Communicating Justice: Lessons from International and National Courts and Prosecution Authorities Dealing with International Crimes

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About the author

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Introduction

The fight against impunity for international crimes has gained momentum in the last 30 years. The 1990s and 2000s saw the creation of multiple international and hybrid courts to deal with atrocity crimes[1] and terrorism. In recent years, there has been a significant rise in universal jurisdiction cases at the domestic level.[2] Other advances important to the present discussion occurred in parallel – the development of the right to information and the emergence of the right to truth.

This report provides an overview of how selected international and national jurisdictions have approached the issue of communicating their work to the affected communities. It outlines some of the best practices that can inform and inspire the Ukrainian authorities as well as civil society organizations as they embark on their own communication and outreach work in the context of investigating and prosecuting international crimes occurring in Ukraine.

Part 1 of the report discusses how transparency underpins the need for communication in the criminal justice context, with reference to the rights to information, to a public trial and to truth. Part 2 examines how international and hybrid courts (including their prosecutorial offices) have discharged their duties in respect of communications while Part 3 assesses selected national practice in this respect. Part 4 presents three important tools already available to the Ukrainian authorities in considering their approach to communications. Best practices relevant to the Ukrainian situation are outlined in Part 5.

[1] For the purposes of this text, the term 'atrocity crimes' refers to genocide, crimes against humanity and war crimes.
[2] Reports published by TRIAL International's Universal Jurisdiction Annual Reports provide comprehensive information and are available at https://trialinternational.org/latest/reports-and-publications/ as does the report of the Center for Transitional Justice on 'Advancing Global Accountability: The Role of Universal Jurisdiction in Prosecuting International Crimes' (December 2020) available at www.ictj.org/sites/default/files/ICTJ_Report_Universal_Jurisdiction.pdf. Please note: unless otherwise stated, all resources were last accessed 30 April 2022.

For the purposes of this discussion, we will use the International Criminal Court's definition of public information and outreach:

> Public information is a process of delivering accurate and timely information about the principles, objectives and activities of the Court to the public at large and target audiences, through different channels of communication, including media, presentations, and the web site.
>
> Outreach is a process of establishing sustainable, two-way communication between the Court and communities affected by situations that are the subject of investigations or proceedings. It aims to provide information, promote understanding and support for the Court's work, and to provide access to judicial proceedings. There can be overlap between these activities, which further highlights the importance of an integrated approach to external relations, public information and outreach.[3]

Part 1 – Transparency

The Guide on Communication with the Media and the Public for Courts and Prosecution Authorities, prepared by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe, of which Ukraine is a member, states:

> Transparency is vital for an efficient functioning of the justice system, since it empowers courts and public prosecutors with trust and respect of the public, and at the same time promotes a positive image. Public's trust in justice also depends on the understanding of judicial activity. This understanding is also a condition for the citizens' access to justice.[4]

International human rights conventions and national laws in countries which have ratified them enshrine transparency of legal proceedings, not only by guaranteeing to the accused a 'fair *and*

[3] International Criminal Court, *Integrated Strategy for External Relations, Public Information and Outreach*, available at http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSWBOR0307070402_IS_En.pdf.

[4] European Commission for the Efficiency of Justice (CEPEJ), *Guide on Communication with the Media and the Public for Courts and Prosecution Authorities*, (2018), available at https://rm.coe.int/cepej-2018-15-en-communication-manual-with-media/16809025fe, § 12.

public hearing'[5] but also by assuring the public that they will be informed about the work of the judiciary. The same conventions guarantee the right to information, usually described as 'the freedom to seek, receive and impart information and ideas of all kinds …'[6] or as 'the right to receive information'. The obligation to respect the right to information (as part of the right to freedom of expression) is binding on all branches of the state — executive, legislative and judicial — at the national, regional or local level.[7] The transparency of legal proceedings is also connected to the right to truth. In his study on transitional justice, the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence stated that '[w]hile there is no specific international convention on the right to truth, national courts and international judicial bodies have developed a set of decisions that provide a framework for satisfying the right of victims and their families to the truth'.[8] The right to truth has been referred to by the International Committee of the Red Cross (ICRC), the UN Human Rights Committee, the UN General Assembly, the Council of Europe, the European Union, the Organization of American States and the Inter-American Commission on Human Rights; and has been recognized in national courts at the highest level.[9] In their regulatory documents as well as their Annual Reports, international and hybrid courts assert that they apply the highest standards in terms of respect for human rights (see section 2.1).

In establishing the obligations of international and national investigative, prosecutorial and judicial authorities to enforce transparency and communicate with the public, we must therefore consider these three inter-related rights – the right to information, the right to a public trial and the right to truth.

[5] Art. 14 International Covenant on Civil and Political Rights (ICCPR) and Art. 6 European Convention on Human Rights (ECHR), both ratified by Ukraine (emphasis added); the American Convention on Human Rights (ACHR), in Art. 8, stipulates that '[c]riminal proceedings shall be public'.
[6] Art. 19 ICCPR; Art. 10 ECHR; Art. 13 ACHR.
[7] *General Comment 34, Art. 19: Freedoms of Opinion and Expression*, UN Doc. CCPR/C/GC/34, 12 September 2011, § 18.
[8] *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his global study on transitional justice*, UN Doc A/HRC/36/50/Add.1, 7 August 2017, 11.
[9] 'Promotion and Protection of Human Rights, Study on the Right to Truth' *Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc E/CN.4/2006/91, 8 February 2006, § 7, 8, 12, 19-20, 23, 29.

1.1. Right to Information

Resolution 59(I) of 1946 the United Nations (UN) General Assembly stated that '[f]reedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated'.[10] The same wording was repeated in the 1948 Universal Declaration of Human Rights and in Article 19 of the 1966 legally binding International Covenant on Civil and Political Rights (ICCPR).[11] Although only 13 countries had adopted freedom of information legislation by 1990,[12] this figure has increased nearly tenfold since the adoption of the ICCPR and the regional human rights instruments,[13] and includes Ukraine.[14] According to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 'the right to seek, receive and impart information is not merely a corollary of freedom of opinion and expression; it is a right in and of itself. As such, it is one of the rights upon which free and democratic societies depend.'[15]

In successive annual reports to the UN Commission on Human Rights, the UN Special Rapporteur has stated clearly that the right to access information held by public authorities is protected by Article 19 of the ICCPR:[16]

> [T]he Special Rapporteur expresses again his view, and emphasizes, that everyone has the right to seek, receive and impart information and that this imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems — including film, microfiche, electronic capacities, video and photographs — subject only to such

[10] UNGA Res 59(I), UN Doc. A/PV.65, 14 December 1946.
[11] Roy Peled and Yoram Rabin, 'The Constitutional Right to Information', 42 *Columbia Human Rights Law Review* (2011) 357, 381-382.
[12] Toby Mendel, 'Freedom of Information, A Comparative Legal Survey', UNESCO (2008) available at http://unesdoc.unesco.org/images/0015/001584/158450e.pdf, 3.
[13] Peled and Rabin (n11) 357.
[14] International Institute for Sustainable Development (IISD) and SDG Knowledge Hub, 'UNESCO Finds 125 Countries Provide for Access to Information', 25 July 2019, available at https://sdg.iisd.org/news/unesco-finds-125-countries-provide-for-access-to-information/.
[15] *Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Mr. Abid Hussain*, UN Doc. E/CN.4/2000/63, 18 January 2000, § 42.
[16] Toby Mendel, 'Freedom of Information as an Internationally Protected Human Right' (Article 19), available at https://www.article19.org/data/files/pdfs/publications/foi-as-an-international-right.pdf, 2.

> restrictions as referred to in article 19, paragraph 3, of the International Covenant on Civil and Political Rights.[17]

In its resolution 53/144 of 1999 entitled the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, the UN General Assembly stated that:

> Everyone has the right, individually and in association with others …[t]o know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems […].[18]

In their 2004 Joint Declaration, the three special mandates on freedom of expression at the United Nations, Organization for Security and Co-operation in Europe (OSCE) and Organization of American States (OAS) stated:

> The right to access information held by public authorities is a fundamental human right which should be given effect at the national level through comprehensive legislation …based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions. Public authorities should be required to publish pro-actively, even in the absence of a request, a range of information of public interest. Systems should be put in place to increase, over time, the amount of information subject to such routine disclosure. Access to information is a citizens' right. As a result, the procedures for accessing information should be simple, rapid and free or low-cost.[19]

In 2011, in its General Comment 34, the UN Human Rights Committee (HR Committee) stated that '[t]he obligation to respect freedoms of opinion and expression is binding on every State party

[17] *Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Mr. Abid Hussain*, UN Doc. E/CN.4/1999/64, 29 January 1999, § 12.
[18] UNGA Res 53/144, UN Doc A/RES/53/144, 9 March 1999, Art. 6.
[19] *Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression*, 6 December 2004, available at http://www.osce.org/fom/38632?download=true.

as a whole' and that this obligation applies to '[a]ll branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level — national, regional or local … .' It further stated that 'article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production.'[20]

In interpreting the wording of Article 10 of the European Convention on Human Rights (ECHR),[21] the European Court of Human Rights (ECtHR) has referred to an evolution in favour of the recognition of a right to freedom of information as an inherent element of the freedom to receive and impart information enshrined in Article 10 of the Convention. It also noted that this development is reflected in the stance taken by international human rights bodies and the fact that nearly all of the Council of Europe member states have enacted legislation on freedom of information.[22]

1.2. Right to a Public Trial

The right to a public trial is founded on the idea of the open and transparent administration of justice as an important safeguard for the interests of the individual and of society at large.[23] Although there does not appear to be agreement as to when the right to a public trial was first developed,[24] most countries today have court proceedings which are open to the public and may be freely reported.[25] The right is also guaranteed in Article 7 of the Ukrainian Criminal Procedure Code.[26]

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[20] *General Comment 34* (n 7) § 7, 18.
[21] *Magyar Helsinki Bizottság v. Hungary*, Appl. No. 18030/11, 8 November 2016.
[22] *Ibid* § 151-153.
[23] *General Comment 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Doc. CCPR/C/GC/32, 23 August 2007, § 28.
[24] Harold Shapiro, 'Right to a Public Trial', 41 *Journal of Criminal Law and Criminology* (1950-1951) 782, 782.
[25] 173 countries have ratified the ICCPR (https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=_en) which guarantees a public hearing (please see below, footnote 27)
[26] Criminal Procedure Code, Ukraine, available at https://rm.coe.int/16802f6016.

One of the major international instruments to guarantee the right to a public trial is the ICCPR,[27] which is ratified by Ukraine.[28] In its General Comment No. 32 on Article 14 of the ICCPR, the HR Committee, the treaty body that monitors the implementation of the ICCPR, pronounced that all trials 'must in principle be conducted orally and publicly' and that the 'publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and of society at large'.[29]

Acknowledging that courts have the power to exclude all or part of the public under exceptional circumstances, the HR Committee stated that apart from such circumstances, hearings must be open to the general public, including the media, and must not be limited to a particular category of persons. They also held that even in cases in which the public is excluded from the trial, the judgment, including the essential findings, evidence and legal reasoning must be made public, except in very limited and pre-defined circumstances.[30] The HR Committee also stressed that Article 14 guarantees must be respected regardless of States parties' legal traditions and domestic law.[31]

Another important international legal instrument guaranteeing the right to a public trial is the ECHR, which has also been ratified by Ukraine.[32] Article 6 of the ECHR repeats the wording of

[27] Article 14 of the ICCPR states: 'All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.' Available at https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
[28] See the UN Treaty Body Database at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=183&Lang=EN.
[29] *General Comment 32* (n 23) § 28. These principles were also confirmed in individual decisions such as *Vasilskis v Uruguay*, UN Doc. CCPR/C/18/D/80/1980 (1983), § 11; *Guerra de la Espriella v Colombia*, UN Doc. CCPR/C/98/D/1623/2007 (2010), § 9.3.
[30] *Ibid* § 29.
[31] *Ibid* § 14.
[32] See European Court of Human Rights, *Ukraine, Press Country Profile*, available at https://www.echr.coe.int/Documents/CP_Ukraine_ENG.pdf

the ICCPR in relation to the right to a public trial.[33] In addition to the text of the Convention, the jurisprudence of the ECtHR in relation to these provisions is also relevant because these decisions 'elucidate, safeguard and develop the rules instituted by the Convention.'[34] The ECtHR found in various cases that the holding of court hearings in public constitutes a fundamental principle enshrined in paragraph 1 of Article 6 of the ECHR. It held that the public character protects litigants against the administration of justice in secret with no public scrutiny and is also one of the means whereby confidence in the courts can be maintained. It moreover added that publicity contributes to the achievement of the aim of holding a fair trial by making the administration of justice more transparent.[35] In its Guides on Article 6, the ECtHR cites cases which deal with the right to an oral hearing, a right to be heard by a court (not only through writing), and the limits the courts are permitted to impose on the presence of the press and public in the interests of morals, public order or national security in a democratic society; where the interests of juveniles or the protection of the private life of the parties so require; or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.[36] The ICCPR also treats this as a qualified right.

While the conventions and their monitoring bodies seem to agree on the general scope and limitations of the right to a public hearing, they disagree on whether this right can be waived. The ECtHR held in several cases that:

[33] Article 6: Right to a fair trial: 'In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.' ECHR, full text available at: https://www.echr.coe.int/documents/convention_eng.pdf

[34] *Djokaba Lambi Longa v The Netherlands*, Appl. No. 33917/12, 9 October 2012, § 58 (citations omitted).

[35] This was held in *Werner v Austria*, Appl. No. 21835/93, 24 November 1997, § 45; *Lawlesss v Ireland (No 1)*, Appl. No. 332/57, 14 November 1960, § 13; *Golder v the United Kingdom*, Appl. No. 4451/70, 21 February 1975, § 36; *Axen v Germany*, Appl. No. 8273/78, 8 December 1983, § 25; *Diennet v France*, App no 18160/91, 26 September 1995, § 33; *Hummatov v Azerbaijan*, Apps no 9852/03, 29 November 2007; 13413/04, § 140; *Schlumpf v Switzerland*, Appl. No 29002/06, 8 January 2009; *and Riepan v Austria*, Appl. No 35115/97, 14 November 2000, § 27.

[36] *Guide on Article 6, Right to a Fair Trial (civil limb)* (Council of Europe/ECtHR, 2021) available at http://www.echr.coe.int/Documents/Guide_Art_6_ENG.pdf; *Guide on Article 6, Right to a Fair Trial (criminal limb)* (Council of Europe/ECtHR, 2021) available at https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf.

> the requirement to hold a hearing in public might be waived based on the will of the person concerned as long as it does not run counter to any important public interest, requires minimum guarantees commensurate to the waiver's importance, and is established in an unequivocal manner.[37]

The HR Committee takes a more progressive view in finding that it 'is a duty upon the State that is not dependent on any request by the interested party, that the hearing be held in public. Both domestic legislation and judicial practice must provide for the possibility of the public attending, if members of the public so wish'.[38] This would correspond to the general view that the right to a public hearing is an interest of the public which may not be surrendered by a party to the proceedings.[39] The HR Committee further found that:

> courts must make information on time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits, taking into account, e.g., the potential public interest in the case, the duration of the oral hearing and the time the formal request for publicity has been made.[40]

Further light is shed on the issue through other individual decisions. In one instance, the HR Committee ruled that the court in question should have taken into consideration the prominent profile of a public figure on trial and provided adequate facilities for the attendance of interested members of the public, within reasonable limits.[41] In a case where the detained applicant alleged he had not had a public hearing as the trial was held in the prison, the ECtHR, for its part, found that for a trial to comply with the requirement of publicity the public must be informed about the date and place of the hearing and the venue must be easily accessible to the public. If a 'regular courtroom large enough to accommodate spectators is not provided, the State is under an obligation

[37] *H. v Belgium*, App no 8950/80 30 November 1987, § 54*; Thompson v UK*, Appl. No 36256/97 15 June 2004, § 43; See also, *Håkansson and Sturesson v Sweden*, Appl. No. 11855/85, 21 February 1990, § 66*; Pfeifer and Plankl v Austria*, App no 10802/84, 25 February 1992, § 37.
[38] *Van Meurs v the Netherlands*, UN Doc CCPR/C/39/D/215/1986 (1990), § 6.1.
[39] OSCE Office for Democratic Institutions and Human Rights (ODIHR), 'Legal Digest of International Fair Trial Rights', 2012.
[40] *Van Meurs v the Netherlands*, UN Doc CCPR/C/39/D/215/1986 (1990), § 6.2.
[41] *Marinich v Belarus*, UN Doc. CCPR/C/99/D/1502/2006 (2010), § 10.5.

to take compensatory measures in order to ensure that the public and the media are duly informed about the place of the hearing and are granted effective access'.[42] In another case where the applicant was put on trial in a relatively remote prison facility, the ECtHR also found that expensive transport to a remote location 'had a clearly discouraging effect on potential spectators wishing to attend' the trial[43] and added that 'the authorities should have provided regular transportation for spectators for the duration of the trial'.[44] Elsewhere, the ECtHR stated more broadly, that the 'Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective'.[45]

1.3. Right to Truth

A third related right is the right to know or the right to truth. Initially referred to in Additional Protocol I to the Geneva Conventions of 1949 and in the context of missing persons and enforced disappearances, the right to truth has since extended to include other major human rights violations. It has been referred to by the International Committee of the Red Cross (ICRC),[46] the UN Human Rights Committee,[47] the UN General Assembly,[48] at the regional level by the Council of Europe,[49] the European Union,[50] the OAS[51] and the Inter-American Commission on Human Rights;[52] and has been recognized in national courts at the highest level. It is, naturally, a recurrent theme in the context of numerous truth and reconciliation commissions. International human rights instruments confer the right to truth on victims and their relatives or representatives, both as an individual and a collective right.[53] It is also seen as linked to, but separate from the right to seek

[42] *Riepan v Austria*, Appl. No 35115/97, 14 November 2000, § 29.
[43] *Hummatov v Azerbaijan*, Apps no 9852/03, 29 November 2007; 13413/04, § 147.
[44] *Hummatov v Azerbaijan*, Apps no 9852/03, 29 November 2007; 13413/04, § 147.
[45] *Artico v Italy*, Appl. No 6694/74 13 May 1980, § 33.
[46] 'Promotion and Protection of Human Rights, Study on the Right to Truth' *Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc E/CN.4/2006/91, 8 February 2006 § 7.
[47] *Ibid* § 8.
[48] *Ibid* § 12.
[49] *Ibid* § 19.
[50] *Ibid.*
[51] *Ibid* § 20.
[52] *Ibid* § 29.
[53] Promotion and Protection of Human Rights, Study on the Right to Truth' *Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc E/CN.4/2006/91, 8 February 2006, §§ 6-8, 12, 19-20, 23, 29, 36.

information and 'may be characterized differently in some legal systems as the right to know or the right to be informed or freedom of information.'[54] It could be argued that the right to seek information is instrumental to realizing the right to truth. [55]

The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence has noted that '[w]hile there is no specific international convention on the right to truth, national courts and international judicial bodies have developed a set of decisions that provide a framework for satisfying the right of victims and their families to the truth'.[56] Moreover, the Office of the UN High Commissioner for Human Rights has explained that the 'set of principles for the protection and promotion of human rights through action to combat impunity … reaffirm the inalienable right to know the truth vis-à-vis gross human rights violations and serious crimes under the international law.'[57] These Principles refer specifically to the 'right to know the truth about past events concerning the perpetration of heinous crimes and about the circumstances and reasons that led … to the perpetration of those crimes'[58].

The right to truth has also been recognized by international courts and is seen as particularly important following serious human rights violations. According to Mendel, '[i]n such cases, it may not be enough simply to provide access to information already held by public bodies; it may be necessary to go further and collect and compile new information to ascertain the truth about the past abuses'.[59]

In further recognition of the importance of the right to truth, particularly in the context of gross violations of human rights and serious violations of international humanitarian law, the UN Human Rights Council appointed the Special Rapporteur on the promotion of truth, justice, reparation and

[54] United Nations High Commissioner for Human Rights (UNHCHR), Human Rights Resolution 2005/66, *Right to the truth*, April 20, 2005, E/CN.4/RES/2005/66
[55] *Ibid* § 43.
[56] *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence on his global study on transitional justice*, UN Doc A/HRC/36/50/Add.1, 7 August 2017, § 51.
[57] 'Promotion and Protection of Human Rights, Study on the Right to Truth' *Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc E/CN.4/2006/91, 8 February 2006, § 4.
[58] *Ibid* § 4.
[59] Mendel (n 12) 5.

guarantees of non-recurrence in 2011 to gather 'relevant information on national situations… relating to the promotion of truth, justice, reparation and guarantees of non-recurrence in addressing gross violations of human rights and serious violations of international humanitarian law', and 'to identify, exchange and promote good practices and lessons learned' and 'potential additional elements with a view to recommend ways and means to improve and strengthen the promotion of truth, justice, reparation and guarantees of non-recurrence'.[60] In his 2013 Report, the Special Rapporteur stated that:

> in the aftermath of repression or conflict the right to truth should be understood to require States to establish institutions, mechanisms and procedures that are enabled to lead to the revelation of the truth, which is seen as a process to seek information and facts about what has actually taken place, to contribute to the fight against impunity, to the reinstatement of the rule of law, and ultimately to reconciliation.[61]

It can be concluded from the foregoing discussion that any desired positive outcomes in respect to the promotion of truth and justice are predicated on access to information in possession of international and national prosecutorial authorities and judicial institutions, especially those with jurisdiction over mass atrocities such as genocide, crimes against humanity and war crimes. In fact, criminal justice institutions can properly and fully guarantee these important rights only if they proactively provide information about their work to the interested communities.

Indeed, as stated in the CEPEJ Guide, 'transparency is vital for an efficient functioning of the justice system' [62] and all international and national investigative, prosecutorial and judicial authorities must do their utmost to guarantee the right to information, the right to a public trial, and the right to truth.

Part 2 – International and hybrid courts and prosecution authorities

[60] UNGA Human Rights Council Res 18/7, UN Doc A/HRC/18/7, 13 October 2011.
[61] *Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff*, UN Doc. A/HRC/24/42, 28 August 2013, § 20.
[62] CEPEJ Guide (n 4).

In order to identify some best practices that might inform and inspire Ukrainian authorities as well as civil society organizations as they embark on their own communication and outreach work in the context of investigating and prosecuting international crimes, we will now turn to an examination of how international and hybrid courts and prosecutors' offices have discharged their duties in respect of communications and outreach.

International criminal justice stems from the Nuremberg and Tokyo Military Tribunals established in the aftermath of World War Two. However, for the purposes of this study, the focus will be on the communications efforts of some of the more recent international and hybrid courts, established in the last 30 years, namely:

- the International Criminal Tribunal for the former Yugoslavia (ICTY), the first modern international criminal tribunal for genocide, war crimes and crimes against humanity and the first to have established a public information department and an outreach program;
- the Special Court for Sierra Leone (SCSL), the first hybrid international criminal tribunal for genocide, war crimes and crimes against humanity whose outreach programme is seen as highly successful;
- the Special Tribunal for Lebanon (STL), the first international tribunal for terrorism, the first with trials *in absentia*, and the first to have included the requirement for outreach in its Rules of Procedure and Evidence; and
- the International Criminal Court (ICC), the only permanent international court with jurisdiction over genocide, war crimes, crimes against humanity and aggression.

2.1. Background

Communications challenges faced by international and hybrid courts are deeply impacted by the overall environment in which they operate(d). This includes the manner of their establishment, the geographic area, time period and crimes over which they have jurisdiction, as well as the prevailing political and social circumstances. Each institution under consideration operates (or operated) in a different context. The ICTY was established by the United Nations Security Council in 1993 as the first modern-day tribunal dealing with atrocity crimes. By 2017, when it closed its doors, it had

completed over 100 cases and prosecuted some of those most responsible for crimes committed in the aftermath of the breakup of the former Yugoslavia.[63] The ICC is a treaty-based institution with 123 states parties[64] and the only permanent international criminal tribunal to date. The SCSL was the first hybrid tribunal – consisting of both international and national judges and staff – and the first to be based in the country over which it had jurisdiction.[65] The STL is the first international or hybrid[66] tribunal with jurisdiction over terrorism (as defined in Lebanese law) and the first to conduct trials in the absence of the accused.

In terms of organizational structure and the rules that govern criminal proceedings, there are many more similarities between these institutions than there are differences. Notable exceptions are in the participation of victims (envisaged at the ICC and STL but not the ICTY and SCSL) and a Defence Office as an organ of the Tribunal (only at the STL).

All international and hybrid courts assert that they apply the highest standards in terms of respect for human rights. In its first Annual Report, the ICTY stated that the Tribunal's 'Statute incorporates all the fundamental guarantees of a fair and expeditious trial that are enshrined in international instruments for the protection of human rights.'[67] Article 21 of the ICC Statute states that '[t]he application and interpretation of law pursuant to this Article must be consistent with internationally recognized human rights.' The STL Statute states that, in drafting the Tribunal's Rules of Procedure and Evidence, the Judges 'shall be guided, as appropriate, by the Lebanese Code of Criminal Procedure, as well as by other reference materials reflecting the highest standards of international criminal procedure'.[68] As a consequence, it can be concluded that all international

[63] More information about the ICTY is available here: https://www.icty.org.
[64] International Criminal Court, 'The States Parties to the Rome Statute' available at https://asp.icc-cpi.int/en_menus/asp/states%20parties/pages/the%20states%20parties%20to%20the%20rome%20statute.aspx.
[65] It is important to note that, although all SCSL trials were conducted in Freetown, Sierra Leone, the trial against the highest level accused – Charles Taylor, former President of Liberia – was conducted in the Netherlands due to security considerations. More information is available here: http://www.rscsl.org.
[66] A hybrid tribunal is one that applies national and international law and has both national and international judges and staff. The Special Tribunal for Lebanon applies Lebanese Criminal law and four of its 11 judges are Lebanese.
[67] *First Annual Report of the ICTY*, UN Doc. A/49/342; S/1994/1007, 29 August 1994, § 58.
[68] Art. 28(2) Statute of the STL.

and hybrid courts have accepted the responsibility to guarantee the rights to information and public trial, as well as the emerging right to truth.

2.2. Legal Framework

The key regulatory documents – the Statutes and the Rules of Procedure and Evidence of the ICTY, SCSL, STL and the ICC – specifically provide for the principle of transparency in line with human rights standards. The Statutes guarantee to the accused a 'public hearing.'[69] The Rules contain a provision that 'proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided'[70] and task the Registrar with keeping a Record Book with 'all the particulars of each case', which will be open to the public.[71] These same documents also stipulate that judgments 'shall be pronounced in public'.[72] Where specified, the exceptions generally refer to the protection of witnesses.[73]

The ICC Statute guarantees to the accused the right to a public hearing and the Rules task the Registrar with taking 'measures to make, and preserve, a full and accurate record of all proceedings, including transcripts, audio- and video-recordings and other means of capturing sound or image';[74] state that the 'Trial Chamber may authorize persons other than the Registrar to take photographs, audio- and video-recordings and other means of capturing the sound or image of the trial';[75] and that '[d]ecisions of the Trial Chamber concerning admissibility of a case, the jurisdiction of the Court, criminal responsibility of the accused, sentence and reparations shall be pronounced in public.'[76]

[69] See Art. 21, Statute of the ICTY, Art. 17, Statute of the SCSL, Art. 16, Statute of the STL, and Art. 67, Statute of the ICC.
[70] See Rule 78 ICTY and SCSL RPE and Rule 136 STL RPE.
[71] See Rule 36 of ICTY RPE, Rule 54 STL RPE or Rule 15 of the ICC RPE. The actual content of the Record Book is not further defined, however.
[72] See Rules 98*ter*, 100 and 117 of the ICTY RPE, Rule 144 ICC RPE, Rules 168, 171 and 188 of the STL RPE.
[73] See Art. 22, Statute of the ICTY, Art. 17, Statute of the SCSL, Art. 16, Statute of the STL, and Art. 68, Statute of the ICC.
[74] Rule 137 ICC RPE.
[75] Rule 137 ICC RPE
[76] Rule 144 ICC RPE.

The STL, uniquely, included outreach in the Tribunal's Rules of Procedure and Evidence, tasking the Registrar with setting up an Outreach Program to 'disseminate accurate and timely information to the public, particularly in Lebanon, about the general role and functioning of the Tribunal, and ... carry out outreach activities related to victims'.[77] The ICC included Outreach in its internal Regulations of the Registry.[78] Additionally, in its Section on Victims Participation and Reparations, the ICC Regulations state that in determining the measures necessary to give adequate publicity to the proceedings, the Registry must consider the specific context and factors such as 'languages or dialects spoken, local customs and traditions, literacy rates and access to the media.'[79]

As the first modern international criminal tribunal whose decisions have served as an important precedent, the ICTY took the view that '[s]ince the Tribunal's activities are of general public interest … subject to the unfettered discretion of the Chambers in each case, public and media access to hearings should be as liberal as possible. Prior to each hearing, available seats are allocated to the public and press.'[80]

In an early decision on a request for witness protection measures, an ICTY Trial Chamber explained that '[t]he benefits of a public hearing are well known. The principal advantage of press and public access is that it helps to ensure that a trial is fair' and quoted the case law of the ECtHR:

[77] Rule 52 of the STL RPE: 'Outreach Programme Unit: (A) The Registrar shall set up an Outreach Programme Unit within the Registry to (i) disseminate accurate and timely information to the public, particularly in Lebanon, about the general role and functioning of the Tribunal, and (ii) carry out outreach activities related to victims.
(B) Due consideration shall be given, in the appointment of staff, to the employment of qualified Lebanese nationals.'

[78] ICC Regulations of the Registry, Regulation 5*bis*: 'Public information and outreach: 1. In fulfilment of the Registrar's mandate to provide information pursuant to rule 13, sub-rule 1 of the Rules of Procedure and Evidence, the Registry shall ensure the public dissemination of appropriate, neutral and timely information concerning the activities of the Court through public information and outreach programmes. 2. Public information programmes shall be aimed at fostering public understanding and support for the work of the Court. To this end, the Registry may employ various means of communication, including print and broadcast media, internet-based technologies, visits to the Court and public-speaking engagements by Court officials. 3. Outreach programmes shall be aimed at making the Court's judicial proceedings accessible to those communities affected by the situations and cases before the Court. To this end, the Registry shall develop appropriate communication tools and strategies, such as consultation and town-hall meetings, radio and television programmes, leaflets, booklets, posters and videos.' (2018), available at https://www.icc-cpi.int/resource-library/Documents/RegulationsRegistryEng.pdf)

[79] *Ibid* Regulation 103.

[80] *Second Annual Report of the ICTY*, UN Doc. A/50/365; S/1995/728, 23 August 1995, § 87.

'By rendering the administration of justice visible, publicity contributes to the achievement of the aim of ... a fair trial, the guarantee of which is one of the fundamental principles of any democratic society.'[81] The Trial Chamber also added that while ECtHR interpretations of Article 6 of the ECHR apply to ordinary criminal trials, the International Tribunal is adjudicating crimes which are considered so horrific as to warrant universal jurisdiction, and emphasized that 'the International Tribunal has an educational function, and the publication of its activities helps to achieve this goal'.[82]

In a later case, a different Trial Chamber added:

> proceedings before this Tribunal should be public as far as possible... Over and above the reasons that public proceedings facilitate public knowledge and understanding and may have a general deterrent effect, the public should have the opportunity to assess the fairness of the proceedings. Justice should not only be done, it should also be seen to be done.[83]

As can be seen from the foregoing, international and hybrid courts' key regulatory documents as well as their jurisprudence safeguard the principles of public trial and transparency in line with human rights standards.

2.3. Structure

In terms of structure, all international and hybrid judicial institutions, including the ICTY, SCSL, ICC and STL, have public information and outreach departments as part of their Registries and the majority also have separate public information units within the prosecutorial offices.

Offices of the Prosecutor (OTP) are organs within international and hybrid courts. They are responsible for both investigations and prosecutions. In most cases, and in accordance with identified best practices, OTPs have separate spokespersons and public information units who

[81] Decision on the Prosecutor's Motion Requesting Protective Measures for Victims and Witnesses, *Tadić* (IT-94-1), Trial Chamber, 10 August 1995, § 32.
[82] *Ibid* § 28, 32.
[83] Order on Defence Motion Pursuant to Rule 79, *Kunarac, Kovač and Vuković* (IT-96-23 & 23/1), Trial Chamber, 22 March 2000, § 5.

issue statements on behalf of the Prosecutor, deal with media queries and follow the news to identify and address misunderstandings. In the early years, the ICTY had only one spokesperson. In 1998, this changed, and the Tribunal reported in its Annual Report that 'Chambers and the Office of the Prosecutor should have different spokespersons in order to allow them to be clearly identified and distinguished from each other.'[84] In its Manual of Developed Practices issued in 2009, the ICTY stated as follows:

> Preserving judicial integrity and independence is vital. This basic principle should be reflected in the organisational set up of the Communication Service. Each of the two main organs of the institution, Chambers, headed by the President of the ICTY, on the one hand, and the Prosecutor's office on the other, require its own Communications Office, including its own spokesperson. ICTY staff including individual prosecutors should not address the media regarding their cases and should be protected by a spokesperson from daily media inquiries.[85]

In 2019, the Assembly of States Parties to the ICC established an Independent Expert Review and asked them to identify ways to strengthen the ICC and the Rome Statute system and enhance their overall functioning and to make specific recommendations to enhance the performance, efficiency, and effectiveness of the ICC.[86] In 2021, the Experts published the *Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report* (IER Report). In the report, they noted that the ICC OTP has no spokesperson or senior media adviser and, thus, no senior staff member fully dedicated to external communications.[87] They advised that an experienced media expert could facilitate the prompt preparation of communications materials and that a dedicated spokesperson could relieve the Prosecutor and Deputy Prosecutor, as well as other OTP staff, from dealing with daily media inquiries and frequent media engagements.[88] In

[84] Fifth Annual Report of the ICTY, A/53/219S/1998/737AS, 10 August 1998, available at https://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_1998_en.pdf, § 193.
[85] ICTY Manual on Established Practices (2009) available at https://www.icty.org/en/press/manual-developed-practices-launched, 190-191.
[86] *Independent Expert Review of the International Criminal Court and the Rome Statute System: Final Report*, 30 September 2020, available at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19/IER-Final-Report-ENG.pdf, 7 (citations omitted).
[87] *Ibid* 51.
[88] *Ibid.*

accordance with these observations, the IER Report recommended that the capacity of the OTP's Public Information Unit should be enlarged, that a senior media officer should be recruited to head the Unit and act as the OTP spokesperson and that the Unit should function directly under the Prosecutor.[89]

In terms of structure, experience has shown that prosecutorial and judicial authorities should have separate spokespersons and communications departments, which employ experienced communications experts.

2.4. Communicating with the public

International and hybrid courts are relatively consistent in their approach to communications and outreach. They maintain an active presence on the internet where they provide a live (30-min delayed) broadcast of proceedings, information about the cases, regulatory and other public documents (including Statutes, Rules of Procedure and Evidence, important filings, orders, decisions, judgements, transcripts of proceedings).[90] All institutions have also appointed at least one spokesperson (for the Registry and Chambers) to deal with media queries[91] and regularly issue press releases to inform the media of important developments.[92] They are also active on social media (such as LinkedIn, Twitter, Facebook, Flickr, YouTube) and issue summaries of the main judicial decisions and witness testimony in court with the aim of assisting the media and others who follow the work of the institution.[93] International and hybrid courts' outreach departments are tasked with establishing sustainable, two-way communication, promoting understanding and support for the judicial process and clarifying misperceptions and misunderstanding to enable affected communities to follow trials.[94]

[89] *Ibid*. It is worth noting that the ICC OTP advertised for the position of Spokesperson in December 2021.
[90] See, for example, ICTY at https://www.icty.org, STL at https://www.stl-tsl.org, ICC at https://www.icc-cpi.int/ .
[91] See, for example, STL 'STL Appoints Spokesperson' available at https://www.stl-tsl.org/en/media/press-releases/3917-stl-appoints-spokesperson .
[92] See, for example, ICC 'News' available at https://www.icc-cpi.int/news or ICTY 'Press' http://www.icty.org/en/press.
[93] See, for example, ICC 'Cases' available at https://www.icc-cpi.int/Pages/cases.aspx or STL 'Bulletin' available at https://www.stl-tsl.org/en/media/stl-bulletin.
[94] 'Strategic Plan for Outreach of the International Criminal Court', ICC-ASP/5/12, 29 September 2006. See also ICTY 'Outreach Programme' available at http://www.icty.org/en/outreach/outreach-programme or STL 'Registry' available at https://www.stl-tsl.org/en/about-the-stl/structure-of-the-stl/registry-stl/5225-the-public-information-and-communications-section.

The diverse cultural and social environments in which the ICTY, ICC, SCSL and STL operate(d) presented complex and very different challenges in terms of communications and outreach. For example, in the former Yugoslavia, both electronic and print media are highly developed, and most of the population has access to television, radio and newsprint. At the same time, the mainstream media remains under the strong influence of local politicians, most of whom were opposed to the work of the Tribunal. SCSL outreach faced a very different problem in Sierra Leone – that of how to reach people in remote villages with no access to electricity or any media. The STL, for its part, had to contend with security concerns whereby outreach personnel were not allowed to travel and conduct outreach activities beyond a certain, relatively narrow, radius outside of the Lebanese capital, Beirut. Finally, because the ICC is a 'world court', it faces the challenge of conducting outreach in multiple countries with different levels of economic development, diverse cultures and different languages. Addressing these very different challenges, the courts have become quite creative in the conduct of their public information and outreach activities, tailoring them to different contexts and audiences. Some salient examples are described below.

2.4.1. International Criminal Tribunal for the former Yugoslavia (ICTY)

In order to reach out as directly as possible to the affected communities, the ICTY ran a series of five 'Bridging the Gap' conferences in 2004 and 2005[95] which focused on completed cases that dealt with crimes committed in a particular area. The events brought together Tribunal officials from its three organs – the Office of the Prosecutor, Chambers and Registry – with around 200 representatives in each of the local communities. The discussions resulted in a much deeper understanding of the work of the ICTY, and the recognition of both its accomplishments and its limitations.[96] Branko Todorović, the then president of the Helsinki Committee for Human Rights in Republika Srpska, noted that '[a]fter participating in Bridging the Gap events, Bosnians,

[95] ICTY 'Bridging the Gap with local communities', available at https://www.icty.org/en/outreach/bridging-the-gap-with-local-communities.
[96] More information and detailed transcripts of Bridging the Gap conferences are available at: https://www.icty.org/en/outreach/bridging-the-gap-with-local-communities .

including Serbs whose knowledge of the ICTY had long been filtered by local political leaders and ethnic media, were finally 'able to see the factual truth, not the political truth… [and to see that] the truths are horrible'.[97]

The ICTY also established a program to reach young people born in the former Yugoslavia after the conflicts of the 1990s and encourage them to scrutinize information presented as fact, challenge conventional wisdom, and develop their own opinions about the conflicts and the Tribunal's work. Since the launch of the program in December 2011, over 8,000 students in Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, North Macedonia and Serbia have participated in the project.[98]

In order to reach global audiences, the ICTY produced seven thematic documentaries which are available free of charge on the Tribunal's website.[99] The movies focus on key jurisprudence and some of the Tribunal's milestone cases and were presented and distributed both in the former Yugoslavia and internationally to a wide range of audiences. Victim's groups welcomed them, and academics, civil society and students use them as educational tools.

2.4.2. Special Court for Sierra Leone (SCSL)

The SCSL was 'the first court to view outreach and legacy as core elements of its work from a very early stage.'[100] The Court responded to communication challenges in Sierra Leone by distributing picture booklets explaining the work of the court, producing radio and TV panel discussions, screenings of trials, weekly summaries of court proceedings, poster campaigns and

[97] Branko Todorović, the then president of the Helsinki Committee for Human Rights in Republika Srpska, as quoted in Diane F. Orentlicher 'That Someone Guilty Be Punished: Impact of the ICTY in Bosnia' OSJI, International Center for Transitional Justice, 2010, 103.
[98] ICTY 'Youth Outreach', available at https://www.icty.org/en/outreach/youth-outreach.
[99] ICTY 'Documentaries', available at https://www.icty.org/en/outreach/documentaries.
[100] SCSL and No Peace Without Justice, 'Making Justice Count: Assessing the impact and legacy of the Special Court for Sierra Leone in Sierra Leone and Liberia', 2012, available at http://www.npwj.org/content/Making-Justice-Count-Assessing-impact-and-legacy-Special-Court-Sierra-Leone-Sierra-Leone-and, 1.

theatre productions some of which travelled to remote provinces. They also conducted training the trainer workshops. SCSL outreach activities resulted in the formation of School Human Rights and Peace Clubs as well as 'Accountability Now' clubs at universities throughout the country, which explored the broader issues of justice, accountability and human rights.[101]

The notable success of SCSL Outreach is often credited to its early start. Even before the Court's establishment, various international and local NGOs engaged with communities around Sierra Leone to disseminate information and listen to views of the affected communities. When the first small team of court officials arrived in 2002, the court's first prosecutor engaged in town hall meetings that eventually reached every district in the country, and the Registry established an outreach section with representation across the country to disseminate information and facilitate outreach by the prosecution as well as the defence teams.[102]

In 2012, the SCSL commissioned a survey on the Court's impact and legacy 'to capture people's understanding about the mandate and operations of the SCSL and establish its impact through its judicial proceedings, its legacy work and its outreach program.'[103] Its results showed that the 'Outreach Section has played a critical role in keeping the public informed and engaged in the work of the SCSL.'[104] In their findings, the authors stated:

> The accomplishments and challenges of the Outreach Section can serve as a good indication to future tribunals on the importance of outreach in ensuring that the impact of international courts and tribunals is felt by the populations affected by crimes. They should also serve as a lesson that outreach should be prioritised from the outset and included in the mandates of international courts and tribunals. In this way, problems faced by the SCSL Outreach Section, particularly financial constraints, can be foreseen and avoided from the start.[105]

[101] Rachel Kerr and Jessica Lincoln, 'The Special Court for Sierra Leone: Outreach, Legacy and Impact, Final Report', February 2008, War Crimes Research Group, Department of War Studies King's College, University of London, 11-12.
[102] Eric Witte, 'International Crimes, Local Justice A Handbook for Rule-of-Law Policymakers, Donors, and Implementers', Open Society Justice Initiative, 2011, 36-37.
[103] SCSL Impact Survey (n 100) 59.
[104] *Ibid* 14.
[105] *Ibid.*

2.4.3. Special Tribunal for Lebanon (STL)

The STL also engaged in communications with the local communities from the outset and established an outreach office in Lebanon very early in the life of the Tribunal. In order to address the resource and security limitations, as well as the very challenging political environment in Lebanon, STL Outreach focused on specialized audiences, such as legal professionals, the academic community and civil society and expanded the outreach strategy to include the broader discussion of international criminal justice as a tool through which to better explain the work of the STL itself. For example, in order to assist the media, legal professionals, the academia and NGOs in following its work, the STL published a glossary of legal terms in Arabic, English and French and facilitated the translation of Antonio Cassese's seminal book – 'International Criminal Law' – into Arabic. Published in 2015, it is the first comprehensive textbook on this subject in the Arabic language. STL Outreach also organized several working visits to the Netherlands and brought Lebanese senior media editors and journalists, lawyers, NGO representatives, academics and students, not only to the seat of the Tribunal but also to other international judicial institutions in The Hague.

Furthermore, the STL used an (at the time, pre-pandemic) innovative approach to education to reach different audiences with messages about international criminal justice. The Tribunal partnered with the Asser Institute in The Hague and universities in Lebanon to provide a course on international criminal law, conducted via video-link by lecturers teaching from the Asser Institute in The Hague to students gathered at one of 11 participating universities in Lebanon. From 2011-2020, the course was attended by well over 1,500 students of law, political science and international relations, over 120 of whom also participated in study visits to The Hague.[106] As a consequence, some of the participating Lebanese universities began offering specialized courses on international criminal law, engaged in other bilateral and multilateral projects, and some of the alumni specialized in the field and began teaching. Most importantly, with the assistance and support of STL Outreach, professors involved in the program established a Lebanese NGO – the

[106] STL, 'Inter-University Programme', available at https://www.stl-tsl.org/en/outreach/inter-university-programme.

International and Transitional Justice Resource Center (ITJRC). Following the STL's withdrawal, the program, which has been described as the 'best attempt towards reconciliation in Lebanon,'[107] continues.[108]

2.4.4. International Criminal Court (ICC)

The ICC for its part is the first and apparently the only international court to have published its *Integrated Strategy for External Relations, Public Information and Outreach*.[109] In it, the Court sets out 'the goals, framework and mechanisms for the external communication activities'[110] and explains that the Strategy 'coordinates the external relations, public information and outreach work of the Presidency, Office of the Prosecutor (OTP) and the Registry; ensuring that these diverse activities fall within a common strategy, with mutually reinforcing messages, activities and goals.'[111] The ICC also issued a number of outreach reports which describe in some detail the implemented activities.[112]

Due to its broad territorial jurisdiction, the ICC has three primary audiences which need to understand its decisions and the process by which they are reached: the international audience (critical to reaching universality in the adoption of the Rome Statute and to general deterrence); the national audiences within the States Parties (critical to recruiting the best staff, encouraging adoption of ICC jurisprudence, and ensuring continued state support); and the national audiences in the States in which the cases arise, whether or not they are States Parties (critical to encouraging witnesses to cooperate and to assuring those on all sides of the conflict that both the defendants and the victims are being treated fairly). [113]

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[107] Georges Masse, Professor at the American University of Science and Technology, discussion on file with the author. Also quoted here: https://www.stl-tsl.org/en/outreach/inter-university-programme.
[108] T.M.C. Asser Institute, 'Inter-University Programme in Lebanon,' available at https://www.asser.nl/education-events/inter-university-programme-in-lebanon/.
[109] ICC Integrated Strategy (n 3).
[110] ICC Integrated Strategy (n 3) 1.
[111] *Ibid.*
[112] Usefully compiled on the *ICC Forum* website at https://iccforum.com/background/outreach.
[113] Expert Initiative on Promoting Effectiveness at the International Criminal Court, December 2014, available at http://www.legal-tools.org/doc/3dae90/, 229.

In order to reach these diverse and sometimes divergent audiences, the ICC and its communications department had to implement an array of outreach strategies. For example, as part of its community outreach and in order to reach affected communities in remote areas of situation countries, ICC Outreach organized screenings of courtroom footage of relevant trials as well as live video and radio broadcasts of important moments in the proceedings. Outreach staff frequently travelled to remote areas and participated in radio and TV programs, presenting video summaries of proceedings.[114] In each country, the media, legal and academic outreach included numerous events specifically tailored to journalists, lawyers and students, respectively.[115]

In an innovative approach to outreach to the international legal expert community, the ICC Office of the Prosecutor supports the ICC Forum of the Human Rights Project at the UCLA School of Law. According to the website,

> [t]he purpose of the Forum is to allow members of the legal community, governments, academics, and others to debate complex issues of international criminal law faced by the Office of the Prosecutor in the course of its work at the ICC. Membership and participation in this Forum are open to everyone. We welcome you to express your opinion, and we request a civil debate which directly addresses the legal issue set forth in the current question.[116]

Reflecting its global nature, the ICC website also provides important online resources for academics and researchers, diplomats, legal professionals, the media, NGOs and teachers and high school students in various official languages of the court.[117] Also innovatively, the ICC website offers a model course on international criminal law in Spanish. For legal professionals everywhere, the ICC 'Legal Tools'[118] online searchable database is an indispensable tool.

[114] ICC 'Engaging with Communities – Report of activities in the situation related countries', January 2011 - October 2014, available at https://iccforum.com/media/background/outreach/2014-11-17_Public_Information_and_Outreach-Engaging_with_Communities-Advance_Copy.pdf.
[115] *Ibid.*
[116] ICC Forum: https://iccforum.com/about.
[117] ICC 'Justice Matters', available at https://www.icc-cpi.int/get-involved/Pages/Justice-Matters.aspx.
[118] ICC Legal Tools Database, available at https://www.legal-tools.org.

Interestingly, particularly for investigators and prosecutors, in 2018, ICC Pre-Trial Chamber I (PTC) in the situation in the state of Palestine extended the victims' and affected communities' right to information to the very early stages of the preliminary examination. The PTC specifically instructed the Court's Registry to 'establish a system of public information and outreach activities for the benefit of the victims and affected communities in the situation in Palestine' stating that 'victims also have the right to provide information to, receive information from and communicate with the Court, regardless and independently from judicial proceedings, including during the preliminary examination stage.'[119] In their Decision, the PTC referred to numerous resolutions of the ICC Assembly of States Parties in which they state that victims should be provided with sufficient and accurate information about the Court's role and activities and further elaborated that:

> for 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 of situations and cases before the Court. Outreach and public information activities in situation countries are quintessential 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.[120]

It is important to note that in the ICC IER Report, the experts observed significant delays in the Court/OTP outreach as it normally does not commence until a formal investigation is opened.[121] They also observed that the only information usually provided by the OTP during preliminary examinations (PEs) is the annual report and occasional statements at some key moments during the PEs.[122] In view of this, and elaborating on the view of the Palestine situation PTC, the experts suggested that, in the absence of a separate outreach department, Registry communications experts should be included in preparations for PEs by the OTP as early as feasible to help the OTP shape an outreach strategy appropriate to the situation that will be investigated.[123] They also

[119] Situation in the State of Palestine, Decision on Information and Outreach for the Victims of the Situation, ICC-01/18-2, 13 July 2018, § 10, 19.
[120] *Ibid* § 7, 11. (citations omitted).
[121] ICC IER (n 86) 126.
[122] *Ibid.*
[123] ICC IER (n 86) 127.

recommended that '[a]n outreach plan, at least for every situation country, if not also per region, should be devised and then implemented from the PE stage of every situation.'[124]

The experts also strongly advised the ICC to develop a coordinated communications strategy and to ensure coordination across the institution on communications issues even before such a strategy; develop and implement an outreach plan from the preliminary examination stage for every situation;[125] build outreach programs and activities into decisions to pursue investigative activities from the start; develop communication materials to be shared during outreach activities covering various topics, namely the role and mandate of the court, its OTP strategy and progress of investigations, the rights of victims, etc.; and improve media access to the court by holding press conferences simultaneously in situation/regional countries.[126] The experts also advised better coordination between the Assembly of States Parties and the ICC on conducting public information campaigns and communicating and explaining the court's mandate in individual countries.[127] These recommendations align with some of the best practices and lessons learned from the ICTY, SCSL and other international courts.

[124] ICC IER (n 86) 127-128.
[125] At the request of the Pre-Trial Chamber, this is applied in the situation on Palestine.
[126] ICC IER (n 86) 127-128.
[127] ICC IER (n 86) 130.

2.4.5. Conclusion

The above examples highlight several of the best practices established through the public information and outreach efforts of international and hybrid courts and tribunals. Experience has shown that having separate spokespersons and media units allows judges and prosecutors' offices to properly communicate their respective mandates and challenges to the public, and that effective communication should begin as early as possible, preferably even before the formal opening of investigations.

In addition to the provision of information (through press releases and work with the media, the website, or social media accounts), successful communications include effective and early outreach, tailored to the local situation and target audiences. This requires a comprehensive public information and outreach strategy which includes an examination of the background and context of each situation and the affected communities (including languages spoken, levels of education, the media landscape, the political and social context); identification of the relevant target audiences (victims' groups, legal professionals, academics, students, as well as others) and means of communications tailored to those target audiences (printed and AV materials, video screenings, town hall meetings, conferences, lectures expert discussions, as well as other activities).
In practice, an array of diverse outreach initiatives tailored to specific audiences have proven effective. They include picture booklets and video screenings in areas with low literacy rates, conferences to facilitate communication between divided communities, youth programs and engaging audio-visual materials to engage younger generations, documentaries to inform a global audience, courses, glossaries and textbooks on international criminal law to assist the academic and professional communities.

The authors of the SCSL Impact Survey are quite explicit in their recommendations to other courts and tribunals:

> Outreach is a condition for success for international courts and tribunals, both in engaging populations to acquire their cooperation and to ensure the impact and legacy of international courts and tribunals in the countries affected by crimes. As

> such, outreach should be included in the formal mandate of international courts and tribunals, preferably in their founding Statute or in their rules, and should be funded through the Court's regular budget. Funding outreach through separate or voluntary contributions means that outreach personnel spend valuable time and energy looking for funding instead of carrying out critical outreach functions. Outreach should start at the earliest possible opportunity, preferably whenever an interest in a particular country is indicated or work begins in a particular country, and should as far as possible extend to encompass the whole country, irrespective of where crimes were committed.[128]

2.5. Managing expectations

International and hybrid courts are usually established in response to mass violations of human rights and in the aftermath of a devastating conflict. Their creators never promise 'only' fair and public trials (which is the primary legal requirement of justice) but also seek to serve other non-judicial goals,[129] such as the restoration and maintenance of peace, contribution to reconciliation, strengthening the rule of law or capacity building aimed at the national legal system of the affected country. For example, in its Resolution 827 establishing the ICTY, the United Nations Security Council (UNSC) stated that establishing a criminal tribunal would not only bring perpetrators to justice, but would also ensure the cessation of violations of international humanitarian law and would contribute to the restoration and maintenance of peace in the former Yugoslavia.[130] UNSC Resolution 1315 on the SCSL states that 'a credible system of justice and accountability for the very serious crimes committed [in Sierra Leone] would end impunity and would contribute to the process of national reconciliation and to the restoration and maintenance of peace.'[131] While some

[128] SCSL Impact Survey (n 100) 2.
[129] The term 'non-judicial goals' is borrowed from UN Human Rights Council terminology in the context of the Special Mandate and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (see https://www.ohchr.org/EN/Issues/TruthJusticeReparation/Pages/Index.aspx) and refers to reconciliation, capacity building, enhancement of the rule of law, etc.
[130] UNSC Resolution 827, 25 May 1993, S/RES/827 (1993), 1.
[131] UNSC Resolution 1315, 1 (preamble).

observers have asserted that contribution to peace and reconciliation and other non-judicial goals lie outside the courts' mandate,[132] many impact studies focus on their fulfilment and assess, *inter alia,* whether the courts brought peace or reconciliation or shrunk the space for denial. In turn, they draw highly critical conclusions of the international and hybrid courts' achievements in this respect and often see these as failures of the courts' communications and outreach efforts.[133] Many of these criticisms, however, fail to take into consideration that 'causal relationships are extremely difficult, if not impossible, to establish; …[that] the change being sought through a transitional justice mechanism will be nonlinear, the result of multiple interactions by numerous actors; and … [that] these will be difficult to predict, let alone control,'[134] as Collen Duggan warned 12 years ago. Mirko Klarin also cautioned in 2009 that if impact of the ICTY 'were to be measured exclusively by the poor perception of the Tribunal that prevails, perhaps the best course of action would be to shut its doors without waiting for the end of its mandate.'[135] More recently, Marko Milanovic concluded that whether an international court is trusted by the local population depends not on the fairness of its procedures or the scope of its outreach programme, but on whether the court's findings align with what the population wants to hear.[136]

In conclusion, within the constraints of their regulations and resources, international and hybrid courts and most of their prosecutors' offices have pioneered communications in the judicial context and done an admirable job of proactively ensuring that the interested public is informed about their work. Despite this, their impact is often assessed on the basis of the courts' achievements of their non-judicial goals, such as the restoration and maintenance of peace, contribution to reconciliation,

[132] See, for example, the works of Eric Stover and Harvey M. Weinstein, Leila Nadya Sadat, Janine N. Clark, Bronwyn Anne Leebaw and others.
[133] For example, a study on the International Criminal Tribunal for Rwanda, included in the Open Society Justice Initiative's comprehensive Handbook which will be further discussed in Part 4 states that while the Tribunal's outreach efforts 'did increase the level of knowledge of the tribunal's activities among those surveyed, this did not create more positive perceptions of the tribunal or its role in promoting reconciliation.' Open Society Justice Initiative, 'Options for Justice: A Handbook for Designing Accountability Mechanisms for Grave Crimes,' Open Society Foundations, 2018, available at https://www.justiceinitiative.org/uploads/89c53e2e-1454-45ef-b4dc-3ed668cdc188/options-for-justice-20180918.pdf, 226.
[134] Colleen Duggan, 'Editorial Note', *International Journal of Transitional Justice* (Vol.4, 2010), 327
[135] Mirko Klarin, 'The Impact of the ICTY Trials on Public Opinion in the Former Yugoslavia', *Journal of International Criminal Justice* 7 (2009) 89-96, 95–96.
[136] Marko Milanovic, 'Courting Failure: When Are International Criminal Courts Likely to be Believed by Local Audiences?', in K.J. Heller et al. (eds), *The Oxford Handbook of International Criminal Law* (Oxford University Press, 2020) 261-293, 292.

strengthening the rule of law or capacity building. Acting in the aftermath of gross violations of human rights, national judicial and prosecutorial authorities might face similar challenges of managing the expectations in relation to their core mandate.

Part 3 – National courts and prosecution authorities

Having examined the communications efforts and best practices of international and hybrid courts and prosecution authorities, we will now turn to select national prosecutorial and judicial authorities dealing with international crimes with the same aim – to examine how they have discharged their duties regarding communication with the public. The following national systems have been taken into consideration – Bosnia and Herzegovina, and specifically its War Crimes Chamber (WCC) and Special Division for War Crimes in the Prosecutor's Office (SDWC), the first hybrid court and prosecution embedded in a national system[137] with jurisdiction over atrocity crimes; Germany, Sweden and France, as countries with a high number of cases dealing with international crimes and some very specific challenges in recent trials; and the Netherlands, as a country with a long tradition of war crimes investigations and the unique MH17 trial.

3.1. Background

As the following pages will show, national prosecutors and national judicial authorities vary in how they provide information to the public. Interestingly for the present discussion, it would appear that some prosecutorial authorities and the police, provide more information to the public than do courts. Finding information provided by national courts of the countries selected for this survey is a time-consuming process. The search becomes more efficient if one relies on websites of NGOs such as TRIAL, Human Rights Watch, European Center for Constitutional and Human Rights (ECCHR), Syria Justice and Accountability Center (SJAC) and others. These websites, though demonstrably very useful, contain information filtered by the policy and interests of each

[137] From 2005 until 2012, the WCC and SDWC was considered hybrid because it included international judges and prosecutors. From 2012, they were no longer 'hybrid' but a national court.

NGO and do not provide a holistic view (for example, TRIAL focuses on universal jurisdiction cases[138] while SJAC focuses on Syria[139]).

In all countries and cases under consideration except Bosnia and Herzegovina, the prosecutorial authorities and judiciaries are dealing with crimes committed outside of their borders and face some of the same challenges as international courts. For example, in most cases, the victims of crimes reside in other countries (such as Syria or Rwanda, for example), and speak a different language than the official language of the court. Furthermore, the number of victims often far exceeds those who are able to formally participate in the proceedings and thus benefit from any interpretation provided to them in the courtroom, in accordance with the law.

Like Ukraine, all analysed jurisdictions have ratified the ICCPR and the ECHR, passed freedom-of-information laws and guarantee the right to a public trial in their Constitution and/or laws. This right is never absolute, and the legal regimes vary as to the limits set or the authority to order closed sessions. Different rules also apply to recording, photographing and broadcasting the proceedings.[140] None define precisely what it means to conduct a 'public trial.'

For the purposes of the parameters of this report, rather than focusing in detail on the legal frameworks (which are not significantly different across examined countries as they relate to the relevant rights to information, public trial, and the truth) and the effectiveness of their implementation (which is found lacking to differing degrees across countries), the following analysis will centre on the most relevant and most instructive (positive and negative) examples from national practice.

[138] More information about TRIAL is available at http://trialinternational.org. TRIAL's analysis regretfully does not include any reference to the ways in which courts provide information about their work. Such an analysis is much needed so that the institutions might become aware of the challenges faced by those who research them.
[139] More information about SJAC is available at https://syriaaccountability.org/about/.
[140] Wim Voermans, 'Judicial transparency furthering public accountability for new judiciaries', Utrecht Law Review, Volume 3, Issue 1 June 2007, 151-152.

3.2. Bosnia and Herzegovina

The Special Department for War Crimes in the Prosecutor's Office (SDWC) and the War Crimes Chamber (WCC) of Bosnia and Herzegovina (BH) were established as part of the completion strategy of the ICTY, so that the Tribunal could transfer certain cases to national jurisdictions which are able to operate in accordance with international standards. [141] Their jurisdiction is over persons suspected of international crimes (genocide, crimes against humanity and war crimes) as defined under BH law.[142]

At the outset, the need for transparency and outreach was recognized and a Public Information and Outreach Section (PIOS) in the WCC Registry was established. Similarly, the SDWC had a Spokesperson and a small PR department. These offices were responsible for outreach and served as focal points for media relations for the respective institutions.[143] Also at the outset, the Court designed an ambitious outreach plan that included setting up a national network of five regional information offices run by local NGOs designated by the Court.[144] The WCC website became a useful tool for anyone interested in following the war crimes prosecutions in Sarajevo and provided indictments and judgments as well as detailed weekly updates on the Court's activities, daily and monthly schedules, and other information. Most of the material was available in Bosnian/Croatian/Serbian and English.[145]

Initially, the WCC and SDWC were commended on their transparency, particularly in comparison with other judicial and prosecutorial institutions of the region.[146] For example, despite the fact that

[141] Elena Naughton, 'Committing to Justice for Serious Human Rights Violations Lessons from Hybrid Tribunals' ICTJ 2018, 27.
[142] International Crimes Database. 'Domestic', available at https://www.internationalcrimesdatabase.org/Courts/Domestic
[143] OSCE, 'Delivering Justice in Bosnia and Herzegovina: An Overview of War Crimes Processing from 2005 to 2010,' 2011, 86.
[144] Bogdan Ivanišević, The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court (2008), International Center for Transitional Justice, 35.
[145] *Ibid* 37.
[146] OSCE Report (n 143) 87.

the rules of criminal procedure precluded film and television recording by media or members of the public of court proceedings, the Court had agreed to provide archived video material from trials to journalists upon request and subject to approval. [147]

Regrettably, many of the initial outreach plans were later abandoned. Due to a lack of resources as well as lack of appreciation for the benefits of conducting outreach, the Public Information and Outreach Strategies which had been developed (emphasizing the need for careful planning in view of the difficult environment in which the Court and Prosecutor's Office conduct their public relations) were not implemented.[148]

The information gap resulted in victims' groups expressing their frustration with the WCC[149] and by 2010, many victims' associations openly stated that they do not trust and support the Court or Prosecutor's Office.[150]

In light of this, Human Rights Watch warned:

> Beginning at an early stage, policymakers, donors, and national authorities should prioritize outreach as an important component of broader confidence-building initiatives aimed at increasing public understanding of criminal accountability processes. While donors have long recognized the value of outreach in the context of international judicial institutions, the need for it is not necessarily obvious for courts based in the country where the crimes took place. Situating the court closer to victims does not guarantee that its impact will be felt more acutely or its work better understood. If anything, the experience in Bosnia demonstrates the very real potential for national political actors to mount self-serving criticisms of judicial institutions conducting sensitive cases. …
>
> An important lesson from Bosnia is that the court and the prosecutor's office should inform and engage the public on their respective work in order to shrink the space for attacks on these institutions that could otherwise more readily gain traction and flourish.[151]

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[147] *Ibid* 88.
[148] *Ibid* 92.
[149] Human Rights Watch, *Justice for Atrocity Crimes: Lessons of International Support for Trials before the State Court of Bosnia and Herzegovina* (2012), 43.
[150] OSCE Report (n 143) 89.
[151] Human Rights Watch BH Report (n 149) 36, 39.

In terms of structure, the Human Rights Watch advised:

> The court—and, where the prosecutor's office is independent of the court, the prosecution—should have competent spokespersons to effectively and regularly engage with the media. … The prosecutor's office should develop and share with the public a prosecutorial strategy for prioritizing cases in order to manage expectations, operationalize the office's commitment to transparency, and keep the public engaged in the office's work. National authorities and donors should also ensure timely training for international and national judges and prosecutors about the value of outreach in order to foster their cooperation when it comes to devising and implementing effective outreach initiatives. Donors and national authorities should also consider providing training to journalists on the particularities of reporting on atrocity cases (for instance, on the presumption of innocence and other rights of defendants) as a means of encouraging fair and responsible journalism.[152]

3.3. Germany

Germany was one of the first countries to incorporate the Rome Statute domestically through the Code of Crimes against International Law adopted in 2002. The Federal Public Prosecutor General (FPPG), who is part of the executive branch of government (rather than the judiciary) and is subordinate to the Federal Ministry of Justice and Consumer Protection, is tasked with prosecuting international crimes.[153] Since 2003, the Federal Criminal Police (FCP) has included a specialised war crimes unit. The unit was restructured and renamed in 2009 and as of August 2018 has the status of an independent unit within the FCP.[154]

[152] *Ibid* 40.
[153] Although he can transfer 'cases of lesser importance' to a State public prosecution office, as explained in 'Universal Jurisdiction in the Federal Republic of Germany: Observations submitted pursuant to UN General Assembly Resolution 73/208 of 20 December 2018,' 22 March 2019, 1 (translation into English) available at https://www.un.org/en/ga/sixth/74/universal_jurisdiction/germany_e.pdf.
[154] FIDH, 'Breaking Down Barriers: Access to Justice in Europe For Victims of International Crimes' (October 2020), available at https://www.fidh.org/IMG/pdf/breaking_down_barriers_en_web_final_2020-11-08.pdf, 62.

The Federal Public Prosecutor General has a website on which it provides limited, mostly general information in German and English.[155] It also maintains a Twitter account[156] with information only in German. The Federal Criminal Police has a website in German and English,[157] which provides general information about the FCP's mandate and activities, but no specific information about investigations into international crimes. The FCP maintains a relatively active presence on social media with accounts on Facebook, Instagram, Twitter, LinkedIn and YouTube, all in German.

International crimes are tried exclusively before the Higher Regional Courts.[158] The German States' Ministries of Justice maintain websites which, in some cases, also include press releases of the Higher Regional Courts.[159] However, the information provided differs in quantity and detail and it is mostly, if not exclusively, in German.

In September 2015, following its longest ever trial, the Higher Regional Court in Stuttgart convicted two leaders of the Forces démocratiques de libération du Rwanda (FDLR), a rebel group active in eastern Democratic Republic of Congo (DRC), of war crimes and leadership of a terrorist group.[160] According to the organizations who monitored the trial (ECCHR and HRW, among others), the process completely failed to communicate with communities in the affected region.[161] Stuttgart court press office updates were published in German and related mainly to organizational aspects. The failure to provide information in French or in any other language spoken in the DRC meant that even victims' organizations were unable to transmit any information about the trials. The little information that was provided and which was received with great interest in the region, was provided by NGOs such as ECCHR.[162]

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[155] Der Generalbundesanwalt beim Bundesgerichtshof, 'Our Role', available at https://www.generalbundesanwalt.de/EN/Our-role/International-Criminal-Law/Voelkerstrafrecht-node.html.
[156] See 'Bundesanwaltschaft' on Twitter at https://twitter.com/GBA_b_BGH.
[157] Bundeskriminalamt, 'The BKA', available at https://www.bka.de/EN/Home/home_node.html.
[158] FIDH Report (n 154) 63.
[159] See, for example, Justiz-online, available at https://www.justiz.nrw/ and Ministerium der Justiz und für Migration Baden-Württemberg, available online at https://www.justiz-bw.de.
[160] European Center for Constitutional and Human Rights (ECCHR), 'Universal Jurisdiction in Germany? The Congo War Crimes Trial: First Case under the Code of Crimes against International Law', 8 June 2016, 2.
[161] *Ibid* 27.
[162] *Ibid* 27.

The *Al Khatib* trial, which concluded in Koblenz in January 2022, concerned crimes committed in Branch 251 (also known as the Al-Khatib Branch) of the Syrian General Intelligence Directorate where suspected enemies of the government were detained and tortured before they were sent to other prisons or were released.[163] The defendants were former Branch 251 officers who had fled Syria and sought asylum in Germany. In line with international law, in Germany, in ordinary court proceedings all oral arguments – including the pronouncement of judgement and other decisions – are public.[164] However, in the *Al Khatib* trial, due to the pandemic, the number of seats in the public gallery was drastically reduced and initially, the interpretation into Arabic was available for the defendant but not for the victims, media or anyone else interested in the trial. Following a successful challenge to the German Constitutional Court, interpretation was provided, but only to accredited journalists who had been able to travel to Koblenz to follow the trial.[165] However, since the accreditation process was published in German for only a week at the beginning of the pandemic, almost no Arabic speaking journalist accredited for the trial.[166] The court in Koblenz did make efforts to accommodate the higher interest in its proceedings (including holding hearings in a larger courtroom and, later, adapting its library to host the trial), but this did not solve the problem of language or possibility for anyone not physically present to follow the trial.[167]

German law does not allow audio-video recording except under exceptional circumstances when judges determine that an audio recording can be authorized for scientific and historic purposes of trials that are of 'paramount significance for the contemporary history of the Federal Republic of Germany'. [168] Based on that provision, SJAC and several other international human rights

[163] Roger Lu Phillips, 'A Drop in the Ocean: A Preliminary Assessment of the Koblenz Trial on Syrian Torture', 22 April 2021, www.justsecurity.org, 1.
[164] Voermans (n 140) 152.
[165] Syria Justice and Accountability Center, 'A Missed Opportunity: Court Denies Recording of Closing Statements in Koblenz,' 30 September 2021, available at https://syriaaccountability.org/updates/2021/09/30/a-missed-opportunity-court-denies-recording-of-closing-statements-in-koblenz/.
[166] Syria Justice and Accountability Center, 'Blackboxing Justice: Greater transparency needed in German universal jurisdiction trials', 25 March 2021, available at https://syriaaccountability.org/updates/2021/03/25/blackboxing-justice-greater-transparency-needed-in-german-universal-jurisdiction-trials/.
[167] *Ibid.*
[168] Courts Constitution Act, Germany, Section 169, available at https://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html.

organizations and academics submitted three requests to the court to allow for the audio recording of the *Al Khatib* trial. All three were rejected.[169] The Court based its decision on the argument that the trial – although generally historical – is not of significant importance to the Federal Republic of Germany itself.[170] The decision could not be appealed. Therefore, similar to what happened in the FDLR trial, since the language of the court is German,[171] the majority of the proceedings in the *Al Khatib* trial were conducted in German; the news releases and information on the trial was provided in German; and the judgement is written in German with no obligation to provide a translation.[172]

Thus, in the case of the *Al Khatib* trial, public information and outreach was again provided by NGOs such as SJAC, ECCHR, TRIAL International and in an innovative and interesting approach – through the *Branch 251* podcast.[173] It was only through such resources that Syrians and others around the world could learn about what occurred in the *Al Khatib* trial. While international and local NGOs and experts have always assisted communications and outreach departments and should continue to do so, they cannot take over this core function. 'Civil society organizations can augment and be vital partners for mechanism outreach structures, but not replace them. To be effective, outreach cannot be simply outsourced to nongovernmental organizations.'[174]

3.4. France

In France, investigations of international crimes are conducted primarily by the Central Office for Combatting Crimes against Humanity, Genocide and War Crimes (Central Office), a specialised unit created in November 2013 and attached to the French National Gendarmerie. In France, public prosecutors are members of the judiciary and investigations are carried out under the supervision

[169] SJAC (n 165).
[170] See ECCHR on Twitter, 6 September 2021, available at https://twitter.com/ECCHRBerlin/status/1434783261688008706.
[171] Courts Constitution Act, Germany, Section 184, available at https://www.gesetze-im-internet.de/englisch_gvg/englisch_gvg.html.
[172] Human Rights Watch, 'Germany Should Translate Trials on Syria into Arabic', 31 January 2022, available at https://www.hrw.org/news/2022/01/13/germany-should-translate-trials-syria-arabic.
[173] Branch 251 Podcast, available at https://branch-251.captivate.fm.
[174] OSJI Handbook (n 133), 90.

of a specialized judicial unit, created in 2012 and brought under the authority of the new national anti-terrorism unit in 2019. Trials concerning international crimes are held before the Paris *cour d'assises*/*Tribunal de Paris*.[175]

The Central Office maintains a website as part of the Ministry of the Interior/Gendarmerie website.[176] The French Gendarmerie is also active on social media. They maintain Twitter, Facebook, Daily Motion, YouTube, Flickr and Calameo accounts and channels. The *Tribunal de Paris* maintains a website as part of the Ministry of Justice (MoJ).[177] The MoJ website also has an active social media presence on Facebook, Twitter, LinkedIn and Daily Motion as well as contact details for persons in charge of communications with the media in the various Prosecutors' Offices.[178] Both websites provide information about their respective mandates and activities but do not provide information about individual cases nor a searchable database. The information is only available in French.[179]

There appears to be no efforts on the part of the authorities to inform victim communities in France or abroad of the proceedings or the possibility to participate in them. This has meant that victims generally only participate if supported by a specialised NGO or victims' association.[180] In addition, France has statutory restrictions on court reporting and forbids the recording or photographing and subsequent publication or live broadcasting of court proceedings. Recordings of proceedings with some historic value are exempted and they can be published, but only if enough time has elapsed

[175] FIDH Report (n 154) 46-47.
[176] Ministère de l'intérieur/Gendarmerie nationale, 'Office central de lutte contre les crimes contre l'humanité et les crimes de haine (OCLCH)', available at https://www.gendarmerie.interieur.gouv.fr/notre-institution/nos-composantes/au-niveau-central/les-offices/l-office-central-de-lutte-contre-les-crimes-contre-l-humanite-les-genocides-et-les-crimes-de-guerre-oclch.
[177] Ministère de la Justice/Tribunal de Paris, 'Les compétences du tribunal judiciaire de Paris', 13 April 2022, available at https://www.tribunal-de-paris.justice.fr/75/les-competences.
[178] Ministère de la Justice/Tribunal de Paris, 'Espace journalistes', 23 July 2021, available at https://www.tribunal-de-paris.justice.fr/75/espace-journalistes.
[179] Ministère de la Justice, available at http://www.justice.gouv.fr.
[180] FIDH Report (n 154) 53.

after the final verdict.[181] A recent proposal to amend the law to allow audio-visual broadcasting of trials has been met with considerable opposition.[182]

Meanwhile, ongoing investigations concern crimes committed in Rwanda, Syria, Iraq, Libya, Chechnya, Chad, Ivory Coast, Central African Republic, the Democratic Republic of Congo, Afghanistan, and Liberia[183] and possibly elsewhere. With very little information shared during the investigation and pre-trial stage and no efforts to inform the public of the outcome of these criminal proceedings,[184] the affected communities are precluded from participating in or benefitting from these important processes.

3.5. Sweden

The Swedish police have a specialised war crimes unit and the Swedish Public Prosecution Authority has a specialised war crimes prosecution team. The Swedish Migration Agency which processes asylum applications in Sweden reports information on potential suspects to the war crimes unit. Sweden has a decentralized judicial system and serious international crimes cases could potentially be prosecuted in courts anywhere in the country. In practice, however, the Public Prosecution Authority normally requests that the Ministry of Justice refer any serious international crimes cases to the Stockholm District Court, which has developed some specialisation in handling such cases.[185]

Swedish authorities appear to be investing considerably more effort into communications than their German and French counterparts. The Swedish Prosecution authority has an excellent and informative website[186] in Swedish and English. They provide general information about their work

[181] Voermans (n 140) 153.
[182] Sindu Ajay, 'France Minister of Justice proposes law to allow filming of trials' (*Jurist*, 18 April 2021). <https://www.jurist.org/news/2021/04/france-minister-of-justice-proposes-law-to-allow-filming-of-trials/.
[183] Open Society Justice Initiative and Trial International, 'Universal Jurisdiction Law and Practice in France', February 2019, 5.
[184] FIDH Report (n 154) 54.
[185] *Ibid* 92-93.
[186] Swedish Prosecution Authority, 'About Us', available at https://www.aklagare.se/en/about-us/.

as well as the criminal proceedings in Sweden and the information is organized to provide information to different audiences (such as victims, witnesses and suspects, for example). The website contains a 'Media' tab which provides Press service contact details both during and outside office hours and promises availability of certain prosecutors who can provide an overview of their work.[187] As can be seen on the 'Press releases' tab,[188] the prosecutors regularly issue press releases and conduct fairly frequent press conferences not only to inform the public about latest news but also to explain certain processes.[189] The Prosecution Authority cooperates with various NGOs while the Swedish Crime Victim Authority[190] disseminates information on victims' rights and the criminal justice system more broadly.

The Swedish Police also has an informative website with a page dedicated specifically to victims of crime[191] that contains information on police efforts in war crimes investigations[192] provided in Swedish and an additional 12 languages, including English, Arabic and Farsi. The website contains general information about the challenges of and need for investigating genocide, crimes against humanity and war crimes. In commendable efforts to communicate with the affected communities, its war crimes unit has produced posters and leaflets in various languages explaining their mandate.[193] The Unit also uses other channels to inform victims and witnesses of their work, such as the Swedish Red Cross centres as well as the diaspora communities, civil society and others who are in regular contact with asylum seekers. They also conduct interviews with Swedish and international media and promote their work among the victim communities.

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[187] Swedish Prosecution Authority, 'Press Service', available at https://www.aklagare.se/en/media/press-service/.
[188] Swedish Prosecution Authority, 'Press Releases', available at https://www.aklagare.se/en/media/press-releases/.
[189] See, for example, Swedish Prosecution Authority, 'Invitation to a press conference – how to investigate war crimes', 2 October 2017, available at: https://www.aklagare.se/en/news-and-press/pressmeddelanden/2017/february/invitation-to-a-press-conference--how-to-investigate-war-crimes/ when the media were invited to a press conference in which '[p]rosecutors and investigators will comment on the cases and explain how crimes committed many years ago in warzones can be investigated'… and 'how to investigate crimes when the crime scene cannot be visited due to an ongoing war.'
[190] Brottsoffermyndigheten, 'If you have been a victim of crime', available at https://www.brottsoffermyndigheten.se/eng.
[191] Polisen, 'Victims of Crime', available at https://polisen.se/en/victims-of-crime/.
[192] Polisen, 'War Crime - Swedish Police efforts', available at https://polisen.se/en/victims-of-crime/war-crime---swedish-police-efforts/.
[193] *Ibid.*

Once the case is in court, the proceedings are held in Swedish with interpretation provided for the defendants and the victims who testify. However, it is unclear as to whether such interpretation would be provided to a broader audience. The Swedish Courts maintain a website which guarantees the principle of transparency[194] but is almost exclusively in Swedish.[195] Although some judgements are published on the website,[196] they do not include judgements of district courts which have jurisdiction over international crimes. The website also has a page through which one can order judgements and other judicial decisions in Swedish and possibly for a fee (depending on length and/or format of document).[197] Thus, although the Swedish judiciary makes considerable effort to provide information, it does so only in Swedish and seems to stop short of proactively informing the public about cases of international crimes.

3.6. The Netherlands

As host country to multiple international criminal courts and tribunals since 1993, the Netherlands developed investigative capabilities in relation to international crimes long before it ratified the Rome Statute. In addition, the Netherlands has a very proactive approach to the provision of information about cases involving international crimes.

The Netherlands has specialised units within its immigration, police and prosecution services to handle cases involving international crimes, as well as a specialised investigating, trial and appellate judges. Investigations are generally opened on the initiative of the international crimes team in the Public Prosecution Service, conducted by the international crimes team of the Dutch National Police and followed by a pre-trial investigation conducted by an investigating judge. The

[194] Sveriges Domstolar, 'Detta blir offentlight', available at https://www.domstol.se/domar-och-beslut/detta-blir-offentligt/.
[195] Sveriges Domstolar, available at https://www.domstol.se/.
[196] Sveriges Domstolar, 'Publicerade domar, beslut och vägledande avgöranden', available at https://www.domstol.se/domar-och-beslut/publicerade-domar-och-avgoranden/.
[197] Sveriges Domstolar, 'Beställ domar, beslut eller handlingar' available at https://www.domstol.se/domar-och-beslut/bestall-domar-beslut-eller-handlingar/.

District Court in The Hague is the only court competent to hear first-instance trials concerning international crimes.[198]

Dutch authorities have taken various steps to keep the public at home and abroad informed of their international criminal proceedings. For example, the Netherlands Public Prosecution Service has a comprehensive website on international crimes, which provides information about the investigations and cases in various languages[199] as well as a Twitter account.[200] The website explains the work of the international crimes team, the cases it has prosecuted to date and provides other important information to the public. It has a page on which it issues press releases,[201] provides contact details,[202] and includes a database with prior decisions on international crimes, most of which have been translated into English. It employs staff within the war crimes unit for whom external communication is a key element of their work.[203] In an effort to improve outreach to the Syrian diaspora, in 2017 the International Crimes Team of the Dutch Police participated in a three-part documentary series concerning their work which was translated into Arabic and made available online[204] while the Prosecution website provides a link to 'A Guide to National Prosecutions in the Netherlands' produced by SJAC.[205]

As reported by FIDH,[206] individual prosecutors have also taken extraordinary steps to inform victims and the broader victim community concerning the outcome of the investigation or proceedings. For example, in 2013 the Public Prosecution Service publicly released evidence obtained during the course of an investigation that revealed the fate of thousands of victims

[198] FIDH Report (n 154) 78-79.
[199] Netherlands Public Prosecution Service, 'International Crimes', available at https://www.prosecutionservice.nl/topics/international-crimes.
[200] See WarCrimes_NL on Twitter, available at https://twitter.com/warcrimes_nl.
[201] Netherlands Public Prosecution Service, 'News', available at https://www.prosecutionservice.nl/topics/international-crimes/news?page=3.
[202] Netherlands Public Prosecution Service, 'Contact', available at https://www.prosecutionservice.nl/topics/international-crimes/contact.
[203] ECCHR (n183) 27.
[204] FIDH Report (n 154) 83.
[205] Netherlands Public Prosecution Service, 'International Crimes', available at https://www.prosecutionservice.nl/topics/international-crimes (see bottom of webpage)
[206] FIDH Report (n 154) 85-86.

tortured and killed by Afghan security services in the 1970s.[207] In 2017, Dutch prosecutors used a variety of means of communication to inform victims in Afghanistan of the closure of an investigation into the Kerala massacre. This included press releases translated into Dari and English and video-link meetings held at the Dutch embassy in Kabul to which members of the broader victim community were invited.[208] Press releases in multiple languages have become a standard practice of the Public Prosecution Service.

On its website, the Dutch Judiciary has a dedicated page to international crimes. Though the page itself is in Dutch (and the same website in English provides different content[209]), in the more recent cases English translations of final judgments have been made available online.[210] The judiciary also maintains a presence on social media (in Dutch), with active accounts on Twitter, Facebook, Instagram, LinkedIn and YouTube.

Furthermore, the Netherlands is unique in having provided explicit policy rules pertaining to all the courts.[211] Though non-binding on the judges, the press Courts' Press Directive,[212] first issued nearly 20 years ago, aims to regulate media access and information provision, setting out the rules and guidelines that courts adopt in their contacts with the media.[213] In other countries, the rules on press admission and reporting methods are laid down in legislation or they are the product of jurisprudence derived from case-based law.[214]

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[207] Netherlands Public Prosecution Service, 'Afghanistan death lists', available at https://www.prosecutionservice.nl/topics/international-crimes/afghanistan-death-lists.
[208] FIDH Report (n 154) 86.
[209] De Rechtspraak, 'Judicial System Netherlands', available at https://www.rechtspraak.nl/English.
[210] De Rechtspraak, 'Zaken internationale misdrijven', available at https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Den-Haag/Over-de-rechtbank/Organisatie/Paginas/Zaken-Internationale-Misdrijven.aspx#bad5f6ad-3979-41b8-82c3-38144416c66eb524b1ea-3c00-478e-8a79-64840e2e26d49.
[211] Voermans (n 140) 155.
[212] De Rechtspraak, 'Press Guidelines 2013' https://www.rechtspraak.nl/SiteCollectionDocuments/Press-Guidelines.pdf.
[213] Lieve Gies, 'The Empire Strikes Back: Press Judges and Communication Advisers in Dutch Courts,' Journal of Law and Society, Vol. 32, No. 3 (Sep. 2005), 460.
[214] Voermans (n 140) 155.

3.6.1. The MH17 trial

The Netherlands is also holding the MH17 trial and prosecuting those believed to be responsible for the downing of Malaysia Airlines flight MH17, which crashed in eastern Ukraine in 2014, killing all 298 people on board. Although the charges are not international crimes as such, the case takes place in the context of the armed conflict in Ukraine and involves many international elements which makes it relevant to the present study.[215] The Netherlands, Malaysia, Australia, Belgium and Ukraine together conducted the criminal investigation of the cause of the crash which concluded that MH17 was brought down by a Russian BUK missile. Four persons were indicted and the trial *in absentia* began in March 2020 before the District Court of The Hague. In order to be able to conduct the trial in the Netherlands, the Netherlands and Ukraine have signed an agreement on international legal cooperation. In addition, due to the international character of the trial, Dutch law was amended to allow the court, for example, to conduct certain parts of the criminal proceedings in English and for defendants to take part in the trial remotely by means of video conferencing technology.[216]

In the case of this trial, the Dutch authorities appear to have adopted a communications strategy very similar to that of international criminal courts. The police,[217] prosecution authorities[218] and the court[219] provide extensive information on their websites in Dutch and English. Although not ideal, including English in addition to Dutch greatly increases the number of people who can follow the proceedings. The Joint Investigation Team also includes Russian and Ukrainian in its calls for witnesses to come forward, posted on the Dutch Police website.[220] These calls include

[215] Netherlands Public Prosecution Service, 'MH17 Plane Crash, Prosecution and Trial', available at https://www.prosecutionservice.nl/topics/mh17-plane-crash/prosecution-and-trial.
[216] De Rechtspraak, 'New legislation', available at https://www.courtmh17.com/en/the-dutch-legal-system/new-legislation.html.
[217] Politie, 'MH17 Witness Appeal and Trial Information', available at https://www.politie.nl/en/topics/flight-mh17.html.
[218] Netherlands Public Prosecution Service, 'MH17 Plane Crash', available at https://www.prosecutionservice.nl/topics/mh17-plane-crash.
[219] De Rechtspraak, 'The MH17 Trial', available at https://www.courtmh17.com/en/.
[220] Politie (n 217).

detailed information on some of the evidence collected with very specific questions as well as information on witness protection measures and safe communications.

The Hague District Court website provides a live stream and daily updates and summaries of proceedings as well as access to an archive of the audio-visual recordings of proceedings with written summaries. The communications officers hold press briefings and otherwise facilitated the work of the media.

3.7. Conclusion

The analysis of select national systems shows that national authorities vary in how they provide information in cases of international crimes, and that they fall short of international standards for guaranteeing the right to information, public trial and truth.[221] Overall, prosecutorial offices seem to be more engaged in meaningful communications with the public than the judicial authorities. In Sweden and the Netherlands, the prosecutors and the police have offered the most progressive approaches to communications by maintaining comprehensive and informative websites in multiple languages with both written and audio-visual materials tailored to different audiences. They are also active on social media. The example of the WCC and SDWC in Bosnia and Herzegovina demonstrates that the legitimacy of courts operating in a post-conflict context also depends on the adoption and proper implementation of a comprehensive and achievable public information and outreach strategy, and that situating a court in the country where the crimes took place, closer to victims, does not guarantee that its impact will be better felt or its work better understood. To the contrary, proximity to local political actors increases the potential for their interference through unjustified criticism. Finally, the examples from Germany provide a stark warning of failure to guarantee the affected communities' right to information, public trial and truth, which occurs when there are no communications and outreach in the languages spoken by affected communities and adapted to their needs.

[221] An analysis of why this is the case lies outside the scope of the present study.

Part 4 – Tools

As described in Part 2, international and hybrid courts have organically grown to adopt a relatively consistent approach in practice to communications and outreach. On the other hand, Part 3 demonstrated that there is no unified practice in terms of how national judicial and prosecutorial authorities handle communications. Nonetheless, a number of tools have been created aimed at national judicial and prosecutorial authorities which identify and promote international and national best practices in terms of public information and outreach and can, therefore, be useful to the Ukrainian judicial and prosecutorial authorities as they consider and plan their approach to communications.

Supra-national and inter-governmental organizations, such as the European Union and the Council of Europe have issued Directives and Guidelines in respect of the right to information as it applies to victims of crime and the more general requirement for transparency. For example, in 2012, the European Parliament issued a Directive establishing minimum standards on the rights, support and protection of victims of crime which lays down a set of rights for victims of crime and corresponding obligations on Member States and represents the cornerstone of EU victims' rights policy.[222] The Directive defines the victim as 'a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence'[223] and states that a 'person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted'[224] and 'notwithstanding his/her 'role' in the national criminal justice system.'[225] Victim status is not affected by the residence,

[222] European Commission, *Report from the Commission to the European Parliament and the Council on the implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, 11 May 2020, COM(2020) 188, § 1.1.
[223] *Ibid* art. 2.
[224] *Ibid* § 19.
[225] European Commission, *DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA*, December 2013, 10 available at https://ec.europa.eu/info/sites/info/files/13_12_19_3763804_guidance_victims_rights_directive_eu_en.pdf.

citizenship or nationality of the victim, and the Directive must be implemented without discrimination of any kind.[226] In accordance with this definition, any person present in a theatre of war or other place where serious violations on human rights are taking place, should be considered a 'victim' for the purposes of access to information. The Directive provides victims with a right to information[227] (among other rights) and devotes articles 3-7 to this topic, specifically. [228] Although Ukraine is not a member of the EU, this Directive may provide useful guidance to Ukrainian authorities in respect of victims' rights to access information.

Furthermore, we have identified three important tools the Ukrainian authorities can consult in considering their approach to communications. One is the aforementioned *Guide on Communication with the Media and the Public for Courts and Prosecution Authorities*[229] issued by CEPEJ. This Guide is relevant because CEPEJ is a body established by the Council of Europe of which Ukraine is a member. [230]

The second is the Open Society Justice Initiative *Options for Justice: A Handbook for Designing Accountability Mechanisms for Grave Crimes*[231] (OSJI Handbook). This Handbook is relevant because it is the most comprehensive guide of this nature to date. It was published by OSJI,[232] the legal arm of Open Society Foundations (OSF),[233] the world's largest private funder of independent groups working for justice, democratic governance, and human rights.

The third is *The Public's Right to Know: Principles on Right to Information Legislation*[234] published by Article 19, one of the leading non-governmental organizations which advocates for

[226] FIDH Report (n 154) 17.
[227] European Commission Directive (n 214) § 1.2.
[228] *Ibid* § 3.2.
[229] CEPEJ Guide (n 4).
[230] Council of Europe website, available at https://www.coe.int/en/web/portal/ukraine.
[231] OSJI Handbook (n 133).
[232] OSJI assists individuals and groups in improving access to justice. More information about OSJI is available here: https://www.justiceinitiative.org/who-we-are.
[233] More information about OSF is available here: https://www.opensocietyfoundations.org/who-we-are).
[234] Article 19, *The Public's Right to Know: Principles on Freedom of Information Legislation* (2016) available at https://www.article19.org/data/files/pdfs/standards/righttoknow.pdf.

the freedom of expression and freedom of information and designs and promotes laws and policies that protect the freedom of information.[235] Though more general than the publications referenced above, these Principles are particularly relevant because they have been widely recognized. In 2000, the UN Special Rapporteur on Freedom of Opinion and Expression endorsed the Principles[236] and urged governments either to review existing legislation or adopt new legislation on access to information and ensure its conformity with them.[237] The Principles were also endorsed by the OAS Special Rapporteur on Freedom of Expression,[238] and have been referred to by the UN Special Rapporteur on Freedom of Opinion and Expression in his report to the UN General Assembly.[239]

These publications are in conformity with international and national best practices in terms of communications and outreach and can provide useful guidelines which can be adapted to the local context in Ukraine.

4.1. Guide on Communication with the Media and the Public for Courts and Prosecution Authorities

The Council of Europe established CEPEJ in 2002 to promote the rule of law and fundamental rights in Europe and improve the efficiency of justice. In 2018, as part of its mandate, CEPEJ issued its Guide on Communication with the Media and the Public for Courts and Prosecution Authorities. The Guide refers to Opinions issued by the Consultative Council of European Prosecutors (CCPE)[240] and the Consultative Council of European Judges (CCJE):[241] it is 'intended for the use of courts and criminal prosecution authorities (public prosecutors and where applicable,

[235] More information about Article 19 is available at https://www.article19.org.
[236] *Report of the Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression, Mr. Abid Hussain*, UN Doc. E/CN.4/2000/63, 18 January 2000, § 43.
[237] *Ibid* § 44.
[238] *Report of the Rapporteur for Freedom of Expression 1999* (OAS Office of the Special Rapporteur on Freedom of Expression) available at http://www.oas.org/en/iachr/expression/docs/reports/annual/1999.pdf?DocumentID=12, 33.
[239] Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/68/362, 4 September 2013.
[240] More information about the CCPE available at https://www.coe.int/en/web/ccpe.
[241] More information about the CCJE available at https://www.coe.int/en/web/ccje.

investigating judges); and [i]ts objective is to help them manage communications with the public and the media.'[242]

The Guide explains that in a world of communications 'where the work of institutions is subject to constant public debate, and where criticism is expressed with less deference and more readiness than in the past… nothing can be taken for granted and justice cannot escape this trend … [and] cannot confine itself in an ivory tower, delivering judgements without taking into account how these will be received and understood, and looking down at the people's and media's agitation with detachment and diffidence.'[243]

On visibility, transparency and strategy, the Guide states that the judicial branch is the least visible of the three branches and justice is often poorly known and understood but that 'public confidence in justice depends on public understanding of the judicial activity.'[244] The Guide also warns that 'justice cannot avoid media coverage,' and that judicial institutions must take into account the growing requirements of transparency in state activities and tackle communication challenges.[245] It advises that journalists 'should be seen as partners' and not adversaries[246] and that 'judicial communications should be part of a general strategy that should define the messages the judiciary wants to convey to the public' about the whole of judicial activity, use all available means of communication and 'define the target audience for each type of communication.'[247]

The Guide describes the purpose of judicial communication as follows:

> to inform about concrete activities of the justice system, in particular cases; to assert the role of justice in the society; to affirm the independence of judicial institutions, in particular when it is called into question; to promote respect for judicial institutions and their representatives; to reinforce or restore citizens' trust in judicial institutions; to take public positions on matters of

[242] CEPEJ Guide (n 4) § 1-2.
[243] CEPEJ Guide (n 4) § 8-9.
[244] CEPEJ Guide (n 4) § 230.
[245] CEPEJ Guide (n 4) § 231.
[246] CEPEJ Guide (n 4) § 232.
[247] CEPEJ Guide (n 4) § 233.

> interest to justice and society; to improve the understanding of laws by the public; to strengthen the image of justice, more generally.[248]

In advising on who should communicate on behalf of the judiciary, the Guide states that professional associations of prosecutors and judges as well as bodies in charge of the administration of the justice system 'may communicate on general subjects concerning justice, fundamental principles … and legislative and social issues' and 'can also play an important role in defending courts, public prosecutors and individual magistrates who have been openly involved'.[249] The Guide points out that prosecutors 'enjoy greater freedom in communicating on pending proceedings'[250] but that both judges and prosecutors 'may be involved in public debates on other matters.'[251] It advises the judges and the prosecutors to appoint spokespersons who should be directly subordinate to those in charge of the relevant judicial entity (president of the court, chief prosecutor) and, among other things, represent the entity, ensure proactive, timely and consistent communications with journalists and others and ensure relevant internal coordination.[252] Importantly, it instructs the judicial institutions to 'identify and offer appropriate communication training to judges and prosecutors.'[253]

As a matter of principle, the Guide advises that judicial communications should respond to the needs of the media and the public, make timely interventions, adapt to the target audiences and be trustworthy (factually true, objective, clear, without speculation).[254]

As means of communications, the Guide lists the following: press releases, press conferences, interviews by judges, prosecutors or spokespersons, written responses to written questions, website (and app), social media, conferences and public debates on topics regarding justice; filmed messages transmitted on television or over the Internet (YouTube), general information on judicial

[248] CEPEJ Guide (n 4) § 234.
[249] CEPEJ Guide (n 4) § 236.
[250] CEPEJ Guide (n 4) § 237.
[251] CEPEJ Guide (n 4) § 238.
[252] CEPEJ Guide (n 4) § 239.
[253] CEPEJ Guide (n 4) § 240.
[254] CEPEJ Guide (n 4) § 242.

activity (through publicly available documents, information desks, open door days, etc.), broadcasting of specific court hearings and rulings.[255]

On the topic of communication about pending proceedings, the Guide reiterates that courts and prosecution services do not have the same responsibilities or the same flexibility with regard to information to the public[256] and sets out a general rule that 'courts and their judges should comment publicly on pending proceedings'[257] and that public prosecution services may do so 'within the limits of main principles of criminal law,'[258] such as, for example the respect for the presumption of innocence and the independence of the judiciary.[259] The Guide also provides some very specific guidance on the content and type of communications[260] as well as on crisis communication.[261] Among other things, it advises the prosecution authorities that the necessary public interest in spreading of information can be to seek public collaboration in solving cases or searching for suspects; to warn or reassure the public; and to correct or prevent the dissemination of inaccurate information or rumours.[262]

Finally, the Guide advises the judicial authorities to conduct press reviews and carry out surveys to gain insight into their image in the media, how their communications are perceived and treated and, in the case of social media, how they are perceived by the public.[263]

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[255] *Ibid.*
[256] CEPEJ Guide (n 4) § 245.
[257] CEPEJ Guide (n 4) § 246.
[258] CEPEJ Guide (n 4) § 254.
[259] CEPEJ Guide (n 4) § 257.
[260] CEPEJ Guide (n 4) § 248-253, 257-259. For example, in terms of content provided by prosecution services, the Guide advises the following: 'objectivity and accuracy; safeguarding the interests of the investigation; if possible, respond to the questions: Who? When? What? Where? How? Why?; respect for the presumption of innocence; respect for the personality of people involved; respect for the independence of the judiciary and the impartiality of judges.' (§ 257)
[261] CEPEJ Guide (n 4) § 261-266. For example, the Guide sets out the purpose of crisis communications as follows: 'to inform on the situation and the measures adopted; to reassure or warn the population; to rectify inaccurate information; to preserve or restore confidence in judicial institutions; to preserve or restore the reputation of natural and legal persons; and to respond to attacks.' (§ 261) The Guide also states that 'the media should have access to accurate and verified information' (§ 262) and that, if the organization does not yet have a spokesperson, it should appoint one (§ 263). For a more detailed discussion of crisis communications ,please see § 208-222 of the Guide.
[262] CEPEJ Guide (n 4) § 256.
[263] CEPEJ Guide (n 4) § 267-268.

4.2. Options for Justice: A Handbook for Designing Accountability Mechanisms for Grave Crimes

Another useful tool available to the Ukrainian authorities is the OSJI Handbook. In the Handbook, the term 'grave crimes' refers to crimes of genocide, crimes against humanity, war crimes, and other serious forms of crime that merit international concern.[264]

As explained by Hans Correll, former United Nations Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations in its preface, the Handbook has content relevant to those designing accountability mechanisms for grave crimes in any location and under any circumstances. Its purpose is to assist national investigation and prosecution authorities, as well as international organizations, policy makers and civil society.[265]

The OSJI Handbook provides an in-depth look at 33 different international and national justice mechanisms. The first 130 pages provide an overview of lessons learned and considerations on various aspects of accountability mechanisms, including useful key questions to consider in assessing the specifics of a particular situation, while the following 540 pages of Annexes provide a more detailed examination of each individual mechanism under consideration.

The OSJI Handbook advises that outreach and public information should be considered as core components of accountability mechanisms explaining that 'grave crimes proceedings are very likely to touch on sensitive issues that may include conflict narratives, group identities, power politics, and economic interests' and that this can lead to 'attempts to delegitimize an institution through falsehoods about its mandate, independence, funding, or individual cases can lead witnesses and sources to distrust court officials and refrain from cooperation.'[266] It considers

[264] OSJI Handbook (n 133) 17.
[265] OSJI Handbook (n 133) 13.
[266] OSJI Handbook (n 133) 28.

'effective and early organization of outreach to key stakeholders and the ongoing provision of accurate public information vital antidotes to rumor and misinformation.'[267] It further explains that

> beyond countering the threat of misinformation, outreach is essential in order to allow those affected by events to see justice being done, to manage expectations of what the mechanism can and cannot do, to build national ownership over domestic mechanisms, to encourage witnesses and victims to participate in proceedings, to inform the public about legal concepts and build trust in the rule of law, to build public expectations about public access to state institutions in settings where this has not been the experience, and to encourage ordinary justice systems to improve the transparency.[268]

The Handbook further advises that accountability mechanisms for grave crimes must have a dedicated structure to conduct outreach to affected communities and stakeholders[269] and that prescribing such structures in the mechanism's primary instruments (legislation or statutes) can help ensure that there are human and financial resources to implement these important elements of the mandate.[270] The Handbook warns that 'where such structures are not specified but instead left to judges and mechanism administrators to create, there is a risk that they will be insufficiently robust, emerge with delay, or not emerge at all' and that this had 'been seen with regard to outreach at many mechanisms.'[271]

The OSJI Handbook also states that civil society organizations can augment and be vital partners for mechanism outreach structures but cannot replace them: '[t]o gain public trust, accountability mechanisms must be able to articulate information about what they are doing and why and mechanism officials must participate in outreach events.'[272]

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[267] *Ibid.*
[268] *Ibid.*
[269] OSJI Handbook (n 133) 90.
[270] OSJI Handbook (n 133) 80.
[271] *Ibid.*
[272] OSJI Handbook (n 133) 90.

On the topic of languages, the OSJI Handbook advises that, 'if the existing justice system does not already have a facility to interpret proceedings into minority languages of the country, special provisions may need to be made to make trials accessible to affected minority communities.'[273]

4.3. The Public's Right to Know: Principles on Right to Information Legislation

The third useful tool are the Article 19 *Principles on Freedom of Information Legislation*. The purpose of these principles is to set a standard against which to measure whether domestic laws genuinely permit access to official information. They set out ways in which governments can achieve maximum openness, in line with the best international standards and practice.

Article 19 principles state that a 'public body' includes judicial (and prosecutorial) authorities[274] and 'information' includes all records 'held by a public body, regardless of the form in which the information is stored (document, computer file or database, audio or video tape, electronic recording and so on), its source (whether it was produced by the public body or some other entity or person) and the date of production.'[275] The nine principles are as follows: (1) maximum disclosure, which stipulates that freedom of information legislation should be guided by the principle of maximum disclosure; (2) obligation to publish, which stipulates that public bodies should be under an obligation to publish key information; (3) promotion of open government, which stipulates that public bodies must actively promote open government; (4) limited scope of exceptions, which stipulates that exceptions should be clearly and narrowly drawn and subject to strict 'harm' and 'public interest' tests; (5) processes to facilitate access, which stipulates that requests for information should be processed rapidly and fairly and an independent review of any refusals should be available; (6) costs, which stipulates that individuals should not be deterred from making requests for information by excessive costs; (7) open meetings, which stipulates that meetings of public bodies should be open to the public; (8) disclosure takes precedence, which stipulates that laws which are inconsistent with the principle of maximum disclosure should be

[273] OSJI Handbook (n 133) 44.
[274] Article 19 Principles (n 234) 4.
[275] *Ibid* 3.

amended or repealed; and (9) protection for whistleblowers, which stipulates that individuals who release information on wrongdoing – whistleblowers – must be protected.[276]

As can be seen from the foregoing, these publications provide guidelines which are in conformity with international and national best practices in terms of public information and outreach and can, therefore, be useful to the Ukrainian judicial and prosecutorial authorities as they consider and plan their approach to communications.

Part 5 – Conclusions and best practices

This report begins by considering the rights at issue – the right to information, right to public trial and the emerging right to truth, as well the legal frameworks that regulate them and affirms the importance of transparency for the efficient functioning of judicial systems. It explains the need for communicating justice and conducting public information and outreach activities and provides an overview of how selected international and national jurisdictions have approached the issue of communicating their work to the affected communities. It outlines some of the best practices that can inform and inspire the Ukrainian authorities as well as civil society organizations as they embark on their own communication and outreach work in the context of investigating and prosecuting international crimes and refers to some specific guidelines and handbooks that can be used.

The research conducted has shown that, in terms of communications, international and hybrid courts and prosecution authorities have been considerably more engaged and more consistent than their national counterparts and can, therefore, offer more useful examples of effective outreach. At the national level, examples show that prosecutorial authorities have been more active in communicating with the public than the courts. The following best practices which may be relevant to the Ukrainian prosecutorial and judicial authorities as they consider their approach to communications have been highlighted.

[276] *Ibid* 2-10. Also, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc A/68/362, 4 September 2014, § 76.

Transparency is vital for the efficient functioning of the justice system and requires appropriate legal frameworks and adequate support.

1. All public activities of an institution and its officials constitute public information and outreach in the broadest sense – from the way the proceedings are conducted to the way each official addresses any audience.
2. Where laws prevent or impede communications, they need to be amended in order to adequately guarantee transparency and the right to information, public trial, and truth, as prescribed in relevant international legal instruments.
3. Public information and outreach are essential in order to allow those affected by crimes to see justice being done, to manage their expectations, to encourage witnesses and victims to participate in proceedings, to inform the public about legal concepts, to build trust in the rule of law and to combat rumour and misinformation.
4. Treating public information and outreach as core functions is the only way that the prosecutorial or judicial authorities dealing with international crimes can properly safeguard the rights to information, public trial and truth.
5. Best results are achieved when decision-makers are aware of the importance of providing information to the public and conducting effective outreach and provide institutional support to these efforts, not only with adequate human and financial resources but also substantively.

Prosecutorial offices and judicial authorities are jointly responsible for public information and outreach and for setting up adequate structures to achieve desired results.

6. Appointing separate spokespersons and communications departments for prosecutorial and judicial authorities allows judges and prosecutors to properly explain their respective mandates, challenges and decisions to the public.
7. Prosecutorial authorities have more freedom than the judges and can provide information about ongoing or concluded investigations as well as trials. Coordination between prosecutorial and judicial authorities on the key messages is crucial.

8. Journalists and civil society should be seen as partners but cannot substitute for the work of spokespersons and communications departments.

Public information and outreach efforts must be properly planned.

9. A comprehensive public information and outreach strategy should be drafted as early as possible, preferably even before the formal opening of investigations.

10. In considering and planning their approach, authorities can refer to the European Commission for the Efficiency of Justice (CEPEJ) Guide on Communication with the Media and the Public for Courts and Prosecution Authorities, the OSJI Handbook for Designing Accountability Mechanisms for Grave Crimes and Article 19 Principles on Right to Information Legislation as well as the experiences of international and hybrid tribunals.

11. The components of a successful strategy include:
    a. a thorough analysis of the context and the affected communities (including but not limited to languages spoken, levels of education, the media landscape, the political and social context);
    b. short- and long-term priorities and key messages;
    c. target audiences (such as victims' groups, legal professionals, academics, students, and others);
    d. means of communication tailored to the target audiences (such as printed and audio-visual materials, video screenings, town hall meetings, conferences, lectures, expert discussions, training sessions and other information materials and activities).
    e. timelines, measurable outcomes, resources needed to achieve them, and a system to measure them.

Public information and outreach efforts must be properly implemented, evaluated and adjusted.

12. To encourage cooperation with external partners, such as local NGOs, academics, legal professionals and others, it is advisable to make the strategy available to the public.

13. The following means of communication have proven effective when used by international and national authorities dealing with international crimes. This list should not be seen as either prescriptive or exhaustive as the best results are achieved by carefully examining the relevant context and choosing the means accordingly.
    a. press releases, press conferences, interviews and other proactive engagement with the media;
    b. informative and interactive websites;
    c. social media engagement;
    d. broadcast of court proceedings;
    e. audio-visual summaries of proceedings, documentaries and other audio-visual material;
    f. information leaflets, Op-Eds, academic articles and other written material;
    g. training sessions for lawyers, NGO representatives, journalists and others;
    h. town-hall meetings, conferences, workshops, round-table discussions and other events;
    i. cultural and educational activities, including relevant courses for students and professionals.
14. Communication with the public must be conducted not only in the official language(s) of the court but also in the languages of the affected communities (if different), and all written information material must be made available in these languages.
15. During trial, interpretation into the languages of the affected communities must be provided not only for the accused but also for journalists and others who wish to follow the proceedings from the public gallery or remotely, using accessible technology.
16. All spokespersons must be authorized and prepared to participate in various programs on TV, radio and online, as appropriate, to explain the work of the institution, to respond to misinformation and disinformation and proactively correct inaccurate information and misperceptions in the public domain.
17. To measure its effectiveness, adjust to the changing environment and address concerns and misperceptions, the strategy and its implementation and impact should be monitored, periodically evaluated, and adjusted accordingly.