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Transitional Justice as Communication: Why Truth Commissions and International Criminal Tribunals Need to Persuade and Inform Citizens and Leaders, and How They Can

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TRANSITIONAL JUSTICE AS COMMUNICATION: WHY TRUTH COMMISSIONS AND INTERNATIONAL CRIMINAL TRIBUNALS NEED TO PERSUADE AND INFORM CITIZENS AND LEADERS, AND HOW THEY CAN

Jamie O'Connell*

This Article reframes transitional justice as communication. It argues that the impact of truth and reconciliation commissions (TRCs) and international criminal tribunals (ICTs) on countries where human rights violations occurred depends largely on these institutions changing what those countries' citizens and elites know and believe. More precisely: most of the ways TRCs and ICTs could advance their goals—such as reconciliation and deterrence—require informing these domestic audiences about the institutions' activities, methods, and findings, and persuading them to accept the institutions' conclusions. Communication-specific activities, such as public outreach and media relations, are essential. Yet shaping elite and popular knowledge and opinion are not mere add-ons to what some see as TRCs' and ICTs' “core” work: investigating human rights violations, holding hearings, writing reports, and indicting and trying perpetrators. Rather, the imperative of influencing local people must shape how these institutions conduct those activities and sometimes even what conclusions they reach. Unfortunately, TRC commissioners, ICT judges and prosecutors, and their staff, along with transitional justice scholars, have underestimated the importance of influencing domestic audiences for advancing TRCs'

* Lecturer in Residence, Stanford Law School, and Faculty Affiliate, Center for Democracy, Development, and the Rule of Law, Stanford University. I dedicate this Article to the memory of Professor Elena Górriz Royo of the University of Valencia, Spain. Professor Górriz was my dear friend and an extraordinary scholar, teacher, and facilitator of international intellectual exchange, including my cherished relationship with her own institution. I am grateful for superb research assistance by Edmund Bao, Emily Wood, and Molly Norburg and for the support of my colleagues in the Robert Crown Law Library at Stanford Law School. Stephen Smith Cody, William Dodge, Anne Joseph O'Connell, Beth Van Schaack, and Leif Wenar, as well as participants in the 2020 Northern California International Law Scholars Conference, offered invaluable feedback. Thank you, also, to Dixie N. McCollum, Roger M. Stevens, and their *South Carolina Law Review* colleagues. The importance of communication in transitional justice began to dawn on me early in my career, as I observed and learned from practitioners, especially Mohamed Suma and Tom Perriello in Sierra Leone and Magouusi Motau, Marie-Louise Ström, and the late Duma Kumalo in South Africa. None of these interlocutors bears any responsibility for the judgments and interpretations in this Article, nor for any errors I may have made.

and ICTs' goals. As a result, the institutions have devoted too little attention and resources to communication.

This Article also provides a typology of the activities and occasions through which TRCs and ICTs can influence domestic audiences. It offers examples of effective and ineffective practice from five international criminal tribunals, such as the International Criminal Court, and over a dozen truth commissions, such as South Africa's. Where evidence permits, it assesses individual institutions' performance. Finally, the Article analyzes the most important challenges that TRCs and ICTs encounter in communicating with domestic audiences.

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I. INTRODUCTION

Transitional justice institutions such as truth and reconciliation commissions (TRCs) and international criminal tribunals (ICTs) devote surprisingly little attention and effort to influencing elites and ordinary citizens in the countries most affected by the human rights violations they address. Their leaders, staff, and funders largely fail to appreciate that advancing many of the goals for which these institutions were created—such as deterring future abuses and promoting national reconciliation—requires informing domestic audiences of their findings, including about the scale, nature, causes, and perpetrators of human rights violations. Persuading those audiences that these findings are justified is equally important, although more difficult. Truth commissions also must generate support for the reparations and reforms they propose.

South Africa's famous Truth and Reconciliation Commission typified transitional justice institutions' inattention to such communication. It held nearly one hundred widely covered public hearings on human rights violations during the Apartheid era and issued a five-volume final report in 1998.¹ Yet just three years later, a national survey found that fifty-one percent of whites and thirty-six percent of blacks believed that the country's comprehensive system of racial subordination had been based on ideas that had been "basically good," even though some "abuses" had occurred in its implementation.² Why? The TRC's hearings and report had focused on individual cases of violent repression and failed to connect them to each other or to the political, economic, and social order of Apartheid. Furthermore, the report was inaccessible. For years it was buried behind a for-profit publisher's paywall and priced at over 1,500 South African rand—almost ten percent of GDP per capita and far too expensive for the impoverished majority of the population.³ Anyone who overcame that barrier found an incoherent, 2,700-

1. Hugo van der Merwe & Audrey R. Chapman, *Did the TRC Deliver?*, in *TRUTH AND RECONCILIATION IN SOUTH AFRICA: DID THE TRC DELIVER?* 241, 242, 244–45 (Audrey R. Chapman & Hugo van der Merwe eds., 2008).

2. JAMES L. GIBSON, *OVERCOMING APARTHEID: CAN TRUTH RECONCILE A DIVIDED NATION?* 80, 369 (2004).

3. See Catherine M. Cole, *Performance, Transitional Justice, and the Law: South Africa's Truth and Reconciliation Commission*, 59 *THEATER J.* 167, 173 (2007) (stating that the

page muddle, with no section that summarized the commission's findings on the vital questions it had been expected to answer: what human rights violations had occurred from 1960 to 1994, who had committed them, what their causes and purpose had been, and what role they had played in South Africa's system of racial oppression.⁴

International criminal tribunals similarly underachieve. A sixteen-year investigation of Uganda's brutal civil war by the International Criminal Court (ICC) has yielded charges against rebels from the Lord's Resistance Army, but none against government soldiers who also committed extensive war crimes. The ICC's inaction has communicated to government forces that they can operate with impunity, undermining the court's capacity to deter government atrocities.⁵ The International Criminal Tribunal for the former Yugoslavia (ICTY) issued its judgments in English and French, not translating a single one into Serbo-Croatian until its sixth year of operation. Both courts, and the International Criminal Tribunal for Rwanda (ICTR), have made only anemic efforts at direct outreach to local publics.⁶

Inspiring counterexamples show that transitional justice institutions can do better. Guatemala's TRC unequivocally found the country's military responsible for the overwhelming bulk of atrocities during a thirty-year civil war and tied those abuses to systematic economic and political oppression of indigenous people.⁷ *Nunca Más*, a book-length summary of the first major truth commission report, by Argentina's National Commission on the Disappearance of Persons ("CONADEP" in Spanish), remains available thirty-seven years after its release.⁸ Its detailed evidence on clandestine detention centers refuted the military's denial that it had disappeared tens of thousands of people. The Special Court for Sierra Leone (SCSL) created an innovative outreach program that sent its chief prosecutor and top

price was over 1,500 South African rand); *GDP per capita (current LCU)—South Africa*, The World Bank (Jul. 23, 2021), <https://data.worldbank.org/indicator/NY.GDP.PCAP.CN?locations=ZA> [<https://perma.cc/4BHY-ZSGZ>] (showing GDP per capita of 17,436 Rand in 1998, the report's publication year).

4. This page count includes just the first five volumes of the report, released in 1998. TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA, FINAL REPORT (1998). Two more volumes, adding nearly 1,800 pages, were published in 2002 and 2003. TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA, 6 FINAL REPORT (2003); TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA, 7 FINAL REPORT (2002).

5. See HUMAN RIGHTS WATCH, UNFINISHED BUSINESS: CLOSING GAPS IN THE SELECTION OF ICC CASES 27–28 (Sept. 2011), <https://www.hrw.org/sites/default/files/reports/icc0911webwcover.pdf> [<https://perma.cc/JNH5-XWBP>].

6. See *infra* Subsection IV.A.5.

7. COMMISSION FOR HISTORICAL CLARIFICATION, 5 GUATEMALA: MEMORY OF SILENCE 17–18 (1999).

8. See *Nunca Más* [*Never Again*], EDITORIAL UNIVERSITARIA DE BUENOS AIRES [UNIVERSITY OF BUENOS AIRES PRESS] (Jul. 25, 2021) (Arg.), <https://www.eudeba.com.ar/Papel/9789502325705/Nunca+m%C3%A1s> [<https://perma.cc/ZP2X-M7ND>].

administrator to villages around the West African country to answer questions from ordinary citizens.

This Article's first contribution is to reframe transitional justice by demonstrating the central importance of communication with people in affected countries, particularly for the field's paradigmatic institutions—truth commissions and international criminal tribunals.⁹ By communication, I refer to those institutions' efforts to influence the knowledge and views of domestic audiences, both grassroots and elite.¹⁰

I contend that informing and persuading local citizens and elites is essential for advancing many of these institutions' goals, not merely a

9. I refer to the former generically as "TRCs," "truth commissions," or "commissions," although their names vary. There is little disagreement among scholars on the definition of a truth commission. *See, e.g.,* PRISCILLA B. HAYNER, *UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS* 10–13 (2d ed. 2011); ERIC WIEBELHAUS-BRAHM, *TRUTH COMMISSIONS AND TRANSITIONAL SOCIETIES: THE IMPACT ON HUMAN RIGHTS AND DEMOCRACY* 3–4 (2010); ONUR BAKINER, *TRUTH COMMISSIONS: MEMORY, POWER, AND LEGITIMACY* 24–30 (2016). I sometimes refer to international criminal tribunals as "ICTs" or "international courts." "Transitional justice institutions" and "institutions" refer to both TRCs and ICTs.

The Article does not examine communication by national courts. Transitional justice cases comprise a tiny fraction of most national courts' dockets, so it is difficult to argue that their prosecutors, judges, and staff should devote significant attention and resources to transitional justice-related communication. Nonetheless, some of the analysis and prescriptions here may apply to national courts when they handle cases related to transitional justice.

10. By "domestic audiences," I mean people within the country or area where the human rights violations examined by the institution occurred. This excludes impact on audiences that have neither experience of the violations nor a primary personal investment in the country or area, such as most foreign politicians, diplomats, scholars, and activists. Truth commissions and international criminal tribunals already have significant incentives to communicate with those foreign audiences, which may provide funding, political support, and staff for the institutions and future professional opportunities for their leaders and staff. *See* HAYNER, *supra* note 9, at 216–18, 228–30; *see generally* Sara Kendall, *Marketing Accountability at the Special Court for Sierra Leone*, in *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY: THE IMPACT FOR AFRICA AND INTERNATIONAL CRIMINAL LAW* 387 (Charles Chernor Jalloh ed., 2014); Sara Kendall, *Commodifying Global Justice: Economies of Accountability at the International Criminal Court*, 13 J. INT'L CRIM. JUST. 113, 121–26, 129 (2015) [hereinafter Kendall, *Commodifying Global Justice*].

For the sake of coherence and space, the Article also does not focus on communication *within* transitional justice institutions, such as discussions among truth commissioners, except where it is relevant to external communication.

For many cases, who counts as "domestic" is straightforward. Much communication by the ICC is specific to an ICC "situation" that corresponds to a particular territory, such as Uganda. However, those most affected by particular human rights violations, and by transitional justice institutions' work, sometimes are spread across multiple countries. For example, the Liberia TRC solicited testimony about the civil war from Liberians who had fled to the United States. *See* Laura A. Young, *Engaging Diasporas in Truth Commissions: Lessons from the Liberia Truth and Reconciliation Commission Diaspora Project*, 3 INT'L J. TRANSITIONAL JUST. 341, 343 (2009).

desirable byproduct of “core” tasks such as collecting evidence, conducting trials, and writing final reports. This is a fundamental yet underappreciated truth about transitional justice. How much commissions and courts can help prevent future atrocities, advance inter-group reconciliation, heal victims, promote peace, build the rule of law, and promote other lofty goals is vigorously debated. But I argue that whatever contribution they might make depends on them influencing citizens, journalists, politicians, judges and prosecutors, soldiers and police, and others outside the institutions themselves. The most important audiences are those in the countries where the human rights violations occurred, rather than international diplomats, activists, and academics. Most theories about the impact of commissions and courts implicitly assume that they somehow change local people’s knowledge and beliefs—about the extent of the violations, who was responsible, whether they were justified, what the institution itself is doing, whether it is legitimate and authoritative, and other matters. Yet these assumptions are seldom stated, let alone explored.

Most leaders, staff, and funders of transitional justice institutions have grasped the importance of communication only slowly. Many take a blinkered, technocratic approach to their work. Focusing on tasks rather than purposes, they understand their mission as a sequence of steps: taking victims’ statements; organizing public hearings; investigating, indicting, and trying individual defendants; and writing up deliverables such as judgments and reports. They think little about their institutions’ ultimate goals and what they need to do to promote them. This narrow focus reflects individuals’ limitations, dysfunctional organizational structures and processes, and constraints imposed by outside actors. Many courts and commissions struggle to complete even these basic tasks, due to insufficient resources, unrealistic ambitions, and sometimes mismanagement. The states that oversee some institutions have been skeptical of communication-specific functions, such as public outreach, and limited funding for them. Furthermore, some leaders and staff of international criminal tribunals argue on principle that their substantive decisions, or even processes, should not be influenced by their organizations’ ultimate goals.

Scholars of transitional justice, too, have overlooked the centrality of influencing domestic audiences and devoted little attention to how it occurs, outside a small literature on court outreach programs.¹¹ This Article appears

11. The exceptions provide important insights and are discussed below. Clara Ramírez-Barat, as author and editor, is responsible for some of the most valuable work. *E.g.*, CLARA RAMÍREZ-BARAT ED., *TRANSITIONAL JUSTICE, CULTURE, AND SOCIETY: BEYOND OUTREACH* (2014); CLARA RAMÍREZ-BARAT, *MAKING AN IMPACT: GUIDELINES ON DESIGNING AND IMPLEMENTING OUTREACH PROGRAMS FOR TRANSITIONAL JUSTICE* (2011) [hereinafter

to be the first scholarly work that analyzes the role of such communication in advancing transitional justice goals—that sees transitional justice largely *as* communication. Lawyers and legal scholars studying ICTs dedicate most time to international criminal law doctrine. Work on these courts' management and procedure has cleaved closely to cases, covering such topics as investigation methods and rules of evidence. Studies of their impact on societies are rarer. Truth commission literature is more fragmented, defying pithy summary. However, it is equally thin on communication: few studies do more than touch on it and most aspects are covered in a handful of works at best.¹² We know little about how transitional justice institutions interact with the media, the roles different leaders and units play in determining messages for external dissemination, and how (and how much) they tailor events and written products for particular audiences, among many other questions. By neglecting communication by transitional justice institutions, scholars have failed to educate the institutions' leaders and staff—as well as the diplomats and politicians who create, fund, and oversee them—about the importance, and difficulty, of reaching local people. Successes and innovations, which could inspire and educate practitioners and scholars, have instead remained obscure.

This Article's second contribution is a survey of the range of activities through which truth commissions and international criminal tribunals can communicate with domestic audiences. These activities may target the population as a whole or specific groups within it, such as victims, perpetrators, activists, or beneficiaries of human rights violations.¹³ They may try to reach these audiences directly or through the media, NGOs, religious leaders, or other influential institutions or individuals. The format and timing of communication vary, too. For example, a truth commission may convey information on and interpretations of human rights violations during its

RAMÍREZ-BARAT, MAKING AN IMPACT]; CLARA RAMÍREZ-BARAT & ROGER DUTHIE EDS., *TRANSITIONAL JUSTICE AND EDUCATION: LEARNING PEACE* (2016). Phil Clark's concepts of distance and complementarity yield insights about the ICC's domestic impact that complement this Article's analysis. PHIL CLARK, *DISTANT JUSTICE: THE IMPACT OF THE INTERNATIONAL CRIMINAL COURT ON AFRICAN POLITICS* (2018). Marko Milanović's study of the ICTY deeply examines the difficulty of persuasion in one region and suggests dynamics that may be important in others as well. Marko Milanović, *Establishing the Facts About Mass Atrocities: Accounting for the Failure of the ICTY to Persuade Target Audiences*, 47 GEO. J. INT'L L. 1321 (2016) [hereinafter Milanović, *Establishing the Facts*].

12. Some studies discuss the rhetoric of ICTs or TRCs with no reference to a specific audience. This approach is odd, since the meaning of particular content and style can vary dramatically based on the position, experience, and prior views of the listener. Such studies of how these institutions *speak* therefore tend to reveal little about how well they *communicate*.

13. Human rights violations often benefit particular people, such as by defending social arrangements that favor a certain group. For example, the Guatemala TRC identified the concentration of political and economic resources in "the hands of a minority" as a root cause of the racism that led to genocide against the country's indigenous people. See COMMISSION FOR HISTORICAL CLARIFICATION, *supra* note 7, at 17.

operational phase, such as through public hearings, and/or at the end of its lifetime, often in a written report.

The need to influence domestic audiences may shape substantive decisions, such as whom a court indicts and what conclusions a truth commission draws about the events it studies. To be sure, those decisions are constrained by important ethical principles. International prosecutors must only pursue people they believe to be guilty of crimes within their court's jurisdiction and only indict those whose guilt they can prove beyond a reasonable doubt. The number of crimes and perpetrators vastly exceeds judicial resources, however. Prosecutors can consider societal impact in prioritizing which events they investigate, whom they indict, and what crimes they charge, although they may need to avoid appearing to do so—precisely to maximize their impact.¹⁴ Truth commissions have more flexibility to make findings and recommendations that challenge or affirm the prior views of victims, perpetrators, and their supporters, among others. A commission may soft-pedal some conclusions, hoping to shift some groups' thinking by meeting them part way. These substantive decisions are complex and fraught: which ones will best advance the goals of a particular international court or truth commission will depend on patterns of public and elite opinion and many other aspects of context.

This Article's third and final contribution is an analysis of the most important factors affecting transitional justice institutions' performance in communicating with local citizens and elites. Failing to appreciate the importance of communication is a common problem. Many institutions also devote insufficient money and personnel. Leaders and staff often lack necessary expertise and skills. Lastly, changing the minds of some people in affected countries on some issues is difficult even with motivation, resources, and ability.

In the course of the Article, I sometimes distinguish among communication efforts by the complexity and ambition of their objectives. This can facilitate analysis of those efforts' potential, limitations, and challenges. Some communication tries to convey relatively uncontroversial, factual information to an audience, often regarding the institution's own actions. For example, on October 30, 1996, the South Africa TRC issued a press release with the location, format, and subject matter of the following

14. I share the "somewhat scandalous" view of my colleague Allen Weiner that international court prosecutors should make "careful and self-conscious political choices regarding charging strategies" in order to advance their institutions' goals. Allen S. Weiner, *Prudent Politics: The International Criminal Court, International Relations, and Prosecutorial Independence*, 12 WASH. U. GLOBAL STUD. L. REV. 545, 546 (2013). I also would stress, as Weiner does, that ethics and pragmatism sharply limit the role that politics should play in such decisions. *Id.* at 548–50.

week's public hearings.¹⁵ Other communication aims to change some audience's views on a complex matter. In June 2020, ICC Prosecutor Fatou Bensouda responded to the discovery of mass graves in Libya by threatening to "expand my investigations and potential prosecutions to cover any new instances of crimes."¹⁶ This statement's purposes likely included deterring further atrocities by convincing potential perpetrators that they faced a significant risk of imprisonment.

This Article sometimes uses the terms "informing" and "persuading" to draw such contrasts. By informing, I refer to more straightforward transmission of facts to an audience that is likely to accept them fairly readily. Persuading signifies more difficult work, involving changing the audience's views, often on complicated, controversial matters that involve contested factual questions and value judgments. The distinction between informing and persuading is often a matter of degree and is not always helpful. Many communication initiatives, from a single press release to a months-long outreach campaign, may involve both informing and persuading on different points. Some people might readily accept a particular idea, so one could refer to "informing" them of it, but another group might be skeptical about the same point and require "persuasion." In March 2013, for example, a *New York Times* journalist may have taken at face value the ICC's statement that it had taken Bosco Ntaganda into custody.¹⁷ On the other hand, followers of the Congolese warlord who had expected him to fight to the death may have been incredulous.¹⁸ Thus, the persuading/informing distinction functions not as a rigorous theoretical framework but rather as a practical tool that sometimes facilitates clear description or insightful analysis.

Many actors beyond TRCs and ICTs influence citizens' and elites' views about past human rights violations and the transitional justice institutions themselves. Journalists, politicians, religious and community leaders, civil society organizations, and family and friends form a complex information

15. *Empangeni/Durban Hearings*, TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA (Oct. 30, 1996), <https://www.justice.gov.za/trc/media/pr/1996/p961030b.htm> [https://perma.cc/X49S-3AKC].

16. See Fatou Bensouda, *Statement of ICC Prosecutor, Fatou Bensouda, on the discovery of multiple alleged mass graves and continued violence in Libya*, INT'L CRIM. CT. (June 22, 2020), <https://www.icc-cpi.int/Pages/item.aspx?name=200622-otp-statement-libya> [https://perma.cc/E5UE-EW6M].

17. See Jeffrey Gettleman, *Wanted Congolese Rebel Leader Turns Himself in to U.S. Embassy*, N.Y. TIMES, Mar. 18, 2013.

18. The video of his initial appearance at The Hague, which the ICC promptly posted on YouTube, may have done the trick. See Int'lCriminalCourt, *Programme "Dans la salle d'audience"—Affaire Ntaganda: Audience de première comparution* ["In the Courtroom" Program—Ntaganda case: First appearance hearing], YOUTUBE (Mar. 26, 2013) (Fr.), https://www.youtube.com/watch?time_continue=13&v=G4K-e9HZ7Yw&feature=emb_logo [https://perma.cc/L67D-6NXT].

ecosystem that shapes people's knowledge and beliefs. These influences may transmit, reinforce, contradict, gloss, or distort transitional justice institutions' messages. For example, in the mid-1990s, the South African Council of Churches conducted workshops for the public on how to give statements to the TRC.¹⁹ At the same time, in Serbia, a relentless barrage by nationalist politicians and media convinced ordinary Serbs that the ICTY was bent on persecuting their countrymen.²⁰ Myriad actors in each society influence each other. Security force commanders take cues from politicians but also pressure them. Politicians both shape and respond to public opinion. Journalists choose how to frame issues, but within what they understand to be acceptable to their readers, viewers, employers, and other constituents. Ordinary citizens debate among themselves and push their leaders for answers. These information ecosystems operate through print articles, radio and television broadcasts, formal meetings, casual conversations, and messaging and social media platforms like WhatsApp, TikTok, and Facebook.

Commissions and courts must consider these other actors and the dynamics among them when selecting messages, devising communication strategies, and implementing those strategies day to day. This Article focuses on communication by transitional justice institutions themselves. However, when evaluating their efforts to inform and persuade, it takes into account the information ecosystems in which that communication occurs.

The Article unfolds as follows: Part II briefly flags important ethical and practical issues that commissions and courts must consider as they attempt to inform and persuade domestic audiences. Part III demonstrates why transitional justice institutions must influence these audiences' knowledge and views if they are to advance their goals. Part IV considers how they can communicate, by surveying occasions, methods, and institutional structures TRCs and ICTs can employ. Where existing evidence permits, it assesses the performance of specific institutions (such as the ICC), identifies common challenges, and highlights best practices. Part V synthesizes these insights into key factors affecting how much and how well commissions and courts communicate. Part VI concludes.

19. In 1996, I observed Magouwsu Motau, Joseph Dube, and Duma Kumalo conduct such a workshop in Johannesburg.

20. DIANE ORENTLICHER, *SOME KIND OF JUSTICE: THE ICTY'S IMPACT IN BOSNIA AND SERBIA* 220–21 (2018).

II. AVOIDING PATERNALISM

This Article examines communication *from* transitional justice institutions *to* domestic audiences, including citizens and elites. As Part III shows, communication in this direction is essential if TRCs and ICTs are to achieve the purposes for which they were created. By focusing on how institutions inform and persuade, I do not mean to endorse a top-down, paternalistic approach to transitional justice, though.²¹ Indeed, I see transitional justice institutions' neglect of communication as part of their broader inattention to the needs of ordinary citizens in affected countries and to those people's key roles in advancing transitional justice goals.

To be effective, transitional justice institutions must listen as well as speak.²² One must understand people's thinking in order to influence it—or even gain sufficient trust for them to listen. Courts and commissions need to determine what people in affected countries know and believe about past human rights violations and what should be done about their lingering effects. They must understand the information ecosystems that shape people's thinking. They should undertake systematic research on these topics, such as through surveys and focus groups, and draw on similar work by third parties.²³ Furthermore, some of the communication initiatives discussed in Part IV, below, can operate in two directions, as opportunities for the institutions both to transmit their messages and to learn their audiences' views. For example, at outreach events, prosecutors and judges can solicit input from attendees, as well as state their own perspectives.

Profound ethical questions surround transitional justice institutions' efforts to influence people's views about complex matters of great importance to their societies. Is it the place of elite truth commissioners and international court prosecutors and judges to tell people what to think about the impact of

21. For a valuable critique of scholars' and practitioners' focus on elite institutions like ICTs and TRCs, see Kieran McEvoy & Lorna McGregor, *Transitional Justice from Below: An Agenda for Research, Policy, and Praxis*, in TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE 1 (2008).

22. See RAMÍREZ-BARAT, MAKING AN IMPACT, *supra* note 11, at 7; INT'L CTR. FOR TRANSITIONAL JUST., TRUTH SEEKING: ELEMENTS OF CREATING AN EFFECTIVE TRUTH COMMISSION 49 (Eduardo González & Howard Varney eds., 2013) [hereinafter González & Varney eds., TRUTH-SEEKING].

23. For example, researchers affiliated with the University of California, Berkeley, Human Rights Center have conducted rigorous surveys of residents of conflict-affected areas, victims of human rights violations, and witnesses and victim-participants in international courts. See, e.g., PHUONG PHAM & PATRICK VINCK, TRANSITIONING TO PEACE: A POPULATION-BASED SURVEY ON ATTITUDES ABOUT SOCIAL RECONCILIATION AND JUSTICE IN NORTHERN UGANDA (2010); ALEXA KOENIG, ERIC STOVER, STEPHEN CODY & MYCHELLE BALTHAZARD, THE VICTIMS' COURT?: A STUDY OF 622 VICTIM PARTICIPANTS AT THE INTERNATIONAL CRIMINAL COURT (2015); CLARK, *supra* note 11, at 100 n.2.

genocide, torture, and systems of racial subordination; who was responsible for them; and how to address their consequences? These questions implicate dilemmas about the proper roles of elites and citizens that have preoccupied philosophers for millennia.²⁴ What distinctive capabilities and limitations does each bring to determining how society should view the past and shape the future? Does the legitimacy of interpretations and policies depend on democratic approval or objective criteria (“truth”)—and who should determine the latter? If one believes transitional justice measures should respect the autonomy and equality of all members of a society—basic human rights values—then the answers to these questions are far from obvious.

As Part III shows, most of the ways international criminal tribunals and truth commissions can contribute to transitional justice require those institutions influencing citizens and elites in affected countries. But this is not a license to usurp those people’s intellectual and moral autonomy. Balancing these imperatives is difficult but vital. Truth commissioners, prosecutors, judges, and their staff must think carefully about their proper role as they endeavor to shape the knowledge and views of local audiences.²⁵

III. THE CENTRAL ROLE OF COMMUNICATION IN TRANSITIONAL JUSTICE

This Part supports this Article’s primary theoretical claim: that the capacity of truth commissions and international courts to advance their ultimate goals depends largely on their effectiveness in informing and persuading elites and citizens in affected countries. A wide range of ambitious political and social purposes are posited for these institutions by their creators, leaders, and staff, as well as scholars, activists, and politicians. These include preventing human rights violations, ending wars, promoting reconciliation between polarized ethnic groups or individual perpetrators and victims, assembling a historical record of unimaginable crimes, developing international criminal law, helping victims of atrocities heal emotionally, and building democracy and the rule of law.²⁶ These aims are set forth as mandates or aspirations in many of the presidential decrees, statutes, UN Security

24. See, e.g., PLATO, *REPUBLIC* 115–20 (Robin Waterfield trans., Oxford Univ. Press 1993) (c. 375 B.C.E.); ARISTOTLE, *POLITICS* bk. III, at 107–12 (Ernest Barker trans., Oxford Univ. Press 1995) (c. 335–323 B.C.E.).

25. These normative considerations should affect both the content of the transitional justice institutions’ communication—what information they try to teach people and what views they urge on them—and their methods—how the institutions try to inform and persuade. At a minimum, the content must not include objective falsehoods and all factual claims should be supported by some quantum of evidence. Methods should be chosen to permit audiences significant autonomy in deciding what to believe.

26. See James L. Cavallaro & Jamie O’Connell, *When Prosecution is Not Enough: How the International Criminal Court Can Prevent Atrocity and Advance Accountability by Emulating Regional Human Rights Institutions*, 45 *YALE J. INT’L L.* 1, 8 (2020) (citing sources).

Council resolutions, and international agreements that create TRCs and ICTs. They also recur in discussions among diplomats, activists, and scholars and in scholarly and practical writing.²⁷

How these institutions can advance their goals is often left vague: few academic works or in-depth NGO reports set out theories of change—causal mechanisms by which transitional justice institutions' existence or activities might translate into impact.²⁸ Almost no shorter advocacy pieces, such as speeches or op-eds, do so either.

Of the few works that do trace chains of causation from what institutions do all the way to their ultimate goals, almost none identify the links that involve communication. This elision is illustrated by one of the most important empirical studies of the real-world impact of the ICC. In "Can the International Criminal Court Deter Atrocity," political scientists Hyeran Jo and Beth Simmons present compelling statistical evidence that the ICC diminishes killings of civilians.²⁹ They also offer a particularly thorough theoretical explanation of their findings. The ICC deters atrocities, they believe, because it increases potential perpetrators' fear of various social and penal consequences. Jo and Simmons's analysis implies numerous information flows and cognitive shifts. For example, if fear of prosecution explains why soldiers in ICC member states kill fewer civilians than those in non-member states, then the former must know that their governments are ICC members and that this increases their exposure to prosecution.³⁰ The authors also find that after the ICC opens more investigations and issues more arrest warrants, civilian killings drop worldwide.³¹ If the reason is that greater ICC activity deters potential perpetrators, then the latter must be learning, somehow, that the ICC is more active and becoming convinced that it might reach them someday. Put generally, for the ICC's effects to operate as Jo and

27. *See id.* This Article focuses on communication between transitional justice institutions and domestic audiences, but transitional justice focused on one country may have spillover effects on other countries. For example, prosecution of a Congolese warlord for war crimes may cause fighters in Colombia to believe that their chances of being prosecuted, if they commit war crimes, are higher than if the Congolese warlord had not been prosecuted. *See Hyeran Jo & Beth Simmons, Can the International Criminal Court Deter Atrocity?*, 70 INT'L ORG. 443, 460, 468 (2016) (finding that increases in investigations and arrests by the ICC were followed by reductions in killings of civilians worldwide). This and many other transnational effects require communication across borders that is similar to the domestic communication described in this Article. For example, the Colombian fighters would have to hear of the Congolese warlord's prosecution in order to be deterred by it.

28. *See Paul Gready & Simon Robins, Transitional Justice and Theories of Change: Towards Evaluation As Understanding*, 14 INT'L J. TRANSITIONAL JUST. 280, 281–82 (2020).

29. Jo & Simmons, *supra* note 27, at 446–55.

30. *See id.* at 460. The ICC can prosecute nationals of its member states, as well as nationals of other states for crimes committed on a member state's territory. *See Rome Statute of the International Criminal Court*, art. 12, ¶ 2, July 17, 1998, 2187 U.N.T.S. 90.

31. *See Jo & Simmons, supra* note 27, at 460.

Simmons's theories argue, potential perpetrators must be *informed* of certain new facts and *persuaded* that those facts increase their own risk of suffering penal or social sanctions. Yet the authors do not discuss the information-related elements of their explanations, even at a theoretical level. The closest they come is to comment, "This [theoretical] framework assumes, of course, that potential perpetrators *are aware of* and can weigh risks, costs, and benefits and update their assessments over time."³²

In fact, most of the ways transitional justice institutions could advance their goals require informing or persuading domestic audiences about particular facts or interpretations related to the atrocities these institutions examine. Put more technically, most theories of change about ICT or TRC impacts that one could hypothesize would include steps—links in the causal chain—that involve either providing particular information to particular people in affected countries or changing those people's beliefs in particular ways. Comprehensively elaborating all of these theories of change is probably impossible: they are so numerous that no scholar seems to have catalogued even the most plausible.³³ Proving rigorously that communication is central to many or most of them would require, first, creating such a catalog, and, second, enumerating the assumptions of every theory—a book-length undertaking. Instead, the rest of this Part demonstrates the importance of communication to transitional justice by identifying the communication-related elements in several categories of transitional justice theories of change.³⁴

Deterrence is the basis of many theories about how transitional justice institutions can help end wars, reduce human rights violations during ongoing conflicts, and reduce the likelihood that violations recur after political transitions.³⁵ It also undergirds some theories on how TRCs and ICTs

32. *Id.* at 446 (emphasis added). This is not a criticism of the authors: Jo and Simmons's theoretical discussion is robust and sophisticated, especially for an article so packed with important empirical findings.

33. See Cavallaro & O'Connell, *supra* note 26, at 5 (discussing the difficulty of identifying all causal paths from human rights institutions to their goals). *But see id.* at 11–57 (analyzing the effectiveness of the ICC and regional human rights institutions in preventing atrocities and promoting judicial accountability for them).

34. I have found only one quantitative study that examines the relationship between any aspect of communication by TRCs or ICTs, on the one hand, and any transitional justice goal. See Laura K. Taylor & Alexander Dukalskis, *Old Truths and New Politics: Does Truth Commission "Publicness" Impact Democratization?*, 49 J. PEACE RES. 671 (2012). It supports my argument, finding that publishing a report and naming perpetrators are positively related to improvements in democracy in subsequent years. *Id.* at 679.

35. See, e.g., Jo & Simmons, *supra* note 27; Kate Cronin-Furman, *Managing Expectations: International Criminal Trials and the Prospects for Deterrence of Mass Atrocity*, 7 INT'L J. TRANSITIONAL JUST. 434, 442 (2013).

strengthen democracy.³⁶ Deterrence involves changing a potential perpetrator's assessment of the likelihood or severity of negative consequences should they commit atrocities, take up arms, or overthrow a democratic government. By imprisoning, publicly exposing, verbally condemning, or otherwise punishing past perpetrators, truth commissions and international courts may scare off potential perpetrators, these theories posit. However, all deterrence-based theories depend on those potential perpetrators knowing that such punishments loom. Deterrence theories also require that potential perpetrators believe that the punishment of others is relevant to their own calculus of the costs and benefits of committing atrocities. That belief may be affected by details that truth commissions or courts could publicize, such as which perpetrators faced them and exactly what consequences they suffered. Thus, while commissions' and courts' capacity to deter is debated, and empirical research is not yet conclusive, any deterrent effect requires communication.

Another purpose of TRCs and ICTs is to hold perpetrators of human rights violations "accountable." This assumes an audience—they are held accountable *to someone*. In some theories of accountability, the audience is the people calling the perpetrator to account, such as judges or truth commissioners. The communication link in these theories is trivial: judges and truth commissioners learn of the perpetrator's deeds through the process of calling them to account. Other theories emphasize the judgment of others, such as victims or the perpetrator's family; revelation of the perpetrator's crimes triggers disapproval by those audiences. Here, communication is not automatic: truth commissions or courts may reveal and judge a perpetrator's deeds, but they are not holding them accountable to victims, family members, or others unless those audiences learn of the deeds. Such communication cannot be presumed—information about a commission's or court's work may be hard to access and many people may lack time or inclination to seek it out.

Holding individual perpetrators accountable can have systemic effects on society; these also require communication that does not automatically occur. Calling powerful people to account for their crimes can undermine the impunity that they enjoy in many societies.³⁷ Citizens' perception that the powerful are untouchable hinders the development of democracy and the rule of law. ICTs and TRCs may help chip away at that perception by forcing powerful wrongdoers to answer for their actions—but only if citizens are aware that the institutions have done so.

36. *E.g.*, CARLOS SANTIAGO NINO, *RADICAL EVIL ON TRIAL*, at x (1996).

37. *See* INT'L CRISIS GRP., *THE SPECIAL COURT FOR SIERRA LEONE: PROMISES AND PITFALLS OF A "NEW MODEL"* 19 (2003) (quoting interview with an international lawyer, in Freetown, Sierra Leone).

A primary justification for creating truth commissions is to prevent the repetition of terrible human rights violations by examining their origins, purposes, and drivers. Some believe international courts, too, can prevent atrocities by illuminating such matters. These theories build on George Santayana's famous statement, "[t]hose who cannot remember the past are condemned to repeat it."³⁸ Historical knowledge can identify risk factors and early warning signs, such as the demonization of a particular ethnic minority (for example, Jews in 1930s Germany and Tutsis in 1990s Rwanda) or rising political violence (for example, in early 1970s Argentina). That knowledge can be used to sound the alarm when a society is on a path to horror and can motivate peacemakers and ordinary people to resist. Insight into security forces' strategic and operational doctrines, command and disciplinary structures, and internal culture can help identify reforms that could reduce those forces' propensity to violate human rights. All these contributions depend, however, on the truth commission's or tribunal's analysis reaching particular audiences, such as religious leaders who might calm rising tensions, politicians who might enact reforms, and citizens whose support they need.³⁹

Thomas Nagel's distinction between knowledge and acknowledgment captures a benefit victims may derive from truth commissions and courts: official recognition that they or their loved ones were hurt, of who was responsible (often the state), of the impact on them, and that their treatment was wrong.⁴⁰ A truth commission or court may name a disappeared loved one as a victim or discuss the kind of violation they suffered, such as rape. (To be

38. GEORGE SANTAYANA, *THE LIFE OF REASON: INTRODUCTION AND REASON IN COMMON SENSE* 172 (Marianne S. Wokeck & Martin A. Coleman eds., MIT Press 2011) (1905).

39. The ICTY recognized this when it belatedly created an outreach program to communicate with people in the former Yugoslavia. *See infra* text accompanying notes 145–151. “[T]he Tribunal is a means to assist in reconciliation and to prevent a recurrence of conflict [in the former Yugoslavia]. 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.” Sixth Ann. Rep. of the Int’l Trib. for the Prosecution of Persons Responsible for Serious Violations of Int’l Humanitarian Law Committed in the Territory of the former Yugoslavia Since 1991, ¶ 146, U.N. Doc. S/1999/846 (Aug. 25, 1999). *See also* Luke Wilcox, *Reshaping Civil Society through a Truth Commission: Human Rights in Morocco’s Process of Political Reform*, 3 INT’L J. TRANSITIONAL JUST. 49, 64 (2009) (noting that the Morocco TRC’s hearings drove “public discussions and debate” that furthered its goal of increasing “national vigilance against recurrence of human rights violations”).

40. LAWRENCE WESCHLER, *A MIRACLE, A UNIVERSE: SETTLING ACCOUNTS WITH TORTURERS* 4 (1990) (quoting Nagel’s comments at a 1988 conference); *see also* Jamie O’Connell, *Gambling with the Psyche: Does Prosecuting Human Rights Violators Console Their Victims?*, 46 HARV. INT’L L.J. 295, 317–20 (2005) (surveying evidence on the impact on victims of acknowledgment by courts). For other ways in which human rights trials may psychologically benefit victims, *see id.* at 320–28; these also require that the court communicate with particular domestic audiences.

clear, we have insufficient empirical scholarship to know whether many victims do, in fact, find such acknowledgment helpful.⁴¹) But unless victims learn of the acknowledgment, it cannot help restore their sense of membership in their society, reduce their loneliness, or have other direct salutary effects.

Another set of theories about how courts and commissions can advance transitional justice goals focuses on how victims can benefit from new information about their cases (also known as “micro-truth”), which courts and commissions sometimes discover.⁴² Confirmation that a disappeared person is dead can help their family begin a long-stalled grieving process.⁴³ Many crave answers to particular questions. One relative told Chile’s first truth commission, “I need to know why they killed him, what happened, what was he doing, or how did they discover him. Anything that would bring my mind to rest.”⁴⁴ Another Chilean had been arrested during the dictatorship with her husband, who then was executed. She was released, but her parents-in-law rejected her because they believed she had denounced her husband. Had the TRC eventually been able to verify that she had not done so, it might have repaired that relationship—but only if the parents-in-law had learned of the finding.⁴⁵

We cannot simply assume that individual victims learn of official acknowledgment or new micro-truth that may matter to them. Many professionals in Buenos Aires, Argentina, may have read *Nunca Más*, but how many residents of rural Tucumán province realized that the report had confirmed that their local sugar mill was used as a torture center?⁴⁶ In many civil wars, including those in El Salvador, Guatemala, Peru, and Sierra Leone, most atrocities occur in rural areas. There, low levels of literacy and access to media may prevent many victims from hearing about their truth commission’s broadest findings, let alone about specific ones connected to them personally.

41. O’Connell, *supra* note 40, at 303.

42. Chapman & Ball, *infra* note 241, at 144.

43. O’Connell, *supra* note 40, at 313–14.

44. Jorge Correa S., *Dealing with Past Human Rights Violations: The Chilean Case After Dictatorship*, 67 NOTRE DAME L. REV. 1455, 1479 (1992). The Chilean government has sponsored two truth commissions. The National Commission for Truth and Reconciliation, also known as the “Rettig Commission” after its chair, operated from 1990 to 1991 and investigated killings and disappearances during the Pinochet regime. HAYNER, *supra* note 9, at 47–49. The National Commission on Political Imprisonment and Torture (2003–2005) covered human rights violations during the same period that had fallen outside the Rettig Commission’s mandate. *Id.* at 60–62.

45. See Correa S., *supra* note 44, at 1479.

46. ARG. NAT’L COMMISSION ON THE DISAPPEARED, NUNCA MÁS 200 (Writers & Scholars Int’l Ltd. trans., 1986) (1984) [hereinafter NUNCA MÁS] (http://www.desaparecidos.org/nuncamas/web/english/library/neveragain/neveragain_001.htm) [<https://perma.cc/RG57-58K2>].

Similarly, many victims of war crimes and their families may never learn if their attacker is indicted by an international court. Even those who learn of an indictment may not find out whether the indictee was charged with killing their relatives specifically. High profile trials, such as those before the ICC, may get significant attention in the affected country. Yet many victims and their families may lack access to news media, and the latter may not report all details that might matter to them.

Many hope truth commissions and courts can help build a social consensus about the past, securing agreement about whether human rights violations occurred, what caused them, whether they were justified, and related issues. Another related goal is to develop a widespread commitment to ensure they “never again” occur. By creating shared understandings of the past, such theories suggest, transitional justice can prevent recurrence and advance reconciliation in divided societies, an aim enshrined in the names of many commissions.⁴⁷ The UN Security Council and others expected that the ICTY, ICTR, and SCSL would have similar effects.⁴⁸

To help build such social consensus, of course, courts and commissions need to reach the public. Nuremberg Tribunal prosecutor Telford Taylor argued that although that court could not unmake the terrible history it examined, “we can see that it is written true.”⁴⁹ His final report to the U.S. government on the trials argued that their evidentiary record “can be of the greatest value in showing the Germans the truth about the recent past.”⁵⁰ But as Julie Mazzei has emphasized—in one of the few studies that recognizes the importance of communication by transitional justice institutions—such effects depend on the public and elites learning of and accepting those

47. Examples include Chile’s National Commission for Truth and Reconciliation, the Timor-Leste Commission for Truth, Reception, and Reconciliation, and the Truth and Reconciliation Commissions of South Africa, Peru, and Sierra Leone.

48. *E.g.*, S.C. Res. 955 (Nov. 8, 1994) (creating the ICTR and stating that it would “contribute to the process of national reconciliation”); S.C. Res. 1315 (Aug. 14, 2000) (creating the SCSL and “[r]ecognizing that[] a credible system of justice and accountability . . . would end impunity and would contribute to the process of national reconciliation” in Sierra Leone); see ORENTLICHER, *supra* note 20, at 103–05.

49. Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L. J. 2537, 2546 n.32 (1991) (quoting ROBERT E. CONOT, JUSTICE AT NUREMBERG, at xiii (1983) (quoting Taylor at the Nuremberg trial)).

50. *Id.* (quoting TELFORD TAYLOR, FINAL REPORT TO THE SECRETARY OF THE ARMY ON THE NUREMBERG WAR CRIMES TRIALS UNDER CONTROL COUNCIL LAW NO. 10 (Aug. 15, 1949)). Richard Wilson lucidly evaluates the debate among scholars and practitioners about whether courts should attempt to describe and assess historical events, and the impact of such efforts. See RICHARD ASHBY WILSON, WRITING HISTORY IN INTERNATIONAL CRIMINAL TRIALS 1–12 (2011). I share his conclusion that international criminal tribunals can contribute positively to transitional justice goals by addressing historical events in their judgments. *See id.* at 18–23; see also *infra* Subsection IV.B.3 (urging ICTs to make their judgments accessible).

institutions' factual discoveries and analytic conclusions.⁵¹ Learning and acceptance often do not occur without active efforts by the courts and commissions themselves. For example, the Peru Truth and Reconciliation Commission's hearings and final report received little attention from the media and public, and its findings about the country's civil war "remain[ed] highly contested" fifteen years later.⁵²

In the mid-1990s, gender equality advocates pushed the ICTY and ICTR to investigate and prosecute sexual violence.⁵³ Their goals included raising awareness in the former Yugoslavia and Rwanda of the incidence and human impact of sexual violence during mass violence there.⁵⁴ They also hoped that successful prosecutions would stigmatize perpetration of the crimes, erode social norms that blamed victims, and deter potential perpetrators.⁵⁵ The advocates' theory of change thus required not just that the courts document sexual violence, show victims to be blameless, and condemn perpetrators' actions—but also that the public and elites be informed of these judicial determinations and persuaded of their truth.

The centrality of communication to these theories may appear obvious, yet most scholarly and applied work in transitional justice ignores the questions of whether and how information reaches people and whether and how those people's views actually change. It is one thing to acknowledge those assumptions and reserve them for others to examine, as Jo and Simmons do—scholars need not dig deeply into every element of their theories. But very few analyses of the impact of transitional justice institutions recognize that the authors' theories of change depend on communication—on the institutions transmitting certain new information to particular elites or citizens and/or changing those people's thinking about specific points or broad topics.

How truth commissions and international courts can change people's minds about painful, contentious questions remains murky. Scholars face myriad methodological challenges in studying attitudes on such issues, how they change, and the roles of particular institutions. Some scholars seem

51. Julie M. Mazzei, *Finding Shame in Truth: The Importance of Public Engagement in Truth Commissions*, 33 HUM. RTS. Q. 431, 432–40 (2011). Mazzei considers only TRCs, but much of her insightful analysis of the role of communication in transitional justice can be extended to ICTs.

52. Jaymie Heilman, *Truth and Reconciliation Commission of Peru*, in OXFORD RESEARCH ENCYCLOPEDIA OF LATIN AMERICAN HISTORY (Jun. 28, 2018), <https://doi.org/10.1093/acrefore/9780199366439.013.495> [<https://perma.cc/EP7X-GLC6>].

53. Kelly D. Askin, *A Decade of the Development of Gender Crimes in International Courts and Tribunals: 1993 to 2003*, 11 HUM. RTS. BRIEF 16, 16 (2004).

54. E.g., Binaifer Nowrojee, "Your Justice Is Too Slow," in GENDERED PEACE: WOMEN'S STRUGGLES FOR POST-WAR JUSTICE AND RECONCILIATION 107, 111–13 (Donna Pankhurst ed., 2008).

55. Kelly D. Askin, *Prosecuting Wartime Rape and Other Gender-Related Crimes Under International Law*, 21 BERKELEY J. INT'L L. 288, 346–49 (2003).

skeptical that transitional justice processes can change anyone's views.⁵⁶ More sanguine analysts see the institutions' impact unfolding over a long period—even generations—after the institutions finish their work.⁵⁷ During their lifetimes, however, courts and commissions can take steps, discussed in Part IV, to increase their long-term persuasive impact.

Short-term impact is not impossible, either. The minds of some in affected countries may begin to change quickly, particularly about whether the violations actually occurred. For example, the South Africa TRC convinced some previously skeptical white South Africans that the Apartheid regime had indeed committed torture and murder.⁵⁸ The television broadcast of the first trial at the Extraordinary Chambers in the Courts of Cambodia, of a Khmer Rouge torturer, stimulated Cambodians to revisit the regime and its crimes.⁵⁹

Finally, if transitional justice institutions are to promote any ultimate goals, then they need local elites and citizens to see them as legitimate and credible; building and maintaining that support requires communicating with those audiences.⁶⁰ Without legitimacy, they struggle with everything from gathering evidence to attracting interest in their conclusions.⁶¹ Like all prominent institutions, TRCs and ICTs are questioned and criticized, sometimes in ways that enhance their accountability and performance. The institutions need the capability to respond, however, if the public and elites are to evaluate them rigorously. Furthermore, perpetrators of human rights violations and their supporters have waged intense campaigns against some institutions—including the ICTY, ICC, and TRCs in Peru and South Africa—that seemed to be designed to destroy the institutions rather than correct

56. See Marko Milanović, *Courting Failure: When Are International Criminal Courts Likely to be Believed by Local Audiences?*, in THE OXFORD HANDBOOK OF INTERNATIONAL CRIMINAL LAW 261, 261 (Kevin Jon Heller et al. eds., 2020) [hereinafter Milanović, *Courting Failure*]; Milanović, *Establishing the Facts*, *supra* note 11, at 1343–53. I discuss these challenges further below. See *infra* notes 316–321 and accompanying text.

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

58. See James L. Gibson, *The Contributions of Truth to Reconciliation: Lessons from South Africa*, 50 J. CONFLICT RESOL. 409, 427 (2006).

59. HEATHER RYAN & LAURA MCGREW, OPEN SOCIETY JUSTICE INITIATIVE, PERFORMANCE AND PERCEPTION: THE IMPACT OF THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA 87 (Kelly Askin & David Berry eds., 2016). The court is a “hybrid” international criminal tribunal, established by agreement between the United Nations and the government of Cambodia, nominally part of the Cambodian judiciary but with its own substantive and procedural law, and staffed by both Cambodians and foreigners. *Id.* at 18–19.

60. See Jaya Ramji-Nogales, *Designing Bespoke Transitional Justice: A Pluralist Process Approach*, 32 MICH. J. INT'L L. 1, 11–21 (2010).

61. See González & Varney eds., TRUTH-SEEKING, *supra* note 22, at 49 (identifying “[b]uilding a sense of ownership in the truth-seeking process” as a primary objective of truth commission outreach).

specific failings.⁶² Their targets need to mount vigorous, persuasive defenses of their missions and methods.⁶³

Not all transitional justice goals, or ways in which ICTs or TRCs could promote them, involve informing or persuading people in the affected countries. Courts arguably advance justice simply by convicting and punishing war criminals, even if they do so in secret. Developing international law, a purpose frequently offered for international criminal tribunals, is important for the small community of international lawyers and scholars.⁶⁴ Nevertheless, most of the causal channels by which TRCs and ICTs could plausibly promote their goals do require that particular information reach particular audiences in the affected country, that some people there change their minds on certain matters, or both.

IV. COMMUNICATION OPPORTUNITIES AND METHODS

If transitional justice institutions need to inform and persuade domestic audiences in order to advance their goals, then when and how can they do so? This Part answers those questions, organizing commissions' and courts' myriad opportunities and methods into a finite set of categories. It identifies key challenges and promising innovations associated with each, as the limited available evidence permits. To the extent the record is clear, it evaluates the performance of transitional justice institutions generally. For a few communication categories, we know enough to assess individual courts and commissions.

Similarities and differences between international criminal courts and truth commissions affect the opportunities and methods each type of institution can use to communicate with domestic audiences. Both types share many goals and focus on similar societies: those that recently have experienced large-scale human rights violations. Both rely on legal, or quasi-legal, investigation methods to resolve question of fact.⁶⁵

62. See, e.g., Mirko Klarin, *The Impact of the ICTY Trials on Public Opinion in the Former Yugoslavia*, 7 J. INT'L CRIM. JUST. 89, 90 (2009); Yvonne M. Dutton, *Bridging the Legitimacy Divide: The International Criminal Court's Domestic Perception Challenge*, 56 COLUM. J. TRANSNAT'L L. 71, 109–17 (2017); Heilman, *supra* note 52; Piers Pigou, *Reaping What You Sow: Political Parties, the TRC, and the Quest for Truth and Reconciliation*, in TRUTH AND RECONCILIATION IN SOUTH AFRICA, *supra* note 1, at 217, 223.

63. Excellent recent work by Yvonne Dutton and Sara L. Ochs develops this point and urges the ICC to engage in extensive outreach to people in its situation countries, as well as international audiences. See Dutton, *supra* note 62, at 101–09; Sara L. Ochs, *Propaganda Warfare on the International Criminal Court*, 42 MICH. J. INT'L L. 581, 619–24 (2021).

64. E.g., Diane Orentlicher, *Review Essay: From Viability to Impact: Evolving Methods for Assessing the International Criminal Tribunal for the former Yugoslavia*, 7 INT'L J. TRANSITIONAL JUST. 536, 538 (2013).

65. See HAYNER, *supra* note 9, at 80–84.

Longevity differentiates most ICTs from most TRCs. Truth commissions generally complete their work in less than five years, often closer to two.⁶⁶ International criminal tribunals tend to work much longer on each country. The ICTY operated for twenty-four years, the ICTR for twenty-one, and the SCSL for eleven.⁶⁷ The Extraordinary Chambers in the Courts of Cambodia opened in 2006.⁶⁸ The ICC began examining crimes in the Democratic Republic of Congo, Uganda, and the Darfur region of Sudan in 2004 and 2005, since then has added full-scale investigations in twelve more countries, and has not concluded its work in any of them yet.⁶⁹

A second difference is that the basic tasks of ICTs are more rigidly structured than those of TRCs. Courts build cases against individual defendants through a fixed set of steps: investigation, indictment, apprehension, pre-trial proceedings, trial, judgment, and often sentence, appeal, and imprisonment. Truth commissions have more flexibility in structuring their processes. They can organize the subject matter of their investigations along numerous dimensions, such as geography or victim characteristics. They have wide discretion in selecting participants for any public hearings they hold, setting the hearings' format, and moderating them, unconstrained by judicial rules of procedure and evidence.⁷⁰

Lastly, courts' final products are more constrained by tradition and rules than those of truth commissions. Although essentially all commissions produce a final written report, these vary widely in content, length, organization, and style. ICT judgments vary much less from one court to another.

These similarities and differences yield both overlap and divergences in how courts and commissions can and do communicate with domestic audiences. Section A discusses means that both international criminal tribunals and truth commissions can use. Section B examines opportunities available only to ICTs. These include publicity around key events in the judicial process, prosecutors' voluntary disclosure of their policies and priorities, the content and form of judges' written decisions, and communication as part of international courts' efforts to stimulate prosecution

66. See WIEBELHAUS-BRAHM, *supra* note 9, at 160 tbl. 8.1.

67. The ICTY operated from 1993 to 2017. *About*, U.N. INT'L RESIDUAL MECHANISM FOR CRIM. TRIBUNALS, <https://www.irmct.org/en/about> [<https://perma.cc/8ZQ9-623A>]. The ICTR operated from 1994 to 2015. *Id.* The SCSL operated from 2002 to 2013. *Residual Special Court for Sierra Leone*, SPECIAL CT. FOR SIERRA LEONE AND RESIDUAL SPECIAL CT. FOR SIERRA LEONE, <http://rscsl.org> [<https://perma.cc/3626-GKNP>].

68. *Key Events*, EXTRAORDINARY CHAMBERS IN THE CTS. OF CAMBODIA, <https://www.eccc.gov.kh/en/keyevents> [<https://perma.cc/PM3V-4P6H>].

69. *Situations Under Investigation*, INT'L CRIM. CT., <https://www.icc-cpi.int/pages/situation.aspx> [<https://perma.cc/V33N-CNHN>].

70. See MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* 57–61 (1998).

by national authorities. Section C examines communication opportunities available only to truth commissions: public hearings and final reports.⁷¹

A. *Communication Opportunities for Both Courts and Commissions*

Many opportunities for informing and persuading domestic audiences are available to both truth commissions and international criminal tribunals. Subsection 1 covers speeches, interviews, and public appearances by institutional leaders and staff. Subsection 2 discusses targeted engagement with domestic elites. Subsection 3 describes communication as the institutions gather evidence and solicit public participation in their work. Subsection 4 considers their interaction with the media. Subsection 5 examines direct outreach to the public.

1. *Speeches, Interviews, and Public Appearances*

Truth commissioners, ICT judges and chief prosecutors, and senior members of their staff often discuss their institutions' work in speeches, interviews, panel discussions, and similar forums.⁷² Frequent hosts include universities, international organizations, bar associations, and radio and TV programs. ICTY staff, for example, spoke at public meetings on issues such as "the key role of the defense in trials, and the institution's practice on plea agreements and command responsibility."⁷³ Guatemala's Commission for Historical Clarification "did its best to make its presence felt" in the country; commissioners "appeared on radio and TV, gave newspaper interviews, and made statements in workshops organized by human rights organizations. Without disclosing any of the substantive results they had obtained, they talked freely about methods applied and objectives pursued."⁷⁴

Non-verbal aspects of the officials' appearances, as well as their words, may influence their audiences. Tone, facial expressions, and body language can appeal to or alienate particular viewers and listeners. Context and company also matter. For example, appearing at a particular institution or with

71. Birju Kotecha identifies several of these communication opportunities but does not elaborate on them. See Birju Kotecha, *The Art of Rhetoric: Perceptions of the International Criminal Court and Legalism*, 31 LEIDEN J. INT'L L. 939, 946 (2018).

72. Those likely to reach audiences within affected countries are generally open to the public, covered by news media, or both. Private discussions with domestic audiences are likely to involve powerful individuals (such as a president or chief justice) or small, elite groups, and are better described as private meetings. See *infra* Subsection IV.A.2.

73. ICTY & UNITED NATIONS INTERREGIONAL CRIME AND JUSTICE RESEARCH INSTITUTE, *infra* note 112, at 193.

74. Christian Tomuschat, *Clarification Commission in Guatemala*, 23 HUM. RTS. Q. 233, 253 (2001).

a particular host may be taken as an endorsement of their work or views. The ICTY's chief judge and chief prosecutor attended the opening of the specialized War Crimes Chamber, part of the national courts of Bosnia and Herzegovina, aiming to use the ICTY's credibility with some citizens of that country to bolster the new court.⁷⁵

Whether speakers' messages—explicit and implicit—reach domestic audiences, and which audiences, depends on many factors.⁷⁶ The most important may be whether the event occurs in an affected country and how well it is covered by the most influential media outlets. The language of a presentation, type of venue, and style of expression (accessible vs. technical) may also matter. Some personnel from an institution may attract more public attention than others. ICTs' prosecutors, fighting evildoers, tend to be more compelling than neutral judges, let alone administration-focused registrars. A few institutional leaders are already celebrities: Archbishop Desmond Tutu led his country's Anglican church and won the Nobel Peace Prize before chairing the South Africa TRC. Others cultivate public support: Sierra Leoneans appreciated SCSL Prosecutor David Crane's flights of Manichean rhetoric, even though those grated on many expatriates.⁷⁷

Institutions based in affected countries themselves, and their on-site personnel, are likely to connect more often with local audiences. There is considerable variation. The ICTY, ICTR, and ICC have stationed few people inside affected countries; most have worked at those courts' headquarters in The Hague and Arusha, Tanzania. For most of the Sierra Leone TRC's lifetime, two of its three foreign commissioners were based in their home countries, Ireland and South Africa, and flew into Sierra Leone for several weeks at a time.⁷⁸ By contrast, some hybrid tribunals, such as the SCSL and the Extraordinary Chambers in the Courts of Cambodia, have been based “in-

75. William W. Burke-White, *The Domestic Influence of International Criminal Tribunals: The International Criminal Tribunal for the Former Yugoslavia and the Creation of the State Court of Bosnia & Herzegovina*, 46 COLUM. J. TRANSNAT'L L. 279, 342 (2008).

76. Court and commission leaders often speak to foreign audiences—such as at UN bodies and famous universities—to further institutional goals and/or the officials' personal interests. See, e.g., Kendall, *Commodifying Global Justice*, *supra* note 10, at 119, 123. The former include funding, information, and political support. The latter include building a professional reputation and relationships that may facilitate employment later in the official's career. See *supra* note 10.

77. Personal conversations, in Freetown, Sierra Leone (Sept. 2002–July 2003). Crane's opening statement at the first SCSL trial began, “This is a tale of horror, beyond the gothic into the realm of Dante's inferno. They came across the border, dark shadows, on a warm spring day, 23 March of 1991.” Transcript of Record at 19, *Prosecutor v. Sesay*, Case No. SCSL-04-15-T (Jul. 5, 2004), <http://rscsl.org/Documents/Transcripts/RUF/RUF-070504.pdf> [<https://perma.cc/3EJJ-6G66>] [hereinafter Transcript of Record, *Prosecutor v. Sesay*].

78. INT'L CRISIS GRP., SIERRA LEONE'S TRUTH AND RECONCILIATION COMMISSION: A FRESH START? 6–7 (2002).

country,” with nearly all their personnel residing in Sierra Leone and Cambodia full-time.⁷⁹ The South Africa TRC was entirely based in that country⁸⁰ and all its commissioners were South African.⁸¹

Effective communication requires coherent messages, as well as substance and style that are tailored to the intended audiences.⁸² Divergent statements by different officials can generate confusion and mistrust among the public and other domestic (as well as international) audiences. Framing can help: prosecutors and defense attorneys can begin by explaining their roles and how those roles affect their perspectives. Some officials may resist message discipline, however. Judges tend to be prickly about their independence, but many of the ideas that an international court might want to emphasize to the public are uncontroversial among jurists. Some concern the court’s principles and procedures—such as decision-making based on evidence and judicial neutrality—and others the content of the law—such as what acts international criminal law forbids. The members of some truth commissions, such as South Africa’s, hold diverse opinions on the matters they examine; they may find it difficult to coordinate messages until they complete their work and, ideally, come to consensus.⁸³ Others, such as Argentina’s CONADEP, are more homogeneous and members may be able to speak with one voice from early on.⁸⁴

2. *Relationship-Building and Advocacy Meetings with Elites*

Transitional justice institutions should maintain the appearance, as well as the reality, of independence from powerful figures in affected countries. On the other hand, truth commission and international court leaders often judge that they must directly engage those figures and other influential constituencies, such as clergy, to obtain specific assistance, heal particular

79. See, e.g., PHUONG PHAM ET AL., *AFTER THE FIRST TRIAL: A POPULATION-BASED SURVEY ON KNOWLEDGE AND PERCEPTIONS OF JUSTICE AND THE EXTRAORDINARY CHAMBERS IN THE COURTS OF CAMBODIA* 9 (2011).

80. TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA, 1 FINAL REPORT 46–47 (1998).

81. Max du Plessis, *Truth and Reconciliation Processes: Lessons for Zimbabwe?*, SOUTH AFRICAN INST. OF INT’L AFF. 18, (2002), <https://saiia.org.za/wp-content/uploads/2013/06/Du-Plessis-Zim-TRC-final-with-corrections.pdf> [<https://perma.cc/4G5B-LPEW>].

82. For example, as Birju Kotecha argues, ICC prosecutors’ legalistic rhetoric—emphasizing “technical rule-compliance and . . . law’s superiority to politics”—is unlikely to persuade people in affected countries of the court’s independence and objectivity. Kotecha, *supra* note 71, at 939.

83. See ALEX BORAINÉ, *A COUNTRY UNMASKED: INSIDE SOUTH AFRICA’S TRUTH AND RECONCILIATION COMMISSION* 77–81 (2000).

84. See HAYNER, *supra* note 9, at 45 (describing the CONADEP commissioners as having all maintained “a consistent stance in defense of human rights”).

rifts, or generally build positive relationships as the basis for future support.⁸⁵ Such meetings are an important forum for communication from the institutions to these elite domestic audiences (and vice versa).

Those outside the room are also watching, however, unless the meetings remain secret. Commissions and courts need to consider the messages that meetings with political leaders and other specific domestic constituencies send to their interlocutors' opponents, ordinary citizens, and others. Just before the South Africa TRC released its report, the ruling African National Congress (ANC)—which had committed significant human rights violations while leading the fight against Apartheid—demanded a meeting with the commission. According to the commission's Deputy Chairperson, the commissioners engaged in a "protracted and heated debate" over how to respond.⁸⁶ Ultimately, they refused the meeting, at least in part to avoid an appearance of bias because other political parties would not have the same chance.⁸⁷ That decision, however, may have damaged the commission's standing among ANC supporters or reduced ANC leaders' willingness to implement the TRC's recommendations. The stakes in this example were especially high, but direct engagement with elites in affected countries often requires weighing benefits against risks, especially the risk of appearing biased.

3. *Gathering Evidence and Promoting Participation*

Transitional justice institutions must communicate with domestic audiences in the quotidian but vital process of gathering evidence.⁸⁸ For truth commissions, this includes recruiting victims to provide statements about their experiences.⁸⁹ That participation also may promote the commissions' goals by delivering benefits to the participating victims, such as acknowledgment of their suffering or qualification to receive reparations.⁹⁰

85. See, e.g., ICTY, OUTREACH: FIFTEEN YEARS OF OUTREACH AT THE ICTY 34 (Giorgia Tortora et al. eds., 2016) (describing visits by ICTY judges and the Registrar to countries of the former Yugoslavia and meetings with "local government authorities, NGO representatives, [and] victims' and missing persons' associations and scholars").

86. BORAINÉ, *supra* note 83, at 306–07.

87. *Id.*

88. They may also solicit information from people outside the country, especially exiles who fled the human rights violations the institutions are investigating. See FREEMAN, *infra* note 91, at 165 (noting efforts by truth commissions in Argentina, Chile, Guatemala, Timor-Leste, and Morocco to reach exiles).

89. See González & Varney eds., TRUTH-SEEKING, *supra* note 22, at 49–51. The South Africa TRC also administered an amnesty, and so also solicited applications from perpetrators.

90. See O'Connell, *supra* note 40, and accompanying text (discussing acknowledgment); see, e.g., Elizabeth Lira, *The Reparations Program for Human Rights Violations in Chile*, in

Securing evidence and participation requires both informing and persuading. TRCs and courts *inform* potential witnesses that they are examining particular incidents or phenomena, such as a particular massacre or the systematic practice of forced disappearance. The institutions also attempt to *persuade* those people to come forward, to share all they know, and occasionally to testify in public hearings or at trial. The legal instruments that created truth commissions in Haiti, Timor-Leste, Sierra Leone, and South Africa mandated them to inform the public about their work; the latter two specifically were required to publicize victims' opportunity to submit statements.⁹¹ Judge Thomas Buergenthal, a member of the Truth Commission for El Salvador, recalls, "[t]he Commission bought advertising space in newspapers, and time on radio and television, informing the public that we had an 'open door' policy and urging the people to come forward with information, to tell their stories, and to file complaints."⁹²

Gathering evidence can require more complex persuasion if the audience is skeptical of the competence or honesty of the institution. For example, the South Africa TRC struggled to convince white victims of attacks by anti-Apartheid forces to give statements because they were skeptical of the commission's objectivity.⁹³

Courts and commissions use a wide range of communication channels and methods to gather evidence and solicit participation. Their scale ranges from mass (advertisements on national radio) to targeted (a presentation to a victims group) to individual (an investigator's secret conversation with a former rebel commander).⁹⁴ They may focus on large groups—such as all victims of human rights violations in the country—or very small ones—such as ex-combatants from one faction who fought in a certain geographic area. The Peru TRC "recruited the theater troupe Yuyachkani . . . to assist in informing [remote] highland communities of the [commission's] work and to encourage people to attend [its] public hearings."⁹⁵ Its South African counterpart distributed posters with slogans like "Revealing is Healing."⁹⁶

HANDBOOK OF REPARATIONS 55, 59 (Pablo de Greiff ed., 2006) (noting that Chile's Law 19.123 of 1992 provided for payment of reparations to families of victims identified by the first TRC).

91. MARK FREEMAN, TRUTH COMMISSIONS AND PROCEDURAL FAIRNESS 162–63 (2006).

92. Thomas Buergenthal, *The United Nations Truth Commission for El Salvador*, 27 VAND. J. TRANSNAT'L L. 497, 505 (1994).

93. Charles Villa-Vicencio & Wilhelm Verwoerd, *Constructing a Report: Writing Up the "Truth,"* in TRUTH V. JUSTICE: THE MORALITY OF TRUTH COMMISSIONS 279, 285 (Robert I. Rotberg & Dennis Thompson eds., 2000).

94. See FREEMAN, *supra* note 91, at 164–65.

95. Cynthia E. Milton, *At the Edge of the Peruvian Truth Commission: Alternative Paths to Recounting the Past*, 98 RADICAL HIST. REV. 3, 8 (2007).

96. Brandon Hamber & Richard A. Wilson, *Symbolic Closure Through Memory, Reparation and Revenge in Post-Conflict Societies*, 1 J. HUM. RTS. 35, 37 (2002).

Outside organizations often help, as the South African Council of Churches did with its public information sessions on the TRC statement-taking process.⁹⁷

Such communication requires a range of skills: fluency in relevant languages, understanding of target audiences' media access, knowledge of the concerns that might inhibit particular groups of potential witnesses from coming forward, ability to craft messages that persuasively address those concerns, and skill in building trust in small groups or one-on-one. There has been little scholarship on the communication elements of evidence gathering by ICTs and TRCs, although those may be covered in training provided to commission and tribunal staff by the International Center for Transitional Justice, Institute for International Criminal Investigations, and national government agencies.

4. *Media Relations*

Much communication from transitional justice institutions to domestic elites and citizens flows through journalists. The media can help or hinder TRCs and ICTs in advancing transitional justice goals, as well as serve as a healthy source of accountability.⁹⁸ Lisa Laplante's 2014 characterization of the relationship between transitional justice institutions and the media as "complex [and] understudied" remains apt today.⁹⁹ Most literature touching on transitional justice and the media focuses on the latter's contributions to human rights violations themselves—such as hate speech broadcast by Rwanda's Radio Télévision Libre des Mille Collines in 1994¹⁰⁰—or its use by powerful figures to undermine transitional justice initiatives—such as in the former Yugoslavia and Peru.¹⁰¹ The few academic articles and sections of

97. See *supra* note 19.

98. See generally REFIC HODZIC & DAVID TOLBERT, INT'L CTR. FOR TRANSITIONAL JUST., MEDIA AND TRANSITIONAL JUSTICE: A DREAM OF SYMBIOSIS IN A TROUBLED RELATIONSHIP, (2016), <https://www.ictj.org/sites/default/files/ICTJ-Briefing-Media-T.J.-2016.pdf> [<https://perma.cc/J5C7-J2HC>] (surveying issues in the relationship between transitional justice institutions and the media).

99. Lisa J. Laplante, *Media and Transitional Justice: A Complex, Understudied Relationship*, INT'L CTR. FOR TRANSITIONAL JUST. (May 14, 2014), <https://www.ictj.org/debate/article/media-and-transitional-justice-complex-understudied-relationship> [<https://perma.cc/K44P-D83W>]; accord HODZIC & TOLBERT, *supra* note 98, at 1 ("One of the least studied, yet highly significant relationships that unfolds in transitional contexts . . . is the nexus between transitional justice measures and the media.").

100. See, e.g., Scott Straus, *What is the Relationship Between Hate Radio and Violence? Rethinking Rwanda's "Radio Machete,"* 35 POL. & SOC'Y 609 (2007).

101. See, e.g., ORENTLICHER, *supra* note 20, at 220–21; Klarin, *supra* note 62, at 90; Lisa J. Laplante & Kelly Phenicie, *Mediating Post-Conflict Dialogue: The Media's Role in Transitional Justice Processes*, 93 MARQUETTE L. REV. 251, 259, 277 (2009).

NGO reports that discuss how the media can promote transitional justice goals speak in broad terms; they offer few specifics on how transitional justice institutions can facilitate those contributions.¹⁰² Almost no work thoroughly describes how a particular TRC or ICT has engaged the media, let alone evaluates the institution's efforts or compares multiple institutions.¹⁰³

That courts and commissions should cultivate journalists and assist them in covering their activities may seem obvious. Instead of being passive objects of coverage, transitional justice institutions can influence what and how the media report about them.¹⁰⁴

Commission and court leaders often have resisted cultivating the media, however, or simply failed to do so systematically. Some believe their "work speaks for itself," according to a former ICTY spokesperson and his co-author.¹⁰⁵ Many do not "see media as an ally but as an ill-informed nuisance, if not an adversary."¹⁰⁶ In 2020, the landmark report of the Independent Expert Review of the ICC's operations found, among other things, that "the Court does not have a joint or integrated communications strategy. Decisions on how to present their activities, respond to criticism, win support from different

102. See Monroe E. Price & Nicole Stremlau, *Media and Transitional Justice: Toward a Systematic Approach*, 6 INT'L J. COMM. 1077, 1077 (2012) (setting out theory); HODZIC & TOLBERT, *supra* note 98 at 1; González & Varney eds., TRUTH-SEEKING, *supra* note 22, at 50–51.

103. Two studies each devote several pages to describing and assessing media engagement by one tribunal. See Jessica Feinstein, *The Hybrid's Handmaiden: Media Coverage of the Special Court for Sierra Leone*, 7 LOY. U. CHIC. INT'L L. REV. 131, 145–51 (2010); Nidžara Ahmetašević & Tanja Matić, *Democratization of Media in Post-Conflict Situations: Reporting on ICTY War Crimes Trials in Serbia*, in TRANSITIONAL JUSTICE, CULTURE, AND SOCIETY, *supra* note 11, at 210, 221–26. Another study analyzes the Rwandan government's use of the media in its highly manipulative transitional justice initiatives. See Timothy Longman, *The Uses and Abuses of Media: Rwanda Before and After the Genocide*, in TRANSITIONAL JUSTICE, CULTURE, AND SOCIETY, *supra* note 11, at 246. Hodzic and Tolbert criticize "transitional justice institutions" in general for their handling of the media, and Laplante and Phenicie critique the Peru TRC's performance. See HODZIC & TOLBERT, *supra* note 98; Lisa Laplante & Kelly Phenicie, *Media, Trials and Truth Commissions: "Mediating" Reconciliation in Peru's Transitional Justice Process*, 4 INT'L J. TRANSITIONAL JUST. 207 (2010).

104. In some cases, they may need to foment media interest first: "Legal processes can be boring and not always easy to comprehend. Often, journalists may lose interest because they do not believe the story will 'sell.' Yet, without the collaboration of print, radio, and TV . . . the public will know little to nothing about these justice processes." Laplante, *supra* note 99. Journalists flocked to cover the beginning of the Nuremberg trials of Nazi war criminals after World War II, then lost interest during the plodding presentation of evidence, although they returned for the verdicts. Simone Monasebian, *Media Matters: Reflections of a Former War Crimes Prosecutor Covering the Iraqi Tribunal*, 39 CASE W. RES. J. INT'L L. 305, 309 (2006). The same was true at the first ICTY trial. *Id.*

105. HODZIC & TOLBERT, *supra* note 98, at 4.

106. *Id.*

quarters and promote the Court's image are taken in an ad hoc fashion" by different parts of the court, such as the chief judge and prosecutor.¹⁰⁷

The ICTY's experience in Serbia is often cited as a cautionary tale.¹⁰⁸ There, Slobodan Milošević and other nationalist politicians convinced the public that the tribunal was biased against their country, aided by sympathetic media.¹⁰⁹ By failing to push back, the court allowed itself to be discredited in the eyes of ordinary Serbs:

The lack of an active outreach program and engagement with the press during the tribunal's early years not only contributed to the inaction of the local media in explaining what the ICTY was meant to be, how it would work, or what its mandate was to the public. Also—and more importantly—this lack . . . created a vacuum of discourse surrounding the tribunal that politicians and local media were able to exploit and fill with their own misinformation and biased criticisms. Over time, some of these practices and misconceptions were altered and improved, but some of the damage has been irreparable. Many of the ICTY's decisions never reached the region's broader public, and many of the objective facts established in the proceedings and judgments of this international institution are still treated as matters of interpretation.¹¹⁰

The ICTY eventually paid more attention to journalists, creating a press office and summarizing each case on its website.¹¹¹ It attempted to counter stories critical of its detention facilities by posting photos and video of them, as well as by making the facility's superintendent available for interviews.¹¹² However, media relations never seem to have become a priority for the court. The ICTY's 228-page manual of lessons learned on how to operate an international criminal tribunal devotes less than five pages to the subject.¹¹³

107. RICHARD GOLDSTONE ET AL., INDEPENDENT EXPERT REVIEW OF THE INTERNATIONAL CRIMINAL COURT AND THE ROME STATUTE SYSTEM: FINAL REPORT 124 (2020).

108. *E.g.*, HODZIC & TOLBERT, *supra* note 98, at 4; ORENTLICHER, *supra* note 20, at 220–21.

109. Klarin, *supra* note 62, at 90–91.

110. Ahmetašević & Matić, *supra* note 103, at 225.

111. *See Cases*, ICTY, <https://www.icty.org/en/cases> [<https://perma.cc/U2KP-RKLV>].

112. ICTY & UNITED NATIONS INTERREGIONAL CRIME AND JUSTICE RESEARCH INSTITUTE, ICTY MANUAL ON DEVELOPED PRACTICES 193 (2009).

113. *Id.* at 191–94.

The ICTR was similarly passive, doing “very little to inform the Rwandan public about its work.”¹¹⁴ Its press office focused on international audiences rather than Rwandans.¹¹⁵

More recent ICTs appear to have made more of an effort to engage and support the media. They now issue press releases around major developments. The ICC has followed the ICTY in summarizing the substance and procedure of each of its cases on the court website.¹¹⁶ The SCSL created weekly summaries of court proceedings for radio and television, in English and Krio, two of the most commonly spoken languages in the country, and distributed them to journalists.¹¹⁷ Courts post key legal documents—such as indictments, motions, judgments, and sometimes hearing transcripts—on their websites.¹¹⁸ They use Twitter, Facebook, and other social media to flag administrative matters and substantive developments for journalists.¹¹⁹ They provide video clips of hearings, press conferences, and other events on their websites and YouTube channels.¹²⁰

Truth commissions, too, can face hostile media. South Africa’s newspapers were highly critical of that country’s TRC.¹²¹ In Peru, “[p]olitical parties and the media played an active role in distorting and silencing truths by speaking out against the findings of the [truth commission] two months before . . . [its] Final Report was made public.”¹²²

Truth commissions’ media operations may be thinner than those of tribunals, due to TRCs’ shorter lives and smaller budgets. The comparatively well-funded South Africa TRC hired reporters to serve as its media liaisons and, according to one of them, “devoted a great amount of resources to establishing strong relationships” with a wide range of journalists.¹²³ Yet that

114. Longman, *supra* note 103, at 266.

115. *See id.*

116. *See Defendants*, INT’L CRIM. CT., <https://www.icc-cpi.int/Pages/defendants-wip.aspx> [<https://perma.cc/G4V3-SGBE>]; *Cases*, *supra* note 111.

117. Feinstein, *supra* note 103, at 147.

118. *See, e.g., Court Records and Transcripts*, INT’L CRIM. CT., <https://www.icc-cpi.int/pages/crm.aspx> [<https://perma.cc/UJB5-7TXX>].

119. *See* Camille Crittenden, “Friend” of the Court: New Media and Transitional Justice, in TRANSITIONAL JUSTICE, CULTURE, AND SOCIETY, *supra* note 11, at 334, 339–41; *e.g.*, Special Tribunal for Lebanon (@STLebanon), TWITTER (May 12, 2021, 11:19 AM), <https://twitter.com/STLebanon/status/1392499686053974021> [<https://perma.cc/KB7A-AA9L>].

120. *E.g.*, IntlCriminalCourt, *International Criminal Court*, YOUTUBE (Oct. 6, 2009–July 18, 2021), <https://www.youtube.com/user/IntlCriminalCourt/featured> [<https://perma.cc/Z9GB-ACTW>].

121. Van der Merwe & Chapman, *supra* note 1, at 262.

122. Milton, *supra* note 95, at 31 n.42 (emphasis removed).

123. Joanna R. Quinn & Mark Freeman, *Lessons Learned: Practical Lessons Gleaned from Inside the Truth Commissions of Guatemala and South Africa*, 25 HUM. RTS. Q. 1117, 1144 (2003).

commission, like its Peruvian counterpart, struggled to counter pervasively negative press coverage.¹²⁴

Both courts and commissions can learn from governments' and corporations' methods of engaging the media. Public relations professionals in those sectors have developed skills and internal procedures for serving journalists' needs, delivering their organizations' key messages, answering their questions, and addressing or parrying their challenges. Internally, media relations staff coordinate negotiations between different parts of a court or commission over the content of public messages and methods for disseminating them, such as whether to hold a press conference on a particular issue or just issue a press release. They build relationships with individual journalists and outlets. Media professionals use their knowledge of journalists' practices, perspectives, and incentives to make it appealing and easy for journalists to convey the institutions' views to their intended audiences. For example, they release positive news on days when relevant audiences are likely to be paying attention to events.¹²⁵ They use this savvy to try to bury negative stories, too: a humiliating acquittal could be announced late Friday afternoon before a holiday weekend, for example.¹²⁶

Understanding the local media ecosystem is essential. Transitional justice institutions need to know which media outlets are most important for each audience they need to reach—politicians, other elites, members of key ethnic groups, loyalists of each political party, and others. They must know the answers to many other questions, too: Who is most influenced by newspapers, radio, television, or social media? Are certain individual journalists especially trusted? The culture, incentives, skills, and working methods of journalists also differ from country to country. Are journalists in a particular country adept at investigation and analysis? Do they strive for independence and objectivity? How intensely do government officials, wealthy individuals, corporate media owners, or criminals pressure the media?¹²⁷ Transitional justice institutions need to understand these and other aspects of the media environment in the countries on which they focus.

Cozy relations with journalists might seem likely to advance transitional justice institutions' goals, but in fact they would be counterproductive.

124. HODZIC & TOLBERT, *supra* note 98, at 12; Laplante & Phenicie, *supra* note 101, at 269–70.

125. Such strategic considerations can affect scheduling within the day, too. For example, an event may be timed to match the daily production schedule of a specific media outlet, such as a popular evening news show. In many countries, however, the daily news cycle is changing as elites and ordinary citizens consume news more online and through social media, and less through more rigidly scheduled TV programs and print sources.

126. See Jacob E. Gerson & Anne Joseph O'Connell, *Hiding in Plain Sight? Timing and Transparency in the Administrative State*, 76 U. CHI. L. REV. 1157, 1157–59 (2009).

127. See, e.g., LONGMAN, *supra* note 103, at 259–63.

Citizens and elites need to assess the work of transitional justice institutions rigorously, based on accurate information. Journalists play a key role in that assessment when they skillfully and objectively scrutinize the motivations and competence of TRCs and ICTs. Courts and commissions should relate to journalists in ways that respect and facilitate the latter's oversight role, while also enlisting them in the institutions' efforts to inform and persuade domestic audiences.¹²⁸

5. Outreach Programs

The outreach programs of international criminal tribunals represent a significant innovation in transitional justice-related communication: formal, structured efforts to engage directly with both the general public and specific groups in affected countries.¹²⁹ The goals of these programs include both informing, such as by describing the court's activities, and persuading, such as to bolster the court's legitimacy against efforts to discredit it.¹³⁰ This Subsection evaluates the various ICTs' programs and highlights particularly innovative practices, taking advantage of a scholarly literature that is larger than the literatures on other aspects of transitional justice communication.¹³¹ Few if any truth commissions appear to have set up units dedicated to outreach specifically.¹³² Many directly engage the public through a variety of activities,

128. These dual responsibilities of the media—overseeing transitional justice institutions while facilitating their advancement of important societal goals—require both the media and transitional justice institutions to strike balances that can be tricky. The normative issues raised in Part 0, above, regarding the role of transitional justice institutions in society, are highly relevant to their relationship with the media.

129. Some communication activities, such as websites and social media feeds, may aim to reach both the media and the public directly. Some institutions, like the SCSL and ICC, have placed media relations and public outreach units under the same organizational umbrella. See *The Registry*, INT'L CRIM. CT., <https://www.icc-cpi.int/Publications/RegistryENG.pdf> [<https://perma.cc/DEW9-KPP7>]; Stuart Ford, *How Special is the Special Court's Outreach Section?*, in *THE SIERRA LEONE SPECIAL COURT AND ITS LEGACY* 505, 507 (Charles Chernor Jalloh ed., 2014).

130. See Dutton, *supra* note 62, at 90–93.

131. See, e.g., RAMÍREZ-BARAT, MAKING AN IMPACT, *supra* note 11; JESSICA LINCOLN, TRANSITIONAL JUSTICE, PEACE AND ACCOUNTABILITY: OUTREACH AND THE ROLE OF INTERNATIONAL COURTS AFTER CONFLICT (2011); Varda Hussain, *Sustaining Judicial Rescues: The Role of Outreach and Capacity-Building Efforts in War Crimes Tribunals*, 45 VA. J. INT'L L. 547 (2005); Maya Karwande, *Implementing an Engagement Model: Outreach at the Special Court for Sierra Leone*, in TRANSITIONAL JUSTICE, CULTURE, AND SOCIETY, *supra* note 11, at 49; Ford, *supra* note 129; Victor Peskin, *Courting Rwanda: The Promises and Pitfalls of the ICTR Outreach Program*, 3 J. INT'L CRIM. JUST. 950 (2005).

132. One of the few studies that covers outreach by multiple kinds of transitional justice institutions—not just courts—discusses various efforts by truth commissions to reach the public directly, but no units or offices dedicated to that work. See RAMÍREZ-BARAT, MAKING AN

however. Some of those activities are covered here because they are similar to courts' outreach, while others are covered in Section C, below.

The SCSL developed the most innovative and extensive outreach program of any transitional justice institution so far, beginning in late 2002, just months after the court began operations. The program took advantage of the fact that the court and nearly all of its personnel were based in the affected country, unlike its predecessors, the ICTY and ICTR. Its work began with visits by Prosecutor David Crane and Registrar Robin Vincent, the court's chief administrator, to communities around Sierra Leone.¹³³ Many of their destinations were far from the capital, Freetown, and saw few foreign visitors, let alone senior international organization officials. Many had been devastated by the war. At open meetings, often held in the main market square, Crane and Vincent explained the SCSL's mission, then answered citizens' questions.¹³⁴ Sometimes they turned the tables, using the events as opportunities to understand the people they were hoping to influence. For example, knowing Sierra Leoneans saw most of their leaders as corrupt, Crane asked if anyone thought *he* might be, too.¹³⁵ "Some hands rose," he recalled later.¹³⁶ "It was fascinating. It allowed me to understand how they're looking at it."¹³⁷ These events provided closer contact and more direct communication between court leaders and the affected population than the ICTY or ICTR achieved.

By early 2003, the Special Court had established a formal Outreach Unit headed by Binta Mansaray, a former civil society activist. Mohamed Suma, a recent university graduate who had managed Crane's and Vincent's tours, also played a key role. Mansaray, Suma, and their colleagues arranged further public events in Freetown and up-country, as well as regular meetings between court staff and civil society groups.¹³⁸ They ran workshops for the general public and specific audiences, including soldiers, police, ex-combatants, and university and secondary students.¹³⁹ Rough roads and long

IMPACT, *supra* note 11. An excellent TRC best practices manual refers several times to TRC "outreach" and suggests that commissions create dedicated outreach or public education units, but does not indicate that any TRC has actually done so. See González & Varney eds., TRUTH-SEEKING, *supra* note 22, at 32–33, 37, 44, 49–51.

133. See THIERRY CRUVELLIER, INT'L CTR. FOR TRANSITIONAL JUST., THE SPECIAL COURT FOR SIERRA LEONE: THE FIRST EIGHTEEN MONTHS 8 (2004).

134. HUMAN RIGHTS WATCH, BRINGING JUSTICE: THE SPECIAL COURT FOR SIERRA LEONE 33 (2004).

135. LINCOLN, *supra* note 131, at 90.

136. *Id.*

137. *Id.*

138. TOM PERRIELLO & MARIEKE WIERDA, INT'L CTR. FOR TRANSITIONAL JUST., THE SPECIAL COURT FOR SIERRA LEONE UNDER SCRUTINY 36 (2006).

139. Cf. RACHEL KERR & JESSICA LINCOLN, KING'S COLLEGE LONDON, THE SPECIAL COURT FOR SIERRA LEONE: OUTREACH, LEGACY AND IMPACT 11–12 (2008).

distances made travel between Freetown and the provinces slow and difficult, so the unit stationed district outreach officers around the country. They traveled from village to village, using print, audio, and video materials produced in Freetown to explain the court's mission, activities, and limitations.¹⁴⁰ Much of Sierra Leone had no electricity supply, so the district officers carried portable generators that enabled them to show videos of trial proceedings to citizens everywhere.¹⁴¹

The SCSL Outreach Unit also worked through the media, NGOs, local opinion leaders, and other intermediaries. It produced clips for radio and television.¹⁴² It facilitated the creation of theater and story-telling programs about the court. A network of Accountability Now Clubs at universities and secondary schools capitalized on young people's curiosity about the flashy new international organization.¹⁴³ The clubs provided a forum for members to learn about human rights and international criminal justice, aided by Outreach Unit materials, and to debate policy questions such as whether a just cause could excuse the commission of atrocities.¹⁴⁴

The SCSL had learned from the ICTY's failure to engage people in the former Yugoslavia and the dire effects of that failure. The ICTY's outreach program was widely seen as "too little, too late."¹⁴⁵ From its creation in 1993, the ICTY largely ignored domestic audiences: "[T]he court's primary constituency—the population of the former Yugoslavia—was typically not its principal focus. Instead, [communication] efforts focused on States, academics, human rights organisations, and international law activists."¹⁴⁶ Until 2000, it issued indictments, judgments, and press releases only in English and French—not Serbo-Croatian.¹⁴⁷ During these early years, as discussed above, politicians in the region took advantage of the ICTY's

140. *Id.*

141. U.N. SCOR, 67th Sess., 6844th mtg. at 3, U.N. Doc. S/PV.6844 (Oct. 9, 2012), <https://undocs.org/en/S/PV.6844> [<https://perma.cc/EB6P-PMZT>].

142. HUMAN RIGHTS WATCH, JUSTICE IN MOTION: THE TRIAL PHASE OF THE SPECIAL COURT FOR SIERRA LEONE 28–29 (2005).

143. SPECIAL COURT FOR SIERRA LEONE & NO PEACE WITHOUT JUSTICE, IMPACT AND LEGACY SURVEY FOR THE SPECIAL COURT FOR SIERRA LEONE 44 (2012).

144. Seven years after the SCSL closed, some clubs remained active, cultivating students' interest in governance and human rights and providing a forum for learning and discussion. See *Accountability Now Clubs Speak to the Pay No Bribe Campaign in a Debate Competition*, AYV NEWSPAPER (Jan. 10, 2020), <http://www.ayvnewspaper.com/uncategorized/accountability-now-clubs-speak-to-the-pay-no-bribe-campaign-in-a-debate-competition/> [<https://perma.cc/S4LA-NHTT>].

145. Hussain, *supra* note 131, at 563; Janine Natalya Clark, *International War Crimes Tribunals and the Challenge of Outreach*, 9 INT'L CRIM. L. REV. 99, 105 (2009).

146. Lal C. Vohrah & Jon Cina, *The Outreach Program*, in *ESSAYS ON ICTY PROCEDURE AND EVIDENCE: IN HONOR OF GABRIELLE KIRK McDONALD* 547, 550 (Richard May et al. eds., 2001).

147. *Id.*

passivity to shape their people's views of it. They relentlessly attacked the court as biased and portrayed it as a tool of foreign powers.¹⁴⁸ By 1999, when the ICTY finally created an outreach program to explain its work to people in the region and gain their trust, it was too late: their views were formed. Once established, the outreach program sponsored events in the region and produced print, audio, and video materials for distribution through the court's website and other channels. Analysts judged it to be chronically underfunded and understaffed, as well as tardy and half-hearted, however.¹⁴⁹

The ICTY had far less impact than its creators had hoped on how people in the former Yugoslavia viewed the wars it investigated.¹⁵⁰ Those hopes may have been unrealistic for many reasons, as Marko Milanović has argued.¹⁵¹ Nevertheless, the tribunal could have been more effective had it recognized that informing and persuading local people were essential to its mission.

The outreach programs of the other major ICTs also have been less robust and creative than that of the SCSL. The ICTR's outreach initiatives were modest and largely passive, perhaps limited by the Rwandan government's hostility to the court and control of access to information in the country.¹⁵² The ICTR maintained an information center in the Rwandan capital, Kigali; created materials for the media; and provided tours of the court premises in Tanzania for Rwandans who traveled there.¹⁵³ A comprehensive study of the Extraordinary Chambers in the Courts of Cambodia judged its outreach efforts "insufficient"—thinly funded, fragmented among court units, and neglectful of the rural areas where most Cambodians live.¹⁵⁴

The ICC, too, has underachieved. Created at the same time as the SCSL, it can learn from the latter's outreach success. Yet the ICC's outreach program appears even more anemic in ambition and activities than the ICTY's.¹⁵⁵ The 2020 Independent Expert Review of the ICC characterized "the resources

148. Klarin, *supra* note 62, at 90; *supra* text accompanying notes 108–110.

149. Clark, *supra* note 145, at 104–05. The ICTY outreach program's presence in the former Yugoslavia—four offices, each with two staff—was much smaller than the SCSL Outreach Unit's sprawling network of district offices throughout Sierra Leone. *Id.* at 105. It also represented a tiny fraction of the ICTY's total workforce of 1,200. *Id.*

150. ORENTLICHER, *supra* note 20, at 6.

151. See Milanović, *Establishing the Facts*, *supra* note 11, at 1344–1353.

152. See LONGMAN, *supra* note 103, at 267; Hussain, *supra* note 131, at 563–65; Philipp Schulz, "Justice Seen is Justice Done?": Assessing the Impact of Outreach Activities by the International Criminal Tribunal for Rwanda (ICTR), CROATIAN INT'L REL. REV. 63, 65 (2015) (judging the ICTR's outreach as "too late" and supported with "too little" resources).

153. See Peskin, *supra* note 131, at 955–56; Tim Gallimore, *The ICTR Outreach Program: Integrating Justice and Reconciliation*, INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA 2–3 (Nov. 2006), https://iccforum.com/media/background/outreach/2006-11-08_Gallimore-The ICTR Outreach Program-Integrating Justice and Reconciliation.pdf [https://perma.cc/R8WE-T84H].

154. OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 59, at 85.

155. See Dutton, *supra* note 62, at 102–06; Ochs, *supra* note 63, at 622–23.

allocated to outreach strategies in situation countries [as] minuscule (around €50,000 per annum).¹⁵⁶ This shockingly small budget has to cover far more countries than the ICTY tried to reach, all of which are farther from the ICC's headquarters than the former Yugoslavia was from the ICTY's.¹⁵⁷

The quality of ICC outreach has been as problematic as its quantity. It has been criticized for a “top-down approach” that emphasizes one-way delivery of messages and gives insufficient attention to community members' questions and concerns.¹⁵⁸ Messages are unclear to target audiences and “fail to sufficiently take into account local conditions, cultural sensitivities, and language.”¹⁵⁹ Expert observers believe outreach is hindered, too, by prosecutors' lack of either interest in engaging with affected communities or sense of responsibility to them.¹⁶⁰ The Independent Expert Review concluded that “[w]hile the Court nominally has a Strategic Plan for Outreach, it appears that this has not been effectively implemented.”¹⁶¹

A more heartening development is that at least seven ICC judges recently have shown some appreciation of the need to communicate with people in affected countries. In cases involving the Democratic Republic of Congo, Palestine, and Bangladesh and Myanmar, they have ordered the court's Registry to engage in outreach. The first such order, in 2013, required efforts to facilitate victim participation in the Ntaganda case.¹⁶² In 2018, a three-judge panel required “the Registry to establish, as soon as practicable, a system of public information and outreach activities for the benefit of the victims and affected communities in the situation in Palestine,” including a webpage

156. GOLDSTONE ET AL., *supra* note 107, at 127.

157. The starting point for both measurements is The Hague, the headquarters of both the ICTY and ICC.

158. OPEN SOCIETY JUSTICE INITIATIVE & AMSTERDAM CTR. FOR INT'L LAW, IMPROVING THE OPERATIONS OF THE ICC OFFICE OF THE PROSECUTOR: REAPPRAISAL OF STRUCTURES, NORMS, AND PRACTICES 15 (2020) [hereinafter IMPROVING THE OPERATIONS OF THE ICC OTP]; Jennifer Easterday, *Transforming Outreach and Engagement with Local Stakeholders*, INT'L JUST. MON. (2020), <https://www.ijmonitor.org/2020/07/transforming-outreach-and-engagement-with-local-stakeholders/> [https://perma.cc/5SPY-BP5V].

159. GOLDSTONE ET AL., *supra* note 107, at 126.

160. IMPROVING THE OPERATIONS OF THE ICC OTP, *supra* note 158, at 16.

161. GOLDSTONE ET AL., *supra* note 107, at 126. The ICC appears not to have learned even the most basic lesson of the ICTY's experience, the necessity of communicating early: a court rule—which the experts recommended changing—precludes outreach during the preliminary examination phase, which can last years and involve significant, controversial ICC intervention in a society. *See id.* (noting the limitation); Cavallaro & O'Connell, *supra* note 26, at 12 (describing the length of preliminary examinations); *id.* at 26–29 (describing the ICC's years-long preliminary examination on Colombia).

162. Prosecutor v. Ntaganda, ICC-01/04-02/06, Decision Establishing Principles on the Victims' Application Process, 21 (May 28, 2013), https://www.icc-cpi.int/CourtRecords/CR2013_03965.PDF [https://perma.cc/JF29-MT6Y].

directed at them.¹⁶³ The judges urged “a continuous system of interaction between the Court and victims [involving a]ll relevant Registr[y] sections.”¹⁶⁴ They explained their motivation:

[F]or the Court to be able to properly fulfil its mandate, it is imperative that its role and activities are properly understood and accessible, particularly to the victims Outreach and public information activities in situation countries are quintessential [sic] to foster support, public understanding and confidence in the work of the Court. At the same time, they enable the Court to better understand the concerns and expectations of victims, so that it can respond more effectively and clarify, where necessary, any misconceptions.¹⁶⁵

A separate panel issued a similar order, with similar reasoning, for the Bangladesh and Myanmar situation in 2020.¹⁶⁶ The dour appraisal of ICC outreach by the Independent Expert Review suggests that these orders may not have been carried out effectively. Nevertheless, the judges’ appreciation of the importance of communication is a positive development at an institution that often takes a narrow, legalistic view of its mission.¹⁶⁷

163. Situation in the State of Palestine, ICC-01/18, Decision on Information and Outreach for the Victims of the Situation, 10 (July 13, 2018), https://www.icc-cpi.int/CourtRecords/CR2018_03690.PDF [<https://perma.cc/NTL3-7XLT>].

164. *Id.* at 8.

165. *Id.* at 4.

166. *See generally* Situation in the People’s Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-28, Order on Information and Outreach for the Victims of the Situation (Jan. 20, 2020), https://www.icc-cpi.int/CourtRecords/CR2020_00138.PDF [<https://perma.cc/B4KN-RPD7>].

167. *See* Cavallaro & O’Connell, *supra* note 26, at 24. National courts are less likely than international tribunals to undertake communication to advance transitional justice goals, because cases relevant to transitional justice comprise only a small fraction of their dockets. Nevertheless, some have shown impressive awareness of the potential human and political impact of their work and the necessity of communication if they are to realize it. For example, in 2020, the Spanish National Criminal Court found a former Salvadoran army colonel responsible for the notorious murder of five Jesuit priests during his country’s civil war. The court set up a live online video stream of its proceedings in Madrid so Salvadorans could view them; at one point 100,000 devices, and presumably at least that many individuals, were watching. Almudena Bernabeu, *The Jesuits Massacre Trial: A Return to Accountability for Human Rights Violations?*, CTR. FOR LATIN AM. STUD., U.C. BERKELEY (Sep. 30, 2020), <https://clas.berkeley.edu/jesuits-massacre-trial-return-accountability-human-rights-violations> [<https://perma.cc/RR29-S55K>] (recounting personal conversation with court technician).

TRCs communicate directly with citizens for many purposes, including to solicit victim statements, publicize hearings, and launch final reports.¹⁶⁸ Information on who within each commission does this work—and how they fit in each commission's organization—is difficult to find, but it appears that few have units or programs dedicated to continuous public engagement that resemble tribunals' outreach programs. The Peru TRC set up four offices in areas of the country that had been especially affected by the civil war.¹⁶⁹ “[T]he coordinators of each office traveled within their regions to inform the population about the commission, organizing rural fairs and meetings in the villages with personnel who spoke the local language, Quechua.”¹⁷⁰ The staff of the South Africa TRC's four regional offices communicated with the public, but possibly only indirectly, through partner organizations.¹⁷¹ It is unclear whether either commission dedicated any staff members full-time to public outreach.¹⁷²

The Timor-Leste TRC's public outreach activities seem to have been particularly well coordinated and extensive. This reflected the commission's participatory philosophy, according to advisor Kieran Dwyer, which “stemmed from the fundamental decision to say, we want this Commission to be meaningful to people in their lives as it is going on, not just in the Final Report.”¹⁷³ Staff within the commission's Program Support Division developed relationships with “women's organizations, church representatives, youth groups and local leaders.”¹⁷⁴ They produced a radio program broadcast weekly across the country as well as “pamphlets, brochures, posters, T-shirts, and short reports on the [TRC's] public hearings.”¹⁷⁵ Timor-Leste's rough

168. See *supra* Subsection 2; *infra* Subsections IV.C.1, IV.C.4; see also González & Varney eds., TRUTH-SEEKING, *supra* note 22, at 49–51 (describing outreach activities that commissions can undertake).

169. RAMÍREZ-BARAT, MAKING AN IMPACT, *supra* note 11, at 10.

170. *Id.*

171. TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA, 1 FINAL REPORT 392–447 (1998). For example, the Johannesburg office reported that “[b]efore every [public] hearing, in many small towns, Commission representatives met with local faith communities, NGOs and community organisations. These organisations took the word of the Commission to the people on the ground.” *Id.* at 447.

172. González & Varney place “Communications and Education Initiatives” in a separate box on their organization chart for the Peru TRC. This may mean that those projects were conducted by a formally constituted unit, but the authors say nothing about this organizational question. González & Varney eds., TRUTH-SEEKING, *supra* note 22, at 46.

173. Patrick Burgess & Galuh Wandita, *Reaching Out to Victims and Communities: The CAVR's Experiences in Timor-Leste*, in TRANSITIONAL JUSTICE, CULTURE, AND SOCIETY, *supra* note 11, at 153.

174. *Id.* at 152.

175. *Id.*

terrain made travel difficult, so teams of TRC staff rotated through the country's districts, living in each for several months at a time.¹⁷⁶

Both TRCs and ICTs increasingly can reach people directly by electronic means, due to the falling cost of technology and citizens' rising access to it, especially on mobile phones. For example, the websites of the ICC and The Gambia's Truth, Reconciliation, and Reparations Commission include audio and video clips of some hearings.¹⁷⁷ They also describe each institution's mandate, leaders, and activities.¹⁷⁸

Social media such as Twitter, Facebook, YouTube, and TikTok now play a critical role in the information ecosystems of many countries, as means of transmitting information and forums for exchange.¹⁷⁹ They can spread both accurate and inaccurate information and facilitate the flourishing of views that advance transitional justice goals and others that undermine them.¹⁸⁰ Over time, people in countries affected by transitional justice are gaining the ability and habit of engaging with institutions directly, albeit electronically. Courts' and truth commissions' websites, social media posts, and internet advertising therefore may become much more important methods for informing and persuading elites and grassroots audiences. Transitional justice institutions also will need to monitor, and sometimes try to influence, online discourse about their legitimacy and activities, as well as about the events and issues they examine.

176. *Id.* at 153.

177. *See, e.g., Ongwen Case Videos*, INT'L CRIM. CT., <https://www.icc-cpi.int/uganda/ongwen/Pages/all-videos.aspx> [<https://perma.cc/W9HQ-8Z4W>]; *Hearings, TRUTH, RECONCILIATION, AND REPARATIONS COMMISSION OF THE GAMBIA*, <http://www.trrc.gm/whats-new/> [<https://perma.cc/6ZBR-MW22>].

178. *See How the Court Works*, INT'L CRIM. CT., <https://www.icc-cpi.int/about/how-the-court-works> [<https://perma.cc/L8SL-2XVP>]; *In the Courtroom*, INT'L CRIM. CT., <https://www.icc-cpi.int/about/Pages/in-the-courtroom.aspx> [<https://perma.cc/2R6Z-HMVE>]; *Mandate*, TRUTH, RECONCILIATION, AND REPARATIONS COMMISSION OF THE GAMBIA, <http://www.trrc.gm/our-mandate/> [<https://perma.cc/35LG-5LWX>]; *The TRRC Commissioners*, TRUTH, RECONCILIATION, AND REPARATIONS COMMISSION OF THE GAMBIA, <http://www.trrc.gm/the-commissioners-2/> [<https://perma.cc/96Z7-FW3K>].

179. Very little has been written on transitional justice institutions and social media. Patrick Vinck's short essay is one of the only exceptions. *See generally* Patrick Vinck, *Transitional Justice in the Age of Social Media*, 13 INT'L J. TRANSITIONAL JUST. 105 (2019) (book review). Crittenden's 2014 chapter was prescient and remains remarkably relevant, but the use and impact of social media in countries undergoing transitional justice has almost certainly changed significantly in the last seven years. *See* Crittenden, *supra* note 119.

180. *See* Crittenden, *supra* note 119, at 355-56; Vinck, *supra* note 179, at 105-07, 109-11.

B. Communication Opportunities for International Criminal Tribunals

This Section surveys communication opportunities that are available to international criminal tribunals but not truth commissions. (Section C will address those available only to commissions.) Subsection 1 explains how a case's progress through the highly structured judicial process creates regular chances to attract attention. Subsection 2 discusses how prosecutors' public disclosure of policies and priorities can advance transitional justice goals. Subsection 3 examines judicial opinions. Subsection 4 briefly addresses the communication aspects of the ICC's and ICTY's efforts to advance one specific transitional justice goal: the prosecution of mass atrocities by national courts.

1. Milestones in the Judicial Process

International criminal tribunals' highly structured judicial processes provide many opportunities to communicate with domestic as well as international audiences. As the ICTY's best practices manual explains:

Certain court activities routinely require the issuance of a press release or advisory information, including the issuance of judgements, the confirmation or unsealing of indictments, the commencement of trial, key developments outside of the courtroom, [and] key speeches and addresses of the [court's] principals.¹⁸¹

Such events provide "hooks" to grab the attention of the media, specific key audiences, and the general public. The issuance of an arrest warrant for an especially notorious defendant or their apprehension may produce particular drama. For example, the capture of Bosnian Serb political leader Radovan Karadžić in 2008, after ten years on the run, provoked extensive media coverage in Serbia.¹⁸²

Trial verdicts, sentences, and appellate judgments also may be compelling to particular audiences. Whether the outcomes match the audience's expectations and wishes may be important determinants of their impact, but courts also can present their decisions in ways that connect with specific audiences. For example, while delivering their verdict against Ugandan LRA commander Dominic Ongwen, ICC judges read aloud the names of his victims. "[F]amily members and survivors listening to the verdict on the radio

181. ICTY & UNITED NATIONS INTERREGIONAL CRIME AND JUSTICE RESEARCH INSTITUTE, *supra* note 112, at 192.

182. *Serbia's "News story of the Year,"* BBC NEWS (July 23, 2008, 4:54 PM), <http://news.bbc.co.uk/2/hi/europe/7521995.stm> [<https://perma.cc/G3ZP-E6C6>].

[in Uganda] quietly shed tears and clapped.”¹⁸³ This unusual judicial act acknowledged victims’ suffering and dignity, a transitional justice goal. Judges at the ICC and other international courts could do the same in other cases.

The most dramatic example in ICT history of using such milestones may be the SCSL’s unsealing of its indictment of Liberia’s then-President, Charles Taylor. This action was choreographed to have a powerful impact both on the people of Sierra Leone and Liberia, where his crimes occurred, and on foreign diplomats. In early 2003, just a few months after beginning work at the court, Prosecutor David Crane began denouncing Taylor in public statements and media interviews for sponsoring murderous Sierra Leonean rebels.¹⁸⁴ He indicted Taylor in March 2003 but kept the indictment sealed and secret.¹⁸⁵ Taylor rarely left Liberia, but in June he flew to Ghana for peace negotiations with rebels trying to overthrow him, brokered by U.S. diplomats. Crane faxed the indictment to the Ghanaian foreign ministry as Taylor landed a few miles away and simultaneously released it to the press.¹⁸⁶ As the prosecutor had intended, the announcement scuttled the negotiations, with Taylor rapidly fleeing back to Liberia.¹⁸⁷ Although the U.S. government, one of the SCSL’s main supporters, was furious with Crane, the unsealing advanced his goal of delegitimizing Taylor and ending a peace process that might have enabled Taylor to cling to power and escape justice.¹⁸⁸ A few months later, the rebels forced Taylor to flee to Nigeria, whose government eventually turned him over to the SCSL for trial.¹⁸⁹

Courts use numerous tools to communicate around such occasions. They issue press releases and multimedia packages. They convene press briefings and events with governments, international organizations, victim groups, professional associations, and other partners. A judgment may be accompanied by a video of highlights from the trial. Reporters covering an

183. Sarah Kihika Kasande & Jesse Mugero, *The Ongwen Verdict: A Step Closer to Acknowledgment and Justice for Victims in Northern Uganda*, INT’L CTR. FOR TRANSITIONAL JUST. (Feb. 8, 2021), <https://www.ictj.org/news/ongwen-verdict-step-closer-acknowledgment-and-justice-victims-northern-uganda> [<https://perma.cc/3HQ3-T66T>].

184. David M. Crane, *The Take Down: Case Studies Regarding “Lawfare” in International Criminal Justice: The West African Experience*, 43 CASE W. RES. J. INT’L L. 201, 209 (2010).

185. INT’L CRISIS GRP., *supra* note 37, at 1.

186. Crane, *supra* note 184, at 211.

187. *Id.* at 211–12.

188. David Crane, *Handing Over Charles Taylor: It’s Time*, JURIST (March 22, 2006), <https://www.jurist.org/commentary/2006/03/handing-over-charles-taylor-its-time/> [<https://perma.cc/8FXW-WJ8P>].

189. See Lydia Polgreen, *Liberian Warlord Charles Taylor Caught in Nigeria*, N.Y. TIMES (March 29, 2006), <https://www.nytimes.com/2006/03/29/world/africa/29iht-web.0329taylor.html> [<https://perma.cc/SWR4-MH4R>].

arrest could receive a tour of the tribunal's detention facilities—the defendant's new home.

The participants, venue, and program for events can be designed to attract the interest of particular audiences, convey particular messages, and do so compellingly. The prosecutor could announce a new indictment at a memorial to victims of a particular massacre. Including the victims' relatives in the press conference would amplify their voices and perhaps convey the reality of the massacre and its human impact to those in their country who had paid little attention before. In choosing which victims to invite, the court would need to consider whose views and manner of expressing them would be most likely to reach those target audiences.

Within the courtroom, procedural rules and norms limit opportunities for prosecutors, defense attorneys, and judges to communicate to outside audiences, but leave some available. Opening and closing statements summarize each side's case, are less constrained than presentations of evidence, and occur when reporters are most likely to be paying attention.¹⁹⁰

Ethical principles meant to ensure fairness to indictees may constrain publicity as well. Theatrical "perpetrator walks," in which indictees are paraded before the media, often in handcuffs, may imply guilt even as they show that the powerful can be called to account for their actions. On the first day of the SCSL's trial of Revolutionary United Front rebels, defense lawyers' objections and the lead judge's exasperation forced SCSL prosecutors to abandon dramatic rhetoric in their opening statement that appeared aimed at the general public.¹⁹¹ In regulating communication in the courtroom and outside it, judges need to consider the goals of their courts.¹⁹² They should take into account differences between ordinary criminal cases in national courts and prosecution of international crimes in ICTs. The latter generally involve more victims, more complex and confusing chains of responsibility, higher levels of public interest, broader social and political meaning, and more powerful defendants. Rules imported from national contexts may be inappropriate, for example, because they are designed to

190. Media attention tends to flag in the middle of trials. See Monasebian, *supra* note 104, at 309.

191. See Transcript of Record, *Prosecutor v. Sesay*, *supra* note 77, at 19–20, 36–41.

192. The restrictions imposed on the prosecution by the judge in the RUF case failed this test. The judge seems to have devoted little thought to their content, purpose, or impact. His explanation of the restrictions focused on his own personal preferences about lawyers' rhetorical style and showed no interest in how they might affect ordinary Sierra Leoneans' understanding of the proceedings. See *id.* at 36–41.

protect defendants who are more vulnerable than the former warlords and heads of state who often face ICTs.¹⁹³

2. *Disclosing Prosecutorial Policies and Priorities*

ICT prosecutors maintain considerable discretion to prioritize particular types of crimes (sexual violence vs. deportation vs. killing vs. torture), categories of defendant (political leaders vs. military commanders, particular factions or ethnic groups), and, at the ICC, entire conflicts (or “situations,” in ICC jargon). Some prosecutors have constrained themselves by announcing policies, procedures, and priorities that they will follow as they make such choices. Why do they tie their own hands with such public communications? They have explained that doing so promotes specific transitional justice goals.

The ICC Office of the Prosecutor has published several such documents. These include the Policy Paper on Preliminary Examinations (published in 2013), Policy Paper on Sexual and Gender-Based Crimes (2014), Policy Paper on Case Selection and Prioritization (2016), and Policy on Children (2016).¹⁹⁴ Each includes statements about the Prosecutor’s priorities. For example, the Policy Paper on Sexual and Gender-Based Crimes commits the Prosecutor to

193. Leading Kenyan politicians’ success in defeating their ICC indictments illustrates the difference between the balance of power in ICTs and national courts, although it is an extreme example. See Laurence R. Helfer & Anne Elizabeth Showalter, *Opposing International Justice: Kenya’s Integrated Backlash Strategy Against the ICC*, 17 INT’L CRIM. L. REV. 1, 2 (2017). Not all ICT defendants retain significant public support or other sources of power, but many do.

It is arguable that the application of principles of fairness in national court cases, too, should take into account the defendant’s power, including access to media and other means of countering the prosecution’s public messages. See, e.g., Benjamin Weiser & William K. Rashbaum, *In Steve Bannon Case, Prosecutors Have “Voluminous” Emails*, N.Y. TIMES (Aug. 31, 2020), <https://www.nytimes.com/2020/08/31/nyregion/steve-bannon-build-the-wall-fraud.html> [<https://perma.cc/6YEU-MZ75>] (describing reciprocal allegations by prosecutors and defense attorneys for Donald Trump’s former chief strategist that the other side’s public statements had violated court rules).

194. INT’L CRIM. CT. OFF. OF THE PROSECUTOR, POLICY PAPER ON PRELIMINARY EXAMINATIONS (2013), https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf [<https://perma.cc/QHV5-W68W>]; INT’L CRIM. CT. OFF. OF THE PROSECUTOR, POLICY PAPER ON SEXUAL AND GENDER-BASED CRIMES (2014), https://www.icc-cpi.int/iccdocs/otp/Policy_Paper_on_Sexual_and_Gender-Based_Crimes-20_June_2014-ENG.pdf [<https://perma.cc/M2R9-SUPC>]; INT’L CRIM. CT. OFF. OF THE PROSECUTOR, POLICY PAPER ON CASE SELECTION AND PRIORITIZATION (2016), https://www.icc-cpi.int/itemsDocuments/20160915_OTP-Policy_Case-Selection_Eng.pdf [<https://perma.cc/Q234-BGSY>]; INT’L CRIM. CT. OFF. OF THE PROSECUTOR, POLICY ON CHILDREN (2016), https://www.icc-cpi.int/iccdocs/otp/20161115_OTP_ICC_Policy-on-Children_Eng.PDF [<https://perma.cc/M3QR-YYYY>].

“ensure that charges for sexual and gender-based crimes are brought wherever there is sufficient evidence to support such charges.”¹⁹⁵

The purposes of announcing these policies include communicating with audiences in affected countries in ways that promote core transitional justice goals.¹⁹⁶ The ICC Prosecutor explains:

Policy papers of the Office are made public in the interest of . . . [among other goals] increasing accountability for sexual and gender-based crimes, and enhancing the preventive impact of the Statute through the work of the Court.¹⁹⁷

SCSL Prosecutor David Crane’s public announcement that he would not prosecute child soldiers was a rare example of an international prosecutor eliminating the legal jeopardy of a large and high-profile set of perpetrators. Thousands of child rebels had committed torture, rape, and murder on a mass scale during Sierra Leone’s ten-year civil war.¹⁹⁸ From the moment their president proposed an international court to address wartime atrocities, Sierra Leoneans had debated whether the court should prosecute those who had committed crimes while underage, and whether it would.¹⁹⁹ Crane answered the latter question in November 2002, early in his tenure and before indicting anyone. Speaking at a secondary school in Kabala, many of whose students had been child soldiers themselves, he declared: “The children of Sierra Leone have suffered enough both as victims and perpetrators. I am not interested in prosecuting children.”²⁰⁰

Crane’s public commitment aimed to advance a primary transitional justice goal: promoting reconciliation. In a 2008 article, he wrote: “[T]he

195. POLICY PAPER ON SEXUAL AND GENDER-BASED CRIMES, *supra* note 194, at 6; *see also* POLICY ON CHILDREN, *supra* note 194, at 26 (“[T]he Office will regard crimes against or affecting children as particularly grave.”); POLICY PAPER ON CASE SELECTION AND PRIORITIZATION, *supra* note 194, at 16; POLICY PAPER ON PRELIMINARY EXAMINATIONS, *supra* note 194, at 11–17.

196. Publicly announcing the policies may have other benefits, too, such as appearing transparent to ICC member states and thus increasing their support for the Prosecutor.

197. POLICY PAPER ON SEXUAL AND GENDER-BASED CRIMES, *supra* note 194, at 11–12. Some of the ICC papers commit to additional communication efforts in order to advance transitional justice goals. “In its public information activities, the Office will draw attention to the rights and best interests of children in the context of international crimes, as appropriate.” POLICY ON CHILDREN, *supra* note 194, at 4–5.

198. *See* Press Release, Human Rights Watch, Sierra Leone Rebels Forcefully Recruit Child Soldiers (May 31, 2000) (<https://www.hrw.org/news/2000/05/31/sierra-leone-rebels-forcefully-recruit-child-soldiers>) [<https://perma.cc/HYD9-VBZF>].

199. *See* INT’L CRISIS GRP., *supra* note 37, at 3.

200. Press Release, SCSL Public Affairs Off., Special Court Prosecutor Says He Will Not Prosecute Children (Nov. 2, 2002), (<http://www.rscsl.org/Documents/Press/OTP/prosecutor-110202.pdf>) [<https://perma.cc/RT8H-QUD7>].

intent in choosing not to prosecute was to rehabilitate and reintegrate this lost generation back into society.”²⁰¹ Crane chose one transitional justice goal, reconciliation with a particular group of perpetrators, over a conflicting one, accountability for them. His public announcement represented a considered effort to persuade the public that this priority was correct.

ICT prosecutors could make more extensive use of public announcements on policy and priorities—including clear commitments not to prosecute—to advance their courts’ ultimate goals. For example, some analysts fear that prosecuting perpetrators of mass atrocities will inhibit other warlords from making peace, or prompt ex-combatants to take up arms again, because they fear arrest.²⁰² Such destabilization would undermine ICTs’ goals of reducing human rights violations and contributing to peace. During the SCSL’s first year, many Sierra Leonean and foreign analysts wondered whether some of the country’s tens of thousands of former rebels might return to the field because they thought they might be indicted.²⁰³ The SCSL’s three-year intended lifespan, the multiyear duration of trials at the ICTY and ICTR, and my conversations with Crane’s staff made it clear that the court would indict at most a few dozen people.²⁰⁴ This meant at least ninety-nine percent of ex-combatants had nothing to fear. Furthermore, it was clear which ones were safe. The court’s statute mandated prosecution of “those bearing the greatest responsibility” and Crane repeated that phrase constantly. Anyone familiar with the conflict could identify the most important political and military leaders who might plausibly be deemed to meet that standard. I urged the court to add a generous numerical limit on the number of possible indictees, such as “a few dozen or less.” Perhaps five times that number of ex-combatants might still have worried that the prosecutor would decide they were among those with “greatest responsibility.” However, the vast majority of ex-combatants would have known they were safe. By announcing an approximate

201. David M. Crane, *Prosecuting Children in Times of Conflict: The West African Experience*, 15 HUM. RTS. BRIEF, no. 3, 2008, at 1, 5. Furthermore, the court’s statute committed it to prosecuting “those bearing the greatest responsibility” for crimes during the war, and Crane believed no child soldier fell within that category. *Id.*

202. See Jack Snyder & Leslie Vinjamuri, *Trials and Errors: Principle and Pragmatism in Strategies of International Justice*, 28 INT’L SEC. 5, 13 (Winter 2003/04); Cavallaro & O’Connell, *supra* note 26, at 18 (paraphrasing Michael Broache).

203. See, e.g., INT’L CRISIS GRP., SIERRA LEONE: THE STATE OF SECURITY AND GOVERNANCE 13–14 (2003).

204. During this time, I was based in the capital, Freetown. The SCSL ultimately indicated thirteen people for international crimes and several more for procedural offenses, such as contempt of court. *Residual Special Court for Sierra Leone*, *supra* note 67.

number of people it planned to indict, the SCSL thus could have reduced the risk of renewed violence in the country.²⁰⁵

3. *Judgments*

International criminal tribunal judges should modestly adapt the structure, topics, and style of their trial and appellate judgments to make them more accessible to audiences in affected countries.²⁰⁶ To be sure, these judgments are not likely to become primary means of communication between those courts and ordinary people. Often hundreds of pages long, they detail relevant historical, political, and military facts; the atrocities for which the defendant is charged; the defendant's role; applicable doctrines and precedents; often the positions of the defense and prosecution on those topics; and the court's reasoning and conclusions. The immediate audiences for these documents are defense and prosecution lawyers, appellate judges, and perhaps defendants. International criminal lawyers, scholars, judges of other courts, and future historians also will scrutinize them. Most of the general public, by contrast, learns about these decisions from media reports or social media posts. Some may seek out court press releases or summaries of decisions. Nonetheless, a few people, such as the victims of the particular defendant or perpetrators of similar crimes, may wish to understand the court's factual findings, legal conclusions, and reasoning in more detail. (Potential readers may be more numerous in affected countries with higher levels of education.) Journalists, too, might look beyond summaries to the judgments themselves. Both journalists and other interested non-lawyers are likely to find most international court judgments impenetrable, however.

205. The court did not add a numerical reference to its communications about potential defendants—but ex-combatants nevertheless did not taking up arms. *Cf.* INT'L CRISIS GRP., *supra* note 37, at 3 (discussing how many people the court likely would indict and noting "Crane's reluctance to give any rough estimation of the number").

206. Regardless of how clearly the grounds for decision are communicated, many people in affected countries may care most about the bottom line: whether the court finds the defendant guilty or not and the severity of the sentence. That is to say, those results may be understood by particular domestic audiences as conveying particular messages. For example, an acquittal may be taken as indicating that the defendant's entire ethnic group was not responsible for atrocities or that the cause for which they fought was just. Judges, of course, cannot consider such possible ramifications when assessing whether charges against a defendant have been proved beyond a reasonable doubt. However, they can devote more time and energy to cases with larger social and political ramifications, to make certain they reach the legally correct decision. Widely criticized decisions by the ICTY in *Prosecutor v. Gotovina* and several other cases and by the ICC in *Prosecutor v. Bemba* raise doubts about the judges' motivation, competence, or both. See ORENTLICHER, *supra* note 20, at 178–89; Beth Van Schaack, *International Criminal Law Roundup Series: Part I, JUST SECURITY* (Sept. 6, 2018), <https://www.justsecurity.org/60597/international-criminal-law-roundup> [<https://perma.cc/YB9Q-WEZM>].

Judges should try to make their decisions comprehensible to laypeople, including the public and journalists. The process of reporting on judgments—distilling them into official summaries and press releases, then media accounts, and then interpretations by commentators—thins and distorts judges' view of the facts and their legal and social implications. By not speaking more clearly, judges risk their views being misunderstood by non-lawyers, including the general public.²⁰⁷ ICTY prosecutors intoned, “[j]udgments speak for themselves” to justify their refusal to comment on them.²⁰⁸ This glib view may veil other motives for silence, but the impenetrable form of ICT judgments suggests that many judges do not appreciate the value of communicating their reasoning to the public.

If their judgments are accessible, judges can advance transitional justice goals by shaping people's understanding of the human rights violations the court addresses. Readers with open minds may shift their views on facts (whether a particular crime occurred), legal conclusions (the defendant's guilt), or their larger meanings (whether atrocities were necessary to protect the defendant's group). These changes in thinking can facilitate acknowledgment of victims' suffering by the rest of society, help narrow of divisions between groups, and stimulate efforts to prevent future violations.

Official press releases and summaries of decisions are essential. All of the major ICTs provide these, but they do not always cover the issues most important to domestic audiences or clearly explain the court's reasoning. Drafting them requires collaboration between lawyers, who understand the decision, and media and outreach staff, who know the concerns and perspectives of victims and other external audiences. They should identify the points in each decision that will be most important to each audience. These should be expressed in accessible style without effacing essential nuances.

Judges should keep the same principles of accessibility in mind as they draft the decisions themselves. They should make sure to explain any points about the case that will be important to any large audience in the affected country. Before finalizing the decisions, they should brainstorm, with the help of media and outreach staff, about what questions those audiences might have about the court's conclusions or reasoning. Implications and subtleties that are obvious to lawyers may need to be stated explicitly for laypeople, such as limits of the court's decision: “In finding the defendants not guilty, the court does not determine that they are innocent, but solely that the evidence presented has not proved their guilt beyond a reasonable doubt.”

Clear organization and expression are as important as relevant content. The goal should be to help lay readers—especially the media—quickly and easily find and understand the points in the judgment that are most relevant to

207. Lawyers, too, can misunderstand complex legal decisions.

208. Ahmetašević & Matić, *supra* note 103, at 223.

them. Collecting that information in as few places as possible, locating it early in the judgment, and expressing it in straightforward terms are most important. The best practice may be to include a summary section just after the judgment's introductory paragraphs.

One negative and one positive example illustrate my prescriptions. Better organization, more relevant content, and clearer explanation would have made the SCSL's appellate decision in *Prosecutor v. Fofana* more accessible and influential. Among other questions, the judges determined that the defendants' punishment should not be mitigated by the justice of the cause for which they arguably were fighting (defending a democratic government against rebels). For many ordinary Sierra Leoneans, this was the most important question that the case raised, along with a similar one: whether the cause should have excused the defendants from criminal responsibility entirely. People had vigorously debated these points on street corners and in homes since the defendants' indictment and arrest in March 2003.²⁰⁹ Instead of addressing these matters early in the judgment, however, the Appeals Chamber buried its analysis, on pages 166 through 173 of a 186-page opinion.²¹⁰ It spent just three sentences on whether the cause could nullify criminal responsibility entirely, summarizing the trial court's rejection of that argument. Although the defendants had not raised this issue on appeal, its importance to ordinary Sierra Leoneans, whom the court ostensibly was created to serve, would have justified a few pages of explanation of the relevant legal and philosophical principles.²¹¹ Finally, the court's discussion of sentence mitigation could have devoted a few paragraphs to explaining the philosophical principles underlying the precedents on which it relied, in language comprehensible to non-lawyers.

A far better example was set by the 2020 judgment of the United States Court of Appeals for the First Circuit in the case of Dzhokhar Tsarnaev. Tsarnaev and his brother committed one of the most notorious crimes in the recent history of Boston, where the First Circuit is based, setting off bombs that killed three and injured hundreds at the 2013 Boston Marathon.²¹² Tsarnaev was sentenced to death by the trial court. The First Circuit overturned the death sentence on appeal. Judge Rogerice Thompson, writing

209. See CRUVELLIER, *supra* note 133, at 6.

210. *Prosecutor v. Fofana*, Case No. SCSL-04-14-A, Judgment, ¶¶ 513–35 (SCSL Appeals Chamber May 28, 2008), <http://rscsl.org/Documents/Decisions/CDF/Appeal/829/SCSL-04-14-A-829.pdf> [<https://perma.cc/CB55-5L23>].

211. See *id.* ¶¶ 25–26 (summarizing the defendants' grounds for appeal).

212. *United States v. Tsarnaev*, 968 F.3d 24, 34 (1st Cir. 2020), *cert. granted*, 141 S. Ct. 1683 (U.S. Mar. 22, 2021) (No. 20-443); *id.* at 110-118 (describing Bostonians' reaction to the bombing). The opinion is available free on the First Circuit's website. *Id.*, at <http://media.ca1.uscourts.gov/pdf/opinions/16-6001P-01A.pdf> [<https://perma.cc/7CWK-2ZYQ>].

for the court, clearly appreciated that many victims, family members, and ordinary citizens might be distressed by any ruling in Tsarnaev's favor and could misunderstand a 182-page judgment (and 42-page partial concurrence) that addressed many complex legal and factual issues.²¹³ She made numerous decisions about content, organization, and style to help non-lawyers understand what the court was deciding and why, while still expounding its analysis of law and facts in full for legally trained readers. The opinion begins with a three-page summary that concludes with the points that journalists and citizens could most easily have misunderstood:

And just to be crystal clear: Because we are affirming the convictions . . . and the many life sentences imposed on those remaining counts (which Dzhokhar has not challenged), Dzhokhar will remain confined to prison for the rest of his life, with the only question remaining being whether the government will end his life by executing him.²¹⁴

The *Tsarnaev* opinion contains many similar sentences, footnotes, and paragraphs whose content and style speak to lay readers.²¹⁵ These represent an impressively thoughtful effort to explain the court's decision to the public and bolster its confidence in the judiciary's handling of this high-profile case. Other judges, including those on international criminal tribunals, should consider using similar techniques in decisions that may attract great public attention.

As a final step to facilitate local people's understanding of their decisions, international criminal tribunals should devote resources to translating judgments, official summaries, and press releases into the languages most widely read in the affected country. As noted above, the ICTY took six years to do this. The SCSL and ICC have been lucky to operate in languages widely spoken by local journalists in many of the countries they have investigated.²¹⁶

213. These page counts refer to the free version posted online by the court. *See id.*

214. *Id.* at 35.

215. *E.g., id.* at 35 ("A core promise of our criminal-justice system is that even the very worst among us deserves to be fairly tried and lawfully punished To help make that promise a reality, decisions long on our books say that a judge handling a case involving prejudicial pretrial publicity must . . ."); *id.* at 35 n.4 ("Remand" is legalese for . . .); *id.* at 42 ("And we last highlight the errors in the judge's crime-of-violence analysis (this is one of the most complex areas of American law, we must say—which is why even well-meaning judges *and* lawyers sometimes make mistakes.)"); *id.* at 42 ("We start with Dzhokhar's claims that . . . (we have a lot to go over, so please bear with us).").

216. The SCSL worked in English, Sierra Leone's official language. The ICC works in English and French, which are among the official languages of nine of the fifteen countries in which it is prosecuting atrocities. *See Situations Under Investigation*, INT'L CRIM. CT., *supra*

Translation is expensive, however, so it may be worthwhile only to translate summaries and press releases, not entire judgments.

By addressing questions of interest to the public in affected countries, and doing so in forms that are accessible to them and to journalists, ICT judges and the communication staff who support them can increase public understanding of what their courts decide and why, improve their odds of persuading people to embrace those conclusions, and thereby advance transitional justice goals.

4. *Positive Complementarity: Stimulating Domestic Prosecutions*

The widely discussed efforts by the ICC to stimulate atrocity prosecutions by national courts, as well as less well-known ones by the ICTY, require influencing national prosecutors and judges.²¹⁷ Late in its life, the ICTY formally transferred the cases of thirteen people it had indicted to national courts in the former Yugoslavia. It also handed off “[a] large number of files from cases that were investigated to different levels” by the ICTY prosecutor but did not lead to an ICTY indictment.²¹⁸ The ICC has claimed a more general mandate to engage in “positive complementarity” activities that aim to encourage, stimulate, and pressure national authorities to investigate, prosecute, and punish the international crimes within the ICC’s jurisdiction.²¹⁹ These activities include calling for such action in public statements and private meetings with national prosecutors and judges.²²⁰ Opening a “preliminary examination” into whether ICC crimes have been committed in the country can prompt domestic action, if national prosecutors see ICC involvement as implying that they have failed or they wish to pre-empt the ICC moving forward to indict specific suspects. For example, in 2018, ICC Prosecutor Fatou Bensouda threatened to open an investigation into Nigerian army crimes if national prosecutors did not.²²¹

note 69; *The World Factbook*, CIA, <https://www.cia.gov/the-world-factbook/> [https://perma.cc/EQ8L-XG36].

217. See generally CARSTEN STAHN & MOHAMED M. EL ZEIDY EDS., *THE INTERNATIONAL CRIMINAL COURT AND COMPLEMENTARITY: FROM THEORY TO PRACTICE* (2011); INT’L CRIM. CT. OFF. OF THE PROSECUTOR, *REPORT ON PRELIMINARY EXAMINATION ACTIVITIES* (2019), <https://www.icc-cpi.int/itemsDocuments/191205-rep-otp-PE.pdf> [https://perma.cc/TM9E-H6TG].

218. *Transfer of Cases*, ICTY, <https://www.icty.org/en/cases/transfer-cases> [https://perma.cc/9BJD-Z7RE].

219. See, e.g., INT’L CRIM. CT. ASSEMBLY OF STATES PARTIES, *REPORT OF THE COURT ON COMPLEMENTARITY* (2011), https://asp.icc-cpi.int/iccdocs/asp_docs/ASP10/ICC-ASP-10-23-ENG.pdf, at 2.

220. See Cavallaro & O’Connell, *supra* note 26, at 23–25.

221. See *id.* at 25.

These efforts consist of communication from the ICTs to national authorities, both informing and persuading. The former term captures ICTY prosecutors' handoff of evidence and indictments to their national counterparts. They also may have needed to persuade the national prosecutors of various points, for example that the evidence in each case was solid enough to support a successful prosecution. The ICC also sometimes shares evidence with national prosecutors, a relatively straightforward communication task.²²² Pushing them to act on it, though, involves persuasion, using both words and action.

National-level prosecution of atrocities sometimes requires support from the public or elites beyond prosecutors and judges. For example, it may be necessary to enact new legislation or defeat a proposed amnesty. Judicial actors may respond to pressure from the public, activists, or others. It may therefore be valuable for the ICC and other ICTs to communicate with these other actors as they attempt to promote prosecution in national courts.²²³

C. *Communication Opportunities for Truth Commissions*

Communication, especially persuasion, arguably is even more important for truth commissions than it is for international courts: commissions' very names emphasize their social goals, such as "truth," "reconciliation," and "reparation." One of truth commissions' main functions is to promote societal awareness of the nature, extent, causes, goals, and consequences (for society and individual victims) of the human rights violations within their mandates. They also recommend reforms to redress past violations and prevent future ones. These findings and recommendations have little impact unless they are embraced by large numbers of ordinary citizens and by elites such as policymakers. TRCs need to inform those constituencies of their conclusions and persuade them to embrace those conclusions.

This Section outlines the main tools that TRCs use to communicate, beyond those covered in Section A. These additional tools include public hearings (Subsection 1), the content of commissions' final written reports (Subsection 2), those reports' form (Subsection 3), and efforts to secure attention around the reports' release and ensure their wide dissemination (Subsection 4).

222. See HUMAN RIGHTS WATCH, PRESSURE POINT: THE ICC'S IMPACT ON NATIONAL JUSTICE 159 (2018) (noting that the ICC prosecutor identifies cases that national authorities can address), https://www.hrw.org/sites/default/files/report_pdf/ij0418_web_0.pdf [<https://perma.cc/Z7EE-FSY9>].

223. See, e.g., Cavallaro & O'Connell, *supra* note 26, at 26–28 (describing the ICC's communication with numerous groups in Colombia to support legal accountability).

1. Public Hearings

Public hearings with victims and perpetrators of human rights violations have become one of the most important means by which TRCs inform and persuade, since the South Africa TRC pioneered them in the late 1990s. 1,819 victims testified at its hearings,²²⁴ which “brought the voices of ordinary Africans into the mainstream public space in a way that was unprecedented in South Africa’s history.”²²⁵ At separate events, perpetrators seeking amnesty confessed publicly to torture, murder, kidnapping, and other crimes and were cross-examined by the commission. Finally, leading politicians, businesspeople, lawyers, clerics, doctors, journalists, and others testified on the contributions of their professional sectors and organizations to Apartheid-era violence in multi-day “institutional” hearings.²²⁶

Since then, public hearings have become nearly obligatory for truth commissions. They have been a primary focus of TRCs in Peru, Sierra Leone, Timor-Leste, and, more recently, The Gambia, Tunisia, and Colombia.²²⁷ Most deponents have been victims. No commission since South Africa’s has offered amnesty as an incentive for perpetrators to testify. In many countries some perpetrators volunteer, however, and generate enormous public interest.

TRC hearings can address victims’ needs, an important transitional justice goal, through communication with several kinds of audiences. Commissioners and others attending in person can acknowledge victims’ experiences through attentive listening, tears, murmurs of sympathy, and responsive comments. Commissioners sometimes express regret or apologize on behalf of the country, which some victims find meaningful.²²⁸ Although some of the value for victims of “telling their stories” may derive from the act

224. Hugo van der Merwe, *What Survivors Say About Justice: An Analysis of the TRC Victim Hearings*, in TRUTH AND RECONCILIATION IN SOUTH AFRICA, *supra* note 1, at 25.

225. Richard Ashby Wilson, *Humanity’s Histories: Evaluating the Historical Accounts of International Tribunals and Truth Commissions*, 20 POLITIX 31, 40 (2007).

226. See Audrey R. Chapman, *Truth Recovery Through the TRC’s Institutional Hearings Process*, in TRUTH AND RECONCILIATION IN SOUTH AFRICA, *supra* note 1, at 171–73.

227. See HAYNER, *supra* note 9, at 36, 40, 59; Julie Turkewitz, *Now Streaming on YouTube: Confessions From a Presidential Hit Squad in Gambia*, N.Y. TIMES (Aug. 31, 2019), <https://www.nytimes.com/2019/08/31/world/africa/gambia-truth-commission-yahya-jammeh.html> [<https://perma.cc/6YDW-P239>]; Tunisia: *Truth Commission Outlines Decades of Abuse*, HUMAN RIGHTS WATCH (Apr. 5, 2019), <https://www.hrw.org/news/2019/04/05/tunisia-truth-commission-outlines-decades-abuse> [<https://perma.cc/QY5X-4LUZ>]; Washington Off. on Latin Am. [WOLA], *A Review of How Colombia’s Truth Commission is Advancing*, COLOMBIA PEACE: MONITORING PROGRESS IN PEACE DIALOGUES (Apr. 6, 2020), <https://colombiapace.org/advancing-truth-commission/> [<https://perma.cc/7UWM-EGAL>]. For a list of commissions that had held public hearings up to 2009, see WIEBELHAUS-BRAHM, *supra* note 9, at 160 tbl. 8.1.

228. See *supra* text accompanying note 40 (discussing the value of official acknowledgment).

of expression itself, much of it likely depends on them knowing that someone who matters to them is listening. Giving victims a live, respectful audience may be one of the most vivid ways to communicate that they are being heard.²²⁹

The impact of hearings on the wider public may be even more significant. Hearings almost certainly reach far more people than commissions' final reports. They also may convey key messages more vividly and compellingly. In South Africa, each of the hundreds of hearings was attended by dozens to hundreds of people. The Sunday-night television show TRC Special Report, which summarized each week's developments, was very popular: it reached ten percent of adults with access to television each week during the commission's first year, and over four percent during its second.²³⁰

South Africa was hardly unique: truth commission hearings in many other countries have drawn rapt attention. Television and radio stations often broadcast them live, as they did in South Africa. "[I]n Gambia, after years of silence and secrecy left people hungry for information, taxi drivers crowd[ed] around TV sets, glued to the testimony. Vendors in market stalls listen[ed] through earbuds. Even supporters of the former leader said that they were hooked."²³¹ Reporters summarize TRC hearings in news stories. Commissions now post video and audio clips on their websites and social media, where citizens circulate them further. The Gambia's TRC set up a live feed that streamed directly through YouTube and Facebook.²³²

Hearings can inform citizens about the nature, scale, and impact of atrocities; how to prevent them recurring; and sometimes who committed them. They may have little effect on the views of people who have already made up their minds or feel impugned by the commission—such as white South Africans, many of whom dismissed their TRC.²³³ Other listeners may be more open-minded, however. Many may have been unaware of the precise nature and scale of horrors that occurred in their prisons and forests, even if they had a vague awareness that terrible things were happening. Testimony by police or soldiers who committed atrocities, or bureaucrats who maintained the system that facilitated them, can convince skeptical fellow citizens that the

229. See HAYNER, *supra* note 9, at 147–52. We do not have enough research to be confident how much emotional benefit victims derive from testifying to truth commissions. There also is evidence that testifying to truth commissions can be traumatic for some victims. *Id.* at 147. Cf. O'Connell, *supra* note 40, at 328–35 (discussing psychological risks to victims of testifying in court).

230. See Gunnar Theissen, *Object of Trust and Hatred: Public Attitudes Toward the TRC*, in TRUTH AND RECONCILIATION IN SOUTH AFRICA, *supra* note 1, at 191, 201–02.

231. Turkewitz, *supra* note 227.

232. *Id.*

233. Theissen, *supra* note 230, at 196 (reporting that 63.3% of white respondents to a 1995 national survey did not believe the TRC would “be able to find out what really happened with human rights violations”).

events occurred. They also can provide insights about how systems operated and thus what reforms might prevent similar violations in the future.

Designing and running hearings to promote various transitional justice goals can be tricky. Selecting content and messages raises the most basic questions truth commissions must resolve: what is true and which truths should the commission emphasize? The Peru TRC interviewed over 1,000 rebels but chose not to have any testify at public hearings.²³⁴ This represented a clear decision that allowing rebels to express their perspectives on the conflict in public, under the commission's auspices, would not advance the TRC's goals.

Commissions cannot fully control what occurs in their hearings. The human drama that gives these events power can take unexpected directions. At one hearing in South Africa, the commission showed a gruesome police video, but family members of murdered anti-Apartheid activists interrupted. They wailed in distress, threw a shoe at the officers (who were present), and forced the suspension of the proceedings. By seizing the spotlight, they "asserted themselves as active agents of performed spectacle [in the hearing hall] rather than passive consumers of the video spectacle" that the commission had planned.²³⁵

Even when hearings go as expected, their impact may not be straightforward. Hard-hitting testimony that moves one audience—such as the ignorant—may alienate another—such as family members of perpetrators. The South Africa TRC gave a platform to victims from multiple sides: white civilians injured by ANC terrorist attacks and victims of the Apartheid government. Such an even-handed approach could bolster a commission's credibility and help it bring the country together. Alternatively, it could alienate everyone and feed a false narrative of equal victimhood. TRCs therefore must understand the views of key groups and think sophisticatedly about how to influence them.

Tensions can arise between communication to victim witnesses and to wider audiences. During Apartheid, South African activist Yvonne Khutwane was briefly detained by government security forces, then ostracized by friends who believed she had agreed in jail to inform on them.²³⁶ When she testified to the TRC years later, Khutwane tried to emphasize the impact of her ostracism, but the commission's evidence leader repeatedly pushed her to focus instead on a sexual assault she had suffered in detention.²³⁷ The commission used Khutwane's appearance to raise public awareness of the

234. Heilman, *supra* note 52.

235. Cole, *supra* note 3, at 184.

236. FIONA C. ROSS, BEARING WITNESS: WOMEN AND THE TRUTH AND RECONCILIATION COMMISSION IN SOUTH AFRICA 85 (2003).

237. *Id.* at 83–84.

prevalence of sexual violence and its use as a tool of repression. By doing so, however, it failed to acknowledge what Khutwane's many experiences meant *to her*.²³⁸ Since all truth commissions use individual examples to illustrate larger patterns, such instrumentalization of personal experience is unavoidable, but commissions have an ethical obligation to try to reduce its detrimental impact on the individuals they use.²³⁹ Hearings sharpen this tension: audiences may be more affected by such examples when they are presented by the victim themselves in a live hearing than when the commission describes them in a written report, but the risk that the victim feels silenced or manipulated may be greater.

Skillfully managing the many challenges that hearings raise constitutes one of a TRC's most important communication tasks, as its hearings are likely to reach more people, and affect each one more powerfully, than any other communication method at the commission's disposal.

2. *Final Reports: Substance*

Until South Africa, the primary means by which truth commissions communicated their findings and recommendations to the general public and specific audiences was through a final written report. Such reports remain commissioners' most precise form of communication. Whether, and how much, these reports advance transitional justice goals depend greatly on commissioners' decisions about what substantive conclusions to reach.²⁴⁰

238. *See id.* at 88–89 (arguing that Khutwane's testimony was “not an unmediated flow of words that described her experience but was marked and shaped by” the evidence leader's interventions).

239. The South Africa TRC's staff chose which victims would testify at each hearing based partly on the “degree to which [their] story represented the types of violence” that had occurred in the community where the hearing was held. Catherine M. Cole, *Reverberations of Testimony: South Africa's Truth and Reconciliation Commission in Art and Media*, in *TRANSITIONAL JUSTICE, CULTURE, AND SOCIETY*, *supra* note 11, at 396, 400; *see also* BORAINÉ, *supra* note 83, at 109.

240. We know little about truth commissions' internal deliberations on the substance of their findings and recommendations or on the aspects of expression considered in the next Subsection. Reflections by commissioners and staff members contain a few nuggets. *See, e.g.*, Chris Mahony & Yasmin Sooka, *The Truth about the Truth: Insider Reflections on the Sierra Leone Truth and Reconciliation Commission*, in *EVALUATING TRANSITIONAL JUSTICE: ACCOUNTABILITY AND PEACEBUILDING IN POST-CONFLICT SIERRA LEONE* 35 (Kirsten Ainley, Rebekka Friedman & Chris Mahony eds., 2015); Villa-Vicencio & Verwoerd, *supra* note 93, at 279 (on South Africa); Tomuschat, *supra* note 74, at 240 (on Guatemala); Buergenthal, *supra* note 92, at 523–25, 541 (on El Salvador).

An important exception is Emilio Crenzel's invaluable account of CONADEP's drafting process, based on the commission's archives and interviews with commissioners and staff. EMILIO CRENZEL, *MEMORY OF THE ARGENTINA DISAPPEARANCES: THE POLITICAL HISTORY*

Truth commissions have considerable freedom to take their ultimate goals into account as they choose factual findings, interpretations, and recommendations. The complex situations they are mandated to study include numerous “truths” that are supported by reliable evidence. No commission can effectively communicate all of those truths. “Given the magnitude of their task and the limitations of time and resources, truth commissions have to be very selective in their approach and what they choose to emphasize. . . . In many ways, truth commissions ‘shape’ or socially construct rather than ‘find’ the truth.”²⁴¹ When deciding which truths to articulate, and which to emphasize most strongly, truth commissioners can choose strategically to advance their institutions’ goals, as long as they carefully consider the ethical obligations discussed previously in Part II.²⁴²

Determining where those limits fall and what choices within them will best advance a particular commission’s goals is difficult—even without considering that some goals may be in tension with each other.²⁴³ In Chile’s transition from the Pinochet dictatorship, “reconciliation” was a code word for ignoring the regime’s human rights violations; the “National Commission for Truth and Reconciliation” (the Rettig Commission) thus could not achieve both of its titular goals. Argentina’s CONADEP both acknowledged left-wing terrorism and characterized the right-wing military’s campaign of torture and disappearances as “a terrorism far worse than the one they were combatting”—yet was denounced by both human rights activists and military supporters.²⁴⁴

OF *NUNCA MÁS* 65–71 (2012). CONADEP made some decisions collectively, including about how to reach its intended audience and persuade it. *Id.* at 66–67. Chapters were drafted by one commissioner, then edited by the others. *Id.* at 67–68. They thought extensively about their public audience: “The style of the report was strongly influenced by the profile of the reader imagined by CONADEP.” *Id.* at 67. For example, because the commissioners “believed that large sectors of society were still unaware and skeptical” that people had been disappeared, they included photographs of the secret prisons where the disappeared had been held and extensive quotations from survivors of the centers and family members of those killed. *Id.* at 66–67.

241. Audrey R. Chapman & Patrick Ball, *The Truth of Truth Commissions: Comparative Lessons from Haiti, South Africa, and Guatemala*, 23 HUM. RTS. Q. 1, 7–8 (2001).

242. ICTs have less freedom, as they must determine the guilt of individual defendants through a strictly objective analysis of whether the evidence proves them guilty beyond a reasonable doubt. They have more flexibility in sentencing. For example, the ICTY and ICTR took into account social goals such as deterrence and reconciliation when setting the terms of imprisonment for some defendants. See ROBERT CRYER ET AL., AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE 496–98 (2d ed. 2010).

243. See BAKINER, *supra* note 9, at 70–81; see generally Bronwyn Anne Leebaw, *The Irreconcilable Goals of Transitional Justice*, 30 HUM. RTS. Q. 95 (2008).

244. *NUNCA MÁS*, *supra* note 46, at 1; see Greg Grandin, *The Instruction of Great Catastrophe: Truth Commissions, National History, and State Formation in Argentina, Chile, and Guatemala*, 110 AM. HIST. REV. 46, 51–54 (2005).

The intellectually thin, even incoherent, content of the South Africa TRC's report almost certainly contributed to its lack of impact on South Africans' understanding of their past. The commission offered a pedantic typology of four kinds of "truth" to justify its reluctance to take sides, such as on whether racism and white economic self-aggrandizement had led to murder and torture by the Apartheid state. The report focused on individual acts of violence, neglecting to connect them to broader patterns of repression.²⁴⁵ It also "[f]ail[ed] to understand apartheid as a system," "deal with racism adequately," or "identify intellectual authors of apartheid crimes."²⁴⁶ The report was "a sloppy, shambolic product comprised of 3,500 jumbled, barely edited pages with no coherent chronology and no index."²⁴⁷ No section clearly summarized the commission's findings on the extent, nature, causes, and impact of the violent human rights violations it had been mandated to examine. Indeed, on many issues it is unclear what, if anything, the commission actually concluded, because relevant findings are scattered across the report and some seem to contradict each other.²⁴⁸

Other commissions have been more decisive and expressed their conclusions clearly, aiming to shift public and elite perceptions of the past. Guatemala's TRC boldly declared that the military had engaged in "genocide" against the country's indigenous people.²⁴⁹ CONADEP opted to assemble documentation of individual cases of violence to prove that the military had engaged in systematic repression, but to refrain from exploring the military's purposes or the social and political factors that enabled the atrocities.²⁵⁰ The Timor-Leste TRC chose to serve the goal of building a new country by telling

245. Audrey R. Chapman & Patrick Ball, *Levels of Truth: Macro-Truth and the TRC*, in TRUTH AND RECONCILIATION IN SOUTH AFRICA, *supra* note 1, at 145, 161.

246. *Id.*; *see id.* at 161–66 (elaborating on these critiques); *accord* Wilson, *supra* note 225, at 40.

247. Wilson, *supra* note 225, at 40. Wilson's page count corresponds to the total length of the first six volumes of the report. TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA, *supra* note 4, at vol. 1–6. He may have omitted Volume 7 (976 pages) because it consists entirely of capsule descriptions of 19,050 individual cases or human rights violations that the commission documented, with no narrative. *Id.* at vol. 7, pgs. 1, 3.

248. Chapman & Ball, *supra* note 241, at 31–32. The report's incoherence and failure to address key questions seem to reflect both unresolved disagreements among the commissioners about various substantive questions and a drafting process that left the content of different chapters to individual commissioners, with little editing to resolve their inconsistencies. *See id.* at 33 (describing the report as a "compilation of essays written by individuals"). Former TRC staffers Villa-Vicencio and Verwoerd claim vaguely that commissioners discussed and came to agreement on the content of different chapters "as much as possible." Villa-Vicencio & Verwoerd, *supra* note 93, at 283.

249. *See* COMISIÓN PARA EL ESCLARECIMIENTO HISTÓRICO, 5 GUATEMALA: MEMORIA DEL SILENCIO 48–51 (1999).

250. CRENZEL, *supra* note 240, at 77–78; *see supra* note 240 (detailing Crenzel's findings on how CONADEP tailored the content of its report to shape the views of its intended audience).

an inspiring story, of an increasingly united people that struggled for decades to achieve independence from Portuguese and then Indonesian colonizers.²⁵¹ There has been little research on the degree to which elite and mass audiences have embraced truth commissions' conclusions, and even less on the degree to which changes in their views have contributed to transitional justice goals. It seems clear, however, that if truth commissions wish to advance such goals, they must start by rigorously determining what is true and then strategically choosing which of those truths to emphasize.

3. *Final Reports: Expression*

Truth commissions need to communicate their findings and recommendations compellingly if they wish the public and elites to embrace them. Like court decisions, truth commission final reports are likely to be read in full by only a few specialists, such as academics and government officials who focus on transitional justice. Key factual findings, assessments of their implications, and recommendations may interest a much wider audience, however. TRCs should craft their final reports so that they are accessible to these potential readers.

Many commissions' reports, unfortunately, underachieve their communication potential and receive little attention from the public, media, or policymakers. Like the South Africa report, they often run to thousands of pages of facts, analysis, and interpretation of complex events.²⁵²

Final reports do tend to be more accessible, in organization, content, and style, than ICT judgments, but they vary. The same principles of clear writing apply.²⁵³ The best reports summarize key findings and recommendations in the first chapter, with the most important points up front. Readers of *Nunca Más* knew CONADEP's key conclusions within a few pages.²⁵⁴ The Canada TRC was even more efficient: it took just 200 words on the first page of its summary volume to acknowledge multiple forms of genocide against the country's indigenous people.²⁵⁵ The following 381 pages summarized the commission's activities, historical findings, and recommendations for reparation and reconciliation.²⁵⁶ The Guatemala commission:

251. David Webster, *History, Nation, and Narrative in East Timor's Truth Commission Report*, 80 PAC. AFFS. 581, 582–83 (2007-08).

252. See *supra* text accompanying note 247.

253. See *supra* Subsection IV.B.3.

254. See NUNCA MÁS, *supra* note 46, at 1–3.

255. TRUTH AND RECONCILIATION COMMISSION OF CANADA, HONOURING THE TRUTH, RECONCILING FOR THE FUTURE (2015), <https://publications.gc.ca/site/eng/9.800288/publication.html> [<https://perma.cc/WY6P-WS7A>], at 1.

256. See generally *id.*

introduces their work with unequivocal conclusions. On 25 February 1999, the report was published as a ninety-two page recommendations and conclusions volume, of which more than 40,000 copies were immediately distributed in Spanish and English. The first paragraph includes broad statistical findings In paragraph two, the [commission] estimates that more than 200,000 people were killed, and in paragraph three, they conclude that “the violence was fundamentally directed by the State against the excluded, the poor and above all, the Mayan people, as well as against those who fought for justice and greater social equality.”²⁵⁷

In addition, an appendix provided over one hundred “illustrative cases” of human rights violations, each five to ten pages long.²⁵⁸ These gave specific examples of violence and its causes and context, which NGOs, journalists, and others could use in subsequent efforts to educate, promote dialogue, or stimulate measures to prevent repetition.²⁵⁹

Free-standing summary versions of TRC reports are a valuable tool for disseminating commissions’ key findings and recommendations. Several commissions have shown impressive creativity in bringing their work to the public, starting with the first truth commission, CONADEP: *Nunca Más* is actually a condensed version of the commission’s multi-volume full report to President Raúl Alfonsín.²⁶⁰ The widely distributed Guatemalan volume, described above, was also a summary; the full report filled twelve volumes.²⁶¹ The Peru TRC lobbied the government to extend its mandate so its staff could create both a book-length version of its 5,500-plus-page report, emulating *Nunca Más*, and a bilingual, 40-page “popular” version.²⁶² The Sierra Leone

257. Chapman & Ball, *supra* note 241, at 32.

258. Elizabeth A. Oglesby, *Historical Memory and the Limits of Peace Education: Examining Guatemala’s Memory of Silence and the Politics of Curriculum Design*, in *TEACHING THE VIOLENT PAST: HISTORY EDUCATION AND RECONCILIATION* 175, 195 (Elizabeth A. Cole ed., 2007).

259. “An illustrative case of a kidnapped Coca-Cola worker, for instance, gives background on the labor movement, and illustrative cases of massacres in the highlands show the history of land struggles these communities faced and how they organized.” *Id.*

260. See *Truth Commission: Argentina*, U.S. INSTITUTE OF PEACE, <https://www.usip.org/publications/1983/12/truth-commission-argentina>. [<https://perma.cc/JK9L-BZH9>].

261. Wilson, *supra* note 225, at 38.

262. See HAYNER, *supra* note 9, at 38; COMISIÓN DE ENTREGA DE LA COMISIÓN DE LA VERDAD Y RECONCILIACIÓN [COMMISSION FOR DELIVERY OF THE TRUTH AND RECONCILIATION COMMISSION], HATUN WILLAKUY, VERSIÓN ABREVIADA DEL INFORME FINAL DE LA COMISIÓN DE LA VERDAD Y RECONCILIACIÓN PERÚ [GREAT STORY, SHORT VERSION OF THE FINAL REPORT OF THE TRUTH AND RECONCILIATION COMMISSION PERU] (2004) (Peru), <http://repositorio.pucp.edu.pe/index/handle/123456789/110702> [<https://perma.cc/4QZA-6PZ9>]. The full version of the Peru TRC’s report also is available online.

TRC provided a 22-page executive summary of its 1,800 page, three-volume report. It also collaborated with UNICEF and the United Nations mission in Sierra Leone to produce a 60-page edition for children, illustrated by children's drawings of war and peace.²⁶³ A third version for secondary school students blended text with graphic novel panels.²⁶⁴ The International Center for Transitional Justice collaborated with the government of Timor-Leste to create a comic book version of *Chega!*, the report of that country's TRC, and print 7,000 copies for use in schools.²⁶⁵

4. *Final Reports: Release and Dissemination*

An accessibly written final report or summary packed with compelling content will have no impact if people are not interested in reading it or cannot find a copy. Neither interest nor access can be taken for granted.

The unveiling of the final report provides a last set of opportunities for a truth commission to attract attention, convey its findings and recommendations to the general public and specific constituencies, and encourage those people to embrace them. The media can amplify or dampen these efforts, like most transitional justice communication. Human rights groups, religious institutions, and other civil society organizations often play key roles in disseminating commission reports as well as lobbying governments to implement their recommendations.²⁶⁶ A commission's report may be consulted for years, even decades, and those initially resistant to its conclusions may grow more receptive (or less). Once the commission has disbanded, however, it will have no effect on those dynamics.

Many reports are released through events that highlight their main themes and provide opportunities for others to endorse them. Chilean President

COMISIÓN DE LA VERDAD Y RECONCILIACIÓN (PERÚ) [TRUTH AND RECONCILIATION COMMISSION (PERU)], INFORME FINAL [FINAL REPORT] (2003) (Peru), <http://cverdad.org.pe/ifinal/index.php> [<https://perma.cc/A4D9-Y3RT>].

263. SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION, TRUTH AND RECONCILIATION COMMISSION REPORT FOR THE CHILDREN OF SIERRA LEONE: CHILD FRIENDLY VERSION (2004), https://www.sierraleonetrc.org/index.php/view-the-final-report/popular-reports/item/truth-and-reconciliation-commission-report-for-the-children-of-sierra-leone?category_id=16 [<https://perma.cc/WQG5-RSCG>].

264. MOHAMED SHERIFF & ELVIRA M. J. BOBSON-KAMARA, TRC REPORT: A SENIOR SECONDARY SCHOOL VERSION (2005), https://www.sierraleonetrc.org/index.php/view-the-final-report/popular-reports/item/trc-report-a-secondary-school-version?category_id=16 [<https://perma.cc/9QQV-VUVF>].

265. Burgess & Wandita, *supra* note 173, at 161. Salvadoran NGOs created a comic book version of their TRC's report, too. WIEBELHAUS-BRAHM, *supra* note 9, at 84.

266. The final reports of some TRCs, including in Nepal, Sri Lanka, and Haiti, would not even have been released without pressure from civil society actors on governments who wanted to keep them secret. BAKINER, *supra* note 9, at 100.

Patricio Aylwin unveiled the Rettig Commission report in a nationally televised address in 1991. His voice broke as he endorsed its findings:

The state agents caused so much suffering . . . while the society failed to react properly. . . . This is why I dare, in my position as President of the Republic, to assume the representation of the whole nation and, in its name, to beg forgiveness from the relatives of the victims.²⁶⁷

Some commissions convene a formal, solemn ceremony to deliver their report. Guatemala's event suggested both the value of the TRC's support for the country's subordinated indigenous people and the intransigence of its ruling class:

The [commission] presented its findings in Guatemala's National Theater in early 1999 to a front row of military and government officials and an overflowing crowd made up of victims, their relatives, and members of human rights and Mayan organizations, many of whom were survivors of political movements decimated by state repression. Chief Commissioner Christian Tomuschat summarized the [commission's] conclusions. . . . "[T]he magnitude and irrational inhumanity of the violence" [resulted from] the "structure and nature" of Guatemalan society[.] [T]he army carried out a "blind anticommunist crusade, . . . resulting in a loss of all human morality." The audience greeted the speech with tears and deafening applause. . . . Guatemala's president refused to climb the stage to accept the report, sitting instead, along with government officials and military officers, in stunned silence.²⁶⁸

Peru's TRC first presented its report to the government in Lima. The next day, it traveled to Ayacucho, the indigenous-dominated region that had suffered the most atrocities, for a second launch that included the unveiling of a plaque in memory of the victims.²⁶⁹

Commissioners should use the occasion of the end of their institution's work to secure interviews and stories on radio, on television, and in print media. Reiterating a few key messages will maximize their impact. Commissioners should agree which factual findings, interpretations, and

267. LUIS RONIGER & MARIO SZNAJDER, *THE LEGACY OF HUMAN RIGHTS VIOLATIONS IN THE SOUTHERN CONE: ARGENTINA, CHILE, AND URUGUAY* 101 (1999).

268. Grandin, *supra* note 244, at 66.

269. Press Release, Truth and Reconciliation Commission of Peru, TRC Final Report Was Made Public on August 28th 2003 at noon, (August 28, 2003), <https://www.cverdad.org.pe/ingles/pagina01.php> [<https://perma.cc/ANF2-J3ML>].

recommendations are most important for citizens and elites to remember and, ideally, adopt. Repeating these talking points in every interview and public appearance will increase the chances they are heard, remembered, and believed. Joint appearances by commissioners with contrasting political backgrounds can make their conclusions more credible with a range of audiences.²⁷⁰

The realization that the TRC is ending can attract the public to events. Commissioners, staff, or NGO partners can present their conclusions to schools, universities, community associations, victims groups, and religious congregations. The Sierra Leone TRC and the NGO Witness produced an hour-long video that “convey[ed] key points of the report through a combination of testimony from public hearings and archival materials.”²⁷¹ NGOs showed it at events around the country.²⁷²

Creative arts can engage the public—and enlist their talents to advance transitional justice. “To Be Remembered,” a photography exhibition mounted by the Peru TRC, drew over 18,000 visitors in eighty days.²⁷³ The Recovery of Historical Memory Project in Guatemala, an unofficial truth commission that preceded the official Commission for Historical Clarification, presented its findings in community workshops that included skits in indigenous languages.²⁷⁴ Young and old Sierra Leoneans contributed poems, drawings, paintings, and three-dimensional artworks about their wartime experiences and hopes for the future to their TRC’s National Vision for Sierra Leone project. The commission’s exhibit of their work at the National Museum drew the country’s president and thousands of other visitors.²⁷⁵

270. The chairs of the United States’ commission on the September 11, 2001, terrorist attacks employed this practice. See Christopher Kojm & Adam Klein, *Bipartisan Investigations: How the 9/11 Commission Did It*, LAWFARE BLOG (Mar. 27, 2017, 1:09 PM), <https://www.lawfareblog.com/bipartisan-investigations-how-911-commission-did-it> [<https://perma.cc/DH3U-2T59>].

271. KIRSTEN MCCONNACHIE, INT’L CTR. FOR TRANSITIONAL JUST. & CDD-GHANA, TRUTH COMMISSIONS AND NGOS: THE ESSENTIAL RELATIONSHIP 34 (2004).

272. *Our partners in Sierra Leone*, WITNESS BLOG, https://blog.witness.org/2005/05/our_partners_in/ [<https://perma.cc/JDP3-698F>].

273. MCCONNACHIE, *supra* note 271, at 34.

274. *See id.* at 30.

275. *See* TRUTH AND RECONCILIATION COMMISSION OF SIERRA LEONE, 3B WITNESS TO TRUTH: REPORT OF THE SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION 499–509 (2004). Artemis Christodoulou conceived and directed the National Vision project. *See* Pria Anand, *Truth and Reconciliation*, NEW J. (Dec. 1, 2007), <http://www.thenewjournalat Yale.com/2007/12/truth-and-reconciliation/> [<https://perma.cc/MQD3-EKFD>]. In 2004, while scouting exhibition sites around Sierra Leone, Ms. Christodoulou suffered severe injuries in an automobile accident. *Id.* She contributed importantly to public participation in transitional justice in Sierra Leone and surely would have done so in many other countries had her career not been cut short.

Finally, the text of TRC reports, including popular versions, should be as accessible as possible to citizens and the media, ideally in perpetuity.²⁷⁶ Active, organized efforts to distribute them are ideal; in Timor-Leste distribution was part of the mandate of the government's Post-CAVR (TRC) Technical Secretariat.²⁷⁷ The United Nations provided tens of thousands of copies of the Guatemala TRC's conclusions and recommendations to schools, libraries, and NGOs, on top of the 42,000 the commission distributed itself.²⁷⁸ The publishing arm of the University of Buenos Aires, a public institution, has kept *Nunca Más* in print since its release in 1984.²⁷⁹ If a report is not posted on a government website—as South Africa's report is now²⁸⁰—then a trustworthy foundation or NGO may be permitted to post it, as the Open Society Institute for West Africa has done with Sierra Leone's.²⁸¹ Electronic copies, which cost nothing to produce, should be free, and the cost of hard copies should be as low as possible.²⁸²

V. SEEKING SUCCESS: SOURCES OF EFFECTIVE COMMUNICATION

The previous Part revealed various factors that influence transitional justice institutions' effectiveness in informing and persuading domestic audiences. This Part synthesizes those insights into three categories. The leaders, staff, and supporters of truth commissions and international criminal tribunals must recognize the importance of communication and invest in it, as Section A explains. They must muster specific human, material, and other

276. See Felix Odartey-Wellington & Amin Alhassan, *Disseminating the National Reconciliation Commission Report: A Critical Step in Ghana's Democratic Consolidation*, 10 AFR. J. POL. SCI. & INT'L REL. 34, 38 (2016) (arguing that mass distribution of the Ghana TRC report is necessary to achieve the commission's goals, including accountability and acknowledging victims).

277. Burgess & Wandita, *supra* note 173, at 160.

278. Chapman & Ball, *supra* note 241, at 36.

279. See *Nunca Más*, *supra* note 8.

280. See *The TRC Report*, TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA, <https://www.justice.gov.za/trc/report/> [<https://perma.cc/5KKD-WTK4>].

281. See *Witness to Truth*, SIERRA LEONE TRUTH AND RECONCILIATION COMMISSION, <https://www.sierraleonetr.com/> [<https://perma.cc/5PMK-JSVQ>].

282. No country should follow South Africa in granting exclusive distribution rights for the first years after the report's publication to a private company that charges an exorbitant price. See Cole, *supra* note 3, and accompanying text. Ghana's government did barely better, only posting the executive summary of its TRC's report online and eventually allowing the website to become inaccessible. Odartey-Wellington & Alhassan, *supra* note 276, at 40. There are other notable distribution failures. Chile's government printed tens of thousands of copies of the 1991 Rettig Commission report, but a year later they were languishing in a warehouse due to fears the report would exacerbate divisions in society. See WIEBELHAUS-BRAHM, *supra* note 9, at 55. The government of El Salvador, unhappy with its truth commission's conclusions, made no effort to distribute the report. *Id.* at 84.

resources, described in Section B. Section C acknowledges the difficulty of influencing local elites and citizens and what we reasonably can expect courts and commissions to achieve.

A. *Buy-In*

To communicate effectively, transitional justice institutions must start by appreciating the importance of influencing how local people think. This awareness has been rare, although it may be growing. Once achieved, it must translate into action. Tribunal judges and prosecutors, truth commissioners, and their staff need to start by considering how their work can advance their institutions' ultimate goals, such as helping victims and preventing the recurrence of atrocities. As Part III demonstrated, most of the ways they can contribute involve changing domestic audiences' knowledge and views. The institutions' leaders and staff therefore need to figure out how their institutions can inform and persuade and their own individual roles.

Some in international criminal tribunals deny that they should even consider ultimate goals.²⁸³ ICTY President Fausto Pocar, for example, told a researcher in 2007 that "the ICTY was entrusted with prosecuting and holding trials for the main perpetrators . . . and that's the only task."²⁸⁴ Although he acknowledged that the UN Security Council may have hoped the court would contribute to other goals, such as "peace, stability and reconciliation,"²⁸⁵ Pocar argued that it could not pursue such "political" aims, but was limited to "deal[ing] with cases as *any other court* would do."²⁸⁶ In 2020, the Independent Expert Review of the ICC reported "a sense in the Court that States Parties do not recognise that the Court was created by the Rome Statute and that its role is to administer justice, not to achieve policy ends."²⁸⁷

Even court leaders and staff who take a broader view of their institutions' goals may pay too little attention to their impacts on people in affected countries and invest too little communicating with them. The ICC published a Strategic Plan for Outreach in 2006, but failed to implement it.²⁸⁸ An ethnographic study of the ICTR concluded: "What Rwandan 'locals' thought

283. See CLARK, *supra* note 11, at 42–43.

284. DIANE F. ORENTLICHER, *SHRINKING THE SPACE FOR DENIAL: THE IMPACT OF THE ICTY IN SERBIA* 38 (2008).

285. *Id.*

286. ORENTLICHER, *supra* note 20, at 103 n.81 (emphasis added).

287. GOLDSTONE ET AL., *supra* note 107, at 312.

288. *Id.* at 126; INT'L CRIM. CT. ASSEMBLY OF STATES PARTIES, *STRATEGIC PLAN FOR OUTREACH OF THE INTERNATIONAL CRIMINAL COURT* (2006), https://www.icc-cpi.int/NR/rdonlyres/FB4C75CF-FD15-4B06-B1E3-E22618FB404C/185051/ICCASP512_English1.pdf, at 3.

about the ICTR appears to have been of marginal concern to ICTR officials.”²⁸⁹

Pocar and those who share his view are mistaken: the role of the ICC, ICTY, ICTR, and other international criminal tribunals *is* to achieve policy ends. States, human rights activists, and victims did not labor for years to create those institutions merely so they would investigate, try, and punish a few of the tens of thousands of perpetrators of atrocities in the countries within their jurisdictions.²⁹⁰ International criminal tribunals are not like “any other court,” in Pocar’s words: unlike national courts, they were created to contribute to complex political and social change.²⁹¹

Truth commissioners and their staff seem less resistant to the idea that their specific tasks—taking victim statements, holding hearings, writing reports—are means to advance ambitious goals.²⁹² For example, the El Salvador TRC’s commissioners took into account their institution’s ultimate purposes as they made major substantive decisions; among other things, they pondered whether naming perpetrators in their report would advance or impede national reconciliation in the long run.²⁹³ Many other TRC commissioners and staff, however, like many court officials, fail to see that contributing to transitional justice goals requires influencing ordinary people and elites.²⁹⁴

This lack of awareness leads truth commissions and international courts to devote insufficient effort to affecting those audiences’ thinking. They give such communication considerations too little weight in substantive decisions. Their written outputs—indictments, judgments, final reports—connect only

289. NIGEL ELTRINGHAM, GENOCIDE NEVER SLEEPS: LIVING LAW AT THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA 13 (2019).

290. The ICTY tried 109 defendants, the ICTR seventy-five, and the ICC, SCSL, and ECCC fewer than a dozen each. *Key Figures of the Cases*, ICTY, <http://www.icty.org/en/cases/key-figures-cases> (last visited Sept. 2021) (detailing figures for the ICTY); *Key Figures of Cases*, U.N. INT’L RESIDUAL MECHANISM FOR CRIM. TRIBUNALS, <http://unictr.irmct.org/en/cases/key-figures-cases> (last visited Sept. 2021) (detailing figures for the ICTR); *Cases*, INT’L CRIM. CT., <https://www.icc-cpi.int/Pages/cases.aspx> (last visited Sept. 2021); *Residual Special Court for Sierra Leone*, *supra* note 67; *Case Load*, EXTRAORDINARY CHAMBERS IN THE CTS. OF CAMBODIA, <https://www.eccc.gov.kh/en/case-load> (last visited Sept. 2021). The ICC and ECCC remain in operation.

291. *See supra* Part III; Cavallaro & O’Connell, *supra* note 26, at 8–9 and sources cited therein.

292. These goals often are set out in the instrument that creates the commission. *See* HAYNER, *supra* note 9, at 23.

293. Buergenthal, *supra* note 92, at 522.

294. *See* Rolando Cobián & Félix Reátegui, *Toward Systemic Social Transformation: Truth Commissions and Development*, in TRANSITIONAL JUSTICE AND DEVELOPMENT: MAKING CONNECTIONS 142, 152 (Pablo de Greiff & Roger Duthie eds., 2009) (noting that truth commissions had “yet to gain clarity on all the practical consequences of being part of a project of substantive and lasting change”).

with narrow audiences. Leaders invest too little time and energy in communication activities such as meeting the media and the public. Too many imagine that their indictments, judgments, hearings, and reports “speak for themselves.”²⁹⁵ To the extent they realize their institutions need to communicate, they think they can leave that largely to specialists, such as spokespeople and outreach staff.

The politicians, civil servants, and diplomats who create, fund, and oversee truth commissions and international courts can remedy this situation, by choosing institutional leaders who embrace transitional justice goals and recognize that they need to influence domestic audiences to advance them. Unfortunately, these overseers, too, tend to miss the importance of connecting with local people. For example, at least until 2002, the ICTY outreach program received no funding from the court’s core, UN-funded budget; its reliance on donations reflected that “the tribunal’s impact on the region [was] of marginal interest to UN policymakers.”²⁹⁶ The SCSL’s pathbreaking outreach unit also relied on donations, because the court’s funders saw it as non-essential and excluded it from the regular budget.²⁹⁷ Most recently, the budget of the ICC’s outreach program, too, has been constrained by the position of several member countries that outreach is not a “core” activity of the court.²⁹⁸

B. Resources

Effective communication requires a variety of resources, in addition to leaders and staff who appreciate its importance. Quantity is one problem. As just noted, communication-specific functions are often underfunded and understaffed. The ICC spends a pitiful €50,000 per year on outreach.²⁹⁹ Court leaders bear responsibility, too. For example, the ICC Independent Expert Review criticized the court’s prosecutor for placing no staff in situation countries to build and maintain relationships with local civil society organizations, which provide critical support for investigations.³⁰⁰

295. See *supra* note 208 and accompanying text.

296. David Tolbert, *The International Criminal Tribunal for the Former Yugoslavia: Unforeseen Successes and Foreseeable Shortcomings*, 26 FLETCHER F. WORLD AFFS. 1, 15 (2002).

297. HUMAN RIGHTS WATCH, *supra* note 134, at 34; Ford, *supra* note 131, at 511.

298. Matias Hellman, *Challenges and Limitations of Outreach: From the ICTY to the ICC*, in *CONTESTED JUSTICE: THE POLITICS AND PRACTICE OF INTERNATIONAL CRIMINAL COURT INTERVENTIONS* 251, 267 (Christian de Vos et al. eds., 2015). “Lack of resources” has limited outreach by the ECCC, too. OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 59, at 88.

299. GOLDSTONE ET AL., *supra* note 107, at 127.

300. *Id.* at 122–23.

The problem is not limited to communication-focused units. Staff in other units and institutional leaders play crucial roles in informing and persuading local people. Yet many feel overwhelmed day to day, because their organizations' ambitions exceed their financial and human resources. Much of the blame belongs to states, which fund many courts and commissions inadequately. Frenetically struggling to complete their tasks, some TRCs' and ICTs' leaders and staff have little time to consider how their work might contribute to their institutions' ultimate goals. Actually modifying their approaches to particular tasks so they contribute more—such as by figuring out a more accessible structure for a TRC final report—is even harder.

Quality of resources is also critical: transitional justice institutions need leaders and staff with specific skills and knowledge. How courts and commissions can contribute to prevention and other goals is a complex question. Informing and persuading people in a country requires understanding its particular politics, social dynamics, culture, and information ecosystems. TRC and ICT leaders themselves need at least some knowledge of these matters and aptitude for thinking about them. They also need highly able advisors and other staff. Some may work directly under them, like SCSL Prosecutor David Crane's advisor on Sierra Leonean politics. Others may work in communication-focused or other institutional units.

Selection and hiring processes need to consider these capabilities when assessing candidates for leadership and staff positions. On-the-job training may be an option, but reaching the necessary level could take years. Truth commissions and many international courts operate under intense time pressure, leaving little time for such learning.

Hiring local people can help transitional justice institutions understand the countries on which they work. Truth commissions tend to have more local people among their leaders and staff than do international courts. Some TRCs, like South Africa's, are almost entirely led and staffed by nationals. The Guatemala and Sierra Leone TRCs had local and international commissioners and staff.³⁰¹ Sierra Leoneans constituted about one-third of the SCSL's personnel by one year after it opened.³⁰² By contrast, the ICTY initially refused to employ people from the former Yugoslavia, apparently because it did not believe it could find any with open minds about the wars the tribunal was examining.³⁰³

301. The Sierra Leone TRC nevertheless suffered from insufficient expertise about the country that, in the view of a commissioner and a staffer, compromised the quality of its analysis on several issues. See Mahony & Sooka, *supra* note 240, at 41–42, 44.

302. See Beth K. Dougherty, *Right-Sizing International Criminal Justice: The Hybrid Experiment at the Special Court for Sierra Leone*, 80 INT'L AFFS. 313, 325 (2004).

303. See ORENTLICHER, *supra* note 20, at 308.

The ICC works in many countries at a time, so it is a rare coincidence when one of its leaders is from one of those. The court can, however, hire staff from situation countries. It clearly needs more expertise on national context, whether from local people or foreign experts. The Independent Expert Review “heard concerns about the lack of understanding of and familiarity with the situation countries [on] complex political, social, and cultural matters, but also [on] more basic aspects, such as language,” echoing other critics.³⁰⁴ These hindered staff in building trust with victims, as well as investigating cases.³⁰⁵ A lack of country experts also has impoverished the historical analysis in ICC judgments.³⁰⁶

Expression skills are important, too, but institutional leaders and staff vary considerably in their ability to speak and write for domestic audiences. Most judges, prosecutors, and truth commissioners have more practice speaking and writing to elites than to ordinary people. Nonetheless, SCSL leaders David Crane and Robin Vincent connected well with ordinary Sierra Leoneans during outreach events.³⁰⁷ On the other hand, in 2013, an ICTY judge lost his cool when a Bosnian Muslim activist criticized the court and asked whether he felt any sympathy for victims. Referring to his own internment during World War II, the judge called the question “offensive to me,” as if his victimization decades earlier entitled him to avoid criticism.³⁰⁸ The uneven accessibility of transitional justice institutions’ written products suggests variation in their authors’ communication skills.³⁰⁹

Being located within the affected country turns out to be a great resource for communicating with local people.³¹⁰ The physical remoteness of the ICTY, headquartered in the Netherlands, and the ICTR, in Tanzania, has been cited by many observers as a cause of their meagre impact in their respective regions. The Independent Expert Review criticized the ICC for basing few staff in situation countries and sending Hague-based staff to “the field” only

304. GOLDSTONE ET AL., *supra* note 107, at 72–73, 252; see Cavallaro & O’Connell, *supra* note 26, at 63; CLARK, *supra* note 11, at 315.

305. See GOLDSTONE ET AL., *supra* note 107, at 252.

306. See Richard Ashby Wilson & Vladimir Perović, “Transitional Justice Histories,” https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3914435 (forthcoming in OXFORD HANDBOOK OF TRANSITIONAL JUSTICE [Alex Hinton, Lawrence Douglas & Jens Meierhenrich eds.]), at 18. The ICTY, by contrast, maintained a thirty-member team of experts on the region, including “historians, linguists, military experts and other non-law specialists.” *Id.*

307. See *supra* Subsection IV.A.5.

308. ICTY, 20 YEARS OF THE ICTY: ANNIVERSARY EVENTS AND LEGACY CONFERENCE PROCEEDINGS 51–52 (2014), http://www.icty.org/x/file/Press/Events/2013/20_Years_of_the_ICTY_en.pdf [<https://perma.cc/8Y92-PTT7>].

309. See *supra* Subsections IV.B.3; IV.C.3.

310. See Dutton, *supra* note 62, at 87–90.

for rare, short trips.³¹¹ By contrast, nearly all TRCs are based in the country they examine, as are some international courts, such as the SCSL and the Extraordinary Chambers in the Courts of Cambodia. Physical proximity helps institutions' leaders and staff engage local people formally—such as through interviews, meetings, and events—and informally, such as in daily interactions with taxi drivers, shopkeepers, and waiters. Over 150,000 people visited the Cambodia tribunal between 2009 and 2014, far more than other ICTs.³¹² All of these interactions provide opportunities both for conveying the institutions' activities and conclusions to local people and for learning those people's perspectives and thus how to communicate with them better.

C. *External Factors and the Difficulty of Communication*

Influencing domestic audiences on matters relevant to transitional justice is also difficult for reasons beyond the control of truth commissions and international courts. One constraint is that the high stakes in transitional justice limit ICTs' and TRCs' sway.³¹³ These institutions address large-scale human rights violations that profoundly affected the society as a whole and many individuals. Wars in the former Yugoslavia, for example, destroyed the once-harmonious relations among ethnic groups and left hundreds of thousands scarred by torture, the death of loved ones, and the experience of having committed such horrors. In other cases, the violence grew out of long-standing, systemic injustices, such as the subordination of indigenous people in Guatemala.³¹⁴ There, a deeply held racist worldview enabled perpetrators and their supporters to justify both the structural injustices and the violence.³¹⁵

Views about whether human rights violations were justified and what should be done to address them are shaped by individuals' differing relationships to them, as well as their interpretation of complex history. People's assessment of facts—such as what abuses occurred and who committed them—may be biased by various factors, even when the evidence is objectively strong. Path-breaking work by Stuart Ford and Marko Milanović sets out psychological and social dynamics that sharply limited the ICTY's ability to persuade residents of the former Yugoslavia of even basic

311. GOLDSTONE ET AL., *supra* note 107, at 251–52. The experts added: “[H]aving a larger cohort of staff in The Hague that understands the realities and challenges of working in the field would make for a better Court overall.” *Id.* at 78. *See also* CLARK, *supra* note 11, at 316–17.

312. *See* OPEN SOCIETY JUSTICE INITIATIVE, *supra* note 59, at 87.

313. Matias Hellman's insightful analysis of the limitations of ICT outreach is relevant to other communication activities, too. *See* Hellman, *supra* note 298, at 257–68.

314. *See* COMMISSION FOR HISTORICAL CLARIFICATION, *supra* note 7, at 24.

315. *Id.* at 17, 23.

truths about the wars there.³¹⁶ Confirmation bias led many of those people to dismiss or distort new evidence that contradicted their prior beliefs; for example, many clung to the idea that only their own ethnic group had suffered atrocities.³¹⁷ People who strongly identify with a particular collective, such as an ethnic group, may struggle to accept that the group committed atrocities because they have a psychological self-interest in believing in their own (and thus their group's) decency.³¹⁸ In Nietzsche's aphorism: "'I have done that,' says my memory. 'I cannot not have done that,' says my pride and remains unshakable. Finally—memory yields."³¹⁹ Yvonne Dutton and her colleagues found similar biases in Kenyans' perceptions of the ICC, which Dutton and Sara Ochs argue could be addressed in part through better outreach.³²⁰ Such dynamics seem likely to affect people's perceptions of transitional justice in other countries, too.³²¹ Transitional justice practitioners must take them into account.

Truth commissions and international courts sometimes face vigorous efforts to counter their messages, in addition to subconscious reluctance to accept them. They should expect the actors they criticize to respond, as the Argentine and Chilean militaries did to *Nunca Más* and the Rettig Commission report.³²² Perpetrators and their sympathizers, including those who benefited from atrocities, may act pre-emptively, too, attempting to discredit transitional justice institutions as biased against a particular group or as tools of nefarious foreign influence. Serb leaders' attacks on the ICTY are the best-known example.³²³ More recently, Kenyan politicians under ICC investigation "[took] advantage of the public's lack of awareness of the

316. See generally Milanović, *Courting Failure*, *supra* note 56; Milanović, *Establishing the Facts*, *supra* note 11; Ford, *supra* note 57.

317. See Milanović, *Establishing the Facts*, *supra* note 11, at 1338–40; Ford, *supra* note 57, at 433–39.

318. Ford, *supra* note 57, at 429–33; Milanović, *Establishing the Facts*, *supra* note 11, at 1340–41.

319. See David Luban, *Demystifying Political Violence: Some Bequests of ICTY and ICTR*, 110 AJIL UNBOUND 251, 253 (quoting FRIEDRICH NIETZSCHE, BEYOND GOOD AND EVIL ¶ 68 (1886)).

320. See Geoff Dancy, Yvonne Marie Dutton, Tessa Alleblas & Eamon Aloyo, *What Determines Perceptions of Bias Toward the International Criminal Court? Evidence from Kenya*, 64 J. CONFLICT RESOL. 1443, 1458–63 (2020); Dutton, *supra* note 62, at 87–97, 101–06; Ochs, *supra* note 63, at 620–24.

321. Milanović and Ford apply their findings to recent cases beyond the former Yugoslavia, but rely on much thinner evidence on the content and determinants of public opinion for those other cases. See Ford, *supra* note 57, at 441–52; Milanović, *Courting Failure*, *supra* note 56, at 278–88. Neither analyzes persuasion by truth commissions.

322. See THOMAS C. WRIGHT, STATE TERRORISM IN LATIN AMERICA; CHILE, ARGENTINA, AND INTERNATIONAL HUMAN RIGHTS 190–91 (2007); CRENZEL, *supra* note 240, at 100–01.

323. See Klarin, *supra* note 62, at 90; *supra* text accompanying notes 108–110.

ICC . . . [and] depicted the ICC as a neocolonialist institution biased against Africa and improperly intruding on Kenyan sovereignty.”³²⁴ The rise of social media and fragmentation of information ecosystems—important factors in recent U.S. politics—may make persuasion more difficult for transitional justice institutions, including by polarizing opinion and facilitating the spread of false information.³²⁵

Luck, too, affects the success of transitional justice institutions’ persuasion efforts. The Rettig Commission report initially gripped Chile, provoking extensive discussion of extrajudicial killings by the Pinochet dictatorship.³²⁶ That ended after a month, however, when leftist guerillas assassinated a prominent right-wing politician. As one of his colleagues put it, “The killing of Jaime Guzmán has buried the Rettig report.”³²⁷ Three months later, only 3.4 percent of the public saw addressing the human rights violations as a top priority.³²⁸

These factors can limit the ability of TRCs and ICTs to influence people in affected countries, but they do not make their efforts futile. Not every context is as daunting as the former Yugoslavia was for the ICTY when that court belatedly began trying to reach domestic audiences. Some groups will be more open than others, and opinions on some topics relevant to transitional justice will be less fixed. Courts and commissions can choose strategically which issues and groups to engage. They also possess significant strengths in many contexts. Truth commission members tend to be highly respected by one or more important domestic group. They often represent a range of professions with diverse and potentially complementary approaches to communication, such as religious ministry, politics, law, academia, and human rights activism.

Transitional justice institutions can continue to shape domestic audiences’ knowledge and beliefs long after the institutions themselves disappear from the scene. The passage of time tends to make it less painful for individuals and societies to examine past atrocities. For example, in West Germany, members of the “1968 Generation” explored their individual families’ roles in the Holocaust as they constructed a national identity based on taking collective responsibility for that atrocity and ensuring it never happened again.³²⁹ Courts’ and commissions’ influence over the long run, including after they cease operation, is likely to depend significantly on how

324. Dutton, *supra* note 62, at 109.

325. See Crittenden, *supra* note 119, at 355; Vinck, *supra* note 179, at 109–10.

326. WRIGHT, *supra* note 322, at 191.

327. *Id.*

328. *Id.*

329. See DAVID A. MESSENGER, WAR AND PUBLIC MEMORY: CASE STUDIES IN TWENTIETH-CENTURY EUROPE 107 (2020); see also Richard J. Evans, *From Nazism to Never Again: How Germany Came to Terms With Its Past*, FOR. AFFS., Jan.–Feb. 2018, at 11.

they communicate during their lifetimes, from the substantive conclusions they draw to the forms in which they express those conclusions.

VI. CONCLUSION

Truth commissions and international criminal tribunals address some of the most painful, divisive, and complex events in the histories of the countries on which they work. Some may conclude that these institutions cannot meaningfully affect what people know and believe about such traumatic events. As acknowledged above, TRCs and ICTs sometimes struggle simply to step through their basic tasks: assembling evidence, indicting and trying defendants, convening public hearings, writing final reports, and the like. Their leaders and staff tend to be dedicated and passionate, but labor to carry out often-sweeping mandates within tight timeframes and budgets. Is it too much to ask them also to figure out the complex ways by which their institutions can advance transitional justice goals such as reconciliation and prevention, then adapt their individual daily work to contribute more to such social change—including by communicating more clearly and convincingly to diverse audiences in affected countries?

Clearly, this is a tall order, and we cannot expect international criminal tribunals and truth commissions to achieve miraculous social transformation. Scholars and practitioners long ago realized that the most grandiose visions for these institutions were unrealistic.³³⁰ Realism need not vanquish hope, though. There is evidence that both courts and commissions can promote the social and political goals set for them.³³¹ They can have greater, and more positive, impact if their leaders and staff better understand their potential roles in social change and play those roles skillfully, however.

This Article has demonstrated that much of TRCs' and ICTs' potential contribution depends on their communicating with citizens and elites in affected countries. Those domestic audiences' knowledge and views about past human rights violations are key to advancing transitional justice goals. Influencing them therefore is a core task of transitional justice institutions, yet has received little attention from their leaders and staff, or from scholars. Communication involves conveying information, including the institutions' factual findings and analysis and TRCs' recommendations. It also entails persuading local people of the merit of those conclusions—or at least shaking their convictions and opening their minds.

The Article also has surveyed transitional justice institutions' methods and opportunities for informing and persuading. Commissions and courts

330. See, e.g., HAYNER, *supra* note 9, at 4–6.

331. E.g., Cavallaro & O'Connell, *supra* note 26, at 16–30; WIEBELHAUS-BRAHM, *supra* note 9, at 69–72; BAKINER, *supra* note 9, at 6–8.

need to take into account communication and their ultimate goals when making substantive decisions, such as which perpetrators a court should indict or which truths a commission should emphasize. They also should invest more thought, energy, and resources in communication-specific activities such as media engagement and outreach. Milestones in their work—such as a court indictment or the conclusion of a truth commission’s work—provide opportunities to seize public attention. Finally, TRCs and ICTs should make outputs like speeches, judgments, and final reports more accessible, including to ordinary citizens. The Article has offered positive and negative examples to support these prescriptions and help practitioners implement them. Where possible, it has evaluated the performance of prominent institutions such as the ICC and the South Africa TRC. Lastly, it has identified key determinants of transitional justice institutions’ communication effectiveness that cut across specific methods and opportunities.

Further scholarship should go deeper and farther. This Article is but a rough sketch of a vast intellectual landscape. Practitioners and theorists would benefit from understanding the communication practices of individual transitional justice institutions as well as drawing comparisons among them. How, and how much, do courts and commissions consider their ultimate goals when making substantive decisions? How are communication priorities set? How much do leaders and staff understand about people in affected countries, including their knowledge, attitudes, and ways of accessing information?

A second set of research questions would examine the effectiveness of various communication practices, including those described above. How can transitional justice institutions best reach citizens in general and specific groups defined by geography, class, gender, relationship to atrocities as victims or perpetrators, and other traits? (The answers may vary by country, of course.) Persuasion raises yet more difficult research challenges. How can transitional justice institutions affect people’s thinking about fraught events? Whatever influence courts and commissions have is likely to occur indirectly, forcing researchers to distinguish these institutions’ effects from many other factors that shape individuals’ views and their evolution over time.

Answering these questions definitively may take years, but incremental progress can help practitioners. By calling attention to the centrality of communication to transitional justice and identifying methods, challenges, and best practices, this Article hopes to support truth commissions and international criminal tribunals as they strive to serve societies emerging from the darkest periods in their histories.