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Scales of Justice: "International Standards" and "Local Ownership" at a Hybrid Tribunal

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Abstract

This paper argues that a politics of scale plays a fundamental but uninterrogated role in internationalised criminal justice processes such as hybrid tribunals. Scale discourses – producing specific notions of "the international" and "the local" – are so naturalised in these endeavours that their regressive effects remain unacknowledged. Following Annelise Riles' ground-breaking analysis of the politics of scale in colonial law, and feminist critiques of scale discourse in accounts of globalisation and conflict, we think critically about "the international" and "the local" in a postcolonial and post-conflict justice context. Using the case of the Extraordinary Chambers in the Courts of Cambodia (ECCC), we specifically examine the operation and effects of discourses of "international standards" and "local ownership". We argue that denaturalising scale in international criminal justice would serve a wider project to decolonise international

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law and address the specific forms of disenfranchisement currently enacted by dominant “scales of justice”.

[illegible] - [illegible] “[illegible]” [illegible] “[illegible]” - [illegible] Annelise Riles [illegible] “[illegible]” [illegible] “[illegible]” ’[illegible] (ECCC) [illegible] “[illegible]” [illegible] “[illegible]’[illegible]

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Keywords
scale, law, expertise, United Nations, Cambodia, Khmer Rouge

Introduction

The bright blue emblem of the Extraordinary Chambers in the Courts of Cambodia (ECCC) is painted on the rear wall of the tribunal courtroom: a cross-legged male figure in traditional dress, holding a short upright sword. The Court emblem is flanked to one side by the pale blue United Nations' globe and the navy blue and red Cambodian national flag. Between these symbols and the courtroom floor is a raised bench that seats both international and national (Cambodian) judges. Before the bench, prosecutors and civil party lawyers square up to defence lawyers. Two islands lie in the space between the lawyers' ranks: the witness box, and the dock, where defendants only periodically appear. Almost encircling this courtroom proper is a large window wall, beyond which is a large public gallery that can accommodate nearly five hundred visitors.

Scale, authority and direction is herein represented, reproduced and materialised (see Elander 2018; Jeffrey 2019a, 2019b:18). The Court is an entity overseen and supported by two bodies: a nation-state and an intergovernmental organisation that is mostly described as international. The virtue of these entities provides the ground for action that is the courtroom itself. The elevated bench directs this action and hands down judgements, with respect vested both upwards and to the centre of the bench, where the President of the Chamber sits. Relations are not only organised as overtly hierarchical and unidirectional but, as we will draw out here, actors in this courtroom scene are designated as either “Cambodian” or “international”. Almost all roles are doubled, so that the Co-Prosecutors, for example, are either “national” or “international”, as are the defence lawyers, civil party lawyers, and judges.

Annelise Riles (1995:40) writes of “the sense of dimension or scale that characterised the international legal project of the colonial era”, noting how “the

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adjudication of international disputes was understood to take place on an international plane, different in scale from [on the ground] events themselves". She adds a further question and an observation:

> What does it mean, then, for local events to become international by becoming "larger" as they become global? It is difficult to talk about this notion of scale in international legal culture because it is an implicit, naturalised starting point … Perhaps it is this ubiquitous notion of scale that makes normative debate possible in the first place. (Riles 1995:41)

This question, about what it means for local events to become international and as such "larger", is as relevant to international criminal law as it is to colonial laws. Cultures of international criminal law and the project of international criminal justice, like the international legal culture of the colonial period, naturalise scale in ways that make normative debate and normative prescription possible. As Margaret Davies (2017:97) argues, scale "implicates normative and political choices, and can be deliberately manipulated in the interests of political objectives". Ours is a case in which the perceived severity of historical crimes demanded accountability under international criminal law – in Riles' terms, "on an international plane". In the contemporary moment, "international criminal justice is portrayed as higher and better than national justice, as an idealised form of best-practice redress" (McMillan 2020:6).

Few scholars have explicitly problematised scale in relation to international criminal justice (but see Goodale and Clarke 2009; Jeffrey 2019b; McMillan 2020).[i] Riles' paper – which was anthologised in an important early collection for the field of legal geography (Blomley et al. 2001) – both excites and cautions, exhorting us to conceive of perspective not as outside and found, but inside and constitutive of a politics of scale. Our desire is to contribute to such a task by taking long-standing feminist critiques of scale discourses within accounts of globalisation (Gibson-Graham 2006; Mountz and Hyndman 2006; Pratt and Rosner 2006, 2012), violence (Pain 2015), and social change (Cameron and Hicks 2014) as productive positions for "upending hierarchies of space and scale" (Pratt and Rosner 2012:1) in the work of internationalised tribunals. As has been pointed out, dichotomies like international/national and global/local are often constituted as hierarchical, and feminist theory is particularly adept at exposing the assumptions within and

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subverting such hierarchies. Feminist critique holds that scale is socially produced (see Marston 2000) and remains "a leaky category that remains fluid, contingent, and overlapping" (Mountz and Hyndman 2006:450-451). To examine the politics of producing scale is to "recognise the uneven resources of power, money, information, and time upon which different social actors rely in their pursuit of the production of scale" (Herod and Wright 2002:11).

In the empirical sections of this paper, we examine two key motifs implicated in the production of a politics of scale at the ECCC: the defence lawyer upholding the rights of the accused as a motif of "international standards"; and legal outreach participants present in the public gallery at the ECCC as a motif of "local ownership". In doing so, we draw on extensive fieldwork at the Court, conducted separately and jointly, which spans more than a decade and includes observations at numerous court hearings. Over the same years, we have interviewed court staff and observed multiple instances of outreach study tours. We have employed an "ethnographic sensibility" (Baker and McGuirk 2017) when present at the Court, and our sensibilities have been further informed by watching hearings live online and as video records.

We acknowledge our own subject positions as "international" visitors to the Court. In doing so, we acknowledge the impossibility of our erasing our own positionality as non-Cambodian scholars who "fly in, fly out" for fieldwork, as such some of our critique is also self-directed. As academic researchers we wielded different, and arguably lesser, authority than legal or court support staff in the court space. While our capacity to witness the proceedings was privileged – for example, we were able to visit repeatedly, usually assured of a public gallery seat – it was also limited by the professional and institutional hierarchy we herein describe.[ii] We hope that in pointing out these scalar constructions, our contribution assists in unmasking what Spivak (1988:294) called the "mechanics of constitution".

In the following analysis we attempt to depart from the standard dichotomies of international/national and global/local by recognising these as hierarchical dualisms rather than simple dichotomies, and by enquiring into what work these dualisms perform. We hope to critique our two selected scalar motifs – "international standards" and "local ownership" – by interrogating their performativity, describing and explaining how they have attained dominance, asking what geographical relations and connections they might obscure, and by setting out why normative assumptions arising from these motifs might be problematic. First, however, it is necessary to introduce hybrid tribunals, particularly the ECCC, and set out the historical politics of

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scale in and through which a specific contemporary scalar politics remains dominant at the ECCC.

Hybrid Tribunals and "the International" at the ECCC

The move to International Criminal Law (ICL) as response to mass atrocity draws on the post-World War II principle of individual accountability: that "[c]rimes against international law are committed by men, not by abstract entities" (International Military Tribunal 1947: 223). In contrast to seeking accountability through claims of universal jurisdiction – whereby any court claims jurisdiction over certain crimes because of their severity – these international or hybrid courts and tribunals are accorded jurisdiction over certain crimes and are themselves, to varying degrees, "international" in authority.

The first two of these recent international tribunals were *ad hoc* tribunals established through United Nations Security Council resolutions: the International Criminal Tribunal for the former Yugoslavia (ICTY), established in 1993, and the International Criminal Tribunal for Rwanda (ICTR), in 1994. An *ad hoc* tribunal adapts the broad principles of institutionalised accountability to a specific context of conflict (Hussain 2005:549), by its nature signalling conflict as a crisis rather than structural problem. The ICTY and ICTR were located outside of the post-conflict context in question; the ICTY was located in The Hague, the Netherlands, and the ICTR in Arusha, Tanzania. Both tribunals were criticised for being physically and operationally "removed" from conflict-affected communities (see for example Mendez 2009; Raub 2008; but see Cockayne 2004).[iii]

These two *ad hoc* tribunals were followed by the permanent International Criminal Court (ICC), established through the Rome Statute in 1998, and by a number of *hybrid* criminal tribunals. These courts and tribunals exemplify how "justice" has come to mean a fight against impunity in the form of individual accountability pursued through criminal prosecutions (Engle 2015) with a certain missionary zeal (Stahn 2015:57). Importantly, these courts and tribunals also seek to materialise a narrative of legal progress: "from impunity to rule of law". Martti Koskenniemi (2002:34) argues that this narrative has less to do with specific spaces and places of conflict and much more to do with the constitution of "an international community".

Hybrid or internationalised criminal courts are institutions whose structure and applicable law consists of both national and international elements (see Williams 2012). Although most operate by virtue of United Nations (UN) support, they are

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usually established through an agreement between the UN and a state government rather than a Security Council resolution. Hybrid tribunals are generally located in the nation-state where the crimes were committed. In these ways, a hybrid tribunal is an internationa*lised* rather than international tribunal. They are legally and physically located within a national court system and a post-conflict context, and yet are internationalised by virtue of their application of international criminal law, the inclusion of international staff, and by financial support coming via multilateral UN donor conferences and bilateral arrangements with other nation-states.[iv]

One oft-repeated rationale for hybrid tribunals is that they can work to build capacity in the host legal system by employing international and local staff, even if this comes with risks. International lawyer Beth van Schaack (2016:242-245) argues that locating a hybrid tribunal in or close to the "affected country" provides legitimacy by involving local lawyers, but also warns that a lack of local capacity may undermine the process. Hanna Bertelmann (2010:341) of the United Nations Office of Legal Affairs sees hybrid tribunals more in terms of a zero-sum game in which "some aspects of national ownership may be promoted [but] at the cost of lowering international standards of justice". These arguments are illustrative of dominant meanings and assumptions about the spatially separated, hierarchical relation between the international and the national in relation to hybrid tribunals, assumptions that we unpack further below.

The ECCC is one such hybrid or internationalised tribunal. The Royal Government of Cambodia and the UN Office of Legal Affairs instantiated the tribunal to bring to trial "senior leaders and those most responsible" for the atrocities committed during Khmer Rouge rule of Cambodia (1975-1979). The hybridity of the Court, with its dual subjectivity, is replicated across its structures and functions: it applies both Cambodian national law (itself indebted to French law) and international law; is staffed by both Cambodian "national" and "international" (UN-employed) personnel; and has separate "national" and "international" budgets.[v] Fully functional since 2007, the ECCC has conducted investigations in four cases, with two of them progressing to trial. Five individuals have been sent to trial by the Co-Investigating Judges, three of whom were sentenced to life imprisonment for genocide, crimes against humanity, grave breaches of the Geneva Conventions.[vi] While there is an Appeal process still ongoing in relation to one case, it seems unlikely that any new cases will come to trial.

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As we have described above, not only is the Court's subjectivity hybrid, but the hybridisation of court sections and even legal roles – and the everyday negotiations that this necessitates (see Kent 2013) – is explicitly invited by the "capacity-building" rationale of this model. Despite this, most actors strategically privilege one scale as the rightful "home" of this legal process. The Royal Government, for example, maintains a view of the tribunal as "a Cambodian court with international features" (Sok An, in Heindel 2009:87), as indicated by its official name, "the Extraordinary Chambers in the Courts of Cambodia". For its part, the UN refers to the same legal process as "the Khmer Rouge Trials"; its own specific body set up to assist the tribunal goes by the name of "UN Assistance to the Khmer Rouge Trials" (UNAKRT). While references to "the international" in the context of the ECCC can mean all non-Cambodian nation-states or individuals, at other times it designates the UN, and sometimes again it refers to the specific entity of UNAKRT.

What this telescopic construction of "the international" achieves is an exclusion of Cambodia from the internationality that calls for justice for these historical crimes. Even where actors and commentators recognise that the Court is both national and international ("hybrid" or "internationalised") they often retain a dualistic sense of international/national, where the international trumps the national in the dominant scale hierarchy, and the two parts remain in *necessarily antagonistic* tension. Nonsensically, this also treats Cambodia as if it weren't already a part of the UN. In the case of post-Khmer Rouge Cambodia, there is a specific history of Cambodia-UN engagement that underpins dominant notions of scale at the ECCC. It is to this historical politics of scale that we now turn.

A Historical Politics of Scale at the ECCC

Much contemporary commentary and analysis of the ECCC relies upon discursive constructions by which the international community, or the UN, operates "elsewhere" and arrived in Cambodia only with the ECCC. This obfuscates the much more complex ways in which the UN and Cambodia are to an important extent mutually constitutive and continually instantiate each other. The UN and Cambodia have a long and complicated history of relations. After the Khmer Rouge were forced from power, and their atrocities known, the UN continued to recognise the Khmer Rouge as Cambodia's representatives in the UN General Assembly. This was because the new government in Phnom Penh was backed by Vietnam and an imperialist Vietnam (supported by the Soviet Union) was seen as the greater threat (see Etcheson 2019;

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Fawthrop and Jarvis 2004; Gidley 2019; Hughes 2020; Kiernan 2002). In later peace negotiations, the UN insisted on treating the Khmer Rouge on par with the new Cambodian government (see Gidley 2019; Kiernan 2002) and during the UN Transitional Authority in Cambodia (UNTAC) period, this authority assumed some administration of the state (see Findlay 1995). In each iteration of their relation, the UN has self-styled as "expert" and each time obfuscated past subjectivities and, arguably, complicities.

From the Cambodian perspective of 1997, international assistance in seeking legal justice for historical crimes would bring resources and expertise in international law to the country. As the then Cambodian Co-Prime Ministers wrote in their request to then UN Secretary General Kofi Annan, that "Cambodia does not have the resources or expertise to conduct this very important procedure".[vii] In Annan's response to the request, as well in the 1999 Report prepared by his Group of Experts, references to international standards abound. For Annan, while it was important to set up a tribunal prosecuting the Khmer Rouge leaders to achieve "the principles of justice and national reconciliation in Cambodia", if the tribunal was to meet the "international standards of justice, fairness and the process of law", it needed to be international in character (in UN Experts Report 1999).[viii]

Annan's Group of Experts recommended the establishment of an *ad hoc* international tribunal, similar to the ICTY, located in the Asia-Pacific region but outside of Cambodia (UN Experts Report 1999: para.219). This location was suggested because the Cambodian judicial system was seen to fall "far short of international standards of criminal justice established in the International Covenant on Civil and Political Rights and other instruments" relating to the treatment of prisoners (UN Experts Report 1999: para.129). These concerns continued to be reiterated throughout the negotiations, alongside recurring emphasis on the rights of the accused (UNAKRT 2003). Thus, "the international" was from the start presented by non-Cambodian actors in relation to certain "standards" concerning justice, fairness, and due process of law as set out in international legal materials.

Meanwhile, the legal and physical location of the court within Cambodia and its legal system was of paramount importance to the Cambodian government. While the Group of Experts had argued that "only a United Nations tribunal can be effectively insulated from the stresses of Cambodian politics" (UN Experts Report 1999: para.179), the Cambodian government and the negotiators insisted on holding any trials in Cambodia "for the sake of the Cambodian people".[ix] While the

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Cambodian side looked to garner international resources and expertise in the face of the complexity and magnitude of historical crimes, they also maintained that the physical siting of the legal process must respect Cambodian sovereignty and take place within Cambodia's sovereign borders and existing court system.[x] The RGC Task Force resisted what Nesam McMillan (2020:7) identifies as the appropriation of historical crimes as international crimes whereby "a harm or event becomes international through its refiguring as somehow belonging elsewhere and to others".

Another recommendation of the Group of Experts was a tribunal composed primarily of international staff, appointed by the UN, with some Cambodian staff only in subordinate positions. Indeed, the Experts emphasised that their "recommendation precludes the choice of a Cambodian Prosecutor or deputy … [as this] is absolutely essential in order to insulate them from the political pressures" (UN Experts Report 1999: para.163). During the negotiations, Kofi Annan and the UN Office of Legal Affairs team continued to insist upon a majority of international staff, that the prosecutor and investigating judge both be "internationals" (and unique, not shared roles), and that international judges constitute a majority on the benches (UNAKRT 2003; see also Fawthrop and Jarvis 2004). They were unsuccessful – the majority of ECCC personnel (including judges) are Cambodian nationals, supported by a minority of "internationals". This reflects Cambodian recognition of required expertise, but also resistance to a situation in which invited experts would have been dominant. As we have noted above, important posts are shared by an international and a national staff person. National judges are in majority at the benches, but supermajority is required to ensure that national and international judges are not pitted against each other in decision making.

The international/national dualism in staffing aligns with discourses of expertise in international development, according to which "some people and places are more developed than others and therefore those who are 'developed' have the knowledge and expertise to help those who are not" (Parpart, in Kothari 2005:427). As Uma Kothari (2005:426) writes, "the development 'expert' acts as an agent in consolidating unilinear notions of modernising progress, construed as 'the only force capable of destroying archaic superstitions and relations'". Notably, this expert is "identified as such not solely because of the extent and form of their knowledge but often because of who they are and where they come from" (ibid.). In a recent UN-focused study, Suzan Ilcan and Lynne Phillips note how UN offices, programmes and projects are "nodes through which [development] expertise is globally transferred"

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(2010:864) because "development knowledge – much as in the past – is still constructed as globally applicable and in the interests of all" (2010:845). Kothari examines the figure of the Anglophone development expert as tied to the British colonial figure, but we suggest that the expert at the internationalised ECCC arrives as "international", without national affiliation and epitomising the idea of the global citizen.[xi]

In practice, one of the privileges accorded to the global citizen with "international" status at the ECCC is significantly better conditions of employment than those accorded "nationals". ECCC Law stipulates that "[a]ll staff … shall enjoy the same working conditions according to each level" of the Court (ECCC 2004: art.32), but employment conditions materialise quite differently. Indeed, as per a 2004 decision, Cambodian professionals are paid at 50% of the UN salary scale used by the UNDP (see, for example, UNDP 2007). National staff have twice gone on strike due to frozen pay because of lack of funding. While the strikes have put the issue of funding for salaries on the agenda, they have not accounted for the fundamental issue of pay discrepancy. Moreover, that the ECCC is founded on an agreement that involves a hierarchy of staff nationality reinscribes differences and inequalities. The difference in pay is not coincidental or even an effect of a difference in size of budget but is stipulated *as a relation*: international staff are to be paid twice the amount of the national on equivalent position of responsibility. The inequality of this seems not to be taken to relate in any way to the international standards repeatedly asserted as a feature of the UN involvement in the ECCC (Carr and McWha-Hermann 2016).

"International Standards"

FIGURE 1 HERE

Figure 1: Victor Koppe (standing), International Co-Lawyer for defendant Nuon Chea (seated to Koppe's left with headphones) in Court in 2015 (photo courtesy of ECCC)

Discourses of international expertise purport that the role of the international lawyer is to uphold "international standards" and in so doing, translate and (re)establish the rule of law (Bruch 2014). The international community is thus imagined as coming from somewhere else to an established local to provide "gifts" in the form of goods such as human rights, peace, democracy, reconciliation, law and justice (Hinton 2013; Orford

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2003). Not only is the international/UN seen as organisationally and spatially discrete from the national but is also temporally – there is a particular moment when the international/UN "arrives". As Anne Orford (2003:85) writes, "the international community is absent from the scene of violence and suffering until it intervenes as a heroic saviour". This hides the much more complex ways in which international institutions and states engage in various contexts across time.

This is also the case in relation to international standards. Too often, an analysis of "the international" involves only the examination of macro-level structures, but "international standards" are also enacted, embodied and relational. As Alex Jeffrey and Michaelina Jakala (2014:652) note with respect to the ICTY, there is a "disjuncture between the imagined geographies of legal jurisdiction and the material and embodied spaces of trial practices". Standards are, in the words of Third World Approaches to International Law scholar Balakrishnan Rajagopal (2002), "malleable" and depend on the individuals involved and the political context. Rather than perceiving "the national" and "the international" as fixed entities, and "international standards" as pre-established structures, we approach legal standards, as per Jeffrey (2019a:571), "not as a static form but as a series of processes that enmesh the material, corporeal and affective".

We turn now to a series of interactions that problematise the performance of "international standards". These interactions occurred between the ECCC judges and defence counsel Victor Koppe, "International Co-Lawyer" for defendant Nuon Chea from 2007 until 2018. Koppe's controversial appearances both re-perform and unsettle the dominant scalar politics premised on the "arrival" of international expertise and the upholding of "international standards". These interactions demonstrate instead how standards are negotiated and relational, and not necessarily in accordance with an international/national dualism.

In 2015, Koppe was twice referred to his Bar Association for possible misconduct at the ECCC. The first instance involved walking out of the proceedings in August 2015 after calling them a "farce", only to return the following day, admitting there was no legal basis for his walk-out, but arguing that one of the judges "had made cowardly decisions and lack[ed] judicial integrity" (ECCC trial transcript, 27 August 2015).[xii] As a result, he was referred to his home bar. A few months later, he stated in an interview that he held "strong professional contempt" for the same judge (Koppe, in Bui Jones 2016). Again, Koppe was referred to his home bar for possible misconduct. In its response, the Amsterdam Bar Association noted that

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Koppe was no longer registered there and so was in fact a "former Dutch lawyer".[xiii] According to the ECCC Internal Rules (11.2.b-c), for a non-Cambodian lawyer to practice at the ECCC, they must be admitted to a bar of an UN Member State and in turn be registered with the Cambodian Bar Association. Koppe argued that a lawyer only had to be registered at his home bar (but not remain registered) to be registered in Cambodia, but this was refuted by both the Cambodian Bar and ECCC officials. As a result, Koppe was dismissed.

It would seem at first glance that Koppe's professionalism is in question, and that the repeated misconduct referrals are perhaps indicative of a sense of operating above and beyond the law. Such a reading would focus on Koppe the individual. If we examine other ECCC referrals for possible misconduct, however, we find that Koppe is not an anomaly. Of the five other ECCC lawyers who have been referred to their Bar Associations, four have been international lawyers.[xiv] This is not because international lawyers are less professional than their national counterparts or because the Court is more likely to refer international lawyers to their bars; there is more to these interactions. The primary target of Koppe's antagonism was international judge Jean-Marc Lavergne, a French national and Trial Chamber Judge from the Court's inception until April 2019. According to Koppe, Judge Lavergne consistently and relentlessly tried to prevent the defence lawyers from questioning witnesses and presenting evidence. He was, in Koppe's view, simply biased. It is beyond the scope of this paper to examine the factual accuracy of this claim, but it is notable that the target of Koppe's criticism has always been the competence of an international judge to uphold fair trial rights. As discussed above, references to fairness and an accused person's right to a defence abound in the 1999 Experts' Report. The defendant's right to a fair trial was particularly emphasised by Kofi Annan in his introduction to the same report, in which he called for an international court with international judges.

An alternative reading of the interactions between Koppe and Judge Lavergne points to different ideals of international criminal justice. International lawyer and scholar Dov Jacobs (2020) argues that while there is an ideal attachment in ICL to the rights of an accused, courts and tribunals regularly "balance away" these rights in the face of other and competing values – such as fighting impunity. Ours is not a case of "the international" being the bearer of "standards" but of different conceptions of justice, and of how different demands are in practice "balanced" in hybrid tribunals. This reading is further supported by the fact that all lawyers who have been referred for possible misconduct have been defence lawyers, whose professional obligations

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vis-à-vis their clients requires them to protest any perceived disadvantage (see Karnavas 2020).

A further complication of the construct of international standards is reflected in Koppe's criticism of the Court itself. During the Closing Hearings for Case 002/02 in June 2017, Koppe directly addressed the President of the Chamber, Cambodian judge Nil Nonn. He reminded the President that his team's closing brief for the previous mini-trial (002/01)[xv] had not been translated into Khmer for 18 months, and appeared only after the Trial Chamber had released their judgement. Koppe to President Nil:

> Are you not somehow offended by this? And for lack of a better word, I find it a quite shameless display of neo-Colonialism and it really should not stand. This is your Court. It is a Cambodian Court, and Cambodian Judges are the majority here. And I strongly feel that you should not be relegated to the sidelines while the foreigners decide on justice for your fellow Cambodians. (ECCC trial transcript, 16 June 2017)[xvi]

Here an international lawyer is arguing that the proceedings in which he is participating are neo-colonial, by pointing out that the majority of the Chamber's judges did not have access in their own language to one of the defendant's closing brief. For Koppe, the lack of translation jarred with his client's right to a fair trial.

This interaction illuminates the way that scale discourse operates in contemporary legal proceedings. Again, we are not evaluating the merits of Koppe's argument about why the translation appeared when it did (not least because this argument also appeared as a strategy to split the bench according to the status of Judges as either international or national, thereby reinforcing separate subjectivities, even while seeming to question a neo-colonial hierarchy). After years of anti-colonial critique, the case brief for the "good" international lawyer includes calling out any colonial tendencies they might witness. Ironically, the task of spotting the local issue and transforming it into an international matter is exactly what Riles (1995:40-41) argued was fundamental to the international lawyer's disciplinary project. While she was discussing nineteenth century land claims in Fiji between larger geopolitical powers, the international lawyers' strategic use of scale – in how and when to pick up the local issue and when to ignore it – is retained. For Koppe, the local issue is the plight of the Cambodian judges being discriminated against through language, but the

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same judges nevertheless need to be educated or reminded from the court room floor that they ought to be offended by this treatment.

Whereas the international is often discursively represented as simply "flying in" with gifts, the interactions described above between Koppe and ECCC judges demonstrate the contingent nature of being recognised as "international". Notably, Koppe's absence of a license to practice law at the ECCC also points to the fiction of the "international" lawyer. While Koppe is employed by an international organisation (the UN) and expert in international criminal law, his license to practice law relied upon agreements between the Cambodian Bar and the Dutch Amsterdam Bar. Others "internationals" at the ECCC similarly rely on the existence of their national bar associations because the license to practice law is still regulated nationally.

"Local Ownership"

FIGURE 2 HERE

Figure 2: Outreach "Study Tour" participants listening to a Public Affairs Section presentation by Dim Sovannarom in the public gallery of the ECCC courtroom (photo courtesy of ECCC)

Looking in on Victor Koppe and the other lawyers and parties is the large ECCC public gallery. The public gallery has weekly played host to hundreds of participants in the ECCC's outreach program. Court outreach generally aims to provide information and otherwise connect to communities that have been affected by the alleged crimes about the judicial proceedings. The *ad hoc* tribunals initially had no outreach programs and found that misinformation spread in their absence. Learning from this mistake, later hybrid tribunals as well as the International Criminal Court have provided for extensive outreach activities.[xvii]

Through information provision and education, outreach at hybrid tribunals also aims to establish popular legitimacy for specific legal events and the role of law in society. Important for our argument is how such programs generally assume that so-called affected communities are passively disconnected in practical and informational terms, rather than actively demonstrating disinterest as political resistance to the authority of a court (see Clarke 2009). To put it another way, lack of "local ownership" of international courts and internationalised tribunals on the part of "affected communities" is generally understood as circumstantial, one of

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disenfranchisement, rather than intentional. Some explanation for this apolitical view of outreach lies not only in a sense of moral right-ness of the project of international criminal justice, but also in the depoliticising assumptions freighted in the international/national dualism; not only that "locals" shouldn't object, but also that they are largely incapable of well-informed objection.

Two underpinning assumptions bear immediate mention: "the national" and "the local" can be interchanged, and that physical proximity to a phenomenon or process causes engagement with, or a positive reception for, that phenomenon. These assumptions are present in the following fairly typical statements: "in-country trials *make locals cognisant* of the atrocities" (Mendez 2009:72-73, emphasis added); "*local* trials *are able to expose* those responsible for atrocities to the *local* population, *leading to* gradual reconciliation and a cathartic process for the victims (Raub 2008:1042, emphasis added). Here, "in-country" ("the national") is the location of victimised or otherwise affected "locals" and "those responsible": the national is local enough. But the commission of crimes and experiences of conflict are rarely uniform within a nation-state or over the entire duration of a conflict. Certainly in Cambodia, a national or "in-country" approach is not local enough to respond to a past in which crimes were far from geographically uniform within the country and where geographical categorisations (rural/urban or "base"/"new" people) often resulted in the specific targeting of victims.

References to "the local" in official court and academic literatures provides the sleight of hand by which a normative ideal (local trials may lead to reconciliation) becomes a causal relationship (local trials and exposure lead to reconciliation and catharsis). Leaving aside the problematic assumption that catharsis and reconciliation are universal and desirable experiences, there is now a well-established geographical literature that questions both the innocence and power of "the local" (for an overview, see Smith 2011). In part, this literature argues that being local or physically proximate to something, does not ensure subjective or well-intentioned engagement (Barnett 2005). "Locals" cannot be "made cognisant" simply through access or exposure. Studies of both progressive and regressive socio-spatial phenomena – diasporic belonging, online communities, *apartheid* – have put pay to deterministic theories of proximity and social action, interest, care or meaning. All places, even the most apparently "local", are always already in process and multiple (Massey 1993). As Kamari Clarke (2009:xiv) recognises:

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> justice-making spaces are today so transnational that their justice aspirations often represent trajectories that are shaped by international institutions, diasporic communities … and various philanthropic agendas.

It is this sense of the connected and changing local place that is generally absent from discourses of international criminal justice, much as it is from international development imaginaries (Smith 2011). This serves to preserve the static but crucial international/national dualism and its power effects. We return now to ECCC outreach specifically to further exercise our argument.

ECCC outreach was initially an enterprise of public information dissemination and the solicitation of formal "complaints" and applications for civil party recognition. This work engaged thousands of Cambodians from all provinces and diasporic Cambodian communities in France and the United States.[xviii] From 2009 onwards, and following earlier activities conducted by Cambodian NGOs (Sperfeldt 2012), a Study Tour was developed by the Court's Public Affairs Section (PAS) as a way hosting hundreds of people per week at the Court. The Study Tour comprised a night-time film screening and information session in a village or community setting, and free return travel for that community to the ECCC the following day. In this way, hundreds of thousands of people have attended tribunal hearings, while the total number of outreach participants (including those reached by public lectures) is now reported at over half a million.[xix] Some commentators have levelled that this is a case of quantity of outreach participants over quality of experience (Ciorciari and Heindel 2014:241). Since we have discussed Study Tour experiences elsewhere (Elander 2018; Hughes 2019), we here wish to enter the motif of outreach participants seated in the public gallery of the Court to analyse the specific scale discourse of "local ownership".

This motif of "local ownership" (see Figure 2) suggests much about the ideal of legal outreach and connects to the image of the court room that we painted in words at the outset of the paper. It is a scene featuring court space, overseen by the court emblem, the two flags, and the judges' raised bench. In addition to the symbolism of legal authority and legitimacy, this motif also shows the court room illuminating a live audience of outreach participants. As Alex Jeffrey (2019b:23) argues, examining legal outreach draws critical attention to the multiple locations of trial justice, "challenging the neat separation of the court's activities from the political contestations within the wider social field". In Figure 2, the Court is not yet in

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session, but its features and work are being explained by PAS officer Dim Sovannarom (through a loudhailer) while "locals" listen attentively.

Having witnessed many such outreach scenes we argue that outreach and "local ownership" is never purely "local" in the dominant and dualistic sense generally assumed. Consider the following Study Tour question and answer session held on 20 December 2011 in the ECCC public gallery with outreach participants from Kompong Chhnang province. The first question came from an elderly man who referred to comments made on radio by the Venerable Hok Savann, a Buddhist monk and *chao atika* (head) of the Khmer Buddhist Temple of Montreal, Canada.[xx] Hok Savann's comments had not only been spoken elsewhere – in Canada, in the diaspora community – they also referred to otherworldly (spiritual) realms. By reference to these on-air comments, the outreach participant raised the troubling notion of justice-seeking as revenge, noting that vengeful acts by Khmer Buddhists are subject to significant karmic consequences. For this man, Buddhist teachings provided a rationale for closing the Court and releasing its defendants. In responding, PAS officer Huy Vannak respectfully recognised that such opinions existed, and sought alternative views from other Study Tour participants. Others spoke on the difference between seeking justice though a legal process and acting out of a desire for revenge, often with sorrowful reference to their losses during the Khmer Rouge regime. The discussion connected those in the public gallery in Phnom Penh to debates ongoing in the diaspora via radio, triangulating these spaces with memories and identities "local" to the home village in Kompong Chhnang. Although global in its extensiveness, this dialogue was at the same time highly intimate, being about belief, correct action, and rebirth.

The next participant to speak asked about ECCC Cases 003 and 004, cases then only in the pre-trial investigative stage and seen by many as controversial because they targeted former mid-ranking Khmer Rouge cadre. The question of whether the Court would try mid-ranking or only senior former Khmer Rouge was at the time dividing commentators, with members of Cambodia's ruling party publicly stating that they would not support such an expansion of trials. Again, the forceful implications of this question resonated beyond the limits set by national political discourse. Another participant then suggested that the ECCC would serve as a model for "other countries who have the same problem as our country". This comment appeared to come from a position of pride and generosity, reversing the directionality of the "gift" of international intervention.

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We have spent some time analysing this particular question and answer session, one instance among hundreds of public lectures and Study Tours, because it is not atypical and because it so well belies dominant assumptions of outreach being unidirectional "information delivery" to uninformed and passive "locals". ECCC outreach, and the NGO-led outreach that preceded it and occurred in parallel, has allowed many Cambodians (most lacking the means to travel in from rural areas) to see the Court with their own eyes (Dim, personal communication, 30 November 2011). They have had an opportunity to voice their concerns and experiences at the centre of these legal proceedings. While not all were interested to do so, many audience members we observed clearly held expectations that their questions would be heard and answered. The ECCC provides a case study of public outreach as a varied and multidirectional set of activities but is rarely recognised for this.

Conclusion

Dualistic conceptualisations of scale in the theory and practice of international criminal justice processes must be interrogated. It is especially urgent that the understanding of scale as representational and subjective, not natural, enters scholarship and practice around hybrid tribunals. In this paper, we have taken particular aim at discourses of "international standards" and "local ownership" within just one hybrid tribunal. At the establishment of the tribunal, "international standards" and "local ownership" were presented as entwined rationales for a legal process that was neither fully international nor national, but hybrid. We consider the accompanying discourses to be complicit in a politics of scale that seeks to normatively produce particular types of legal activity in particular kinds of places, as well as specific legal subjects. Crucially, this politics of scale affords some actors significant additional coercive, political, symbolic, and legal power.

As we have detailed, "the international" features discursively in hybrid justice processes as a distinct entity, which is present ostensibly in response to but otherwise external to the gravity of the alleged crimes and to ensure certain standards are upheld. The international operates relationally, i.e. in relation to a national or a local figure, process or scale. At times, these relations are explicitly hierarchical, as seen in the case of staff salaries. At other times, the dualism of the international/national is less settled. This is seen in the example of international defence lawyer Koppe's conduct, whether in relation to his own professionalism, the target of his criticism being an international judge, his claim of the Court's neo-colonial tendencies, or his

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authority to practice law. Our closer examination of how the international is embodied problematises the presentation of the international as a uniform entity operating in a dichotomous relation to the national. Instead, we see more complex embodiments of "the international" where standards remain in negotiation, such as in relation to the rights of an accused.

While hybrid tribunals and outreach are often presented as attempts to localise international criminal justice, these activities often remain national- or "country-"focused at the expense of recognising a heterogeneity of historical experiences and justice demands within the nation-state. At the same time, hybrid tribunals participate in reifying discourses of "the local". For "locals" of these places, law is happening to them; rarely are they seen as having agency, as happening to law. Legal outreach programs are seen as key to fostering "local ownership". While we eschew the ideology of "ownership", we acknowledge the energetic interface of outreach as potentially productive, multidirectional, and affectively engaging. Rather than dismissing outreach, we are calling for renewed attention to how it takes place (where, when and involving whom), the experiential legacies for all involved, and beyond this to who is calling for, and what might be at stake in, outreach as the "localisation" of justice processes (see Hinton 2018; Jeffrey 2019b; Jeffrey and Jakala 2015; Manning 2018).

The normative production and reproduction of these "scales of justice" in and around hybrid tribunals fails to account for the existence of a politics of scale, let alone its operation in the complex relations between subjects and processes that are differently positioned by the project of international criminal justice. As well, these dominant discourses of scale veil the important ways in which experiences of justice, like experiences of injustice and violence that precede them (Pain 2015), are at once intimate and globally connective. As Davies (2017:97) notes in relation to law, the feminist downscaling of the political from state politics to the level of personal relationships is a deliberate intervention in an existing politics of scale. The political implication of our argument is that scholars and practitioners must make a similar move, but not only by "downscaling". The challenge is to go beyond mere recognition – that dominant scalar dualisms prevent more pluralistic conceptualisations and experiences of justice – to deliberately denaturalise scale within wider efforts to decolonise international criminal justice scholarship and practice.

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Figure 1: Victor Koppe (standing), International Co-Lawyer for defendant Nuon Chea (seated to Koppe’s left with headphones) in Court in 2015 (photo courtesy of ECCC)

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Figure 2: Outreach "Study Tour" participants listening to a Public Affairs Section presentation by Dim Sovannarom in the public gallery of the ECCC courtroom (photo courtesy of ECCC)

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[i] Attention has been paid to the politics of scale within human rights discourse (Goodale and Merry 2007), humanitarian intervention (Orford 2003), and transitional justice (Shaw and Waldorf 2010).

[ii] For example, we were not free to move about the court complex unless accompanied by court staff and we were excluded from the "VIP" public gallery section (reserved for high-status visitors, including government officials and diplomats).

[iii] Neither operates any longer, and any remaining legal issues are being dealt with either by domestic courts or by the United Nations International Residual Mechanism for Criminal Tribunals, also headquartered in The Hague.

[iv] Hybrid tribunals include the Special Panels for Serious Crimes in East Timor, the Special Courts for Sierra Leone, the Bosnian War Crimes Chamber, the ECCC, and the Special Tribunal for Lebanon.

[v] This "national" contribution also contains monies given directly to Cambodia from external states and entities to Cambodia directly for its tribunal costs.

[vi] These individuals were Kaing Guek Eav (alias Duch), Khieu Samphan and Nuon Chea. In Case 002, Ieng Thirith was found unfit to stand trial, and Ieng Sary died whilst on trial. Duch, Nuon Chea and Khieu Samphan were all convicted and received life imprisonment sentences.

[vii] "Letter dated 21 June 1997 from the First and Second Prime Ministers of Cambodia addressed to the Secretary-General Kofi Annan." https://www.eccc.gov.kh/sites/default/files/June_21_1997_letters_from_PMs-2.pdf (last accessed 27 August 2020).

[viii] Calls for legal accountability for Khmer Rouge atrocities were made during and immediately after the end of the regime in 1979 (Fawthrop and Jarvis 2004; Hughes 2020).

[ix] "About ECCC." https://www.eccc.gov.kh/en/about-eccc (last accessed 23 September 2021).

[x] Ibid.

[xi] Here we include symbiotic experts such as consultants, court monitors, and court technology specialists, as well as ECCC staff. ECCC "international" staff are themselves stratified into those under direct UN-employment and those employed by UNAKRT, the latter being less well remunerated than the former.

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[xii] See https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/2015-09-04%2023%3A10/E1_338.1_TR002_20150827_Final_EN_Pub.pdf (last accessed 23 September 2021).

[xiii] "Declassified letter (E378/8.1) from the Disciplinary Council of the Bar Association of Amsterdam, re. Cambodia Trial Chamber/Mr V. Koppe, Case 40-15-0862, 25 January 2018." https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/E378_8.1_EN.PDF (last accessed 23 September 2021).

[xiv] In 2012, International Co-Lawyers for Nuon Chea, Michiel Pestman and Andrew Ianuzzi, were referred for alleged misconduct that included disrespectful language and unauthorised disclosure of confidential information to the media (ECCC press release, 29 June 2012; https://www.eccc.gov.kh/en/articles/trial-chamber-decision-misconduct-nuon-chea-defence). The only time a national lawyer has been referred to the Cambodia Bar was in 2014 when all three Co-Lawyers for Khieu Samphan, one national and two international, were referred to their respective bars after refusing to attend hearings (ECCC press release, 19 December 2014; https://www.eccc.gov.kh/en/document/public-affair/trial-chamber-refers-misconduct-khieu-samphans-counsel-their-respective-profe).

[xv] Case 002 was somewhat controversially severed into two mini trials: 002/01 and 002/02.

[xvi] See https://www.eccc.gov.kh/sites/default/files/documents/courtdoc/%5Bdate-in-tz%5D/E1_523.1_TR002_20170616_Final_EN_Pub.pdf (last accessed 23 September 2021).

[xvii] The SCSL, for example, developed extensive outreach activities as part of its original design (see Clark 2009:107-108; Hussain 2004).

[xviii] Coordinating media access and media releases, public lectures and forums in various parts of the country (see Manning 2012) were early tasks of the ECCC. Later, a Victims Unit/Victim Support Section (VSS) was established.

[xix] See https://www.eccc.gov.kh/sites/default/files/Outreach%20statestics%20as%20of%20September%202017.pdf (last accessed 23 September 2021).

[xx] Fieldwork journal and audio recording of Outreach Study Tour at ECCC on 20 December 2011.

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