunity to participate and the

method of participation; providing resources to victims to facilitate their participation; and supporting victims through the process, including those whose applications are rejected.

At the ECCC, victims are able to file a Victim Information Form to apply either as complainant with the Co-Prosecutors or as Civil Party with the Co-investigating Judges. All complaints are put on the case file and considered by the Co-Prosecutors. As Civil Party, victims are recognized parties in the proceedings and can claim moral or collective reparations, which “shall be awarded against, and borne of convicted persons”.¹¹ VSS is responsible for collecting and processing Victims Information Forms.

Taking into account the broader scope of Case 002 and the increased awareness about the work of the Court, there has been a substantial increment in the number of civil party applicants (CPAs). For Case 001, there were a total of 94 applicants; while for Case 002, the number has reached 3,982 as of March 2010. The number of CPAs puts resource strains on every aspect of the court’s work and presents difficult challenges for VSS. Many applications provide insufficient information, and VSS staff must often personally travel to visit the applicants and collect the missing information.

VSS has so far focused specifically on CPAs and complainants. For example, VSS has held “Civil Party Forums” for applicants to understand what civil party lawyers are, to meet potential legal representatives, and to ask more questions about the process. Other outreach efforts have included TV and radio spots on the scope of the investigation and deadlines for applications, screening the documentary “Long-awaited Day” on victim participation, and an updated brochure and website. VSS has also prioritized assistance to applicants to attend hearings or visit the ECCC if possible. Moving forward, VSS has proposed CPA regional forums, provincial or district meetings, mobile teams to travel to communes, villages and homes, and film screenings.

Dealing with Rejection

Not all victims’ statements and applications filed are admitted as testimony or used in court. In the Former Yugoslavia, thousands of people were interviewed, but many did not know what eventually happened to their statements. Some victims felt like they had failed in some way, and were “not good enough” to be called to testify. In this way the experience of applying for participation can be further traumatizing. Acknowledging that victim testimony is fundamental for the working of the court, it is very important to keep the people who participate in the process informed, thanking them for their contribution and providing feedback on the process.

With the increase in CPAs for Case 002, VSS anticipates there will be a corresponding increase in the number of applicants that are rejected as civil parties. Efforts are being made from the

¹¹ECCC Internal Rules: Rule 23, 12 (see note 5). However, it remains unclear whether funds will be recoverable in the event of a conviction. Each of the accused persons has been declared indigent and under the Law that established the ECCC, property confiscated from a convicted person is returned to the state (A39, ECCC Law).

Office of the Co-Investigating Judges to be cognizant of the impact of rejection, and measures are being taken to lessen the blow. For example, a part of the Victims Information Form was recently reworded to reduce confusion over what status victims were given after filling out the form. Wording was changed to make it clear that although not all applicants will be accepted as CPAs, all will be complainants and their statements will be considered by the Co-Prosecutors. Hopefully, the change in wording will help mitigate unrealistic expectations and corresponding disappointment.

In addition, the letter from the Co-Investigating Judges that informs the applicant of the decision aims to be more than a perfunctory statement of acceptance or denial of the civil party application. It explains to the victim that the statement the victim provided in the form will be kept as a complaint and thanks them for filling out the form. There is anecdotal evidence that the letter has been well received and has left a positive impression on victims.

*New Mandate for VSS: Non-legal Measures.*¹²

In addition to the increasing workload of processing CPA's applications for Case 002, VSS has a new mandate for non-legal measures to support victims. At this time, it is undecided what activities will be conducted under the new mandate, and part of the agenda of the workshop was to facilitate discussion on ideas and possibilities for coordination with PAS in this respect.

It will be important to develop a consultation process with victims to understand what they want. Opportunities to collect ideas from victims that were discussed included: when they call in on the VSS helpline;¹³ on the Victim Information Form; and at forums for civil parties. So far the majority of responses collected from victims when asked about collective reparations have suggested measures such as houses, roads and schools. However, and as it was pointed out, given that in Cambodia the notion of reparations is usually understood in individual financial terms, examples such as pagodas, schools and the like are often put forward to illustrate the type of collective measures that might be considered. These examples may influence answers from victims, so an alternative way of collecting ideas may be needed.

A consultation process may also come with the risk of creating expectations that might not be fulfilled—especially in regard to funding, which will be completely dependent on external sources. Taking this into account, it will be important for the court to be honest during any consultation process, acknowledging it ultimately may not be able to implement all the ideas collected.

¹² It is important to recall here the difference between the new non-legal measures included in the VSS mandate (which can target all victims and are independent of concrete procedures at the court) and the collective reparations (only to be granted to Civil Parties). While the information here compiled might be also relevant for the reparations, the discussion in the workshop focused exclusively in the non-legal measures. (See note 7).

¹³ VSS set up a 24-hour phone line, where victims from around the country could call, seek support and ask questions.

Currently, VSS is exploring the implementation of one non-legal form of support: the Victims Register. The Victims Register is based on a Buddhist tradition of recording the dead called the Golden Book of Memory. Another initiative could involve collaborating with the Transcultural Psycho-social Organization (TPO), a local NGO who is implementing Testimony Therapy with groups of victims. It is possible that with its new mandate, VSS may be able to collaborate with TPO to reach more victims. Another possible avenue for collaboration with TPO could be around training for psychosocial support.

4. Way Forward

Almost 30 years after the fall of the Khmer Rouge regime, the ECCC has come into being—something that most Cambodians did not believe would ever happen. During the Duch trial, more than 27,709 Cambodians came to the court. At this point, surveys show that a great majority of the Cambodian population are not only aware of the trials, but also believe they are rendering justice in Cambodia.¹⁴

Increased awareness of the process, however, also impacts the context in which ECCC outreach programming operates. On the one hand its work load has increased (as the increased number of CPAs shows). On the other hand as awareness rises, more sophisticated (quality rather than quantity) information is needed. This shifts the objectives of the work done by PAS and VSS in order to meet the questions that people have. Therefore it is very important not only to identify and address misunderstandings and possible confusion, but to make sure that expectations are realistically managed (especially in relation to such issues as the court’s mandated timeframe, the fact that only senior leaders and the most responsible will be prosecuted, the possibility of receiving reparations, and so on).

The ECCC is now entering a period of limited trial activity. PAS and VSS have the opportunity to step back and devote time to reflecting on past challenges and learning from them before moving forward. Moreover, the forthcoming verdict in the Duch trial and the Closing Order of Case 002, expected in September, present opportunities for engaging in new outreach planning and ideas. The new mandate for non-legal measures also opens the door to considering new ways of conducting outreach—especially exploring options for greater collaboration, both between PAS and VSS, and among the court’s outreach system and Cambodian civil society groups.

Both PAS and VSS are in a very good position to make the most of this opportunity. First, they can benefit from their past experiences and achievements. Second, they have already identified specific new objectives: to keep momentum (“the KRT is not over”); to maintain public access to the court; and to improve public awareness of the court’s work and progress, especially among rural Cambodians and youth. Third, they have planned new activities,

¹⁴International Republican Institute: Survey on Cambodian Public Opinion, July 31-August 26, 2009.

including producing material about the court, organizing monthly field missions, organizing and participating in public forums, arranging schools visits, supervising the production of ECCC weekly TV shows, producing TV/radio spots and short documentary films, producing a monthly newsletter in Khmer, revising the ECCC booklets and producing leaflets, and producing a one-off publication on the Duch trial.

To complement these ideas, and respond to the challenges and opportunities identified by the ECCC at the workshop, the following issues raised in the discussion could prove helpful:

- 1) Designing a strategy. A precise strategy document for outreach with clear short-, medium- and long-term goals is fundamental for guiding future actions and strengthening coordination among internal and external actors.
- 2) Internal cooperation and coordination. So far, coordination between VSS and PAS has focused on outreach to inform victims of the opportunity to apply to the proceedings and facilitating visits of interested parties. Given the new context and challenges, especially the new mandate on non-legal measures, it is important to explore ways to improve coordination between PAS and VSS in order to maximize results. Likewise, although court officials from other sections of the ECCC have participated in outreach in the past, strengthening this type of collaboration can help promote a more inclusive dialogue and build a more coherent external view of the institution. This coordination is especially important in a court like the ECCC, with both national and international sides which sometimes have different approaches to their work.
- 3) Institutional support. To facilitate this internal coordination, it is important for PAS and VSS to go beyond the willingness of particular individuals, to find ways to connect with the ECCC's institutional support structures. To achieve this, however, it was acknowledged that there is a need to get support from the highest levels of the court.
- 4) Audiences and messages. Without a trial in progress, the upcoming months will be an opportunity for different levels of the court to participate in discussions on outreach. While a good number of activities have already been planned and some specific audiences have already been identified (rural communities and youth), an inclusive discussion within the court is highly recommended. This would enable the court to identify different audiences (for example perpetrators, women, religious leaders); understand what role they play in society; identify what the objective in reaching out to them is; and develop outreach methods accordingly. As one participant in the workshop said, "only one message won't do."
- 5) Building a legacy. One issue that was repeatedly raised in the discussion was that the time is now ripe for the court to include legacy issues in its agenda. To do so, different activities could be considered, including: exploring how to introduce and link the information being distributed about the court proceedings with broader transitional justice, rule of law, and human rights topics; addressing specific audiences such as the

legal community and law students; or exploring how documents produced in connection to the work of the court could be transformed into educational material.

- 6) External coordination: With the Duch verdict and the Closing Order in Case 002 expected in 2010, PAS has an opportunity to improve coordination with NGOs generally, and specifically around these two events. Coordination is fundamental in preventing confusion that often results from having different sources of information and messages. Likewise, cooperation will prove fundamental for VSS vis-à-vis its new non-legal measures mandate, in terms of building networks across the country (both to reach a broader number of victims and to support more concrete, one-to-one ways of communication). This coordination might be challenging, taking into account that NGOs have assisted the court in very unconventional ways. They have performed services that normally a court would provide. In promoting this coordination it is therefore important that the court assumes a leading role, starting with clearly articulating what NGOs can help with and what they cannot. Following the example of the ICC, it would also be helpful in this respect to make the strategy document public.
- 7) Identifying other potential partners. When thinking about collaboration with civil society, a broader framework should be taken into account that goes beyond NGOs working in collaboration with the court, to include and identify different groups that could be potential partners, such as religious groups, sports groups, community organizations, local authorities, and so on. It is also important to take into account that, in some cases, there is no clear structure of organized civil society and so other paths to reach broader audiences should be explored.
- 8) Answering difficult questions. Increased awareness about the ECCC within Cambodia leads to demands for more specific, and sometimes delicate, information. For example, PAS has identified within its current challenges the need to bring visibility to the work of the judicial offices while keeping confidentiality. Wanda Hall pointed out that although investigations are confidential the process should be explained (why it takes time, why it is confidential, and so on). While not compromising confidentiality when replying to questions about the court's activities, it is important to avoid elusive answers (such as "no comment"). As she said, "even an explanation of why you cannot answer a question can educate people on the process, the rules and regulations and the reason these rules protect the integrity of the court."
- 9) Conveying the Duch verdict. The Duch verdict is going to be a major event in the court's work. This offers both opportunities and challenges in terms of outreach work. Given the nature of the crimes and the procedural issues that will influence the final sentencing, it is unpredictable what the general public and most importantly victims' perceptions will be. As Refik Hodzic highlighted, the ICTY experience shows that when it comes to communicating the result of a trial, the sentence is not necessarily the most powerful thing. It is never going to satisfy everybody, nor is it able to give people what they need. It is something that only affects the perpetrator directly and cannot

compensate suffering. There may therefore be incentives to focus on other aspects of the trial (the fact that Duch apologized, for example). It was also suggested that the sentencing could be used as an acknowledgment ceremony for victims (using traditional practices such as Buddhist mourning processes, for example, and coordinating with NGOs to organize a big national event).

- 10) Keep momentum while no trial hearings are expected. For Wanda Hall, the time the court faces now without hearings is a good opportunity to explore and find new ways to give voice to the court's constituencies, more specifically to let them give feedback, ask questions or creatively explore how they can expand the influence of the ECCC in Cambodia.
- 11) Preparing for Case 002. It is expected that Case 002 will be more complicated and antagonistic than the Duch case. In the period before the trial starts, it would be useful for PAS not only to prepare outreach material on the case, but also to build a proactive strategy, thinking about ways to anticipate problems and preparing the public for the trial. The experience and material gathered in Case 001 could be also useful for this purpose.

5. Closing Note

The workshop highlighted the importance of outreach not only for the ECCC, but for all international and hybrid courts. Yet outreach is not widely accepted as an integral part of courts' functions. International courts and other transitional justice processes established with international assistance often have the comfort of not being directly responsible to the people they are intended to serve. It is important, however, to make a connection and for both the people and the court to value the relationship. The institution must recognize that genuine public support is crucial for its functioning. Public support can help the court when financial or government backing starts to waver. Moving forward, the workshop contributes to a global debate about the term "outreach" and to the recognition of its importance.

List of Registered Workshop participants:

ECCC

PAS:

Sambath Reach
Sovannarom Dim
Vichet Chin
Yuko Maeda
Lars Olsen
Laurel Saito

VSS:

Helen Jarvis
Constanze Oehrich
Neou Kassie
Elenor Fernandez
Heng Kimhuch
Knut Chhornsocheata
Mahlana Wiverson
Colette Van Der Ven

OCP:

Dararasmey Chan
Bill Smith
Craig Etcheson
Charles Jackson
Sambath Pich

OCIJ- Neak Seakirin

DSS- Richard Pool

DDOA: Zarqaa Chohan

WESU- Ly Nimol

ICT- Has Bunton

VUCP- Katrina Gordo

NGO's

The Khmer Institute of Democracy (KID): Poramy Chhit

Center for Justice and Reconciliation (CJR): Seng Daravuth and Jennifer Bumbasaro-Brady

ICTJ staff and consultants

Caitlin Reiger

Clara Ramirez-Barat

Maya Karwande

Mychelle Balthazard

Independent Experts

Wanda Hall

Mohamed Suma

Refik Hodzic