HUMAN RIGHTS CENTER
UC Berkeley School of Law

2015

THE VICTIMS' COURT?

A Study of 622 Victim Participants at the International Criminal Court

UGANDA • DEMOCRATIC REPUBLIC OF CONGO • KENYA • CÔTE D'IVOIRE

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The Human Rights Center at the University of California, Berkeley, School of Law conducts research on war crimes and other serious violations of international humanitarian law and human rights. Using evidence-based methods and innovative technologies, we support efforts to hold perpetrators accountable and to protect vulnerable populations. We also train students and advocates to document human rights violations and turn this information into effective action.

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ACRONYMS

ASP	Assembly of States Parties to the Rome Statute
AU	African Union
CAR	Central African Republic
CICC	Coalition for the International Criminal Court
CIPEV	Inquiry on Post-Election Violence
CLR	Common Legal Representative
DRC	Democratic Republic of Congo
FIDH	International Federation of Human Rights
FPLC	Patriotic Forces for the Liberation of the Congo
FRPI	Force de Résistance Patriotique en Ituri
HRC	Human Rights Center, University of California, Berkeley
HRW	Human Rights Watch
ICC	International Criminal Court
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally Displaced Persons
IW	Impunity Watch
LRA	Lord's Resistance Army
NGO	Non-governmental Organization
ODM	Orange Democratic Movement
OPCV	Office of Public Counsel for Victims, ICC
OTP	Office of the Prosecutor, ICC
PNU	Party of National Unity
PTC	Pre-trial Chamber, ICC
REDRESS	The Redress Trust Limited
TFV	Trust Fund for Victims, ICC
TC	Trial Chamber, ICC
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNSC	United Nations Security Council
UPC	Union des Patriotes Congolais
VPRS	Victims Participation and Reparations Section, ICC
VRWG	Victims' Rights Working Group, CICC

EXECUTIVE SUMMARY

WHEN THE INTERNATIONAL CRIMINAL COURT (ICC) was created in 1998, its founders hailed it as a "victims' court," one that would give survivors of mass atrocity an influential voice in the administration of justice.[1] In addition to being called as witnesses, victims would have the right to be heard by ICC judges at all stages of the proceedings. They could comment, largely through their legal representatives, on the court's decision to open an investigation, admit or reject a case, narrow or broaden the scope of charges against an accused defendant, make submissions to the judges or question witnesses during trials, or comment on the nature and extent of any reparations, so long as the presentation was done "in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial."[2] Surviving victims would even have a special section of the court, the Victims Participation and Reparations Section (VPRS), to facilitate their interactions with the court.[3] These "revolutionary conditions," the court's founders said, meant that the ICC could serve "not only a punitive but also a restorative function," reflecting the "growing international consensus that participation and reparations play an important role in achieving justice for victims."[4]

In the nearly two decades since the ICC's establishment, thousands of victims have been registered as "victim participants," and thousands more have applied to the court for acceptance. There is now widespread agreement, both inside and outside of the court, however, that the ICC victim participation program needs to be reformed. Court staff and outside observers have argued that current levels of outreach, care, and support are inadequate and incorporation of the views of so many victims is unworkable. Both defense and prosecution teams have also questioned whether victims' representations, filings, and testimony have sometimes had an adverse effect on the fairness of ICC trials.[5]

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1 See Eric Stover et al., "The Impact of the Rome Statute System on Victims and Affected Communities," RC/ST/V/INF.4 (paper presented at the Review Conference of the Rome Statute, Kampala, Uganda: International Criminal Court, 30 May 2010).

2 Rome Statute of the International Criminal Court, Art. 68(3), 17 July 1998, 2187 UNTS 90, UN DOC A/CONF 183/9 [hereinafter Rome Statute].

3 Under a proposal represented by the Registrar, and currently under consideration by the ICC judges, VPRS would be merged into a victims' office that handles an array of victim-related activities and services.

4 See ICC, *Report of the Court on the Strategy in Relation to Victims*, ICC-ASP/8/45 (10 November 2009), 3.

5 Brianne McGonigle Leyh, *Procedural Justice? Victim Participation in International Criminal Proceedings* (Intersentia, 2011); Mugambi Jouet, "Reconciling the Conflicting Rights of Victims and Defendants at the International Criminal Court," *Saint Louis University Public Law Review* 26 (2007), 249–308; Salvatore Zappalà, "The Rights of Victims v. the Rights of the Accused," *Journal of International Criminal Justice* 8 (2010), 137–64; Scott Johnson, "Neither Victims Nor Executioners: The Dilemma of Victim Partici-

But what of the victim participants themselves? What motivated these men and women to become victim participants? Was it to tell their story and to have it acknowledged by the court? Did they wish to see the accused punished? Or was it more important to receive reparations for the harms they suffered? What did they think of the process of becoming a victim participant? What were their perceptions of the court and how it operated? How were their interactions with court staff? And did they have security or safety concerns?

To explore these and other questions, the Human Rights Center (HRC) at the University of California, Berkeley, conducted an interview survey of ICC victim participants, at the request of the VPRS, in four countries where the ICC had initiated investigations and prosecutions of serious international crimes—Uganda, Democratic Republic of Congo, Kenya, and Côte d'Ivoire. In consultation with the VPRS, we developed a strategy that would give HRC researchers access to victim participants without compromising either their safety or the work of the court, while maintaining our independence as university-based researchers. It was agreed that HRC would conduct the study independently from the court and that the conclusions and recommendations would be our own.

Our interviews with 622 victim participants and dozens of key informants strongly suggest that the ICC has reached a critical juncture in its victim participation program. It is our view that the court must either invest more resources and think more creatively about how it can meet the pragmatic and psychosocial needs of victim participants in its present form or revamp the program entirely. Despite admirable efforts by ICC staff, both in The Hague and in victims' home countries, most victim participants, our findings indicate, have only a rudimentary knowledge of the ICC and its mandate. They also want more contact with the court, are deeply frustrated by the slow pace of the proceedings, and expect to receive individual reparations. What remains to be seen is if the ICC (and the states that support it) can make the necessary reforms to meet these expectations.

The Study

Between July 2013 and February 2014 researchers at the Human Rights Center at the University of California, Berkeley, School of Law, interviewed 622 people who were registered as victim participants or had submitted applications to the ICC for consideration as victim participants and were awaiting responses. In addition, we interviewed 41 ICC staff members, legal representatives, and victims' advocates to understand the evolution of the victim participation program. Interviews were conducted in The Hague (N=27), Uganda (N=151), Democratic Republic of Congo (N=154), Kenya (N=204), and Côte d'Ivoire (N=127). Interviews were confidential and varied in length from twenty minutes to two hours.

Imperfect information about affected communities and victim applicants did not make random sampling possible, but we recruited victim participants roughly in proportion to their appearance in the victim population by geography, ethnic affiliation, ICC case affiliation, applicant status, age cohorts, and sex. Interviews were conducted with victims whose injuries fell within the scope of the criminal charges against the defendants (case victims) as well as with victims who were affected directly by the mass violence but not by specific charged

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pation and the Defendant's Right to a Fair Trial at the International Criminal Court," *ILSA Journal of International and Comparative Law* 16(2) (2010), 489; Natalie von Wistinghausen, "Victims as Witnesses: Views from the Defence," in *Victims of International Crimes: An Interdisciplinary Discourse,* ed. Thornsten Bonacker and Christoph Safferling (Hague: Springer, 2013), 165–73; Marianna Tonellato, "The Victims' Participation at a Crossroads: How the International Criminal Court Could Devise a Meaningful Victims' Participation while Respecting the Rights of the Defendant," *European Journal of Crime, Criminal Law, and Criminal Justice* 20 (2012), 315–59.

offenses (situation victims). Victim-respondents represented a wide spectrum of people, including widows, child soldiers, survivors of sexual violence, and others who had suffered grave harms during the conflict.

Summary of Findings

Most victim participants have insufficient knowledge to make informed decisions about their participation in ICC cases. Respondents' understanding of the ICC's mandate, basic structure, and most important rules varied depending on location. Respondents in rural areas tended to have far less knowledge of or information about the ICC than did respondents in urban communities. Few knew the location of the court's headquarters, and many believed the ICC was an aid organization rather than a criminal court. The best informed respondents lived in cities, had more regular contact with ICC field staff, and had better access to information about developments at the court. For example, victim participants in Abidjan, Côte d'Ivoire, had a good understanding of the ICC and wanted to participate in legal proceedings. In contrast, rural participants in Uganda, DRC, and Kenya often lacked access to information about the court or its cases.

Victim participants want convictions. Most victim participants said that they expected the court to deliver convictions and that they would be disappointed by anything less. Few respondents expressed doubts about the guilt of the accused. (There was one exception: In DRC, some child soldiers said Thomas Lubanga Dyilo, a militia commander on trial for recruiting child soldiers, should be acquitted because he housed and fed them during the conflict.) Most victim participants said that high-level cases should be tried at the ICC and not in local or regional courts. They also expressed frustration that the ICC would not be prosecuting lower level offenders. In Uganda, respondents complained that no action had been taken to prosecute government actors.

Victim participants want reparations. Victim participants joined ICC cases with the expectation that they would receive reparations. In Uganda and DRC, the prospect of receiving reparations was the primary motivation for the overwhelming majority of victim participants; in Kenya and Côte d'Ivoire, less than half reported that receiving reparations was their main objective. Nearly all respondents, however, reported an interest in individualized reparations for themselves and others. Their conceptions of reparations were frequently interwoven with local conceptions of justice.

Victim participants find value in filling out individual applications, but few are concerned with who at the court reviews them. Victim participants reported that completing an ICC application gave them confidence that their experiences would be known at the court and aid in building a case against the accused. Few said that the judges needed to review them, however; most said they would be satisfied if any member of the ICC read their application.

Few victim participants want to participate directly in trial proceedings. Of the hundreds of ICC victim participants interviewed for this study, few said that they wanted to participate in person in trials at The Hague, and some felt that such exposure could lead to reprisals. The overwhelming majority reported that they were pleased to participate through intermediaries or their legal representatives who could convey their stories to the court. Even among victim participants motivated by the promise of criminal convictions, few said they needed to appear at trial to confront the accused.

Victim participants express frustration at the length of trials, which, in turn, fosters distrust and disappointment. Victim participants, like other observers of the ICC, complained about the inordinate length of the ICC judicial process. Many victim participants were concerned that they would die before verdicts or reparations decisions, and some worried that delays in proceedings could compromise their personal information and cause them security problems. Some said that such delays signaled corruption at the court, and that infrequent updates about court developments damaged goodwill in their communities.

Victim participants' satisfaction with the ICC depends largely on their personal interactions with ICC staff and their legal representatives. Most victim participants said that ICC staff treated them in a professional and respectful manner and genuinely cared about their suffering and loss. However, nearly all respondents wanted more interaction with ICC staff or their legal representatives. Few participants reported that they had met with ICC representatives or legal representatives more than three times. Many said they had had only one meeting with a lawyer or member of the court. Some had only interacted with court intermediaries, which gave them the impression that the ICC did not value their views and their testimony. Interactions with ICC staff, intermediaries, and especially legal representatives were a key determinant of respondents' satisfaction with the court.

Victim participants fear reprisals. Some participants, in Kenya and DRC especially, feared that they could be targeted for violence because of their association with the ICC and its representatives. In Kenya, instances of intimidation and witness disappearances led victim participants to fear that the accused could use the apparatus of the state to target them. They pointed to the intimidation and disappearance of witnesses as evidence of risk. In DRC, victims feared that their association with the ICC left them vulnerable to attack by local warlords or hired thugs. Ongoing violence and shifting political alliances continue to make partnership with the ICC a potential liability in both countries. In contrast, victims in Uganda and Côte d'Ivoire, where violence had subsided and perpetrators lacked political power, expressed fewer concerns about reprisals.

Recommendations

The following recommendations stem from three key observations emanating from this study. First, the victim participation program has created high expectations that can lead to great disappointments. Second, victim participants are often poorly informed about how the ICC works in general and, specifically, what it means to be a victim participant. And, third, victim participants may be led astray by their own expectations or by the failure of the ICC or its representatives to be forthright about what it can and cannot provide.

Recommendations to the International Criminal Court:

Create a greater separation between victim participation programs for victims who wish to participate in the legal process and programs for victims who seek support either through the reparations process or through petitions to the Trust Fund for Victims. Our findings show that most victims who apply to participate in ICC cases are not motivated to participate directly in trial proceedings. They join cases because they believe it will result in material support or reparations or because they believe their statements will contribute to the conviction of the accused. Victims often believe that by completing a victim application, they are communicating their interest in material assistance to the court. Court staff and their representatives should make clear to victims from first point of contact that individual compensation will not result from participation in judicial proceedings or affect the availability or disbursement of material support at the reparations

stage, should one occur. Applications to participate in trials should be separate from victim statements about harms suffered. Reforms that increase ICC transparency and eliminate the expectation of compensation from participation in trials could reduce the number of victims who wish to participate in trials, and create a more efficient and meaningful system for victim participation.

Provide greater field support to common legal representatives and rely more on legal assistants in ICC situation countries. Legal representatives help determine the quality of victim participants' experiences participating in trials. Legal representatives act as conduits for information, correct misinformation, and represent the perspectives of participants in The Hague. A victim participant's legal representative can be as important to them as defense counsel is to the accused. Lawyers representing victim participants need adequate support in ICC situation countries to conduct regular outreach meetings and host bi-monthly consultations. Most victims who took part in our study want a minimum of bi-monthly updates on proceedings and bi-annual visits from ICC officials. Regular opportunities to learn about, discuss, and debate ICC activities and developments are necessary for meaningful participation in trials. These interactions also promote feelings of safety, provide reassurances of confidentiality, and signal continued interest in victims' perspectives. The court should consider employing more legal assistants to achieve these goals.

Find ways to speed up the trial process. Current timelines for cases make victim participants feel anxious, resentful, and even abandoned. It is important to communicate a clear horizon for cases and provide timely updates to victim participants, who should not have to wait more than five years for trial outcomes and reparations decisions. ICC policies of limited outreach during lulls in cases should be reexamined in light of our study findings.

Train ICC staff and their representatives to be extremely clear about what the court can and cannot provide victim participants. Our research shows that most victims join ICC cases because they believe that prosecutions will result in convictions and individual reparations. Many also develop unrealistic hopes for what the court can provide: Some develop these expectations on their own, while others develop them because of what they were told by ICC staff and their representatives. Further, the level of protection, care, and other support available from the ICC, including the scope of services and support that can or will be provided by the Trust Fund for Victims, must be made clear to victim participants.

Recommendation to the States Parties:

Support the International Criminal Court by investing in outreach and robust educational programs for victim participants, particularly in rural areas. Meaningful victim participation in ICC cases will remain a myth without more widespread victim education about the court, its processes, and its procedures. The legal process is complex and often disconnected from the needs and concerns of victims. More outreach and training is needed, particularly in rural regions, to ensure that victim participants understand their rights, their options for participation, and the limitations of the court's mandate. The court must also ensure accurate, detailed, and frequent information about cases. Victim participation regimes that operate outside of victims' understandings fall short of legal requirements in Article 68(3) of the Rome Statute. States Parties and other donors should support the ICC so that it can increase its victim-related services and field staff in situation countries and greatly improve its use of communications technologies. For example, the court should find ways to use mobile phone networks and SMS systems to establish regular channels of communication about new cases, especially with victims in rural areas.

INTRODUCTION

PROVISIONS FOR VICTIM PARTICIPATION at the International Criminal Court have caused significant dissension among jurists, activists, and scholars. On the one side are those who argue that by providing victims with expansive participatory rights, the ICC will help restore victims' sense of dignity, contribute to their "healing" and rehabilitation, and bring to light facts and evidence that may not otherwise emerge.[6] On the opposing side are those who fear that such participatory rights will enable victim participants to run roughshod over a defendant's right to a fair trial; prolong proceedings and increase their expense; hinder the prosecutor's ability to conduct a focused investigation; and provide legal recognition to certain categories of victims and not to others.[7] Many are also concerned that the court's statute creates high expectations on the part of survivors—expectations that the court, with its limited mandate and resources, may be unable to fulfill.[8]

Further, there is controversy over program costs. In 2014, the ICC approved €6,287,900 (US $6,867,959) for victim-related programs,[9] prompting some critics to argue that such expenditures would be better spent on investigations and the court's criminal mandate. Victim advocates, though, including ICC member state

6 Mariana Pena and Gaelle Carayon, "Is the ICC Making the Most of Victim Participation?," *International Journal of Transitional Justice* 7(3) (November 2013), 518–35; Luke Moffet, *Justice for Victims at the International Criminal Court* (New York: Routledge, 2014); Conor McCarthy, *Reparations and Victim Support in the International Criminal Court* (Cambridge: Cambridge University Press, 2012); Hans-Peter Kaul, "Victims' Rights and Peace," in *Victims of International Crimes,* 223–29.

7 Christine Van den Wyngaert, "Victims Before International Criminal Courts: Some Views and Concerns of an ICC Trial Judge," *Case Western Reserve Journal of International Law* 44 (2011), 475–96; Jouet, "Reconciling the Conflicting Rights of Victims and Defendants at the International Criminal Court," 249–308; Zappalà, "The Rights of Victims v. the Rights of the Accused"; Brianne McGonigle Leyh, "Victim-Oriented Measures at International Criminal Institutions: Participation and Its Pitfalls," *International Criminal Law Review* 12(3) (2012), 407; Christine Chung, "Victims' Participation at the International Criminal Court: Are Concessions of the Court Clouding the Promise?," *Northwestern Journal of International Human Rights* 6(3) (Summer 2008), 542; Mirjan Damaska, "What Is the Point of International Criminal Justice?," *Chicago-Kent Law Review* 83 (2008), 342–3; Solange Mouthaan, "Victim Participation at the ICC for Victims of Gender-Based Crimes: A Conflict of Interest," *Cardozo Journal of International and Comparative Law* 21 (2012), 619.

8 See Charles P. Trumbull IV, "The Victims of Victim Participation in International Criminal Proceedings," *Michigan Journal of International Law* 29 (2008), 802–18; Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (Philadelphia: University of Pennsylvania Press, 2005), 148–50; Sara Kendall and Sarah Nouwen, "Representational Practices at the International Criminal Court: The Gap Between Juridified and Abstract Victimhood," *Law and Contemporary Problems* 76(3) (2014), 235–62.

9 ICC Assembly of States Parties, *Proposed Programme Budget for 2015 of the International Criminal Court*, ICC-ASP/13/10 (18 September 2014), ¶113, 115, 120.

representatives, have argued that the amount is well below what is necessary to provide direct and meaningful participation to qualified victims, particularly when one considers the court's burgeoning caseload.

But what of victim participants themselves? Does participation turn out to be, in their view, meaningful? Victims' incorporation into international criminal justice processes is widely noted as an innovation of the ICC, yet few researchers have asked victims about their experiences working with the court.[10]

To explore such questions, the Human Rights Center (HRC) at the University of California, Berkeley, School of Law, conducted an interview survey of ICC victim participants at the request of the Victims Participation and Reparations Section (VPRS). Working with the VPRS, we selected four countries for the study where the ICC had initiated investigations and prosecutions of grave international crimes—Uganda, Democratic Republic of Congo, Kenya, and Côte d'Ivoire.[11] We also developed a strategy that would allow HRC researchers access to victim participants without compromising their safety or the work of the court, while maintaining our independence as university-based researchers. It was agreed that HRC would conduct the study independently from the court and that the conclusions and recommendations would be our own.

10 A few researchers have conducted focus groups or interviews with victim participants in international criminal trials. Examples include: Elisa Hoven, "Civil Party Participation in Trials of Mass Crimes: A Qualitative Study at the Extraordinary Chambers in the Courts of Cambodia," *Journal of International Criminal Justice* 12 (2014), 81–107; Chris Tenove, "International Criminal Justice for Victims? Assessing the International Criminal Court from the Perspective of Victims in Kenya and Uganda," *Africa Portal* (2013); Luke Moffett, "Meaningful and Effective? Considering Victims' Interests Through Participation at the International Criminal Court," *Criminal Law Forum* 26(2) (2015), 255–89; Eric Stover, Mychelle Balthazard, and Alexa Koenig, "Confronting Duch: Civil Party Participation in Case 001 at the Extraordinary Chambers in the Courts of Cambodia," *International Review of the Red Cross* 93 (882) (2011), 503–46.

11 States Parties or the United Nations Security Council can refer a conflict situation to the court, or the Office of the Prosecutor can open and investigate situations under its jurisdiction. Four States Parties to the Rome Statute—Uganda, Democratic Republic of Congo, Central African Republic, and Mali—have referred situations within their borders to the court. The Security Council has also referred the situation in Darfur (Sudan) and the situation in Libya—both non-States Parties. Although Côte d'Ivoire is not a party to the Rome Statute, the government submitted a declaration under article 12(3) in April 2003 to accept the court's jurisdiction. The Office of the Prosecutor has initiated investigations in Kenya.

THE STUDY

BETWEEN JULY 2013 AND FEBRUARY 2014 we interviewed 663 people. Of these, 622 people reported that they were registered as victim participants or had submitted applications for consideration as victim participants to the ICC and were awaiting responses. We also interviewed 41 ICC staff members and victims' advocates to understand the evolution of victim programs. The interviews were conducted in The Hague (N=27), Uganda (N=151), Democratic Republic of Congo (N=154), Kenya (N=204), and Côte d'Ivoire (N=127). Interviews varied in length from twenty minutes to two hours, with an average interview lasting thirty to forty minutes. All interviews were anonymous and confidential.

Imperfect information about affected communities and victim applicants did not make random sampling possible. Instead, we recruited volunteers among victim participants roughly in proportion to their appearance in the victim population by geography, ethnic affiliation, ICC case affiliation, applicant status, and sex. Interviews were conducted with victims whose harms fell within the scope of the criminal charges against the defendants (case victims) as well as with victims who were affected directly by the mass violence but not by specific offenses in the ICC cases (situation victims). Victim respondents represented all major ethnic groups, age cohorts, and political factions, and included widows, child soldiers, and survivors of sexual violence.

Researchers conducted in-depth, semi-structured interviews with respondents to explore the social, psychological, and material dimensions of their experiences with the court. Specifically, the researchers wanted to understand how victims made sense of their ICC participation and whether respondents:

- felt they had a *voice* in ICC proceedings;
- viewed the ICC as a *neutral* arbitrator;
- felt *respected* by court staff;
- *trusted* the ICC;
- felt *safe* being associated with the court; and
- wished to receive *reparations* by way of the ICC.

Intermediaries, who were already known to the communities and spoke English or French in addition to the language of the respondent,[12] were used as interpreters. Although professional translation would have afforded linguistic advantages, the use of local intermediaries helped to establish rapport with community

12 In Uganda, local languages or dialects included Acholi, Ateso Gimara, Kumam, Lugbara, Lango, and Madi. In DRC, local languages included Congolese Kiswahili, Hema, and Lingala. In Kenya, local languages or dialects included Kiswahili, Luo, Luhya, and Kisii. In Côte d'Ivoire, respondents spoke French or Dyula.

members and generated more candid responses. Respondents also reported that using intermediaries assuaged security concerns—limiting their exposure to non-community members—and put them at ease. Nevertheless, the lack of professional translation at times resulted in confusion as interpreters struggled to find the right words to translate more complicated ideas. Conversations frequently shifted from the first to the second person. Given these realities, we have taken greater liberties than we might otherwise have in editing victims' statements for grammar and clarity, while of course making every effort to preserve the original meaning and substance of the statements.

The Committee for the Protection of Human Subjects at University of California, Berkeley approved the study protocol. Approval to conduct interviews was also obtained from local authorities where required. Oral informed consent was obtained from all respondents. Neither monetary nor material incentives were offered for participation in the study, although we paid travel reimbursement to respondents journeying to interview sites. Interviewees were also provided either sodas and pastries or tea and lunch during interviews.

Researchers working with vulnerable communities can encounter unique methodological challenges.[13] Understanding local political dynamics proved essential in some regions to ensure we did not exacerbate ongoing tensions between individuals or among groups. To overcome potential problems, we worked closely with local intermediaries to anticipate social or political sensitivities and to address short and long-term security concerns. Before interviews, we reviewed questionnaires with intermediaries and sought advice on local translation. We also asked for advice on where to organize meetings to avoid inadvertently compromising confidentiality. Due to risks of retraumatization, we did not ask respondents about any specific harms they may have suffered, although many interviewees brought up these on their own.

All interviews were transcribed and coded using the qualitative coding software *Atlas.ti*. Both inductive and deductive coding methods were used to develop the final coding scheme and analyze the interview data. The final coding scheme included 206 qualitative codes.[14] The final coded interview data for the study consisted of more than 15,000 pages of quotations. As a check on the veracity of these results, we created a dataset that included 67 dichotomous and ordinal variables to record demographic characteristics of the population and generate internal counts of victims' opinions to confirm patterns in the interview data. These numbers are provided in the report only when they were specifically asked as part of the structured questionnaire. However, they also inform our qualitative characterization of the data. In this report, "vast majority" refers to more than three-quarters of respondents in a country, "most" to at least a majority of respondents, "many" to more than a dozen respondents, "some" to less than a dozen, and "few" to less than six respondents.

Limitations

While the study was conducted as rigorously as possible, some limitations need to be acknowledged.

First, as with any non-random study, there is a limit to the generalizability of our findings. While we managed to interview a broad cross-section of victim participants from a large number of communities affected by the crimes being prosecuted at the ICC, we could not visit every community. Some affected communities were too difficult to reach or, in a few cases, were deemed unsafe.

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13 Cathy Zimmerman and Charlotte Watts, "Documenting the Effects of Trafficking in Women," in *Public Health and Human Rights: Evidence-Based Approaches*, ed. Chris Beyrer and H. F. Pizer (Baltimore: Johns Hopkins University Press, 2007), 143–76.

14 Following protocols approved by the Committee for the Protection of Human Subjects at UC Berkeley, researchers stripped identifying information from transcripts prior to coding.

Second, because we depended on local intermediaries to facilitate our access to affected communities and recruit volunteers for the study, we cannot be sure that they were all acting as neutral middlemen. Some had independent agendas that may have created a stake in our study outcomes and therefore may have skewed results either through selective recruitment or inaccurate interpretation. Nevertheless, we found that respondents, including those in the same communities, were willing to express a diversity of views about the court and victim participation programs, including criticism of the court and its practices.

Third, the time and cost required to participate in the interviews possibly created a bias in the study population. It is likely that those people able to forego work and travel to speak with us differed from the general population of victims.

Fourth, as with any such study, some responses to questions may have been influenced by "social desirability." Social desirability occurs when a respondent answers in a manner he or she believes will please the interviewer. Respondents might also have sought in their answers to please the court intermediaries, who often have high social standing in the community.

Finally, in some cases, respondents may have had ongoing concerns about personal safety that prevented them from providing completely honest answers.

VICTIM PARTICIPATION AND PROCEDURAL JUSTICE

THIS REPORT IS BASED ON THREE PRECEPTS. First, *victims have a stake in international criminal justice.* While victims have long enjoyed substantive rights, such the right to life and liberty, and the procedural rights to enforce substantive claims in many civil law jurisdictions, they have historically been relegated to the role of witnesses in domestic common law trials and international criminal proceedings.[15] In recent decades, however, debates on the rights of victims to contribute to international criminal justice have taken center stage.[16] Many observers now view victim participation as essential to the legitimacy and effectiveness of international criminal proceedings.[17] This evolution in thinking about victims resulted from a confluence of forces, including the success of domestic victims' rights movements, the growth of human rights norms worldwide that promoted victim-oriented justice, and an acknowledgement on the part of state officials and lawyers that previous tribunals—including the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR)—failed to fully take into account the experiences and opinions of victims. Victim contributions to criminal investigations, judicial processes, and legal decision-making can enhance the quality of criminal trials and willingness of affected communities to accept legal outcomes.

Victims' procedural rights have their limits, however. Their interests must be balanced against the rights of others, most especially the accused. This fundamental concept is enshrined in the *Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power*, adopted by the UN General Assembly on November 29, 1985. Hailed as the Magna Carta for crime victims around the world, the declaration sets out basic principles of justice, including the right of victims to have access to the judicial process and to receive

15 Jonathan Doak, *Victims' Rights, Human Rights and Criminal Justice: Reconceiving the Role of Third Parties* (Oxford: Hart, 2008).

16 Valentina Spiga, "No Redress without Justice: Victims and International Criminal Law," *Journal of International Criminal Justice* 10(5) (2012), 1377–94; Carolyn Hoyle and Leila Ullrich, "New Court, New Justice? The Evolution of 'Justice for Victims' at Domestic Courts and at the International Criminal Court," *Journal of International Criminal Justice* 12(4) (2014), 681–703; Claire Garbett, "From Passive Objects to Active Agents: A Comparative Study of Conceptions of Victim Identities at the ICTY and ICC," *Journal of Human Rights* (2015).

17 REDRESS, *Representing Victims before the ICC: Recommendations on the Legal Representative System* (London: REDRESS, April 2015); ICC Assembly of States Parties, *Report of the Bureau on Victims and Affected Communities and the Trust Fund for Victims and Reparations*, ICC-ASP/11/32 (23 October 2012), ¶24; Peter Dixon and Chris Tenove, "International Criminal Justice as a Transnational Field: Rules, Authority and Victims," *International Journal of Transitional Justice* 7(3) (2013), 408.

prompt redress for the harm they have suffered.[18] This right is one of the minimum guarantees for a fair trial and is particularly important with respect to charges of genocide and crimes against humanity, where the accused may be sentenced to life imprisonment.[19]

Second, *the ICC has a legal responsibility to provide meaningful opportunities for victims to express their views and concerns.*[20] Under Article 68(3) of the Rome Statute victims are granted unprecedented rights.[21] In contrast to the *ad hoc* tribunals for Rwanda and the former Yugoslavia, the Rome Statute gives victims a voice in proceedings and grants them extensive procedural rights, including the right to be heard on issues that affect their personal interests and the right to receive reparations.[22] These new provisions reflect a "growing consensus that participation and reparations can play an important role in achieving justice for victims."[23] International prosecutions are, today, focused on more than ending impunity.[24] They also aspire to the welfare and recovery of individual victims.[25]

This shift toward greater victim recognition and participation raises crucial questions: How should the scope and character of victim participation be defined? Should the court's obligations to victims be spelled out in concrete terms? If the ICC prosecutor suspends an investigation in a situation country, does the court have an obligation to continue its contacts with victim participants? And what role should the ICC play, if any, in addressing victims' needs beyond their participation in criminal trials?

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18 See United Nations, A/Res/40/34 (1985). The declaration defines victims of crime as "persons who, individually or collectively, have suffered harm, including physical and mental injury, emotional suffering, and economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power." It also states that victims' procedural rights must "be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial."

19 On rights of the accused, see Rome Statute, Art. 67.

20 See ICC Assembly of States Parties, *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court*, Part IIA: Rules of Procedure and Evidence, Rule 85, ICC-ASP/1/3 and Corr.1 (3–10 September 2002). This rule defines victims as "natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court." William A. Schabas, *An Introduction to the International Criminal Court*, 4th ed. (Cambridge: Cambridge University Press, 2011); Cherif M. Bassiouni, *Introduction to International Criminal Law* (Leiden: Martinus Nijhoff, 2012).

21 Markus T. Funk, *Victims' Rights and Advocacy at the International Criminal Court (*Oxford: Oxford University Press, 2015); Susana SáCouto and Katherine Cleary, *Victim Participation Before the International Criminal Court* (Washington, DC: War Crimes Research Office, American University Washington College of Law, November 2007); Susana SáCouto and Katherine Cleary, "Victims' Participation in the Investigations of the International Criminal Court," *Transnational Law and Contemporary Problems* 17 (2008), 73.

22 Rome Statute, Art. 68.

23 See ICC Assembly of States Parties, *Report of the Court on the Strategy in Relation to Victims,* ICC-ASP/11/40 (5 November 2012), ¶3.

24 Jo-Anne Wemmers, "Victims' Rights and the International Criminal Court: Perceptions within the Court Regarding the Victims' Right to Participate," *Leiden Journal of International Law* 23(3) (September 2010), 629–43.

25 Luke Moffet, "Elaborating Justice for Victims at the International Criminal Court Beyond Rhetoric and The Hague," *Journal of International Criminal Justice* (2015); Emily Haslam, "Victim Participation at the International Criminal Court: A Triumph of Hope Over Experience?," in *The Permanent International Criminal Court: Legal and Policy Issues*, ed. Dominic McGoldrick, Peter Rowe, and Eric Donnelly (Oxford: Hart, 2004), 315–34; Raquel Aldana, "A Victim-Centered Reflection on Truth Commissions and Prosecutions as a Response to Mass Atrocities," *Journal of Human Rights* (2006), 107–12; Claire Garbett, "The Truth and the Trial: Victim Participation, Restorative Justice, and the International Criminal Court," *Contemporary Justice Review* 16(2) (2013), 193–213; Elisa Hoven and Saskia Scheibel, "'Justice for Victims' in Trials of Mass Crimes Symbolism or Substance?," *International Review of Victimology* 21(2) (2015), 161–85.

The Rome Statute offers little guidance on how to answer these questions. To further complicate matters, the ICC, like the ICTY and ICTR, is a blend of common law and civil law. As such, judges seeking to forge new law on victim participation must navigate legal terrain with a bi-polar compass that points simultaneously to often-contradictory precedents in domestic civil and common law jurisdictions. Judges must decide what forms of participation are appropriate and meaningful for victims, but they often lack knowledge about victims' situations, aspirations, or expectations for participation in trials. While many pressing questions about victim participation are beyond the scope of this study, the documentation of victims' views and experiences can inform deliberations on the structure and practice of victim participation at the court.

Third, *perceptions of the fairness of criminal prosecutions affect how trial participants view judicial outcomes.* Since the mid-1970s, social psychologists have surveyed people around the world who have participated in judicial and quasi-judicial proceedings to understand in what circumstances participants consider them fair or unfair, and ultimately come to accept or reject the outcome.[26] Almost universally, researchers have concluded that the manner in which a trial is conducted and the extent to which participants feel they have a "voice" in the proceedings are major influences—though not the only ones—on extent of satisfaction that justice was done.[27]

A person's views of the fairness of court procedures can also make a significant difference in how they evaluate judicial outcomes independent of other factors,[28] including whether or not there is a conviction in a case.[29] Multiple studies of domestic courts, for example, have shown that whether or not people feel that they have been fairly treated can help to determine not only trial participants' satisfaction with court judgments, but also their willingness to accept them.[30] Experiences of procedural justice can condition people's views of the legitimacy of criminal enforcement and courts.[31]

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26 John W. Thibaut and Laurens Walker, *Procedural Justice: A Psychological Analysis* (Hillsdale, NJ: Lawrence Erlbaum, 1975).

27 See, for example, Robert Folger, "Distributive and Procedural Justice: Combined Impact of Voice and Improvement on Experienced Inequity," *Journal of Personality and Social Psychology* 35(2) (February 1977), 108–19; E. Allan Lind, Ruth Kanfer, and P. Christopher Early, "Voice, Control, and Procedural Justice: Instrumental and Noninstrumental Concerns in Fairness Judgments," *Journal of Personality and Social Psychology* 59(5) (November 1990), 952–59; Tom R. Tyler et al., *Social Justice in a Diverse Society* (Boulder, CO: Westview Press, 1997); Tom R. Tyler and Yuen J. Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (New York: Russell Sage Foundation, 2002); Tom R. Tyler, "Procedural Justice, Legitimacy, and the Effective Rule of Law," *Crime and Justice* 30 (2003), 283–357; Steven L. Blader and Tom R. Tyler, "How Can Theories of Organizational Justice Explain the Impact of Fairness?," in *Handbook of Organizational Justice*, ed. Jerald Greenberg and Jason A. Colquitt (Mahwah, NJ: Lawrence Erlbaum, 2005), 329–54; Elizabeth Mullen and Linda J. Skitka, "Exploring the Psychological Underpinnings of the Moral Mandate Effect: Motivated Reasoning, Group Differentiation, or Anger?," *Journal of Personality and Social Psychology* 90(4) (April 2006), 629–43.

28 Jonathan D. Casper, Tom Tyler, and Bonnie Fisher, "Procedural Justice in Felony Cases," *Law & Society Review* 22(3) (1988), 483–507; Robert J. MacCoun and Tom R. Tyler, "The Basis of Citizen's Perceptions of the Criminal Jury: Procedural Fairness, Accuracy, and Efficiency," *Law and Human Behavior* 12(3) (September 1988), 333–52; Tom R. Tyler, *Why People Obey the Law*, Reissue ed. (Princeton, NJ: Princeton University Press, 2006).

29 Rebecca Hollander-Blumoff and Tom R. Tyler, "Procedural Justice in Negotiation: Procedural Fairness, Outcome Acceptance, and Integrative Potential," *Law & Social Inquiry* 33(2) (June 2008), 473–500.

30 Tom R. Tyler, "Multiculturalism and the Willingness of Citizens to Defer to Law and to Legal Authorities," *Law & Social Inquiry* 25(4) (October 2000), 983–1019.

31 Jason Sunshine and Tom R. Tyler, "The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing," *Law & Society Review* 37(3) (September 2003), 513–48; Tom R. Tyler and Jonathan Jackson, "Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement," *Psychology, Public Policy, and Law* 20 (February 2014), 78–95;

In 2009, the ICC issued a report on the court's strategy in relation to victims that echoed insights from procedural justice theory.[32] The report notes that "by providing victims with an opportunity…to be part of the justice process and by ensuring that consideration is given to their suffering, it is hoped that they will have confidence in the justice process and view it as relevant to their day to day existence rather than as remote, technical, and irrelevant."[33] With this goal in mind, we set out to determine if, in the view of victim participants and some informed observers, the court was adhering to its commitment to provide victims with greater access to the administration of justice, and how victim programs had shaped their views of justice and the court.

Justice Tankebe, "Public Cooperation with the Police in Ghana: Does Procedural Fairness Matter?," *Criminology* 47(4) (November 2009), 1265–93.

32 The court's revised strategy in 2012 also recognized that "the ICC has not only a punitive but also a restorative function; that positive engagement with victims can have a significant effect on how victims experience and perceive justice; and that it can contribute to their healing process," ICC Assembly of States Parties, *Court's Revised Strategy in Relation to Victims*, ICC-ASP/11/40 (5 November 2012), ¶2.

33 ICC Assembly of States Parties, *Report of the Court on the Strategy in Relation to Victims*, ICC-ASP/8/45 (10 November 2009), ¶46.

VICTIM PARTICIPATION IN CRIMINAL TRIALS

VICTIM PARTICIPATION IN CRIMINAL TRIALS is not a novel phenomenon. Historically, victims have in some instances even borne the responsibility for bringing criminal cases to trial. In recent decades, however, it has been more typical in countries with civil law traditions than in those with common law traditions to incorporate victims into criminal prosecutions as more than witnesses.

This distinction between civil and common law traditions is important. The *common law* system, which is practiced in the United Kingdom, the United States, and most former and current Commonwealth countries, tends to focus on the adversarial nature of criminal proceedings: The prosecution and the defense make zealous presentations of their cases to the jury and the judge acts mainly as a referee, mediating the process and helping the jury fulfill its fact-finding function. The role of victims in most common law systems is largely limited to that of being a witness. As witnesses, victims can only speak if called upon by the prosecution or defense and can only answer questions that are posed to them. In some common law countries, such as the United States, victims may also be allowed to provide 'impact statements' during the sentencing phase to make the court aware of facts that could contribute to determining an appropriate sentence.

By contrast, courts within the *civil law* system—a system that is predominately utilized by national courts in continental Europe, most of Latin America, many parts of Africa and Asia, and recent adopters of Western legal traditions such as Japan—one or more investigating judges generally supervise the compilation of a dossier (which can include a wider range of evidence than is permitted in common law courts), to which the accused must respond at trial. Unlike the relatively passive role of the common law judge, the judge in the civil law tradition is inquisitorial, actively controlling the trial's direction and questioning witnesses. In such systems, victims tend to play a more central role: For example, victims may institute proceedings or seek compensation by applying to join the criminal prosecution as a civil petitioner (*partie civile*). Victims may also benefit from legal representation, present evidence, cross-examine witnesses, and make closing statements.[34]

In recent decades, France and Cambodia have received the most attention for their inclusion of victim participation in trials of war crimes suspects. In France, most notably, scores of victims of crimes

34 See Vivian Grosswald Curran, "Gobalization, Legal Transnationalization and Crimes Against Humanity: The Lipietz Case," *American Journal of Comparative Law* 56(2) (Spring 2008), 376.

committed during World War II participated as *parties civiles*, "civil parties," in three prominent trials of alleged Nazi war criminals and sympathizers, those of Klaus Barbie (head of the Gestapo in Lyon, convicted in 1991); Paul Touvier (leader of a Vichy-run paramilitary group under the direction of Barbie, convicted in 1994), and Maurice Papon (a police official in the Prefecture of Bordeaux, convicted in 1998). Similarly, in Cambodia, civil parties have been a regular feature in the trials of former commanders and leaders of the Khmer Rouge.[35]

35 Stover, Balthazard, and Koenig, "Confronting Duch"; Mahdev Mohan, "The Paradox of Victim-Centrism: Victim Participation at the Khmer Rouge Tribunal," *International Criminal Law Review* 9(5) (2009), 733–75; Susana SáCouto, "Victim Participation at the International Criminal Court and the Extraordinary Chambers in the Courts of Cambodia: A Feminist Project?" *Michigan Journal of Gender and Law* 18 (2012), 297–359; Thorsten Bonacker, Wolfgang Form, and Dominik Pfeiffer, "Transitional Justice and Victim Participation in Cambodia: A World Polity Perspective," *Global Society* 25 (2011), 113–34.

VICTIM PARTICIPATION AT THE INTERNATIONAL CRIMINAL COURT

COMMON LAW AND CIVIL LAW TRADITIONS fed into the Rome Statute negotiations and were drawn upon to forge a new mandate for the inclusion of victims when the International Criminal Court came into being. Today, victim participation is regarded as a defining feature of the court, but it almost was not included in the statute. In anticipation of the negotiations over the Rome Statute, France and New Zealand submitted draft language on 'the rights of victims,' including a provision designed to greatly increase the participation of victims in court proceedings. However, they faced opposition from a number of powerful delegations, including those of Australia, the United Kingdom, and the United States, who argued that the prosecutor should be the sole voice of victims.[36] The idea that victims should participate in proceedings raised red flags for many diplomats and lawyers, who anticipated myriad political and legal complications. But the French delegation refused to back down, and sought support from several influential victim-oriented NGOs and a coalition of states, including common law countries from Africa and South America.[37]

After a series of debates, the French prevailed and the Rome Diplomatic Conference adopted Article 68, the statute's major provision on victims.[38] It reads:

> Where the personal interests of victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.

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36 Fanny Benedetti, Karine Bonneau, and John Washburn, *Negotiating the International Criminal Court: New York to Rome, 1994–1998* (Leiden: Martinus Nijhoff, 2013), 153; see also Cherif Bassiouni, "Negotiating the Treaty of Rome on the Establishment of an International Criminal Court," *Cornell International Law Journal* 32 (1999), 443; Chris Tenove, "Justice and Inclusion in Global Politics: Victim Representation and the International Criminal Court" (PhD diss., University of British Columbia, 2015).

37 The victim-advocacy organization REDRESS is often credited with drafting the language for the victim participation provisions and lobbying behind the scenes for its inclusion in the statute.

38 For discussion, see Sergey Vasiliev, "Article 68(3) and Personal Interests of Victims in Emerging Practice of the ICC," in *The Emerging Practice of the International Criminal Court*, ed. Carsten Stahn and Göran Sluiter (Leiden: Brill, 2009), 638–58.

Despite initial differences over victim participation among the parties, the French delegation managed to promote the right of victims to receive reparations by building an alliance with the United Kingdom.[39] Background lobbying by a coalition of NGO staff, which included American and British advocates, eventually managed to quell opposition from the United States and others who feared the provision would distract from the primary mission of criminal prosecution.[40] The Rome delegates thus adopted Article 75, instructing the court to "establish principles relating to reparations to, or in respect of, victims, including restitution, compensation, and rehabilitation." The article also provided that "[b]efore making an order of [reparations]," the court may invite and shall take account of representations from or on behalf of the convicted person, victims, other interested persons or interested states."[41]

Although celebrated as a progressive innovation of international criminal law, the court's victim-orientation has, at times, resulted in a kind of institutional rift, with different sections of the court emphasizing either retributive or restorative language in the statute. Nowhere have these tensions been more pronounced than in the implementation of the victim participation program.

39 Benedetti, Bonneau, and Washburn, *Negotiating the International Criminal Court*, 159.

40 The 'constructive ambiguity' of the draft language, which was so vague that parties could agree on principles and leave it to judges to figure out practice, made possible the inclusion of new victims' rights. Van den Wyngaert, "Victims Before International Criminal Courts," 478.

41 Rome Statute, Art. 75.

THE VICTIM PARTICIPATION PROCESS

UNDER ICC PROCEDURE becoming a victim participant is a purely voluntary decision. Victims who wish to participate in a specific case must seek permission from the court by filling out an application that documents personal harms suffered or registering as a victim with a court-appointed lawyer. Victim applications submitted to the court are generally reviewed by the Victims Participation and Reparations Section (VPRS) and then submitted to ICC judges, who decide whether or not the applicant has sufficiently demonstrated his or her direct link to the specific crimes articulated in the indictment. If it is determined that these conditions have been met, the VPRS then informs the applicant that he or she has been accepted as a victim participant.

Over the years the ICC has worked to streamline the victim application process. When the first application form was introduced in 2005, it was 17 pages long. The forms are now shorter and efforts have been made to make the process of review faster and simpler.

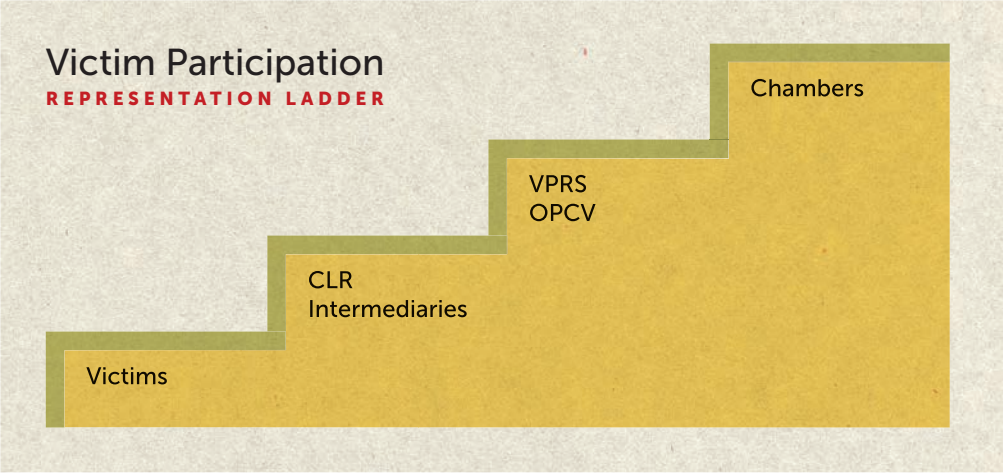
In Uganda, for example, victims initially completed lengthy individual applications with the assistance of local intermediaries. These applications, which often recorded in detail victims' experiences during the violence, were then analyzed for completeness by VPRS and forwarded to chambers for substantive review. Chambers and VPRS then each had a responsibility to redact sensitive personal information that could reveal the identity of the applicant before applications were shared with the prosecution and defense teams. The process required a lot of people and time.

In Kenya, at the trial stage, the court abandoned individual applications in favor of collective victim registration. Under this model, the common legal representatives, who represent a specified group of victims with support from VPRS, acted as the court's workhorses. They organized community meetings, identified eligible victims, and registered them with the court. While the judges ordered the Registry to register victim participants, no individual applications were submitted to judges or parties, which made it easier for victims to join cases, eliminated the need for redactions, and relieved judges of the burden of review.[42] In Democratic Republic of Congo (DRC), different models were adopted in different cases, and applications evolved to a simplified one-page, individual application process in *Ntaganda*. Finally, in Côte d'Ivoire, victims submitted a one-page declaration to join the case, while information on incidents suffered by groups

42 See Mariana Pena, "Victim Participation Decision in the Ntaganda Case: How Does the System Compare to Previous Experiences?," *International Justice Monitor* (17 February 2015).

of victims were submitted collectively. Common to all these approaches is that only those victims who suffered harms within the scope of the criminal charges were deemed eligible to participate.[43]

The scope of victims' participation during specific stages of the cases also varied. Early on, victims could participate in preliminary investigations as well as express views and opinions at trial.[44] However, the ICC appeals chamber curtailed victims' participation during pre-trial investigations.[45] As it stands now, victim participation in ICC decision-making is limited during the pretrial period, when there are few opportunities to express views to the court, and often possible at trial only through multiple levels of representation.[46] For example, victims may express their views to court intermediaries, who pass these views along to a common legal representative or a VPRS staff member, who then makes representations to the court.



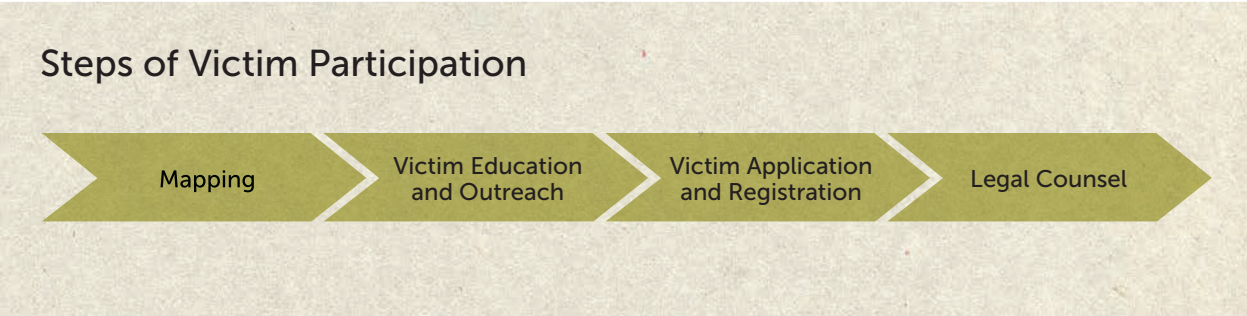
Another determinate factor of participation is the extent of victim access to information about the court and its proceedings. Media, of course, play a key role. Victims residing in remote areas, however, often have limited or no access to television, newspapers, or the Internet. So far, radio has been the most accessible source of information in more rural communities, but news reports of ICC proceedings are rare. The Registry staff provide information during community meetings, and may take video summaries of proceedings to communities, but these are only occasional and reach a relatively small proportion of victims. Moreover, those who reside in areas of ongoing conflict often are at risk if they are seen meeting with ICC

43 Elizabeth Evenson, *Making Justice Count: Lessons from the ICC's Work in Côte d'Ivoire* (New York: Human Rights Watch, August 2015), 6–7.

44 ICC Pre-trial Chamber I, *Decision on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6 (Public Redacted Version)*, ICC-01/04-101 (17 January 2006).

45 ICC Appeals Chamber, *Judgment on Victim Participation in the Investigation Stage of the Proceedings in the Appeal of the OPCD against the Decision of Pre-trial Chamber I of 7 December 2007 and in the Appeals of the OPCD and the Prosecutor against the Decision of Pre-trial Chamber I of 24 December 2007*, ICC-01/04 OA4 OA5 OA6 (19 December 2008); ICC Appeals Chamber, *Judgment on Victim Participation in the Investigation Stage of the Proceedings in the Appeal of the OPCD against the Decision of Pre-trial Chamber I of 3 December 2007 and in the Appeals of the OPCD and the Prosecutor against the Decision of Pre-trial Chamber I of 6 December 2007*, ICC-02/05 OA OA2 OA3 (2 February 2009).

46 See Trial Chamber VI, *Decision on Victim Participation in Trial Proceedings* (6 February 2015), 18; see also Carsten Stahn, Héctor Olásolo, and Kate Gibson, "Participation of Victims in Pre-trial Proceedings of the ICC," *Journal of International Criminal Justice* 4(2) (May 2006), 219–38.



officials. Such potential victim participants must thus often rely on ICC intermediaries, who are usually affiliated with local community-based NGOs, for information about the court's activities.

In general, the victim-related sections of the court take five steps before the court initiates the victim participation process in any given case. First, VPRS maps potential victim populations and relevant civil society organizations in the region under investigation to identify potential partners. Second, the Registry identifies, recruits, and trains local partners to act as unpaid intermediaries. Third, the intermediaries, often in coordination with VPRS or other sections of the ICC, conduct outreach to inform victims about the court and the victim participation process. Fourth, VPRS field staff, intermediaries, or legal representatives assist victims who wish to apply to join a case. Finally, victims who are certified by judges to participate in a case are appointed legal counsel.

Below we describe each of the five phases of the victim participation process using examples from the first ICC case in northern Uganda. In other cases, the process is somewhat different but generally includes similar stages of activity.

Step One: Mapping

When the chief prosecutor moves toward a prosecution, the judges in the case will often request that the Registrar produce an initial mapping of victims' communities and potential court intermediaries.[47] In the past, this task has fallen to the VPRS.[48] Such mapping reports provide a first glimpse at who could be the court's potential partners.

VPRS conducted the first ICC mapping exercise in northern Uganda in November 2004. The section's staff began by conducting a survey of potential court intermediaries for the case against Joseph Kony and other leaders of the Lord's Resistance Army (LRA). When VPRS staff returned to Uganda a few months later, in February 2005, they encountered widespread distrust and anger: some political leaders and local and international relief organizations believed that the ICC intervention would undermine peace talks taking place between the LRA and the government, as well as the implementation of an amnesty for LRA fighters who laid down their weapons.[49]

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47 Where the Office of the Prosecutor initiates an investigation *proprio motu* under Article 15, victims may make representations to the Pre-trial Chamber. In this instance, the OTP usually does its own mapping of the affected communities.

48 With the restructuring of the Registry, it is possible that such activities will be shifted to a victims' office.

49 See Phuong Pham et al., *Forgotten Voices: A Population-Based Survey on Attitudes about Peace and Justice in Northern Uganda*, Initiative for Vulnerable Populations (New York: International Center for Transitional Justice; Berkeley: Human Rights Center, University of California, Berkeley, July 2005), 7–8.

Victim Intermediaries

Intermediaries are often disparaged in the halls of the ICC. They can be easy scapegoats when misunderstandings arise between the court and affected communities. However, many of these unpaid volunteers undertake their work at great personal risk. They may become targets of crime as they move about the region or, if their association with the court is known, they can be subject to threat or reprisals. At least one intermediary with whom we spoke reported that he had been shot at while leaving an internally displaced persons (IDP) camp where he had been helping victims fill in applications. Victims' trust in the ICC frequently depended on their interactions with local intermediaries. Respondents relied on intermediaries to complete and submit their applications, communicate their concerns to ICC officials, organize meetings, and advocate on their behalf.

Intermediaries also confronted criticism from members of affected communities. Some victims reported that they had grown suspicious of their intermediaries. Absent alternative channels of communication to the court, victims reported that they suspected intermediaries of concealing case details. When no financial support was forthcoming from the ICC, intermediaries were sometimes accused of embezzling the funds that victims assumed had to exist. One intermediary, for example, described an instance where an ICC visitor promised to help a young boy in one of the affected communities:

> She was promising support, I mean, economic kinds of support, such as school fees. Then she went away. But this boy was already so expectant, and his mother was desperate. So when the ICC left, this family kept on following-up with me. . . . Remember, I am from the same locality where she had pledged to help this boy. Now anytime I go to my village, they ask me about this support. If I go there wearing a new shirt, they may say, 'Oh, it's our money you're spending, it's my son's money that you diverted to buy your shirt.' . . . It is so embarrassing. Remember, I'm working as an intermediary out of my desire to help. And I do this voluntarily, with no pay.

In August 2005, VPRS and the court's outreach section returned to northern Uganda in an attempt to build confidence in the court. Meanwhile, the Office of the Prosecutor (OTP) organized workshops in Acholi, Ateso, and Lange to inform affected communities about the court and its activities. Still, by the end of this third mission, not a single organization had agreed to work with the ICC.

In November 2005, the VPRS adopted a different tactic. Instead of reaching out directly to affected communities, they conducted legal trainings in partnership with the Ugandan Law Society and provided briefings to magistrates and other Ugandan judicial officers and government officials. VPRS also hired a field assistant to collect information about additional potential intermediaries and organize outreach activities. VPRS established its own office within the ICC field office in Kampala, and focused on building relationships, while sending weekly reports to The Hague.

Step Two: Victim Education and Outreach

Court intermediaries play a key role in the education of potential victim applicants. They are essential to victim participation as cultural translators, community educators, and channels of communications to affected communities. But recruiting intermediaries can be challenging, especially as the court offers them no salary or benefits, minimal support, and few security protections. Many intermediaries volunteer out of a sense of duty to their communities. However, some intermediaries may leverage their ICC position to seek

financial support from international donors or to boost their status in local communities. In a few cases, intermediaries have exploited their positions for personal gain, charging potential victim participants fees to complete applications. In response to such malfeasance, the court has published guidelines on the conduct of intermediaries and their relation to the court.[50]

Once intermediaries are on board, the real groundwork begins. In many communities, potential victim participants may never have attended or otherwise followed a formal legal proceeding. They may be traumatized, lack formal education, or have limited access to media. These all create obstacles to a victim having a meaningful opportunity to participate in court proceedings. Intermediaries, ICC staff, and victims' lawyers must frequently devote multiple meetings to explaining how a criminal trial works. These educational activities are fundamental to victim participation, but they also create some tension for the court's officials and representatives as they try simultaneously to promote the idea of international criminal justice and manage victims' expectations about what it can deliver.

By the middle of 2006, VPRS staff and intermediaries were making inroads in northern Uganda, opening up communications with a wide range of community members through reliable intermediaries. In addition, educational campaigns about the ICC were underway in several Internally Displaced Persons (IDP) camps.

Step Three: Victim Applications and Registration

In order to be eligible to apply for victim participation status, a person must qualify as a victim under Rule 85, which requires that the applicant—either as a natural person or an organization—has suffered harm as a result of an alleged crime within the ICC's jurisdiction. In order to reach this threshold, the applicant must provide proof of identity, information about the date and location of the crime, as well as supporting documentation. Victims are then further distinguished as either 1) case or 2) situation victims. *Case victims* are those who suffered harms that fall within the scope of the criminal charges in the case, while *situation victims* are those who suffered harms during the violence that fall *outside* of the specific charges.

Victims frequently need assistance completing applications due to language barriers and illiteracy, which can be time consuming for intermediaries, especially if they are working with large numbers of victims. Victims may also bring inadequate documentation to their meetings with intermediaries or become confused about what is required for the application. This can result in incomplete applications, which require additional follow up by intermediaries or VPRS staff.[51] By way of illustration, of the 108 victim participation applications VPRS staff and intermediaries collected in northern Uganda in 2007, ICC judges accepted only seven, deferring decisions on the remainder until adequate proof of identity could be provided. The arrest warrants, which were redacted and failed to disclose details of the specific incidents under investigation, further complicated the application process because they made it impossible for the court to inform potential applicants as to who would be eligible to participate.

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50 See ICC, *Guidelines Governing the Relations between the Court and Intermediaries for the Organs and Units of the Court and Counsel Working with Intermediaries* (March 2014).

51 See, for example, ICC Pre-trial Chamber II, *Decision on Victim's Participation in Proceedings Related to the Situation in Uganda*, Situation in Uganda, ICC-02/04-191 (9 March 2012), ¶40–3.

Victim Applications for Participation

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Dem. Rep. of Congo	213	209	273	315	47	1132	0	1670	259
Uganda	49	108	216	277	446	26	24	90	31
Kenya	—	—	—	0	69	2571	945	427	724
Côte d'Ivoire	—	—	—	0	0	0	197	123	249

Source: ICC, Working Group on Lessons Learnt, "Report on Cluster D(1): Applications for Victim Participation to the Study Group on Governance" (25 August 2015), 9.

Step Four: Legal Counsel

Once victims are accepted as participants in ICC cases, lawyers to represent them are normally appointed by the court or with the court's assistance, although victim participants may retain their own counsel for advisory purposes, if they can afford it. The appointment of competent legal counsel can be the crux of effective and meaningful participation given the reality that few victims will ever travel to the court.[52] It is thus essential that victims have confidence in their legal representative. Yet victims can have divergent interests and goals, which can make it difficult for a single lawyer to represent "victims' interests" satisfactorily.[53] It can also be challenging to identify lawyers with a good working knowledge of the situation and the ICC rules and regulations.

More generally, because so few victim participants will be able to travel to testify in court, they must depend not only on legal counsel but also on VPRS staff and intermediaries for their access to legal proceedings. Such "external actors"—whether VPRS staff, intermediaries, or legal counsel—greatly affect the ways in which victims experience their participation with the ICC.[54] This places a huge responsibility on these external actors who must interpret and convey complex legal and procedural issues to their clients in a clear and coherent manner.

52 Rome Statute Art. 90(1) provides that victims can choose their common legal representation, but if they cannot agree, the court can override that right.

53 See REDRESS, *Representing Victims before the ICC*.

54 So far, most ICC proceedings have taken place in The Hague (*in situ* hearings are a possibility but have not happened yet), although the court has taken testimony through video link.

MODELS OF VICTIM PARTICIPATION

THE ROME STATUTE PROVIDES THE COURT with little guidance on how to handle victim participation in challenging environments. Judges are left to reconcile the tension between the court's mandate for victim inclusion and its interest in fair and efficient trials. In response, they have adopted a number of different approaches.[55] The evolving models of participation reflect a learning curve at the court, but the ICC is nowhere near a final resolution of what is the optimal model in a given situation. Here, we review briefly three models of participation, each of which was used in a different case.[56]

Individual Model (Uganda and Democratic Republic of Congo)

The most straightforward structure for organizing victim participation requires each victim to submit his or her application to the court, which is then considered by the chambers and the parties and either accepted or rejected. However, this process is not necessarily the most efficient. Early cases relied on individual applications for victim participation, which was cumbersome and expensive, requiring exhaustive efforts on the part of the Registry and local intermediaries. Each application had to be entered into a database, shared with chambers, redacted, and passed along to legal counsel—a process that could take months. Missing information forced court staff to return to applicants for additional information or to correct errors, and led to the rejection of many applicants.

Many court observers have argued that the time and resources required under this model make it too costly, particularly when victims are dispersed over a vast geographic area. In response, judges have developed collective and hybrid models to streamline applications, maximize victim access, and control costs.

Collective Model (Côte d'Ivoire)

The collective model, first introduced by Judge Férnandez de Gurmendi during the confirmation of charges against Laurent Gbagbo in 2013, strives to maximize efficiency by further revising the application process.[57]

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55 Sergey Vasiliev, "Victim Participation Revisited: What the ICC is Learning About Itself," in *The Law and Practice of the International Criminal Court*, ed. Carsten Stahn (Oxford: Oxord University Press, 2015).

56 For the Court's own analysis of the different approaches to victims' applications to participate in the proceedings, see ICC Assembly of States Parties, *Report of the Court on the Review of the System for Victims to Apply to Participate in Proceedings*, ICC-ASP/11/22 (5 November 2012).

57 ICC Pre-trial Chamber II, *Decision on Issues Related to Victims' Application Process*, Situation in Côte d'Ivoire, ICC-02/11-01/11 (6 February 2012).

This model relies on a group form and a one-page declaration for individuals developed by the Registry.[58] Victims can in principle apply either as individuals or as a group, but in practice direct participation by individual victims is difficult and extremely rare. Nearly all interactions with the ICC occur through a common legal representative. For this reason, some victim advocacy groups have expressed concerns about this approach because individual views can be overwritten by community sentiment.[59] The collective approach may also be inconsistent with Article 68(3) of the Rome Statute. The collective model re-imagines *groups* as the rights bearers, but the language of the statute fairly clearly grants rights to *individuals*. On the plus side, the collective model pared down the multi-leveled and labor-intensive process of individual-application review, and may be more responsive to victims' collective concerns, even if it restricts opportunities for individuals to engage directly with trial proceedings.

Hybrid Representation Model (Kenya Cases)

The Kenyan cases presented new dilemmas for the ICC because of the number of potential victim participants—in the thousands—and, because of unprecedented security concerns for witnesses and other trial participants.[60] In response, Trial Chamber V fashioned an application system that combined collective recruitment and registration, but preserved the ability of individual victims to join cases as trial participants.[61] Only victims who wished to appear in court, either in person or via video link, needed to submit an individual application to chambers. In the applications, they had to provide a summary of the views and concerns they wished to present in proceedings and explain why they were "best placed to reflect the interests of victims."[62]

Under this hybrid model, the common legal representative registers victims, which largely eliminates court review and redaction of individual applications. Also, while VPRS works closely with the common legal representative, most outreach and other interactions are outsourced to the legal team. By reducing the burden of processing long applications, the hybrid model reduces delays in responding to individual applicants seeking victim recognition. The model also potentially provides greater security and protection to victims because detailed information is only collected on a smaller group who want to appear in court. This hybrid model preserves the possibility of individual victims making representations at The Hague while moving towards a mostly collective approach. For example, as of July 2015, one lawyer represented 949

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58 The Registry refers to Gbagbo model as a 'partly collective application process' because of individualized declarations. See ICC Assembly of States Parties, *Report of the Court on the Review of the System for Victims to Apply to Participate in Proceedings* (5 November 2012), ¶32 ("In this process, each applicant completed an individual declaration (confirming their wish to participate in proceedings and detailing their harm suffered), but information relating to the crime/incident and other elements common to the group was recorded in a collective form. Only VPRS facilitated the process, and the form was not made available to intermediaries. While this application process is partly collective, victims' applications were determined individually and, if accepted, they participated individually").

59 Carla Ferstman, *The Participation of Victims in International Criminal Court Proceedings: A Review of the Practice and Consideration of Options for the Future* (London: REDRESS, October 2012).

60 ICC Trial Chamber V, *Decision on Victims' Representation and Participation*, Situation in the Republic of Kenya, ICC-01/09-01/11 (3 October 2012), ¶23, 24.

61 ICC Trial Chamber V, *Decision on Victims' Representation and Participation*, ICC-01/09-02/11 (3 October 2012).

62 ICC Trial Chamber V, *Decision on Victims' Representation and Participation*, ICC-01/09-01/11 (3 October 2012), ¶56.

victims in the Ruto and Sang case.[63] The hybrid model gives victims some choice and in this way places an emphasis on the form of participation desired by participants.

The following sections of the report document the experiences of respondents who engaged with the court under the different models. They proceed in chronological order based on when the investigations began.

63 See ICC, *Sixteenth Periodic Report on the General Situation of Victims in the Case of* The Prosecutor v. William Samoei Ruto and Joshua Arap Sang *on the Activities of the VPRS and the Common Legal Representative in the Field*, ICC-01/09-01/11-1933-AnxA 24-07-2015 2/9 EC T (23 May–23 July 2015).

UGANDA

IN JANUARY 2004, ICC Chief Prosecutor Luis Moreno-Ocampo stood shoulder to shoulder with Ugandan President Yoweri Museveni and announced that the ICC's inaugural investigation would target senior commanders of the Lord's Resistance Army (LRA), a Ugandan rebel group operating in the north of the country. For two decades, LRA members had killed and disfigured thousands of civilians, hewing off the ears and lips of suspected informants and abducting hundreds of children, many still young enough to attend primary school.[64] A 2007 study by the Human Rights Center at the University of California, Berkeley, estimated that by April 2006 between 24,000 and 38,000 children and between 28,000 and 37,000 adults had been abducted by the LRA.[65] At the time of Moreno-Ocampo's announcement, few international actors had paid much attention to the LRA's conflict with Ugandan government forces, even though more than a million civilians had been displaced to squalid government run "protection camps," where residents queued for up to five hours for water and as many as fifty residents shared a single latrine.[66]

The conflict in northern Uganda has deep historical roots in the division between southern and northern tribes. But the emergence of the LRA, led by Joseph Kony, a self-proclaimed liberator of the Acholi people and prophet, ushered in a particularly brutal period of violence. ICC investigators interviewed scores of witnesses to crimes against humanity committed during LRA raids before sending its case in 2005 to the Pre-trial Chamber II (PTC-II), which can authorize investigations and issue arrest warrants or summons to appear. On 27 September 2005, the pre-trial chamber issued arrest warrants for Joseph Kony, who faced

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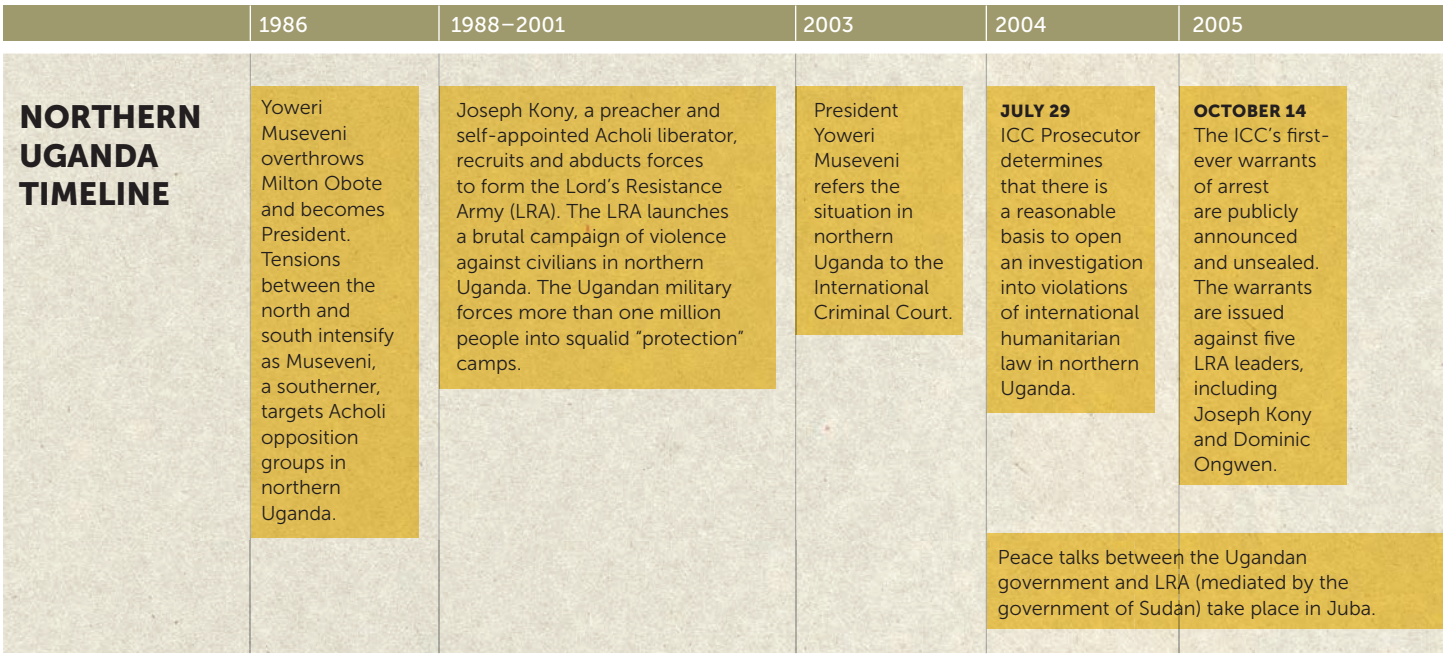
64 Rosa Ehrenreich, *The Scars of Death: Children Abducted by the Lord's Resistance Army in Uganda* (New York: Human Rights Watch, September 1997); Annette Weber and Jemera Rone, *Abducted and Abused: Renewed Conflict in Northern Uganda* (New York: Human Rights Watch, July 2003); Jo Becker and Tony Tate, *Stolen Children: Abduction and Recruitment in Northern Uganda* (New York: Human Rights Watch, March 2003); Alex Moorehead and Jemera Rone, *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda* (New York: Human Right Watch, September 2005); "Uganda: No Amnesty for Atrocities; Turning a Blind Eye to Justice Undermines Durable Peace," Human Rights Watch press release (27 July 2006); Chris Dolan, *Social Torture: The Case of Northern Uganda, 1986–2006* (New York: Berghahn, 2009); Sverker Finnström, *Living with Bad Surroundings: War, History, and Everyday Moments in Northern Uganda (*Durham: Duke University Press, 2008).

65 See Phuong Pham et al., *When the War Ends: A Population-Based Survey on Attitudes about Peace, Justice, and Social Reconstruction in Northern Uganda*, Berkeley-Tulane Initiative on Vulnerable Populations (Berkeley: Human Rights Center, University of California, Berkeley; New Orleans, LA: Payson Center for International Development, Tulane University; New York: International Center for Transitional Justice, December 2007).

66 See James Otto and Jemera Rone, *Between Two Fires: The Plight Of IDPs in Northern Uganda* (Gulu: HURIFO, 2002); Tim Allen, *Trial Justice: The International Criminal Court and the Lord's Resistance Army* (London: Zed Books, 2006), 53–71.



thirty-three counts of war crimes and crimes against humanity.[67] The court also indicted four other senior commanders: Vincent Otti, Raska Lukwiya, Okot Odhiambo, and Dominic Ongwen. Arrest warrants included accusations of murder, enslavement, rape, sexual enslavement, inhumane acts of inflicting serious bodily injury, pillaging, and forced enlistment of children.[68]

Soon after the ICC arrest warrants were issued, the Victims Participation and Reparations Section (VPRS) began operations in northern Uganda to recruit volunteer court intermediaries and interview potential victim participants. Judges eventually recognized 41 victim participants in the case against Joseph Kony.[69] However, without arrests, victim participation in the pretrial period mostly consisted of attending outreach programs, community meetings, and activities of the Trust Fund for Victims, an ICC auxiliary organ that supports victims.[70] Although hundreds more victims submitted applications in subsequent months, judges hesitated to accept more participants, perhaps out of concern that it would raise victim expectations for support or reparations. As a result, victims' applications piled up at the ICC field office in Kampala.

Joseph Kony and the LRA had fled into the lush jungles of Democratic Republic of Congo. Facing internal threats of desertion and external threats of prosecution, LRA leadership entered formal peace talks

67 ICC Pre-trial Chamber II, *Warrant of Arrest for Joseph Kony Issued on 8 July 2005 as Amended on 27 September 2005*, Situation in Uganda, ICC-02/04-01/05 (27 September 2005).

68 ICC Pre-trial Chamber II, *Warrant of Arrest for Vincent Otti*, Situation in Uganda, ICC-02/04-01/05-54 (8 July 2005); ICC Pre-trial II, *Warrant of Arrest for Raska Lukwiya*, Situation in Uganda, ICC-02/04-01/05-55 (8 July 2015); ICC Pre-trial Chamber II, *Warrant of Arrest for Okot Odhiambo*, Situation in Uganda, ICC-02/04-01/05-56 (8 July 2005); ICC Pre-trial II, *Warrant of Arrest for Dominic Ongwen*, Situation in Uganda, ICC-02/04-01/05-57 (8 July 2005).

69 See *Situation in Uganda: The Prosecutor v. Joseph Kony and Vincent Otti*, Case Information Sheet, ICC-02/04-01/05 (10 September 2015).

70 Kristin Kalla and Peter Dixon, *Learning from the TFV's Second Mandate: From Implementing Rehabilitation Assistance to Reparations* (Hague: ICC Trust Fund for Victims, Fall 2010).

with the Ugandan government in the southern Sudanese city of Juba in July 2006. The talks, which raised the possibility of a domestic trial for Kony, stoked passions on both sides and ignited more debate on the merits of peace versus justice, prosecutions versus amnesty. The two sides traded accusations and promises for nearly two years before talks collapsed.

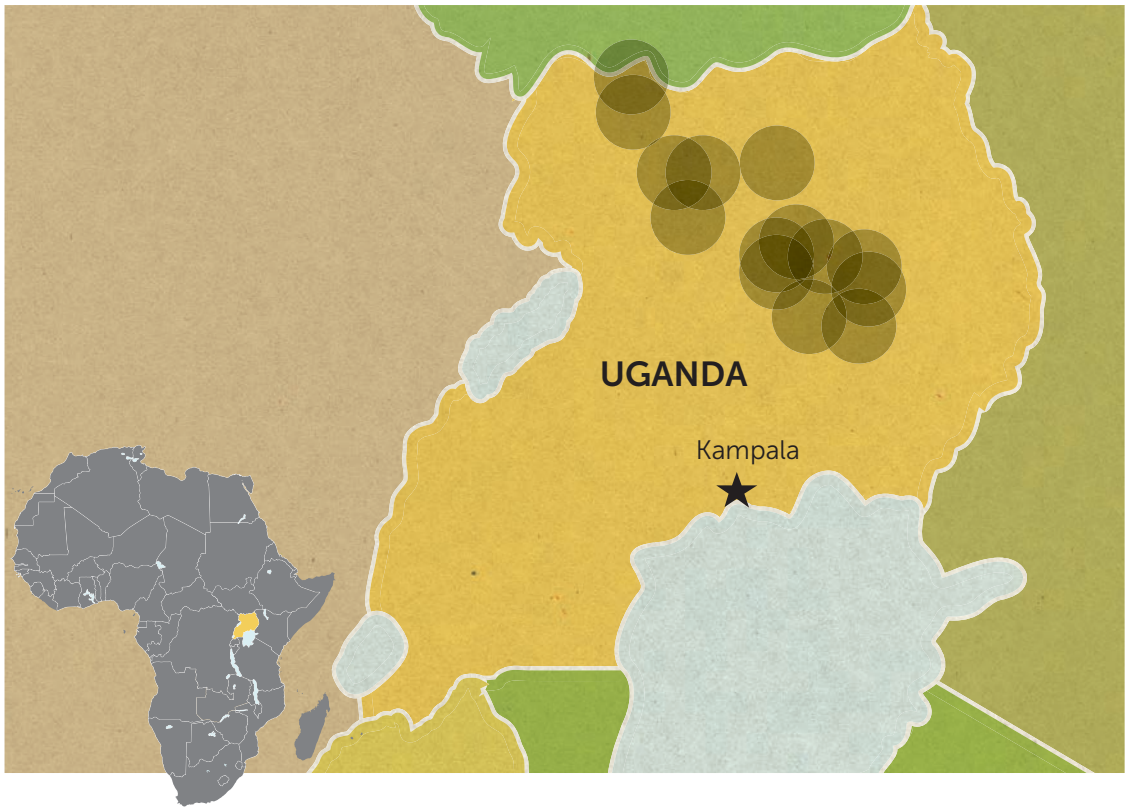
In 2008, with the Juba talks over and reports of renewed LRA atrocities in northeastern Congo, the ICC campaign to arrest Kony and the surviving LRA suspects gained steam. Meanwhile, Kony, having the previous year disposed of his second in command, the indicted Vincent Otti, by firing squad, found himself isolated. He fled with several hundred rebels into the vast expanse of the Central African Republic. With increasing international attention and waning political support from South Sudan, times got tough for LRA leadership. Another of the commanders indicted by the ICC, Dominic Ongwen, surrendered to US forces in the Central African Republic in January 2015. He is now in The Hague, awaiting trial, which is scheduled to begin in January 2016.[71]

Study Population

In Uganda, 151 respondents took part in our study of victim participation between October 2013 and February 2014. All said they had direct experience with the conflict in northern Uganda, and dozens had been recognized in the ICC cases. Nearly all had submitted applications to join an ICC case. Researchers conducted interviews in or around the towns of Lira, Pajule, Pagak, Adjumani, Lokodi, Moyo, Barlonyo, Otuke, Alebong, Obalanga, Amuria, and Kaberamaido.[72]

71 Lukwiya died in 2006 and Otti in 2007. In 2015, the Ugandan government confirmed the death of Odhiambo. Ongwen surrendered to US forces in the Central African Republic in January.

72 Respondents came from twenty districts in northern Uganda, including Abim, Adjumani, Alebtong, Amuria, Amuru, Apac, Arua, Buyende, Kaberamaido, Kampala, Gulu, Lamwo, Lira, Mbale, Moyo, Nwoya, Otuke, Oyam, Pader, and Soroti.



The study sample in Uganda was comprised of a roughly equal number of men (76) and women (75). Only adults between the ages of 18 and 78 years were selected for interviews. Our sample included 25 respondents who reported being abducted during the conflict and 20 respondents who identified themselves as former LRA members, mostly child soldiers. Fourteen interviews were conducted with intermediaries, all of whom said they, too, had been victims of the LRA. All interviews occurred before the surrender of Dominic Ongwen. Joseph Kony also remained at large. Among the respondents, eight languages or dialects were represented as were seven different ethnic groups. The three dominant groups were Lango (33 percent), Acholi (18 percent), and Ateso (18 percent).[73]

In the following sections, building on the procedural justice framework discussed in the introduction, we examine the answers respondents gave when we asked them whether they: 1) felt they had a *voice* in ICC proceedings; 2) viewed the ICC as a *neutral* arbitrator; 3) felt *respected* by court staff; 4) *trusted* the ICC; 5) felt *safe* being associated with the court; and 6) wished to receive *reparations* from the ICC.

Voice

The vast majority of respondents said that they had a voice in the ICC cases during the pretrial period. Only sixteen individuals complained they did not. "I know that the ICC is a court that works to help the victims who suffered harms. When they came here, they told us that people like us also have the right to speak and have our voice heard," explained one respondent. Respondents, in particular, believed that their submission of individual applications ensured their views were known at the court.

73 The other ethnic groups included Aringa, Gimara, Kumam, Lugbara, and Madi.

Respondents valued the opportunity to tell their stories. "I feel that my voice should be heard throughout the world because it is not going to help only me, but the whole clan, the whole Acholi tribe," said one respondent. "I was happy to fill out the application," said another. "I want our suffering to be known, and for my voice to be forwarded to the court." Another said: "My voice is heard in the court because my story will be read, and will be known, and I will be represented."

During interviews, respondents occasionally recited their application numbers or showed letters that attested to their submission. "Our numbers have been entered in the computer in The Hague," one respondent said. "I was given a number, and I was also made to register my complaint on the paper. It is important because what we suffered and how we feel about it has been taken up to the court. It is known there," said another.

Many respondents also supposed that by submitting their application they provided evidence for prosecutions. Said one respondent:

> I was beaten and tortured by the LRA rebels. I witnessed with my own eyes the rebels torturing, burning people in houses, and killing people in this place where we are sitting today. So I felt the application was authentic evidence to show the court.

Another respondent said:

> I expect that this participation will provide a lot of evidence to the court. The judges will use this, they will tell [Joseph] Kony: 'See, this is what you have done. These are people from the community where you went and committed atrocities. Hear and listen to their voices. This is exactly what the victims suffered as a result of the crimes you committed.'

Some respondents, however, reported frustration at the lack of feedback from the court during the application process. "Our forms have taken a long time with no response," said one respondent. "Nobody has come from the court to tell us what happened. We need these people to come to us," complained another. Another said he had applied to be a victim participant but was left out in the cold: "The ICC staff only come once . . . and don't give us feedback. So we don't know how . . . things are going. So we worry. Why do they do that?"

Many respondents said a lack of regular communication also raised questions about the nature of victim representation at the court. One respondent asked:

> What are victims' representatives telling the judges? Are they telling them what's on their mind or what's on my mind? I know the lawyers can speak about the legal issues, but these legal issues should be framed by local understandings. If the court staff really listens, they will understand our perspectives and can translate them into legal language for the court. But no one is coming to speak with me anymore. It's very hard.

Another, while he expressed a desire for more ICC visits, said: "There is no way we can speak from here and be heard by the court. We rely on people like you to write things down and then tell the court. . . . That's how we can convey our message to the court. Other than that there is nothing we can do."

Delays in trial proceedings also shaped respondents' views of the court. "Voices have not been heard yet because there have been no proceedings," said one respondent. Another echoed this sentiment: "My voice has not been heard because there has been no step taken in the case."

Finally, for more than a dozen respondents, having a voice in the proceedings simply did not matter. They had filed an application not to be heard or provide evidence, they said, but to ensure that they were included in any eventual payouts.

Neutrality

Many respondents said the court's failure to prosecute members of the Ugandan military, who they alleged were also responsible for crimes, demonstrated a lack of neutrality. "The government was causing atrocities. People were killed. Women were raped," declared one respondent. "Let the court proceed so both sides [the LRA and the government] can be prosecuted."

Most respondents, despite their concerns about imbalanced prosecutions, preferred the ICC to domestic courts. "In Uganda nobody believes the local judicial system could replace the ICC if it withdraw[s]," explained one respondent. Interviewees also felt that local bureaucratic hurdles and corruption would undermine attempts at national prosecutions. "We still don't have any hope for convictions in Uganda as there is still a lot of interference from the government officials," another respondent said.

Even if it was slow moving or far from perfect, most victims saw the ICC as their best hope for justice and reparations. As one respondent put it:

> The information I got before filling in the application was that ICC is a universal court. And I had the feeling it has the power to prosecute leaders of states and rebel groups. This includes not only those found in one country, but those, like Kony, who keep on moving from state to state. So I felt that it would be good to fill in an application for the ICC. Since the ICC is universal, it has the mandate to get those who are committing atrocities, no matter where they go.

Dozens of respondents reported that the ICC's failure to make arrests and proceed to trial in a timely manner generated doubts about the neutrality of the court. "One thing about the court is that it moves very slowly. This is one thing people have been complaining about," explained a respondent. Judicial delays suggested to some that political engineering was occurring behind closed doors:

> [T]here are delays. The ICC is taking its time processing our case. It is making me frightened. A common thing that happens in Uganda is that when a court case is delayed people are always maneuvering to manipulate the case or taking bribes.

Some study respondents found it hard to evaluate the court's character, and especially its neutrality, because of insufficient information about the court's mission, structure, or rules. Only a third of the respondent population in Uganda could explain that the ICC was an international court that prosecuted grave crimes.[74] For many respondents the ICC was just another aid organization that worked with victims of the conflict.

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74 A previous HRC population-based survey found that just 59 percent of the population in the Acholi sub-region had heard of the International Criminal Court (ICC), and only 6 percent ranked their knowledge of the Court as being good or very good. Phuong Pham and Patrick Vinck, *Transitioning to Peace: A Population-Based Survey on Attitudes about Social Reconstruction and Justice in Northern Uganda* (Berkeley: Human Rights Center, December 2010), 42.

Respect

Respondents were split as to whether or not the ICC had shown them appropriate respect. In our sample, a majority of victims said they felt respected. Yet, dozens said they had been disrespected, even betrayed, by the court. The vast majority of both groups agreed that more communication and support were necessary for them to feel truly respected.

Most respondents said that ICC staff had traveled to see them and acknowledged their suffering, and this constituted an important form of respect. "The respect they are giving us is that every time, they come and they meet us. For me, I consider that to be respect. They come and tell us things," said one respondent.

Face-to-face meetings were especially important signals of respect for respondents. "They are treating us with respect in their way of coming, and coming again, and talking to us," explained one respondent. Another attributed his feeling of respect to the fact that the VPRS had "a continuous program" that included multiple visits to his community. He added: "That way we know that [we] are not forgotten."

Infrequent ICC visits, in contrast, signaled disrespect to some. "A lot of people feel betrayed," one respondent said. "Why has it taken so long? Why hasn't the court come back to let us know what's going on?" A few respondents lamented the fact that no ICC staff member had contacted them in years. "There is nothing," one said. "No formal assistance of any kind. You register, but you get nothing. It is deceiving," another said.

Trust

The ICC's failure to keep in regular contact with victim participants and applicants undermined trust in the court as a whole. Not one respondent in Uganda reported having more than three meetings with an ICC staff member.[75] Nearly all respondents wanted more meetings. A few said they had never met with anyone from the court, despite having submitted applications to participate in ICC proceedings. A majority of respondents reported that they had attended only a single meeting with someone whom they identified as being from the ICC, usually an investigator from the Office of the Prosecutor, a representative of VPRS, or a lawyer from the Office for the Public Counsel for Victims (OPCV).

Several respondents said they had trusted the court in the past, but as time passed without any regular communication they had changed their minds. As one respondent put it:

> I am really disappointed with the ICC. Ever since I filled in my application nobody has ever come back to me, and the court keeps on telling me 'to wait, to wait.' I am getting fed up. I have a feeling they just want to use us, to use our applications for their personal gains or to fulfill their selfish interests.

Waiting for prosecutions to start also fostered skepticism in affected communities. "We are in the process of waiting. That is why there is a quickly degenerating sense of trust between the people and the court," explained one respondent. A second respondent said:

> I feel that the ICC could have done the right thing. They promised they were going to fulfill what was within their mandates, but equally they went and kept quiet, and so they created mistrust in us and it has affected me. I didn't feel like there was anyone left who could help me. They were the only hope I had.

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75 It is possible that victims did meet with ICC staff, but failed to recognize them as personnel of the court. Victims often expected ICC staff to be foreigners.

Security

More than three-quarters of Ugandan respondents said they felt safe applying to the ICC. The remaining quarter, however, expressed concerns that they might be targeted for reprisals due to their participation, either by returning LRA rebels or by government forces. A few child soldiers also worried that they might be prosecuted for their role in the conflict.

Many respondents, understandably, reported that they felt safer applying to participate after the security situation in northern Uganda had improved. "When the ICC started operating in northern Uganda, people were very afraid to be identified as affiliated with it," one respondent said. "At first, in the beginning, participating in the court raised some fear in me. I thought that maybe the LRA would know that I was one of those who had accused them to the ICC. I was afraid the rebels might come back to harm me," said another.

Some respondents feared that by filling out ICC application forms, they had taken a stand against the LRA and might suffer LRA retaliation. "I was thinking that maybe the rebels are somewhere in the bush around us, and they would come and take us again," said one respondent. Another said:

> I was afraid, especially when I was filling in this form. . . . What if Kony comes tomorrow and realizes that I was part of this group reporting him to the ICC? Not only that, the information we were giving would also implicate the government as well.

For those respondents who had recorded details of government abuses in their applications, government retaliations were often a serious concern. "Sometimes it is very difficult to talk against the government. They still have the power. They may come and arrest you," said one respondent. Former child soldiers expressed concern that the court would use their statements against them. "This is a universal court," said one former abductee. "I'm so scared that one day some people can even just come and arrest me."

The promise of confidentiality gave some respondents piece of mind. But for others, the ICC's collection of personal information was cause for unease. "The information they get from us, how will they handle it? Will it be kept confidential?" asked one respondent. Another commented: "After asking me this series of questions, they leave and keep quiet. So it makes me wonder if I am really safe?"

A few respondents, who cited the brutality of the conflict, dismissed fears due to court participation as secondary. "I didn't feel afraid applying to the court because of the experience that I went through during the conflict," said one respondent. Another said decades of living in fear had "dwarfed" any fear he had of joining the case.

Reparations

The vast majority of respondents, nearly three-quarters of the Ugandan study population, reported that reparations were the main reason that they had applied to become victim participants. An even greater number, more than four-fifths of the respondents, said that convictions must be paired with reparations for them to be truly satisfied with the outcome of any case. By contrast, less than a quarter of respondents said convictions alone would satisfy them. Reasons respondents gave other than reparations to participate included the wish to have their personal stories known beyond their villages, to build an accurate historical record of what had happened, and to bring perpetrators to account for their crimes. Still, reparations, according to respondents, were fundamental to justice.

Most respondents saw compensation as fused with accountability. "If I am not paid, it seems that the people who are handling our case are not committed," said one respondent. "It's like this," another said, "if you're hungry, you don't feel well. So if I'm not given reparations, I won't feel well."

Other respondents, echoing Acholi beliefs that justice includes reparations to the victim in the form of goods or cattle, supposed that reparations were the *sine qua non* of justice. As one put it:

> For me, I feel that reparation is something that has to be negotiated now. It is an obligation that after a commission of crime the perpetrator is expected to pay reparation to the victims of his crimes. So it is a priority; it is something that has to be done after the proceedings.

Respondents familiar with the activities of the Trust Fund for Victims, an organ of the ICC authorized to provide assistance independent of the reparations process, argued for greater court engagement in affected communities. According to one respondent:

> There is some money from the Trust Fund for Victims. That is a small pocket of money from the court. It should be directed for treatments because most of the victims have suffered effects of the war. Cancer. Operations. Bullets in the body. They should be directed for medical attention while waiting for the case to be tried.

Another respondent equated such general assistance to humanitarian relief:

> It is important for the ICC, as an international body, to assist some of the victims like us, at least to give something while we wait for the case. In disasters, say in Asia, the victims are being assisted. Why can't we be assisted like them? Those were disasters, but what we suffered were deliberate acts.

Others said the Ugandan government should take responsibility for victim compensation. "It is obvious that Kony cannot pay. He cannot pay because he has nothing. But I think it's the primary responsibility of the government to provide compensation," said one respondent.

Conclusion

The vast majority of Ugandan victims apply to the ICC to receive material support or reparations, not to participate in trials or seek legal convictions. While most want Joseph Kony and other LRA leaders captured and punished, Ugandan victims most often filled out ICC applications in the hopes that the court would help to pay school fees, replace livestock, or provide compensation for the death of loved ones. Many see the ICC as primarily a victims' aid organization.

This may change, however, with the trial of LRA commander Dominic Ongwen next year. All our interviews occurred before Ongwen's surrender and transfer to The Hague. Participants feel frustration that they have waited years without formal recognition, support, or opportunities to tell their stories. It is possible that the Ongwen trial will generate greater interest in victims' participation in legal proceedings. Time will tell.

DEMOCRATIC REPUBLIC OF CONGO

DOZENS OF ARMED FACTIONS dot the landscape of eastern Democratic Republic of Congo, where complex local histories, migration, competition for natural resources, and ethnic tensions have caused conflicts to seethe and sporadically erupt for decades.[76] In April 2004, authorities in Kinshasa, the Congolese capital, referred conflict in the Ituri region of eastern DRC to the ICC. Within months, Chief Prosecutor Moreno-Ocampo opened an investigation focused on ethnic violence between three major ethnic groups—the Hema, the Lendu, and the Ngiti.[77] In the end, the court would bring charges against four warlords: Thomas Lubanga Dyilo, Bosco Ntaganda, Germain Katanga, and Mathieu Ngudjolo. International justice advocates hoped their trials would create a fear of accountability in the Ituri region and quell fighting in the complex civil war that had already taken several million lives.

THOMAS LUBANGA DYILO

In 2009, Lubanga became the first of the four accused warlords to appear in The Hague. However, the indictment of so few individuals in a region where thousands share responsibility for war crimes has caused many to wonder if such international prosecutions can only be symbolic.[78]

Thomas Lubanga Dyilo, a Hema, led an ethnic militia, the Union des Patriotes Congolais (UPC). In 2002, he created a military wing of the UPC called the Patriotic Forces for the Liberation of the Congo (FPLC) and, a year later, in response to growing tensions with Uganda, he built an alliance with the Rwandan-backed rebel group Congolese Rally for Democracy RCD-Goma. Under his leadership, members of the FPLC recruited child soldiers and raped and killed thousands of civilians.[79]

In November 2006, four victims testified in a three-week hearing on the confirmation of charges against Lubanga, and two months later, in January 2007, the Pre-trial Chambers sent the case forward for trial. The case then proceeded at a glacial pace. Prosecution witnesses refused to disclose potentially exculpatory evidence to Lubanga's defense team, causing a stay in proceedings, which, in turn, morphed

76 Jason Stearns, *North Kivu: The Background to Conflict in North Kivu Province of Eastern Congo* (London: Rift Valley Institute, 2012); Jason Stearns, *Dancing in the Glory of Monsters: The Collapse of the Congo and the Great War of Africa* (New York: Public Affairs, 2011).

77 See "Cases & Situations: Democratic Republic of Congo," *Coalition for the International Criminal Court* (2015).

78 Adam Hochschild, "The Trial of Thomas Lubanga," *Atlantic* (December 2009).

79 "Profile of Thomas Lubanga Dyilo," *American Non-Governmental Organizations Coalition for the International Criminal Court* (18 April 2006).

into a legal battle over the potential release of Lubanga in light of the stalled proceedings. (He remained in custody.)

Two legal teams from the Office of Public Counsel for Victims (OPCV) represented 129 victim participants in the case, one team for former child soldiers and a second for all other victims. A majority of these victims applied for reparations, even though a number of the child soldiers sought Lubanga's acquittal. Under the Rome Statute, reparations occur only after convictions, but this distinction is not always understood in victims' communities. It would not be until August 2011 that the prosecution, defense, and representative for victims made closing statements in the case.

In March 2012, Trial Chamber I found Lubanga guilty of abducting boys and girls under the age of 15, using them as part of his personal security detail, and forcing them to kill in the Ituri region of DRC. It was the court's first guilty verdict, and Lubanga is currently serving a 14-year sentence at the Detention Centre in The Hague. Critics faulted the prosecution for its failure to charge sexual violence offenses.[80]

In August 2012, Trial Chamber I issued a decision on principles for victims' reparations in the Lubanga case.[81] Years later the Appeals Chamber instructed the Trust Fund for Victims (TFV) to present a draft implementation plan for collective reparations by 3 September 2015. Both courts agreed that individual

80 Karine Bonneau and Montserrat Carboni, *DRC: Victims of Sexual Violence Rarely Obtain Justice and Never Receive Reparation: Major Changes Needed to Fight Impunity* (Paris: FIDH, October 2013).

81 ICC Trial Chamber I, *Decision Establishing the Principles and Procedures to be Applied to Reparations*, Situation in the Democratic Republic of the Congo, ICC-01/04-01/06 (7 August 2012).

DRC TIMELINE

2002	2004	2006	2007
APRIL 11 DRC ratifies the Rome Statute and accepts ICC jurisdiction.	**APRIL 19** Government refers conflict in eastern DRC to the ICC.	**FEBRUARY 10** Pre-trial Chamber I issues sealed arrest warrant for Thomas Lubanga.	**JULY 2** Pre-trial Chamber I issues sealed arrest warrant for Germain Katanga.
	JUNE 23 ICC prosecutor announces investigation.	**AUGUST 22** Pre-trial Chamber I issues sealed arrest warrant for Bosco Ntaganda.	**JULY 6** Pre-trial Chamber I issues sealed arrest warrant for Mathieu Ngudjolo Chui.

reparations would be impractical due to the vast number of victims involved.[82] The Appeals Chamber held that reparations programs should focus on former child soldiers' reintegration, and address further victimization, social stigma, and discrimination. It directed TFV to consider awards such as medical services, housing, education, and other self-sustaining programs. The Appeals Chamber is requiring that all victims, their families and communities be treated equally in regards to reparation awards, whether or not they participated in the trial or requested reparations. It also ordered that reparations programs take a gender-inclusive approach. Victims of sexual violence, a crime for which Lubanga was neither charged nor convicted, though it was detailed by witnesses, are therefore also entitled to TFV assistance.

Who will pay for those reparations? The Appeals Chamber found that the Trial Chamber erred in not holding Lubanga liable for monetary costs of reparations on the basis of his indigence. The Appeals Chamber held that Lubanga must pay reparation amounts that reflect his crimes, but that TFV could cover those amounts until Lubanga can provide reimbursement. It seems unlikely Lubanga will ever pay.

GERMAIN KATANGA AND MATHIEU NGUDJOLO CHUI

The ICC's second trial, which began in 2009, prosecuted two other Congolese warlords, Germain Katanga and Mathieu Ngudjolo Chui, though the latter would later be acquitted. Katanga faced charges for war crimes and crimes against humanity, including sexual slavery, child conscription, and the willful killing of civilians, for his role as commander of the Force de Résistance Patriotique en Ituri (FRPI), a group comprised

82 See ICC, "Lubanga Case: ICC Appeals Chamber Amends the Trial Chamber's order for Reparations to Victims," International Criminal Court press release (3 March 2015).

of mostly Ngiti and some Lendu members.[83] During the Ituri conflict, the FRPI, often in alliance with other rebel factions, carried out military operations targeting the Hema civilian community. In February 2003, members of the FPRI, including some under the age of 15, attacked the village of Bogoro in the Ituri region, massacring dozens of civilians, burning and pillaging homes, and kidnapping women and girls.

In March 2014, the ICC Trial Chamber II convicted Katanga as an accessory to war crimes for directing an attack against a civilian population, pillaging, and destruction of property, as well as murder as a war crime and as a crime against humanity. In the course of the proceedings, chambers authorized the participation of 366 case victims. In June 2014, Katanga dropped his appeal, accepting the court's judgment and is serving a 12-year sentence. He is currently held at the Detention Centre in The Hague.[84]

BOSCO NTAGANDA

The trial of Bosco Ntaganda, who has also been charged with war crimes in eastern DRC, began in The Hague in September 2015. Ntaganda fought alongside Lubanga as UPC's chief of military operations from 2002 until 2005, and later served in command positions with other violent rebel groups.[85] Despite an ICC warrant for his arrest, a peace deal at the time enabled him to become a general in the Congolese national army, where he served until a 2012 rebellion disrupted the fragile balance of power. Ntaganda allegedly fell out of favor in subsequent peace talks, and in 2013, surrendered himself to the US Embassy in Kigali,

83 "Germain Katanga & Mathieu Ngudjolo Chui at the International Criminal Court: Background," *International Justice Monitor* (accessed 19 June 2015).

84 ICC Trial Chamber II, *Decision on Sentence Pursuant to Article 76 of the Statute*, Situation in the Democratic Republic of the Congo, ICC-01/04-01/07-3484 (23 May 2014).

85 Penny Dale, "Profile: Bosco Ntaganda the Congolese 'Terminator,'" *BBC News* (28 August 2015).

Rwanda, requesting transfer to The Hague.[86] Two legal representatives from the OPCV have been appointed to represent the 922 chamber-recognized victim participants in the Ntaganda case, one representative for former child soldiers and their relatives, the other for survivors of UPC attacks.

Population

In our study of victim participation in Democratic Republic of Congo, 147 people took part. The respondent population, all of whom lived within 70 kilometers of Bunia, included former child soldiers (52), survivors of the Bogoro massacre (57), and survivors of violence in other communities (38). ICC judges accepted the majority of the child soldiers as victim participants in the Lubanga and Ntaganda cases. The vast majority of Bogoro respondents joined the case against Germain Katanga, while other respondents participated in the Ntaganda case. The court deemed only three respondents victims of the situation.

The sample in DRC comprised a roughly even number of women (72) and men (75) between the ages of 18 and 83 years. Ethnically, most reported being Hema South (59), Bira (18), Lendu (14), Hema North (12), or Alour (11). Most identified as subsistence farmers or small business owners, but the sample also included students, public servants, and skilled laborers. All but ten of the respondents said they had lost a loved one as a result of the conflict. The majority reported being unmarried, but included more than two dozen widows.

Building on the procedural justice framework discussed in the introduction, we examine below the answers respondents gave when we asked them whether they: 1) felt they had a *voice* in ICC proceedings; 2) viewed the ICC as a *neutral* arbitrator; 3) felt *respected* by court staff; 4) *trusted* the ICC; 5) felt *safe* being associated with the court; and 6) wished to receive *reparations* from the ICC.

Voice

The majority of DRC respondents reported that they felt that their views had been heard by the court. Many reported that individual applications allowed their voice to reach The Hague, even when they could not travel there themselves. However, more than two dozen victim participants complained that they had no way to share their experiences with court officials. Most often they cited infrequent visits from ICC personnel.

Most said that they wanted to tell their stories in order to detail the violations that had occurred. They shared difficult or gruesome details about their forced conscription, sexual servitude, even cannibalism. "Our statements are testimonies of the events, what happened here," said one respondent. "It was important to tell what happened," explained another. "Me, I told how my husband was killed; how my children were killed; how my cows were stolen." Another said: "I was afraid in my community, like an animal who gets cornered. Completing the application gave me a feeling of security. If something happened to me, there was an institution where they knew about me, where someone could ask about me, about what happened to me."

Most said that filling out individual applications channeled their voices to the court. "If there were no form, it would not be possible to express myself, to make my statements," said one respondent. Another explained: "I was happy to be recognized as [a] victim because before nobody came to talk to us. But during the application process, people listened to us and we could talk about our difficulties openly and freely." While respondents appreciated individual applications, they did not express strong feelings about who specifically at the court should review them.

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86 D.H., "Bosco Ntaganda: A Surprising Surrender," *Economist* (19 March 2013).

A few former child soldiers saw their applications as a way to prevent their own criminal prosecution. "It is important to demonstrate what happened in order to prevent my arrest," said one former child soldier. Other former child soldiers said applications were a chance to aid the accused. "I filled out the form because I thought it could help to release Thomas Lubanga. He is my Hema brother."

Some respondents said the applications provided a chance to confess their crimes and provide an opportunity for redemption. One respondent said:

> Telling my story was important because it was a chance to lighten my conscience about what I did. Me, I ate people, carried weapons, killed, and everything. I was disturbed; it was not good. When I took those papers to completion, I felt relieved, a personal relief. That was vital to me.

Legal representatives also played an important role as conduits of victims' concerns to the ICC. "It is the lawyers who listened to us because they said they will represent our case," explained one respondent. "We talked to our lawyers. Now it is their turn to tell the court," said another. "The court listens and understands us through our lawyers who plead our case," commented a third.

However, a lack of ICC feedback compounded by the slowness of the prosecutorial process caused many victims to doubt their voices had reached The Hague. "I am not sure if the ICC listens to me. I am in the dark. I do not know what is happening," said one respondent. "I have the feeling that the ICC listens, but I have no feedback," said another. Others, too, complained that they had no contact with members of the court other than the intermediaries. "What I see is that the ICC does not listen. People who are in charge of bringing the cases over there either do not transmit our views or the information gets lost," said one respondent. Said another, "The lawyers come here, but until now there is no result from the ICC."

Neutrality

Few DRC respondents expressed opinions about the ICC's objectivity. Most, it turned out, had little knowledge of the court's actions. Nearly half of all DRC respondents could not identify the ICC's mission, most could not say which ICC case they had applied to join, and many could not even identify the ICC as a criminal court.

Respondents typically had only a vague notion of the ICC's role, though it was generally seen as positive. "The ICC is something that comes from the government, works with people from the government, to help people," said one respondent. "It is an organization that assists people with difficulties," explained another. "It is an institution where people go to expose their problems and then the ICC has to provide assistance."

A leading reason why there was so little understanding of the ICC was that the vast majority of DRC respondents had limited access to information about ICC activities or proceedings. Most said they depended on radio stories for news about their cases, but these rarely focused on individual cases. One respondent put it this way:

> As victims, we do not understand. We need more information so we understand our case. Intermediaries are struggling to inform us. They provide information when they have it, but the problem is to reach us. Their means are limited. There are not enough efforts to keep the victims informed.

Respect

A majority of DRC respondents said they felt respected by the court, and most said that ICC representatives had treated them well during personal interactions. "The way they talk to us; they are not like soldiers, but like our brothers," said one respondent. "When they come, they inform us, and explain everything. They

even agree to answer our questions," said another. "When we ask difficult questions, they are patient. Those attitudes demonstrate that they consider us with respect," said a third.

Others tied respect to results or to an apparent understanding of and empathy with victims' experiences. However, dozens felt the ICC's respectful manner of speaking with victims was not enough. "The ICC does not see our realities or understand our grievances. I want something concrete, some results in our daily life," explained one respondent. Another said:

> People from the ICC receive us, but they do not make us feel comfortable. We travel from far away. We spend the day away from home. We return home late and very tired without having gained anything from our meeting. That is why the ICC does not respect us.

Still another respondent put it this way:

> I can illustrate why the ICC is not respectful. The victims are miserable. Each time we are reminded of our lost loved ones, our lost possessions, of our past life. It is difficult. It is painful. Each time, the lawyer comes and talks to a person without trying to console her. In Africa, consoling someone means doing something. When someone's house has been burned, consoling means to bring a stick, or some other material so that person can rebuild his house. People from the court say they will do something. At first, we were spirited. Everyone was coming. But now, people are tired. The only thing that is happening is that they remind us of our past. We find it difficult.

Trust

Few respondents in DRC expressed faith or confidence in the ICC. Many questioned the length of the legal process. Mistrust was particularly prevalent among victim participants in older ICC cases. Newer participants expressed more optimism about the court and often adopted a 'wait and see' attitude. A central issue for the vast majority of victims was the ICC's failure to make good on explicit or what were taken to be implied promises of victim assistance.

The failure of the ICC to meet victims' expectations for assistance frequently undermined trust as time passed. Nearly two dozen respondents said that court officials or legal representatives had led them to believe they would receive assistance. When no assistance came, they lost faith in the institution. "The lawyers promised. They said that our losses will be returned," said one respondent. "The ICC told us the lawyers will support us individually," said another. "We were told that each person could choose something that could help them—a house or animals, such as a cow, a goat, or something," claimed another.

Some DRC respondents saw their participation with the ICC case as an exchange, and lost faith when nothing was given in return for information. "They came and they interviewed us. As victims, we think they will provide some solution to our problems, but they gave nothing," explained one respondent.

Other respondents noted that the slow pace of the trials had created mistrust. "I would like to talk about speeding up the case. I have been waiting since 2008," said one respondent. Another explained: "Our wish is for our lawyers to bring the case to its end. We just wait and hope that the promises will materialize."

Some urged more transparency on the part of the ICC and more communication from it. "If it is not possible to help us, then the ICC needs to tell us. Let us know either way if there will be reparations," said one interviewee. Another remarked: "It is important for the ICC people to come to us, in our place, to know the realities in the field. It is important for people from the ICC to come and ask about what happened; to be informed."

Security

The vast majority of DRC respondents said they felt safe participating in the ICC cases. However, some respondents said they had safety concerns when they first applied to be victim participants. Dozens of others expressed concerns about being targeted for reprisals, especially if the accused were released.

"Afraid? Of who? Why?" asked one respondent. "We do not have to be scared because what I said was the truth," declared another. For many respondents, a feeling of security had increased with stability in the region: "I was afraid when I first applied because the enemies were around. If they had noticed that I had completed the form, they could have hurt me or my family, but now I am not afraid." Another explained: "At the time of the application, I was really scared that people could come to our house, arrest us, and hurt us if they knew we were participating in the court. But now, I do not think so. Things have changed. We are not scared; we can talk freely, and there is no impact like there was at the time."

Of the dozens of respondents who still worried about the impact of participation on their safety and the safety of their loved ones, some feared that friends and neighbors would discover their participation. One respondent explained:

> I was afraid because the secret cannot be hidden. If you arrive in a place, people come across each other. People see us. It is scary. . . . The other day we were in the town with my lawyer. We were finishing our discussion, we were leaving, then close to the fence, there was my friend. He asked me what I was doing over there. I said: 'I am doing some reading.' He said: 'no, you are in contact with the ICC.' I said: 'no' because that could link me to the court.

Many others said they were afraid that the accused would be released. "I am still scared of the family of the accused or his armed groups. I want to make sure that my . . . participation is not exposed, it must stay confidential," said one respondent. "I want to know what is happening at the court and how we can be protected if there is a release or an acquittal. How we can be moved, otherwise we will be scared of the retaliations," said another.

More than one-third of the former child soldiers interviewed in the DRC said they felt unsafe due their court-related participation. "I was scared. I thought the ICC would betray me," explained one respondent. "I was scared because my application form was going to the authorities, but I did not know what was going to happen to me," said another. Respondents also feared becoming targets of local militia. "Even now, here, in my village, the militias are looking for us; they continue to recruit by force. We can be recruited by force. We left for our protection. They enroll, recruit young boys, every day," said another respondent.

Respondents also expressed concerns about the way the ICC had handled protection issues in DRC and elsewhere. "Some people went to the court to testify. When they came back, they had police protection. But after a week, the police left the victims without protection," said one respondent. "I am concerned about the witnesses. I heard that in Kenya there were witnesses. They recognized those people. It is really unsafe for people who went to testify. There is a need for protective measures and concealment of people who want to testify before the court."

Reparations

The vast majority of the respondents expected reparations or other material assistance as a result of ICC involvement. In fact, more than a third of DRC respondents reported that reparations were their main motivation to join their case. Most viewed reparations as inevitable post-conviction, and most said such reparations should be paid to individuals. While reparations were not respondents' sole interest in participation, few

said they would be satisfied without them. "If there are no reparations, the court lied to us," one respondent commented. Yet another said: "If [the court] does not succeed in providing them, it is discouraging. It is a disgrace."

For many respondents, as these comments indicate, reparations also reflected the extent of the ICC's commitment to victims. "If there is no reparation that would mean they give no importance to the victim," said one respondent. "We will feel abandoned." "In Africa, to console means helping. If you are not helping, it is traumatizing the person," said another.

While many respondents said that nothing could compensate for the loss of their loved ones, they hoped that reparations would at least help them rebuild their lives. "We lost loved ones. It is impossible to replace them. We lost possessions, too. Now reparations are the only way to alleviate our suffering, but how they will happen depends on the ICC," said one respondent. "It is not possible to resuscitate the dead, but it is possible to compensate for the losses," said another. "Reparations are there to rebuild my life," explained a third. "I am a farmer, but I do not have enough to meet my needs. If I could get some tools to work with and make progress with, it would help me to start my life again."

Many former child soldiers said that reparations would advance the demobilization process and aid their reintegration into society. "Since demobilization, despite what we were told, there had been no action; nothing concrete," said one respondent. Explained another: "I am expecting material assistance; a sewing machine, a motorcycle, something that would allow me to make a living. Even if I was demobilized, I need something to earn an income." Another said, "What I really want is to finish my schooling because I spent my time doing other matters instead of studying."

Ultimately, in DRC, respondents equated convictions with reparations. Most assumed a person convicted of a crime would need to pay victims. "What can prevent reparations since there is already a conviction?" asked one victim. Another said, "After the judicial process, if the accused are found guilty either the government or the ICC will have something to give us, for reparations." Another respondent said, "If there are no reparations, we would not accept the outcome."

Conclusion

Victims in DRC, like Uganda, have only rudimentary knowledge about the ICC. Most Congolese victim participants, for example, cannot identify the name of the accused in the case they have joined. Most apply to the ICC case to receive support or reparations. They lack access to information about the court or regular updates about trials. As a result, many have come to doubt that the ICC is listening to their concerns. Former child soldiers are especially distrustful of the court, which they fear will prosecute them.

In contrast to Uganda, where most participants feel safe, victim participants in DRC also fear for their safety. Victims worry that their participation will make them targets for reprisals, especially if perpetrators are released from detention and return to DRC.

Congolese victim participants also expect convictions and reparations. Many participants believe that the court has promised them individual reparations and see this as an inevitable and necessary outcome of their participation. Few participants will be satisfied with convictions alone.

KENYA

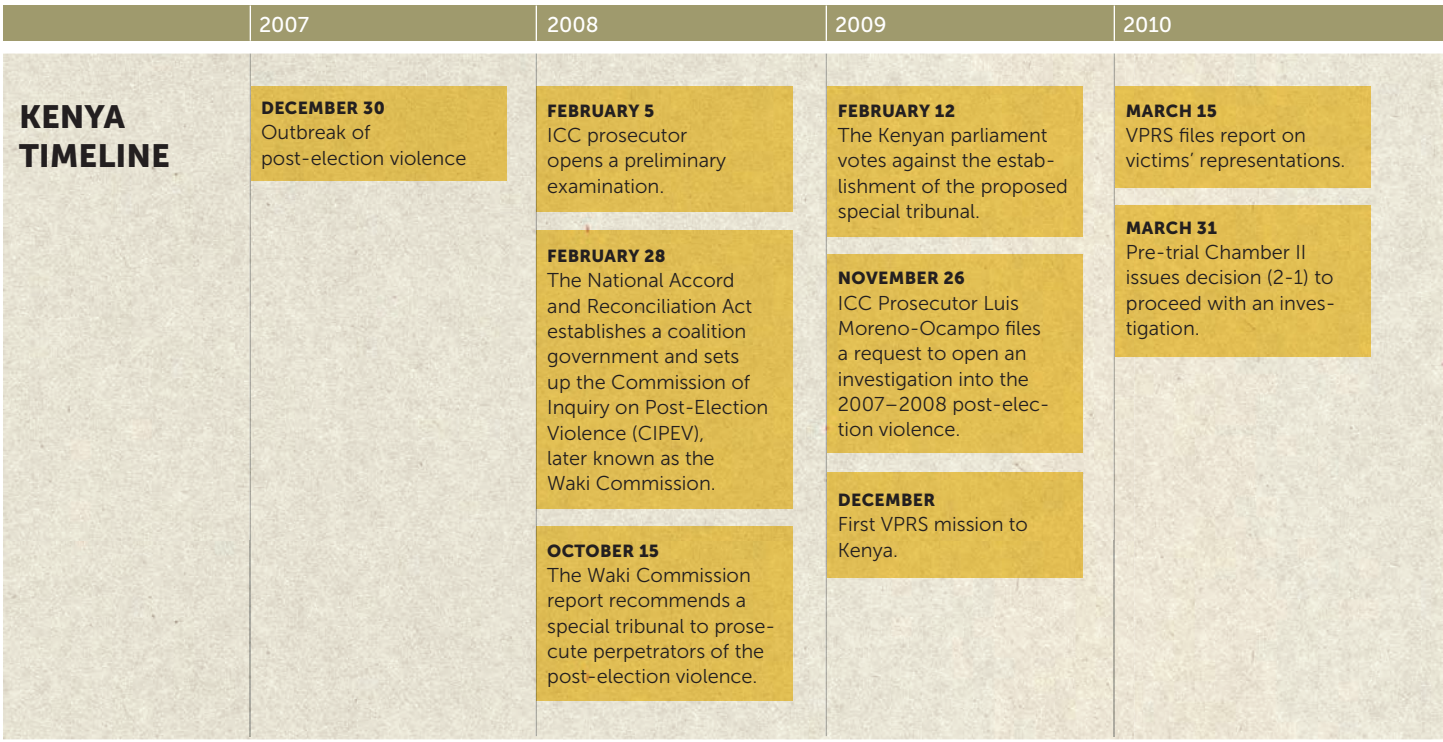
THE POST-ELECTION VIOLENCE at the heart of the Kenyan ICC cases occurred between December 2007 and February 2008.[87] Raila Odinga of the Orange Democratic Movement (ODM), the main opposition leader, seemed to have a commanding lead of nearly a million votes in the election until a few hours before the end of the vote count, when a flood of votes for the incumbent President Kibaki of the Party of National Unity (PNU) suddenly appeared. Allegations of election fraud resulted in widespread violence. Odinga supporters reportedly attacked ethnic Kikuyu and others perceived to be PNU supporters. In retaliation, Kibaki supporters reportedly targeted ethnic Kalenjin, Luo, and Luhya, who were viewed as backers of the ODM opposition party. During the violence, between 1,133 and 1,220 people were killed and more than 300,000 displaced.[88]

In the aftermath of the violence, Kenyan government authorities created an international Commission of Inquiry on Post-Election Violence (CIPEV) to investigate criminal violations that had occurred and to identify those most responsible for inciting the violence. The CIPEV, more familiarly known as the Waki Commission after its chairman, the Kenyan Court of Appeals Judge Philip Waki, published a report arguing for a special tribunal to investigate and prosecute perpetrators of the post-election violence. The Waki Commission went on to declare that if no tribunal were established, all of the evidence collected by the commission, including the names of suspected high-level perpetrators, would be forwarded to the ICC. After the Kenyan parliament voted three times against a bill to establish the special tribunal, the ICC prosecutor was sent the extensive documentation the commission had compiled.

On 5 November 2009, the ICC's chief prosecutor, Luis Moreno-Ocampo, notified the ICC president of his intention to request an investigation *proprio motu* under Article 15(3) of the Rome Statute. The request, assigned to Pre-trial Chamber (PTC) II, triggered a duty under Rule 50 of the Rules of Procedure and Evidence to inform victims known to the prosecutor so they could make representations the court. On 23 November, the Office of the Prosecutor (OTP) held a press conference and provided an address to which victims could send representation. A few weeks later, in December 2009, PTC ordered VPRS to identify

87 Kenya has experienced cycles of election violence dating back to at least 1991. See Stephen Brown and Chandra Lekha Sriram, "The Big Fish Won't Fry Themselves: Criminal Accountability for Post-Election Violence in Kenya," *African Affairs* 111 (443) (April 2012), 244–60; Sara Kendall, "'UhuRuto' and Other Leviathans: The International Criminal Court and the Kenyan Political Order," *African Journal of Legal Studies* 7(3) (2014), 399–427.

88 "Kenya Cases: Background," *International Justice Monitor* (accessed 19 June 2015).



leaders in communities affected by the violence who could make representations to the court and report to chambers.[89]

In contrast to Uganda or DRC, the ICC faced additional challenges around victim participation in Kenya. The government had a keen interest in the cases and a sophisticated and extensive security apparatus that could keep close tabs on ICC activities.[90] Kenyan society also had an active, often partisan, media that threatened to compromise victim and witness identities. Corruption was commonplace.[91] Security analysts in the Registry advised against hiring Kenyans for ICC activities because it would be impossible to protect them. To maximize security, ICC officials decided not to set up a separate field office, but to operate a special task force within the United Nations complex in Nairobi. In addition, victim-related activities were closely coordinated with the OTP, who expressed concern that Registry activities could impact prosecutions by exposing potential witnesses.

When VPRS first arrived in Kenya they found civil society groups eager to assist, but many of the most established NGOs were based in Nairobi, with minimal access to victims outside the capital. Beginning in February 2010, VPRS began to collect victim views by mapping the affected communities, conducting individual consultations, and organizing small informational meetings in partnership with community leaders.

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89 ICC Pre-trial Chamber II, *Order of the Victims Participation and Reparations Section Concerning Victims' Representations Pursuant to Article 15(3) of the Statute*, Situation in the Republic of Kenya, ICC-01/09 (10 December 2009).

90 The former head of state security oversaw the mail system, for example.

91 Transparency International ranked Kenya 145 out of 175 countries on their corruption perceptions index in 2014. Its score of 25 barely edges out the Central African Republic with a score of 24. See Transparency International, *Corruption Perceptions Index* (2014).

Confidentiality and the trustworthiness of intermediaries proved key to decision-making about whether or not to conduct outreach activities. Relying primarily on face-to-face contacts and avoiding phones and Internet communication, VPRS staff collected applications on victims' experiences, and filed their first report on victims to the court in March.[92]

VPRS filed applications from 320 individual victims and 76 community organizations that represented thousands of internally displaced persons. Of these applications, 383 applicants favored ICC investigations, and many cited the need to deter future election violence and their lack of faith in the Kenyan justice system.[93] Applicants also commonly sought swift criminal trials and reparations.

Pre-trial Chamber II granted the OTP's request for an investigation on 31 March 2010. VPRS followed up with victims in May 2010. Due to threats against prospective ICC participants, VPRS often met with victims and victim representatives in Nairobi. VPRS also began efforts to identify and train future intermediaries, and explore possibilities for legal representation.

On 8 March 2011, Pre-trial Chamber II issued summonses to Deputy Prime Minister Uhuru Kenyatta, Minister of Industrialization Henry Kosgey, Education Minister William Ruto, Cabinet Secretary Francis Muthaura, radio executive Joshua Arap Sang, and former police commissioner Mohammed Hussein Ali—each of whom was accused of crimes against humanity. Ruto, Kosgey, and Sang were grouped into Case 1; Kenyatta, Muthaura, and Ali were grouped into Case 2.

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92 ICC Pre-trial Chamber II, *Of Corrigendum to the Report on Victims' Representations (ICC-01/09-17-Conf-Exp-Corr) and Annexes 1 and 5*, ICC-01/09-17-Corr-Red (29 March 2010).

93 ICC Pre-trial Chamber II, *Of Corrigendum to the Report on Victims' Representations (ICC-01/09-17-Conf-Exp-Corr) and Annexes 1 and 5*, ICC-01/09-17-Corr-Red (29 March 2010).

The chamber issued its first decision on victim participation on 30 March 2011, holding that applicants must provide proof of identity, express an explicit wish to participate in cases regardless of interest in reparations, and meet the criteria for victims.[94] Four months later, the judges listed those accepted and rejected and set out the basis for their decisions. The chamber also appointed lawyers for victims in both cases.[95]

Pre-trial Chamber II confirmed charges against Ruto and Sang on 23 January 2012, but excluded Kosgey. Ruto was charged as an indirect co-perpetrator of crimes against humanity for his role in promoting a common plan of attacks in the Rift Valley during the post-election violence. Sang was charged with crimes against humanity for promoting attacks as a popular Kass FM radio broadcaster. On the same day, the chamber also confirmed charges against Muthaura and Kenyatta, but not Ali. Kenyatta was charged as an indirect co-perpetrator for crimes against humanity committed during the post-election violence, including murder, deportation or forcible transfer of a population, rape, persecution, and other inhumane acts.

The Trial Chamber issued its decision on how to organize victim participation on 3 October 2012. It made a distinction between victims participating in person before the court, who would be required to go through the standard application system, and those participating through a common legal representative, who would simply sign up through the Registry. The common legal representative, based in Kenya, would take primary responsibility for vetting the victims not participating in person.

In light of the new requirements, neither of the appointed victims' lawyers wished to continue in the cases. They expressed concern that resources were insufficient to assume the burdens of registration and representation for eligible victims. VPRS then recommended two new victims' lawyers, whom the Trial Chamber appointed.[96] VPRS then worked with the common legal representatives to jointly register victims, and determine who would remain eligible to participate since the scope of the charges in the cases had been reduced.

Meanwhile, on 2 December 2012, Uhuru Kenyatta and William Ruto—once vehement opponents—walked on stage before a sea of supporters at Afraha Stadium in Nakuru, Kenya, one of the epicenters of the post-election violence of 2007–2008. Although both men stood accused of crimes against humanity, more than 60 members of parliament framed them on stage in a show of support. They exchanged red and yellow baseball caps, a marker of their party alliance, to symbolize their new political partnership. United by the ICC cases against them, the two men, representing the most powerful tribes in Kenya, declared their intention to run for president and deputy president as the Jubilee Coalition.

The Kenyatta-Ruto ticket won the presidential election in 2013. The Kenyan government marshaled opposition to the ICC in the African Union and lobbied for a UN deferral of the Kenya cases under Article 16 of the Rome Statute. There were also widespread reports that Kenyan officials were actively working to undermine ICC investigations through bribery and witness intimidation. ICC investigators complained of non-cooperation as teams struggled to gather sufficient evidence. Case 2 began to collapse and charges against Muthaura were withdrawn in March 2013, leaving only Kenyatta.

In December 2014, nearly two years later, Trial Chamber V rejected the prosecutor's request for further adjournment of the Kenyatta case and directed the prosecutor to either withdraw the charges or indicate readiness for trial. Chief Prosecutor Fatou Bensouda immediately filed notice to withdraw charges, stating she had no alternative in light of Kenyan non-cooperation and inadequate evidence, but retaining the

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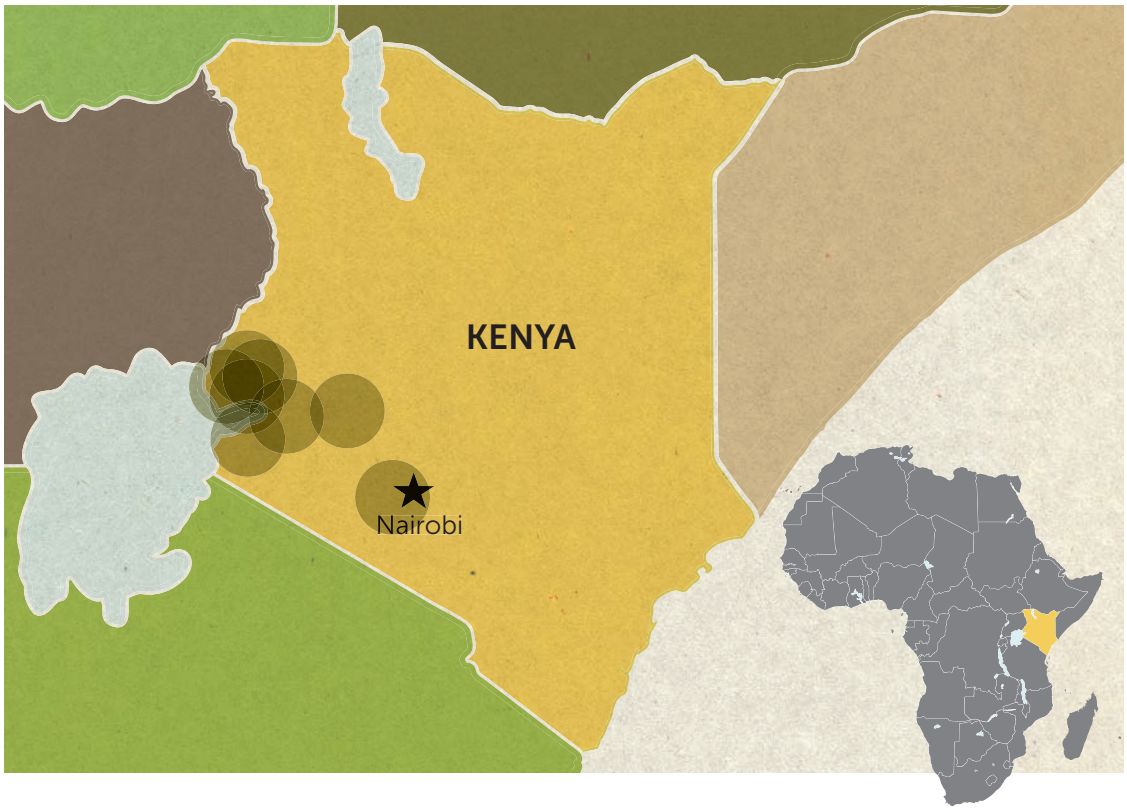
94 See ICC Pre-trial Chamber II, *First Decision on Victims' Participation in the Case*, Situation in the Republic of Kenya, ICC-01/09-01/11-17, ICC-01/09-02/11-23 (30 March 2011). Victims had to meet Rule 85 assessments.

95 Sureta Chana was appointed as the common legal representative for victims in Case 1 and Morris Anyah in Case 2.

96 Wilfred Nderitu was appointed to Case 1 and Fergal Gaynor to Case 2.



possibility of bringing a new case if additional evidence became available. The Trial Chamber terminated Case 2, against Kenyatta, on 13 March 2015. Following the decision, VPRS and the common legal representatives met with the victims to inform them that the case was closed.

As of this writing, Case 1 against Ruto and Sang continues. The ICC also recently brought new cases against individuals accused of bribing and intimidating ICC witnesses. It is not yet clear how victims will be involved in this case.

Population

In Kenya, HRC researchers interviewed a total of 204 victim respondents, all of whom had submitted applications through to the court. Of these respondents, 124 reported that the direct harms they suffered fell within the scope of the legal charges against Kenyatta or Ruto and the judges had accepted them as victims of the case. The remaining respondents reported that they had registered with the ICC because they suffered harms during the post-election violence of 2007–2008. All respondents reported having a common legal representative appointed by the ICC. Interviews were conducted in Nakuru, Kericho, Kisumu, Kakamega, Siaya, Kisii, Vihiga, and Nairobi. Respondents hailed from more than forty communities, including affected communities in the Rift Valley.

The respondent population was comprised of a roughly equal number of men (100) and women (104) and included seven ethnic groups: Kikuyu, Kalenjin, Luo, Kisii, Kipsigis, Luhya, and Kamba. Interviews were conducted in English, Kiswahili, or one of three local languages: Luo, Luhya, and Kisii.

Building on the procedural justice framework discussed in the introduction, we examine below the answers respondents gave when we asked them whether they: 1) felt they had a *voice* in ICC proceedings;

2) viewed the ICC as a *neutral* arbitrator; 3) felt *respected* by court staff; 4) *trusted* the ICC; 5) felt *safe* being associated with the court; and 6) wished to receive *reparations* from the ICC.

Voice

Nearly three-quarters of respondents in Kenya said that they felt they had a voice in the proceedings. Yet more than four dozen complained that they did not. For most Kenyan respondents, having voice meant having a trusted advocate who would represent their views at the court.

The ICC's intervention in Kenya, according to some respondents, offered a chance to finally speak about their experiences and those of friends and neighbors. "We could not have a voice in Kenya, but at [the] ICC we have a voice," said one respondent. For others, participation in the cases offered a chance to record and support their views of local events and correct government-manipulated misperceptions. One respondent said: "What happened to us was not being told properly. I wanted to tell the truth." Another said: "So many things happened. I was an eyewitness, and whatever happens to me, I must be able to speak about it."

Most Kenyan respondents had met with their legal representative at least once and viewed their lawyer as an effective advocate for their concerns. Common legal representatives, as opposed to intermediaries or ICC staff, were most frequently cited as victims' channels to the court. "He links me with the ICC," said one respondent. "Otherwise, the ICC could not hear my voice," explained another. "They hear my voice through [our lawyer]." A third respondent said:

> I have a voice because we have our legal representative there [in The Hague]. Yeah, our legal person is there. So that is my voice at the court. I live here. He's my voice there.

Even when physical contact with their legal representative was infrequent or non-existent, many respondents felt that their lawyer communicated their views to audiences in The Hague. One respondent, who had never met his lawyer and only learned of his representations in "electronic and print media," declared: "He's doing a good job." Another said: "Everything that he wrote were things that really took place." A third explained:

> When they come, learn from us, and write reports, I feel the goodness in it. It can help with the case. They are doing this work because of our suffering as victims.

A few respondents also reported that witnesses in the trials would give voice to their experiences. According to one, "I have a voice in the courtroom through the other witnesses who underwent the same kind of experience."

Many respondents reported a desire to speak in order to provide evidence in the cases. "I wish to have a voice because of the things that I saw in the past and the physical evidence that I have, which I got during the violence," said one respondent. "Without us, their case is a case without witnesses," said another. A third respondent agreed: "They need our voice. There is no case without us. We are the evidence. The case shall have to stand on us." And a fourth commented:

> I'm ready to provide testimony because the shoe wearer knows where it pinches. It really pinches me. I lost everything. I lost my wife because of the post-election violence, so it pinches me, even right now as we speak today, so I can participate in any other way, either by a person or by any means. If I'm called to do that, I'll do it.

Respondents believed that increasing the frequency of meetings between victim participants and their lawyers or other members of the ICC would help amplify their voices in the cases. Some complained that the

lengthy periods between updates had adversely affected their sense of being heard. Two-thirds of respondents reported that they had received one or fewer updates on their case from ICC staff. One confessed: "I don't know whether my voice is being heard. I'm not even aware if my forms are read. There's no feedback." Another complained about her lawyer: "We have only seen him once during the first seminar we had." Others expressed similar feelings of frustration: "Nobody has communicated to me the goings on of our case." Still another proclaimed: "We don't see any progress. We have not seen any progress. We have not had any responsible person come to us the way you have come."

More than three-quarters of respondents said they would be happy to meet with anyone in an official capacity at the court. However, nearly two dozen victims singled out judges as the people who they wanted to hear their views. "I would like the judge to read it. He's the one who should hear our cries," said one respondent. "We'd also like to know the ICC judges, so that they may get to hear our feelings," said another.

Many respondents had adopted a wait-and-see approach on the efficacy of their participation. "It will be clear if we have been heard when there's a judgment," explained one respondent. Another respondent said: "If there is progress in the case, then my voice is heard."

A few said they had already begun to regret their participation and felt their perspective was basically being ignored. "The court hears the voices of the people who perpetrated this violence, not the victims," declared one respondent. Another said: "The attention to the common person's interest is not being addressed."

Neutrality

Very few Kenyan respondents described the ICC as impartial. Many believed the Kenyan government would influence trial outcomes. Still, most said that it was the only available mechanism to pursue accountability for the post-election violence. Nearly all the people we spoke with rejected any suggestion that domestic courts or even regional courts could handle the cases against President Kenyatta or Deputy President Ruto. And even if the ICC court was biased, respondents saw some promise in ICC prosecutions.

For many respondents, the court was anything but independent. One said: "The ICC is a biased court. They're looking after big money. If you have money, you're protected; there's no justice that will occur." Another said: "When Ocampo [the former ICC chief prosecutor] came on board, there was a lot of heat. Now we see justice is dying by itself. I feel that it's bleak. There's no light in front of us." Another respondent asked: "Was there someone who was bribed? Because it seems this case is no longer proceeding." A few respondents who were displeased with the prosecutions even accused the Chief Prosecutor Fatou Bensouda of corruption: "Bensouda has been given something by Uhuru [Kenyatta]."

A distinct minority of respondents, however, saw the ICC as an independent and apolitical body. "It is an independent court. It deals with the international criminals. It deals with the big fish," said one respondent. Another declared: "It is the only court for us, I mean compared with our Kenyan system. This full, victim-centered approach is beautiful. I think all courts should adopt such a concept." "I know that the ICC is going to help us get justice for what happened to us," said a third.

For some, prosecutions, even limp ones, could pave the way to peace: Victim participants glimpsed promise in the prosecutions as a bulwark against future cycles of election violence. "The ICC is going to change the political landscape in Kenya," one respondent predicted. "No other politician, or anybody else, will participate in this type of violence. Everybody will at least fear the court." Said another, "There is a lot of impunity in Kenya. Convictions serve as a warning to the rest of the politicians, and we can have peace."

Ultimately, most Kenyan respondents viewed the court with a combination of hope and suspicion. The amalgamation of shifting alliances hinted simultaneously at independence and corruption. However, the slow pace of trials, limited information about proceedings, and witness issues tempered respondents' optimism about the possibilities for justice. "The ICC process is too slow. When it's too slow, then people get a lot of negative attitudes towards the ICC," explained a respondent. Procedural delays raised questions for many respondents about the neutrality and intentions of court personnel.

Respondents said that they struggled to obtain accurate information about the cases, which made it especially difficult to ascertain the ICC's neutrality. "The government has imposed some road blocks to sensitive information about the court," reported one interviewee. "Given the resources of the suspects, misinformation always prevails over what really takes place in the court," explained one respondent. Another said:

> I would say, obviously, the government of Kenya is engaged in a campaign to discredit the ICC and to obstruct the prosecutor's investigation. . . . Even setting aside a degree of prosecutorial incompetence, there's no question at all in my mind that the lion's share of the blame for what's happened in the Kenyatta case rests with the government of Kenya and its deliberate policy of obstruction.

For many respondents, the ICC's failure to retain witnesses created further doubts about the impartiality of trials. "In the initial stages of the case, the court seemed to be on the right track," explained one respondent. "In the recent past, it seems there is something amiss because so many witnesses are withdrawing from the proceedings or from the case."

Respondents speculated that witnesses had been bribed and coached on how to testify on the stand. One respondent asked: "Are these people telling the truth? Have they been bribed? It is discouraging to me, because we seem not to know exactly where is the truth about the whole process." Another said: "People are being given money, and it is believed that the money came from the current president. Now, those bribes are not being mentioned at the ICC." Still another respondent said: "I have seen all these things which took place, but when people go to The Hague they change their stories to lies, like that nothing took place."

Respondents also expressed unease about the prosecutor's selection of crimes, and about which witnesses were called. "The way the case is processing before the court, we are not happy. We see that the areas which are within the scope of the case is very small as compared to the wider area where there was violence," said one respondent. Others resented victim designations, and argued that the court discriminated against victims of the situation, who suffered harms outside of the scope of the charges. "To be very frank to you, that's why most Kenyans are losing faith in that court," said one disheartened respondent.

Many respondents said they had become frustrated with their ICC experience. One of the victims' lawyers put it this way: "They do see it largely, as far as I can tell, as an example that yet again the rich and the powerful have triumphed, and yet again the process of justice is a bit of a mirage because they are being forgotten, and the most powerful man in the country from the richest family in the country has succeeded."

Respect

The launch of official investigations and the act of bringing charges against high-ranking officials provided many respondents with a sense that the ICC valued their experiences and recognized their suffering. "When I watch the cases on TV, I feel like they're really trying to fight for us," said one respondent. "When you see the case is still proceeding, we see that they are respecting our issues," said another. A third respondent put it this way: "The court has shown respect because the key perpetrators are facing charges at the court. That's why I feel the court has honored me."

The court's attention to victims' issues made some respondents see themselves as vital contributors to justice in The Hague. "They come to us, we're not the ones who go to them," said one respondent. "They are engaging with such seriousness with us," said another. A third respondent offered: "I believe the ICC is doing all it can to listen to the victims." Still another echoed this sentiment: "The court has really given me a lot of respect because we have really seen the court all the time talking about the victim. All the time they look at the victims as the people who really suffered in this case."

By appointing a lawyer for them who would visit their communities and keep them informed, the court had shown them respect, respondents said. "The lawyers come and tell us what's going on back at the court," explained one respondent. Another explained: "If we need our lawyer, they just get him very quickly." The responsiveness of legal counsel mattered to respondents. "I have been respected because of how ICC has done follow-ups," said one respondent. Another said: "I know the ICC treats me with respect because they fight for my rights. We are ordinary people. You don't [normally] have a say when you don't have money."

Regular communication with members of the affected communities was vital for feelings of respect to grow, said many respondents. "The court has shown us respect by sending people to interact with us. They show respect by allowing us to communicate and by using the information which we give as ICC evidence," explained one respondent. The ongoing exchange of information convinced many respondents that they were a priority for the court.

Not all respondents said the court respected them, however. "It seems the cases are not going anywhere. There is no respect there," said one respondent. Another said: "I'm not seeing them treating me well. There's no respect. I'm not happy the way they keep on postponing the case. The witnesses have withdrawn. I'm not so happy about it the way things are moving at the ICC."

Many victims said that they would have felt more valued had they received more communications from the ICC. Respondents wanted more updates to explain delays and witness withdrawals. One respondent explained: "I cannot say that I've been treated with respect. I haven't received any answer or result from The Hague." Another respondent said: "I feel disrespect because they have never called us to tell us the position of the court. There's no truth. I don't get information from the ICC." The lack of regular communication made some feel less valued over time. "This is the seventh year. I don't visit The Hague. I don't even know how to deliver a message," admitted one respondent.

A few victims offered qualified statements of respect. "The court is treating me with respect," said one respondent, "though I've not had any aid or help from them." However, such sentiments were often tied to compensation. One respondent said: "We have not received any help or any assistance. There's no assistance here. But in the central part of Kenya, they have been supported. They're treating them with respect, but there is no assistance here." Another said: "Yes, respect is there, but it's just assistance and help that's not there."

Respondents also said that regional or tribal disparities signaled a lack of respect because some affected communities were receiving more assistance than others. "From the time we were affected, nothing has been done for us. If you see other areas, people's problems have been solved. They have been compensated." Another respondent said:

> Our tribe is so neglected and discriminated by the government. The representative of the ICC should have delivered that message to headquarters so that the Kenya government should treat its people equally, without discriminating against a certain community.

Some victims struggled to make a determination on respect, either because they had limited or no contact with the ICC or because their assessment depended on the outcome of cases. One respondent explained: "I cannot say because I've not see the fruits of the court." Another said: "I don't know how they are treating me because I have not met them." Many respondents simply said they did not know if they were respected: "I've never gone to ICC," said one respondent, "and therefore, I don't know whether they respect to me."

Trust

Few people trusted Kenya's notoriously crooked courts, as we've seen, and as a consequence respondents were more willing to invest hopes in an international court, especially at the outset of proceedings. "Kenya is a corrupt country," said one respondent. "There are so many corruptions. They will just display a case on top of the table, and then finally throw it away." Another explained: "I have confidence in the court because it is an independent court in The Hague. It has our grievances and addresses. I know justice will be found."

For most respondents, trust in the ICC court was built through personal relationships with their court-appointed lawyers. "Our interactions and communication with our lawyer have been good," said one respondent. Another said: "Our lawyer, the victims' lawyer, we trust him. He can read my story because he's the one that knows me." A third respondent said: "Our lawyer is a straight-up man. He's actually seeking justice, and he's there to see that justice is done. He's actually representing us. He's really fighting for us, and you can see that he will do everything to see that we get compensation and justice."

Respondents said meetings with lawyers gave them hope that they would succeed in court. Many also said that they anticipated receiving compensation for their losses. "The lawyer can give us hope. When somebody gives you hope, is that not a good promise? When the case is over, you know you will get something." Another respondent explained:

> I am definitely expecting some convictions on the strength of the victims' sentiments, regardless of the shortcomings we have with the prosecutor's office. Just on the strength of the victims' presentations, I'm expecting convictions, and I think a lot of the credibility of the court is at stake. If the suspects are able to get away with the intimidation and manipulation that is currently going on, it will be a problem.

Notwithstanding such hopefulness, many respondents said their expectations for justice have dampened with time. "I'm losing faith that the ICC will convict Kenyatta," said one respondent. He added: "Initially, it was good, and I trusted that I would get my justice. But now, I'm fearing that will not happen."

Security

Some Kenyan respondents said they felt safe participating in the ICC cases. Most did not. The vast majority expressed trepidation about their safety after so many witnesses began to withdraw from the cases. Respondents said that they feared reprisals from a diversity of actors, including government authorities, other ethnic groups, as well as local thugs sympathetic to the accused. As a result, many respondents expressed some hesitancy about meeting with ICC staff, said they felt apprehensive about testifying in The Hague if they were asked, and raised concerns about keeping their identities confidential in light of what most saw as government campaigns to identify them.

Widespread reports of witness intimidation and disappearances created an environment of fear for participants in the Kenya cases. "Many witnesses have withdrawn. They are withdrawing because of threatening. I do fear that if those witnesses are withdrawing, the same acts, the same problem they are facing, I

might even face because I'm a victim," said one respondent. "The witnesses are fearing for their lives, meaning that this court has no elaborate system of protecting witnesses," explained another. Another said: "The ICC should do something to make sure they are helping the witnesses. The court should investigate why the witnesses are withdrawing."

Some respondents said they had been threatened. "I've been getting threats, sometimes in messages," said one respondent. She explained: "People from Nairobi called me pretending to be working with ICC. They asked me to come to Nairobi. When I went there, I realized that they were not genuine ICC people. I pretended to be going to the toilets, and then, that's how I disappeared." Another respondent said: "I've had bad threats, personal threats," but wouldn't specify. Still another reported that a person at the market told him: "'We know you went to the ICC to give evidence and maybe your head will need to go.'"

Respondents also feared for their loved ones. "Some of us are afraid to speak out. We fear for our life, and we also have children," explained one respondent. "There are so many things that we saw, so many things that we know, but we cannot relate this because we are afraid for our family and our life."

Many others said that they were afraid that personnel at the court could make their identities public. "I'm trying to tell you, they [the ICC] can disclose your identity, [they can] even [disclose] where you are staying," said one respondent. "I don't want people to know that I'm an ICC participant," said another. "If they know that I'm a participant, then I'll be crushed." A third said:

> There has to be an assurance that my identity will not be revealed. It's very hard to describe what kind of an assurance they can give us, but so long as that I'm not exposed. If I participate in a trial, then maybe I'll wear a mask. They must change our names and stuff.

Confidential meetings were mandatory in order for many respondents to feel safe. "I want meetings to be anonymous and secret," said one respondent. "In Kenya, if something is not kept secret, then I can be killed." Another echoed this sentiment: "If the perpetrators know where we have meetings, they can destroy us." Some respondents said they felt pulled in two directions. They wanted to contribute to the prosecutions but were afraid that their complicity with investigations would be discovered and they would be targeted for violence. "I just want the truth to be known," explained another, "but meetings should be done secretly so that I cannot be known." A few respondents hesitated to have their information written down at all. "I didn't know whether to put my contact [information] on the form," admitted one respondent. "I want to be easily contacted, but, on the other hand, I do not feel that my life is safe."

Although few victim respondents had been approached by investigators or prosecutors to become witnesses, many said that they feared being targeted because of the testimony they could provide at trial, if asked. Respondents often considered themselves potential ICC witnesses as many had been bystanders to the atrocities committed during that period. One respondent said: "I fear for my safety. The people who I'm supposed to testify against are the people in power. They can do harm if they know that some people are talking. They may fear we are undermining them."

"Witnesses who testify are killed after they testify," said one respondent. Another explained: "There is no safety. We can be killed at any time if it is known that you are participating in ICC cases." Still another respondent explained:

> If we go to testify, when we come back to Kenya, we don't know what will happen. When the first witness testified, you saw her name spread all over Kenya. She could not stay anywhere in Kenya. Everyone already knew what she said. The court must build security for those witnesses who are prepared to testify. They are supposed to be protected.

Some respondents feared retaliation not just from people in power, but from other groups in their communities. "The people I fought with," said one respondent, "once they discovered that I am participating in the process, it can pose some risks to me." Underscoring his concern, another respondent said "we can't talk outside" for fear of being outed as participants in the case.

Some respondents reported that they would not feel safe unless the cases ended in convictions. "If the case is thrown out, then these people will start hunting for us," said one respondent. "When the perpetrators are sentenced, that is when I'll be free," declared another.

Reparations

More than half of Kenyan respondents said that reparations were their main reason for joining the ICC cases. Nearly all expected compensation when the trials concluded. Reparations were not respondents' only motivation, though. More than three-quarters of the respondents reported having other reasons for participating in the case, and roughly half said that convictions, if they occurred, would be the most important outcome of the cases. Indeed, most said any material assistance must be accompanied by formal accountability for the post-election violence.

The vast majority said that they wanted compensation in the form of individual reparations. Such direct payments, respondents said, could help limit corruption, provide greater equity across affected communities, and better address survivors' individual circumstances. They wanted individual compensation to replace lost property, pay school fees for their children, and move forward with their lives.

Collective reparations programs would be corrupted and divert funds, according to some interviewees. "Money can be paid in the wrong hands," said one respondent. "In the community, we won't get it. It will go to a chief or somebody else in charge. The people who suffered will not get it," said another. "Even the perpetrators will be able to profit," lamented a third.

Others worried that only certain communities would benefit from collective reparations, while others would be left out: "If it is a community project, how is it going to benefit someone who is far, far away?" Another respondent worried reparations would only be given to certain tribes: "Collective reparations wouldn't be fair because many tribes are affected, but only some would be given reparations. If assistance only goes to Kikuyus, it wouldn't be fair." "We want the ICC to treat us equally," declared a third.

Still, for most Kenyan respondents, convictions of those charged remained an essential component of justice. "Compensation is not the only solution," said one respondent. "The accused should be in prison so that others will learn." Another agreed:

> Compensation alone, it won't be enough. People will be compensated; then tomorrow the same thing will happen because actually this is not our first experience with election violence. We have had these clashes every five years. Every election time.

Only a small group of respondents said they preferred convictions to compensation. "I'd rather get something and see him acquitted," said one interviewee. Likewise, only a small group of respondents said that compensation alone was sufficient to achieve justice. "Whether I'm compensated or not, if people are being brought to book that will be the only justice I would like," said one respondent. For most, convictions without reparations, or the reverse, seemed like a betrayal of justice.

Convictions and reparations served different but equally necessary goals for Kenyan respondents. Convictions promised punishment for individual perpetrators, but also warned others not to engage in

similar criminality. "Convictions will be a good example for other countries and other people," said one respondent. Reparations, on the other hand, offered a new beginning for survivors of the violence.

Conclusion

In contrast to both Uganda and DRC, where most victims have limited understanding of the ICC, Kenyan victim participants have varied knowledge. Some victim participants are deeply aware of both substantive and procedural developments in their case. They watch the ICC proceedings on television, and can recount the details of individual witness's testimony. Others have less familiarity with the court, however, and may believe the ICC is headquartered in the United States or the Kenyan capital, Nairobi. The differences between participants make it harder to generalize in the Kenya cases. But there are some commonalities.

Nearly every victim participant rejects the suggestion that a domestic Kenyan court could handle the prosecutions of either Kenyatta or Ruto. Victim participants are also skeptical of a proposed African court trying the cases. The ICC, even if slow moving or susceptible to political influence, holds greater promise for justice than other judicial mechanisms.

Court-appointed lawyers give Kenyan participants confidence that their interests are represented at The Hague. But they still see the prosecutions as prejudiced, and point to ongoing issues of witness intimidation and bribery.

Kenyan victim participants also have more safety concerns than victim participants in any other country. Respondents fear reprisals from government authorities, other ethnic groups, as well as locals sympathetic to the accused. And as a result, many participants, even those who want more contact with the ICC, are afraid to meet with ICC staff or testify in The Hague.

The promise of reparations is a central reason that most Kenyan victims apply to participate in ICC cases. Nearly every victim expects individual compensation. Though for roughly half the victim participants in Kenya, convictions are even more important.

Our interviews occurred before the Office of the Prosecutor withdrew charges in the case against Uhuru Kenyatta or brought new charges against Philip Kipkoech Bett and Paul Gicheru for corrupting prosecution witnesses. It is likely that victim participants' views of the court have continued to evolve in light of these developments, which underscores the need to conduct future consultations and research with victims.

CÔTE D'IVOIRE

IN NOVEMBER 2010, following a contentious presidential election, the Independent Election Commission of Côte d'Ivoire declared Alassane Ouattara, a former senior International Monetary Fund official, the winner with 54 percent of the vote. Weeks later, in a decision that would ignite a violent struggle for power, the Ivoirian Constitutional Council overturned the Commission's verdict and named Ouattara's opponent—former President Laurent Gbagbo—the victor.[97] Violence erupted between Ouattara's and Gbagbo's supporters, leaving more than three thousand people dead and a million displaced.[98] In the commercial capital, Abidjan, Gbago's forces abducted political opponents from their homes, torturing and killing them. Others were burned alive, beaten to death with bricks, or simply executed. By late December Navi Pillay, the UN High Commissioner for Human Rights, had found "growing evidence of massive violations of human rights" in Côte d'Ivoire.[99]

On 11 April 2011, Ouattara's forces, backed by French troops, successfully stormed the presidential residence and arrested Laurent Gbagbo and his wife, Simone Gbagbo, known for her fiery speeches as the "Iron Lady." Seven months later, Laurent Gbagbo was transferred into ICC custody to face charges of crimes against humanity for his role in the violence and shelling perpetrated against protesters and civilians in March and April 2011.

In December 2014, the ICC found substantial grounds to believe that an associate of Laurent Gbagbo, who was a leader of the pro-Gbagbo youth movement, Charles Ble Goude—known as "général de la rue" because of his charismatic ability to rally civilian crowds—was responsible for crimes against humanity, including murder and rape.[100] The cases of Gbagbo and Goude were joined on 11 March 2015.[101]

Despite a 2012 ICC arrest warrant for Simone Gbagbo, the Ivoirian government refused her transfer to The Hague.[102] In March 2015, following domestic proceedings, she was sentenced to 20 years in prison for her

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97 See "Côte d'Ivoire: Ensure Security, Protect Expression, Movement: Constitutional Council's Overrule of Election Results Raises Risk of Violence," *Human Rights Watch* (4 October 2010).

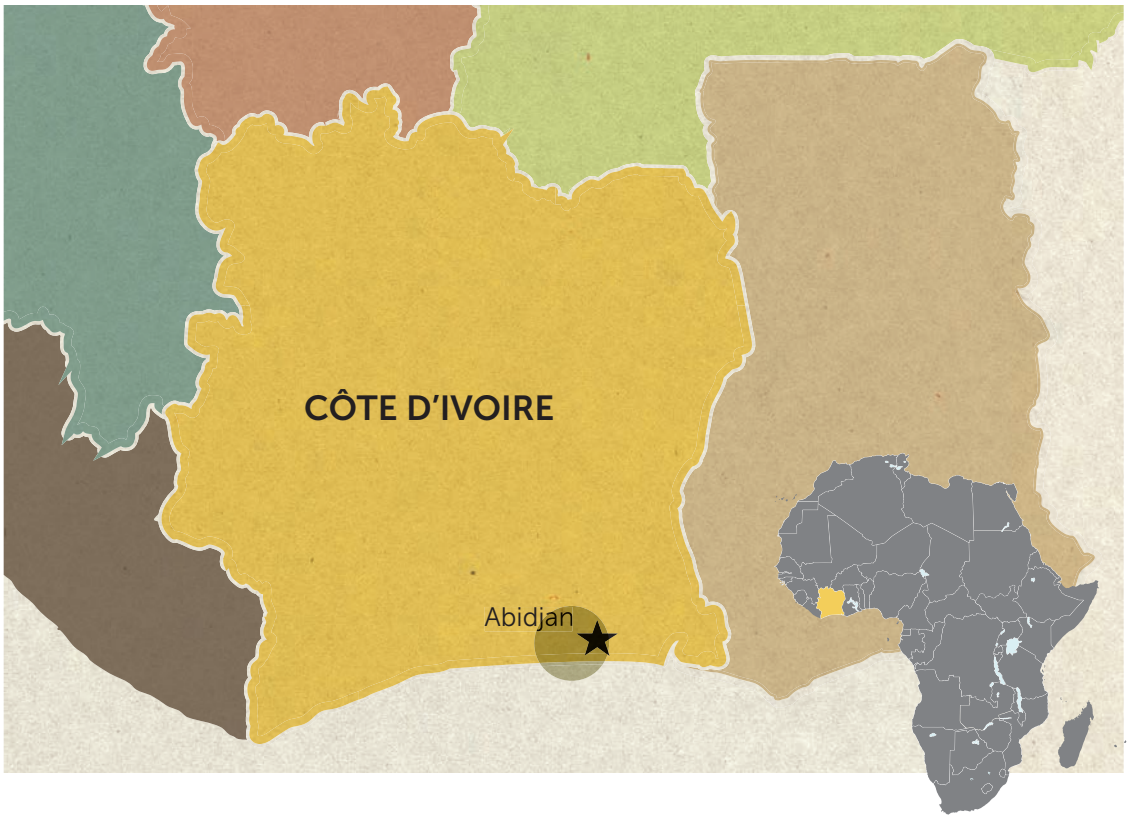
98 See "In Cote d'Ivoire, Civil Society Leads Effort to Realize Reparative Justice," *International Center for Transitional Justice* (3 February 2014).

99 Matt Wells, *"They Killed Them like It Was Nothing": The Need for Justice for Côte d'Ivoire's Post-Election Crimes* (New York: Human Rights Watch, October 2011), 90–102.

100 ICC Pre-trial Chamber I, *Decision on the Confirmation of Charges against Charles Blé Goudé*, Situation in the Republic of Côte d' Ivoire, ICC-02/11-02/11 (11 December 2014).

101 See ICC, *Situation in Côte d' Ivoire. The Prosecutor vs. Laurent Gbagbo and Charles Blé Goudé*, case information sheet, ICC-PIDS-CIS-CI-04-02/15 (2015).

102 Penelope Starr, "Is the Simone Gbagbo Verdict Justice for Côte d'Ivoire?," *UN Dispatch* (11 March 2015).



role personally distributing arms to death squads in the post-election violence.[103] On 25 May 2015, the ICC's Appeals Chamber confirmed Pre-trial Chamber I's decision that the domestic trial against Simone Gbagbo did not concern the same conduct as alleged in the case before the court and determined that the former president's wife must still be handed over to face trial in The Hague. If Côte d'Ivoire continues to refuse to transfer her, ICC judges could refer the matter to the court's 122 member states, which could then decide to impose sanctions.[104]

In the pending case against Laurent Gbagbo, ICC judges had certified 199 victims to participate in proceedings at the time of the research, as well as a dozen court intermediaries and a range of civil society organizations. The recognized organizations act as conveners, advocates, and conveyers of information for affected communities, and have also offered some material support to victim participants.

Population

Human Rights Center researchers interviewed 127 victim respondents in Côte d'Ivoire in November 2014 about their experiences with the ICC. All of the respondents identified themselves as victim participants in the case against Laurent Gbagbo, and reported having directly experienced violence during the post-election crisis. Unlike in other cases, all respondents hailed from one city, Abidjan. This meant that

103 Starr, "Is the Simone Gbagbo Verdict Justice for Côte d'Ivoire?"; ICC Appeals Chamber, *Judgment on the Appeal of Côte d'Ivoire against the Decision of Pre-trial Chamber I of 11 December 2014 entitled* "Decision on Côte d'Ivoire's Challenges to the Admissibility of the Case against Simone Gbagbo," Situation in the Republic of Côte d'Ivoire, ICC-02/11-01/12 OA (27 May 2015).

104 See "Ivory Coast's Former First Lady Simone Gbagbo Jailed," *BBC News* (10 March 2015).

CÔTE D'IVOIRE TIMELINE

2002	2003	2004	2005
Northern rebels launch an armed uprising against the government, including attacks in the main city Abidjan. France sends troops to support Côte d'Ivoire's military. The government retains control over the south, but loses the north to the rebels as a result of the civil war.	Laurent Gbagbo negotiates a "government of national unity."	Opposition supporters are killed in clashes with military forces.	The presidential election is postponed until 2010.

they had greater access to court staff and legal representatives, headquartered in the city.[105] A higher percentage of the victims were also active in civil society organizations, and through these organizations had more opportunities to discuss court practices and legal developments than was true of victim participants described in the other country sections of this study. Most respondents lived in just two neighborhoods: Abobo (83) and Yopougon (21). The vast majority reported that they still lived in the neighborhood where the violence had occurred.

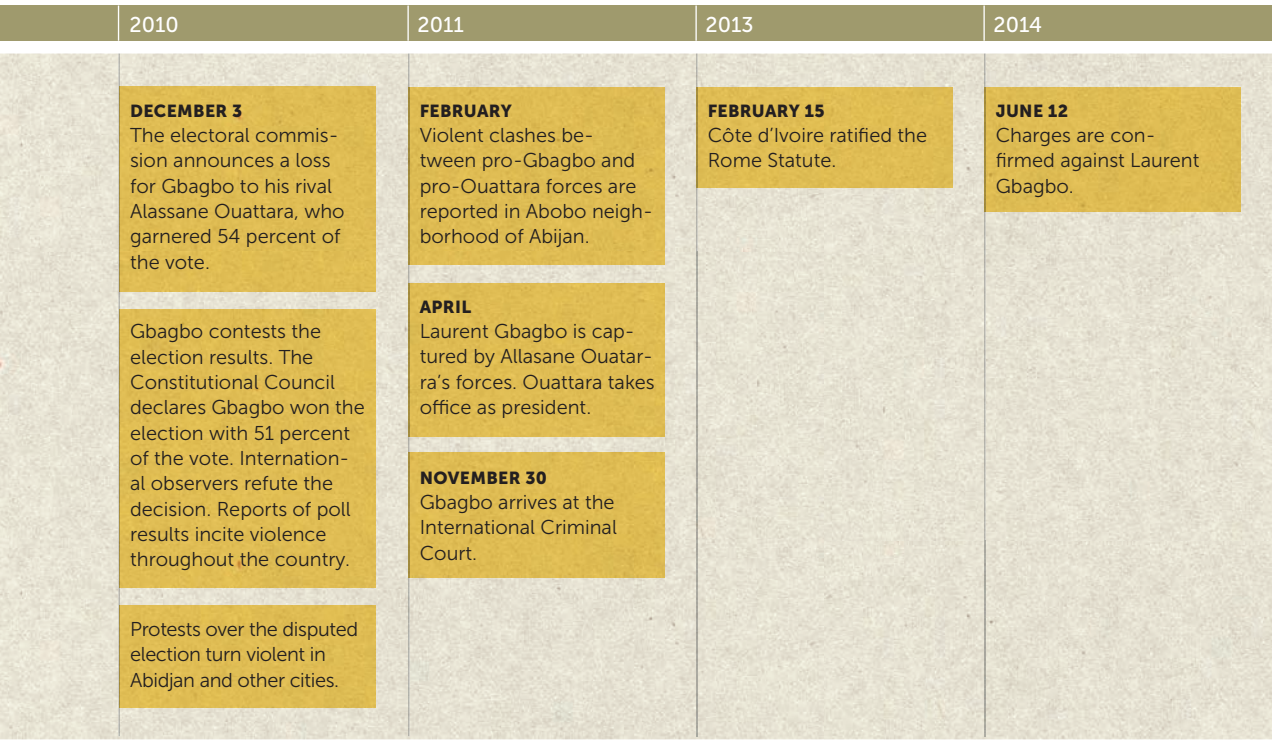
The population of Ivoirian victim participants included more women than men. HRC researchers interviewed 71 women and 51 men. All respondents were between the ages of 18 and 79 years. Respondents spoke French or Dyula and identified with three main ethnic groups: Dyula (16), Malinke (57), and Senoufos (21). The majority reported being Muslim (97) and most were married (83), either officially or traditionally. The sample included individuals who identified as sexual violence survivors. None had testified at the ICC in The Hague.

Building on the procedural justice framework discussed in the introduction, we examine below the answers respondents gave when we asked them whether they: 1) felt they had a *voice* in ICC proceedings; 2) viewed the ICC as a *neutral* arbitrator; 3) felt *respected* by court staff; 4) *trusted* the ICC; 5) felt *safe* being associated with the court; and 6) wished to receive *reparations* from the ICC.

Voice

Most Ivoirian respondents felt the ICC duly noted their views and concerns. Since none of the respondents testified in The Hague, their views were transmitted to the court through victim applications, court

105 Evenson, *Making Justice Count*.



intermediaries, and legal representatives. Respondents felt a duty to speak out. As one respondent put it: "I could not just cross my arms and do nothing. I needed to have my voice heard." Another said: "What happened was beyond me. Because of the killings I saw, I had to complete the papers. It was too much. I had to complete the form."

ICC applications took on particular importance for many Ivoirian respondents, who saw them as a means of conveying their hopes and expectations to the court. One respondent asked: "If I do not complete the application form, how could I be heard?" Another said: "I wanted my voice to be heard. That is why I completed the form—so people would know what happened to me." A few respondents said the ICC was the only mechanism to air their concerns. "We would be forgotten without the court. The court is there so our voice is heard. Without the court we will be nothing today. "

Respondents also believed that their applications would provide evidence to build the case against Laurent Gbagbo. "If we do not tell what happened," one respondent commented, "there will be no evidence for a conviction. We have to tell what happened." Respondents particularly resented government denial of the violence. As one put it:

> We are expecting the truth from the court because on the day of the killings they—I am talking about those who did it, those in power at the time—said there were no murders; they said it was untrue. We were shocked. They said the blood was faked, put on people during the filming of the events. . . . Gbagbo's defense lawyer said his opponents killed some pigs and that it was pigs' blood that covered people. We read what he said in the newspaper. It was shocking. It is the denial that pushes me to want the truth. . . . If there is a verdict, the truth will be revealed.

Few respondents reported practical difficulties with the application process, but it took an emotional toll on some. Most victims preferred individual forms, which could reflect their specific experiences and harms,

but a small group of women noted that collective applications offered an opportunity for "other women to speak" on behalf of those who feared making their own stories public.

In spite of the relative importance of individual applications, as in other cases, few respondents expressed a strong opinion about who should read their applications at the court. Most victims said a court staff person or court-appointed lawyer should review them. Fewer than a dozen reported that it was necessary for an ICC judge to read them.

Local intermediaries were another conduit for victims' concerns. Most respondents learned about the possibility of participation in ICC proceedings from the intermediaries and relied on them for information and communication with the court. Many respondents, especially those without formal education or facing economic hardship, viewed intermediaries as powerful "leaders" and "advocates" for their interests. Intermediaries served as go-betweens and as interpreters with ICC staff, legal representatives, and other organizations working to assist survivors of the post-election violence.

Respondents also viewed legal teams as conduits for their concerns. Many said they felt close to their legal representatives because they had a role in selecting them. In addition, most respondents had met with their legal representative. Some victim participants reported having met as many as ten times in the two years since submitting their applications. One respondent noted that her ICC attorney managed "the case of the women; she defends our case [at the court]." Another reported: "When [our ICC attorney] talked to us, we felt that . . . even if we are not there, we can tell her and she will talk on our behalf."

Most respondents said that lawyers helped explain the process, kept them updated on developments, and took time to hear their stories and respond to their concerns. "She listens to us," explained one respondent. "I am not over there, but our lawyer comes and tells us about the developments over there and asks our points of view. I think she listens to us and transmits what we say over there." Another said: "At the time of the confirmation of charges hearing, we had the feeling they were listening to us. The prosecutor explained what happened, and we felt it was really informative. In our exchanges, they ask about our suffering. They have empathy."

A few respondents wanted more direct involvement, either by attending proceedings or testifying at trial:

> They asked us about the possibility of testifying. It is a possibility. I would like to attend the trial. Attending the trial is very important. Others are going on our behalf whereas they are not parents of the victims or victims. We do not understand because nobody could talk on our behalf.

Some victims remarked that the case had not yet produced concrete changes in their lives. For many, however, giving voice to their perspectives had provided a sense of relief. One respondent explained: "Morally, I feel relieved. I do not know how to explain. It did not change anything physically, but morally, it is one way for me to honor people who perished during the crisis."

Neutrality

Most respondents reported that they were satisfied with the neutrality of the court, particularly as compared with alternative national mechanisms. Said one respondent, "To my knowledge, the International Criminal Court is an independent and neutral court. It prosecutes the perpetrators of war crimes who killed innocents, or people who are neutral. It renders the justice to victims."

Such views of ICC neutrality resulted from a widespread perception, quite different from respondents in Kenya, that the ICC was insulated from political bargains. According to one victim participant: "To be judged outside the country is fairer. Politicians always have political deals. They would say we need to drop

the case because of this or that consideration." Another respondent said, "The [ICC] doesn't get into politics," adding, "It is more equitable, fairer. That is why I prefer the court."

Unlike victim participants in Uganda, DRC, and Kenya, Ivoirian respondents had a good working understanding of the ICC as a criminal court, even if their knowledge about specific rules and regulations was limited. "The ICC prosecutes war crimes and addresses impunity in countries that could not prosecute or find a solution on its own," said one respondent. Explained another, "The world has decided to create [the court] to prosecute crimes that cannot be prosecuted domestically, nationally." Respondents overwhelmingly associated the ICC with criminal justice, and many noted its independent international character and the narrow scope of its jurisdiction over the most serious international crimes. "The International Criminal Court represents independent justice. It prosecutes people who committed crimes against humanity," explained one respondent.

Still, nearly a third of victim participants could not describe the ICC: "I hear everywhere, ICC, ICC, but I do not know what that is. Me, I am already old. I hear ICC, ICC, but I do not know if it is here or there." Another confessed: "I do not know about the ICC."

Updates from legal representatives also reinforced perceptions of the court's neutrality by allowing victim participants to distinguish fact from fiction in media reports and local rumor mills. Said one respondent: "Here there are rumors. People speak, but we do not believe it. We do not consider it as the truth. But those who come from over there, from the court, we consider what they say." According to another, "Often the newspapers report that Gbagbo will be released. He will not be prosecuted. He is not guilty. When our lawyer sees these reports in the Ivoirian newspapers, she comes and tells us not to believe in the newspapers, but to look at and wait for the ICC."

Despite frequent contacts with their legal representative, approximately half of all the Côte d'Ivoire respondents wanted more information about the case. The majority desired updates at least once a month. "I would like more information about the trial, the process, and the development in the case….Then I know someone is working on the case. This lack of information is what discourages people. When there is no information, people think the case will never end." Although most respondents preferred updates directly from their lawyers, the vast majority said they would be satisfied with information from an intermediary. One respondent said of court visitors:

> I would like them to come more often because when there is something in the newspapers it is often lies. When they come they often tell us something opposite than what we read in the newspapers. I would like them to come more often so they could explain what is really going on over there.

Respect

The overwhelming majority of Ivoirian respondents said they felt respected by the ICC. For these victims, regular interactions with ICC staff, particularly their court-appointed lawyers, gave a sense of being a valued participant in the case. "The ICC people respect us. They listen, we meet, we exchange," explained one respondent. Another said, "They respect us because they talk, explain, help, and listen to us."

Open communication signaled respect to respondents: "They respect us! When they come, they respect us. They listen to us. They want everybody to talk, to give their opinion. They ask questions. They ask our point of view. That is part of respecting us. These are group meetings but everyone can talk, in turn."

The willingness of ICC officials to take time with members of affected communities also contributed to respondents' feelings of respect. "They are patient, and take their time," said one respondent. "We are

not forced to answer questions if we do not want to." Respondents were especially animated when speaking about the ways that their legal representative and her team created space for them to ask questions and share their points of view. One respondent said:

> She respects us enormously. The way she behaves towards us. When [our lawyer] comes, she is nice. When she talks you are satisfied and happy, you forget you have a problem.

Some respondents did express some concerns about not being fully respected. Some worried that legitimate victims of the post-election violence had been excluded from the case. "They should send other people in the field, in addition to our lawyer, so they can see and understand what happened," one respondent said. "To neglect some victims, it is a lack of respect." Others expressed concern that legal representatives were not really listening to their views, even if they showed respect during meetings. As one respondent put it:

> I do not think they listen to us because when she comes, what we say, what we express, every time it is the same thing. . . . But they respect us because they demonstrate sympathy towards us. They are compassionate but there is no result.

Five Ivoirian respondents reported that they felt disrespected at the time of the interviews because there had been no results—both with regard to convictions and reparations. Yet in Côte d'Ivoire, such feelings of disrespect were rare. Nearly all the victim participants expressed satisfaction with their legal counsel and their communication with the court.

Trust

Most Ivoirian respondents also expressed trust in the ICC. "The ICC is helping us a lot," explained one respondent. "It is reassuring what the ICC is doing. It goes right into our heart, so we know, we can be peaceful. We can have justice and peace."

In large part this faith in the ICC equated to a faith in their lawyer. Respondents frequently reported that they trusted their legal representative to present their interests in The Hague. "I chose her because I have faith in her. She could represent me." Another said:

> I feel there is someone who is defending my interests. It is the ICC obviously. It is my lawyer. . . . She is a generous woman who is there to defend our interests. We feel supported.

Respondents' trust in the ICC traded on post-colonial racialized notions of international justice. "We have faith in you, white people," said one respondent. Several others underscored the significance of "white people" being involved in prosecutions. "This is an affair with white people . . . What they proposed, it is the way it would be done. . . . I think we Africans, we could not do it. We needed the help of the white people. You see me. I am black, but I am more confident in the white people than I am in the black people from my country." Respondents repeatedly credited "white people" for the legal process. "I completed the application because I wanted the white people to help us," said one respondent. "Because the white people really help people. Black people I would not want [to] be involved. Black people could try to help but, at the end, they abandon you. . . . I am confident in the white people. They have confirmed the charges against Laurent Gbagbo."

Respondents' trust in the ICC came with expectations for convictions. The overwhelming majority of respondents anticipated a conviction. "We have faith in the ICC to issue a good verdict in our favor," said one respondent. For some victim participants, Gbagbo's conviction was inevitable. "He is guilty!" declared

a number of respondents. Others, while more circumspect about the limits of formal justice, still held out hope for a conviction: "We are victims. We want to convict [Gbagbo]. What we wish for is a conviction."

Eleven Ivoirian respondents expressed misgivings about the ICC, mainly because of a lack of communication of concrete progress: "At first, we were a lot of people. But now, many people are discouraged. Many are discouraged because they leave their work to come to meetings but there are no results." Another said: "They always explain developments, but there are no results. We are tired now." A third said: "They told us nothing. We completed several papers in multiple offices but we have nothing."

Security

More than three-quarters of Ivoirian respondents said they felt safe participating in the ICC case against Laurent Gbagbo. Gbagbo's arrest and transfer to The Hague assuaged many of their initial fears. Respondents' sense of security also evolved with the maturation of the case. Nearly half said they felt safe at the time of the interview. When victims first completed their applications to participate, many felt uneasy about what might happen with the information. They did not know intermediaries, much less trust them. Many said they were scared to be identified. "I was very afraid because we did not know who was who," explained one respondent. "We did not know that person or the other person, even the lawyer who came I did not know who he was. I was scared. Now, it is fine." Another respondent said: "I was afraid because I thought the application form would be given to someone and those people would come to kill us. Now, I am confident. I am not afraid anymore." A third victim participant explained: "[At first,] I was scared I would be identified. I was scared of the supporters of Gbagbo. But now, I feel like a fish in the water."

By the time of these interviews, victims' fears had lessened. Interactions with lawyers and court staff had reassured participants of the confidentiality of the process. Some respondents pointed to numbers assigned by the ICC to anonymize applications as proof of confidentiality. "The ICC gave us a code. They do not call us by name but use a code," said one respondent, adding: "It is because of the perpetrators. They are still among us."

Some still harbored fears—and for good reason. Thirteen respondents reported being threatened at some point because of their participation in the ICC case. One victim participant said:

> They threatened me. They called me on my phone and threatened me because, my father, everybody saw my father on TV. They saw me on TV, too. . . . They said, 'Ah this is his daughter, they killed his five children.' The information was supposed to be confidential, but it was not. I was scared. . . . We were threatened because of the ICC. We were threatened. This is why we asked if the ICC could provide a computer, so if the ICC sends something, we can receive it at home directly.

Others reported apprehension about reprisals from Laurent Gbagbo's supporters. One respondent said: "I was scared at the time of the application, and I am still scared. We do not know who is who, who is around us. Laurent Gbagbo's supporters are everywhere around us, among us. They live like us." Another respondent said: "Someone recently called and asked about the ICC. I did not know the caller. He called twice. This is what makes us a little bit afraid still." Another said: "At first, I was scared. We were scared because they threatened us. They threatened us here. Now it is better. It stopped."

Other victims said they were no longer as fearful as they once were, but still needed to be careful: "When we completed the form, we were scared because arms were in circulation. We do not know who is who. Some are supporters of Gbagbo, even now. . . . When we go into town we do not talk about the case because we do not know who is who. We do not wish to be eliminated before the trial. We stay quiet. If the court needs us, and they say they would protect us, no problem. We can testify."

A few respondents said that after surviving the post-election violence, they were now fearless. "Before you get burned, you are scared of the fire, but after you get burned you know what it is." Another said: "I was not afraid because after what happened to me I am beyond fear. . . . I have seen everything already. Someone came to kill me, but he did not. Now I cannot be afraid of anything."

Reparations

Ivoirian victim participants generally prioritized convictions and punishment over reparations. "The first thing, it is justice, a conviction, a guilty verdict, then we would be satisfied," said one respondent. Only a small minority of respondents reported that material assistance or other forms of reparations motivated their applications to join the case. More than two-thirds of respondents said that convictions and compensations should go together, however. One respondent said: "It is not possible to replace a life, but I would say, for us, the victims, reparations are part of justice." Respondents often demanded that Gbagbo pay restitution for his crimes. "If he is guilty and they put him in prison that means he needs to pay with money for his crimes," said one respondent. Another explained: "Justice comes first, and then the accused compensates the victims." For many respondents serving a criminal sentence was not enough: "He has to pay for what he did. Even if he is given 50 years in prison, that is nothing." Most respondents said when the issue of compensation came up that individualized payments and medical care would be best, but a few respondents supported more collective forms of reparations, such as hospitals or schools, which, they pointed out, would benefit perpetrators as well as victims.

Criminal trials offered an opportunity for public recognition, according to some respondents. "We have to honor those who were killed. We saw them being killed right before our eyes, we cannot forget," explained one respondent. Another said: "I expect nothing else but the truth… The only thing we want, us, small people, is to recognize the perpetrator as the person who committed the crimes." Convictions were a first step for many. "We lost parents, some survived but have bullets in their bodies, or lost their work. This is why we asked if it could be possible to be helped, but first we want a conviction."

Less than two dozen Ivoirian respondents said they were focused exclusively on securing economic or medical assistance. "I thought they could give me a house and food," said one respondent, "that is why I came." Others looked to the ICC as a potential patron. "We want a compensation so we can live better. Otherwise, it is difficult," said one respondent. Another explained that "even if there is no money, they could still give us something. If there is no money, food is good. Medical care is good also."

These respondents, who often faced tremendous hardships, hoped for assistance independent of any reparations decision. "I want the ICC to help us, to provide financial assistance before the end of the trial," said one. Another said: "If we wait for the trial, many victims could die." The desire for assistance was especially pressing for those victims who lost older children and thus a critical source of labor, or were struggling to support young dependents. One respondent said:

> We are the victims. It is not possible to pay for the death of my children but those children were helping me. . . . Now, I pay the rent and raise children. It is difficult for me. If they could take the role of those who were helping me, this is what I want.

Such desired support did not need to come from the ICC, however. Respondents said the point was to guarantee basic assistance to those in dire need. "The well-being of the country is important to me. It is what makes me feel good," said one respondent. Another said: "The most important thing is to get help, the source

is not important. It would please me to get some assistance." In general, though, respondents in Côte d'Ivoire recognized the ICC as a court tasked with prosecuting crimes, and not an aid organization.

Many respondents looked to the government to provide compensation as well as assistance and psychosocial support to those who had suffered during the post-election crisis. "It is the responsibility of the state," said one. "The state has to ask: what can I do for my sons who are victims?" Another respondent said: "We will turn to the government. I want it to pay the victims, literally." Respondents expressed a general view that the government should bear some responsibility for assisting victims of the post-election crisis. One said:

> I want the conviction of Laurent Gbagbo. But the state needs to do something for those people who have pain. . . . Some have bullets in their bodies. Others are injured. We suffer. But we want justice first, and then something for the victims.

Although respondents sought assistance, many respondents put their hopes for compensation into the hands of higher powers. Nearly two dozen respondents said the outcome would depend on "God's will." One respondent said: "If Gbagbo is convicted and sent to prison, but there were not reparations, it is God's will and the ICC did what it could. Still, it would be difficult to me." Another said: "In terms of justice, we need to be compensated. But it will be in the hands of God." A third declared: "With everything we lost, we will be in the hands of God."

In Côte d'Ivoire, ICC staff and court intermediaries generally steered clear of discussions of reparations to avoid raising victims' expectations. As a result, respondents rarely mentioned reparations by name. Nearly a third of the respondents said they did not understand the meaning of reparations when asked by an HRC researcher. Still, respondents talked frequently about their desire to have the ICC aid in processes of reconstruction. According to one intermediary: "People do not understand the term reparations, but they understand compensation."[106]

Conclusion

Ivoirian victim participants differ from victim participants in other countries. They have, on average, a better understanding of the ICC, more knowledge about their case, meet more often with their legal representative, and prioritize convictions over assistance or reparations. Nearly all of them view the ICC as primarily a criminal court and care about its prosecutions.

The difference may be due to victim participants' concentration in the capital city of Abidjan, which facilitates communication and gives them greater access to information about the ICC, as well as the active involvement of civil society organizations in providing updates about ICC developments. Regular meetings and ongoing updates about the case give respondents a sense that their views and concerns are being taken seriously.

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106 Few respondents in our study had a conception of reparations beyond compensation, but compensation was nearly always intertwined with other demands for justice and truth. See also Simon Robins, *"To Live as Other Kenyans Do": A Study of the Reparative Demands of Kenyan Victims of Human Rights Violations* (New York: International Center for Transitional Justice, July 2011).

As a result of participants' regular interaction with the court and their common legal representative, victims see the court as unbiased and capable of delivering justice. They strongly prefer the ICC to national courts.

Still, victim participants' ultimate satisfaction may depend on the judicial outcomes. Ivoirian participants' trust in the ICC is deeply rooted in a belief that the accused will be convicted, and an expectation that compensation for their losses and suffering will follow. These high expectations may result in great disappointments.

CONCLUSIONS AND RECOMMENDATIONS

We offer the following conclusions and recommendations:

Conclusions

Most victim participants have insufficient knowledge to make informed decisions about their participation in ICC cases. Respondents' understanding of the ICC's mandate, basic structure, and most important rules varied depending on location. Respondents in rural areas tended to have far less knowledge of or information about the ICC than did respondents in urban communities. Few knew the location of the court's headquarters, and many believed the ICC was an aid organization rather than a criminal court. The best informed respondents lived in cities, had more regular contact with ICC field staff, and had better access to information about developments at the court. For example, victim participants in Abidjan, Côte d'Ivoire, had a good understanding of the ICC and wanted to participate in legal proceedings. In contrast, rural participants in Uganda, DRC, and Kenya often lacked access to information about the court or its cases.

Victim participants want convictions. Most victim participants said that they expected the court to deliver convictions and that they would be disappointed by anything less. Few respondents expressed doubts about the guilt of the accused. (There was one exception: In DRC, some child soldiers said Thomas Lubanga Dyilo, a militia commander on trial for recruiting child soldiers, should be acquitted because he housed and fed them during the conflict.) Most victim participants said that high-level cases should be tried at the ICC and not in local or regional courts. They also expressed frustration that the ICC would not be prosecuting lower level offenders. In Uganda, respondents complained that no action had been taken to prosecute government actors.

Victim participants want reparations. Victim participants joined ICC cases with the expectation that they would receive reparations. In Uganda and DRC, the prospect of receiving reparations was the primary motivation for the overwhelming majority of victim participants; in Kenya and Côte d'Ivoire, less than half reported that receiving reparations was their main objective. Nearly all respondents, however, reported an interest in individualized reparations for themselves and others. Their conceptions of reparations were frequently interwoven with local conceptions of justice.

Victim participants find value in filling out individual applications, but few are concerned with who at the court reviews them. Victim participants reported that completing an ICC application gave them confidence that their experiences would be known at the court and aid in building a case against the accused. Few said that the judges needed to review them, however; most said they would be satisfied if any member of the ICC read their application.

Few victim participants want to participate directly in trial proceedings. Of the hundreds of ICC victim participants interviewed for this study, few said that they wanted to participate in person in trials at The Hague, and some felt that such exposure could lead to reprisals. The overwhelming majority reported that they were pleased to participate through intermediaries or their legal representatives who could convey their stories to the court. Even among victim participants motivated by the promise of criminal convictions, few said they needed to appear at trial to confront the accused.

Victim participants express frustration at the length of trials, which, in turn, fosters distrust and disappointment. Victim participants, like other observers of the ICC, complained about the inordinate length of the ICC judicial process. Many victim participants were concerned that they would die before verdicts or reparations decisions, and some worried that delays in proceedings could compromise their personal information and cause them security problems. Some said that such delays signaled corruption at the court, and that infrequent updates about court developments damaged goodwill in their communities.

Victim participants' satisfaction with the ICC depends largely on their personal interactions with ICC staff and their legal representatives. Most victim participants said that ICC staff treated them in a professional and respectful manner and genuinely cared about their suffering and loss. However, nearly all respondents wanted more interaction with ICC staff or their legal representatives. Few participants reported that they had met with ICC representatives or legal representatives more than three times. Many said they had had only one meeting with a lawyer or member of the court. Some had only interacted with court intermediaries, which gave them the impression that the ICC did not value their views and their testimony. Interactions with ICC staff, intermediaries, and especially legal representatives were a key determinant of respondents' satisfaction with the court.

Victim participants fear reprisals. Some participants, in Kenya and DRC especially, feared that they could be targeted for violence because of their association with the ICC and its representatives. In Kenya, instances of intimidation and witness disappearances led victim participants to fear that the accused could use the apparatus of the state to target them. They pointed to the intimidation and disappearance of witnesses as evidence of risk. In DRC, victims feared that their association with the ICC left them vulnerable to attack by local warlords or hired thugs. Ongoing violence and shifting political alliances continue to make partnership with the ICC a potential liability in both countries. In contrast, victims in Uganda and Côte d'Ivoire, where violence had subsided and perpetrators lacked political power, expressed fewer concerns about reprisals.

Recommendations

The following recommendations stem from three key observations emanating from this study. First, the victim participation program has created high expectations that can lead to great disappointments. Second,

victim participants are often poorly informed about how the ICC works in general and, specifically, what it means to be a victim participant. And, third, victim participants may be led astray by their own expectations or by the failure of the ICC or its representatives to be forthright about what it can and cannot provide.

Recommendations to the International Criminal Court:

Create a greater separation between victim participation programs for victims who wish to participate in the legal process and programs for victims who seek support either through the reparations process or through petitions to the Trust Fund for Victims. Our findings show that most victims who apply to participate in ICC cases are not motivated to participate directly in trial proceedings. They join cases because they believe it will result in material support or reparations or because they believe their statements will contribute to the conviction of the accused. Victims often believe that by completing a victim application, they are communicating their interest in material assistance to the court. Court staff and their representatives should make clear to victims from first point of contact that individual compensation will not result from participation in judicial proceedings or affect the availability or disbursement of material support at the reparations stage, should one occur. Applications to participate in trials should be separate from victim statements about harms suffered. Reforms that increase ICC transparency and eliminate the expectation of compensation from participation in trials could reduce the number of victims who wish to participate in trials, and create a more efficient and meaningful system for victim participation.

Provide greater field support to common legal representatives and rely more on legal assistants in ICC situation countries. Legal representatives help determine the quality of victim participants' experiences participating in trials. Legal representatives act as conduits for information, correct misinformation, and represent the perspectives of participants in The Hague. A victim participant's legal representative can be as important to them as defense counsel is to the accused. Lawyers representing victim participants need adequate support in ICC situation countries to conduct regular outreach meetings and host bi-monthly consultations. Most victims who took part in our study want a minimum of bi-monthly updates on proceedings and bi-annual visits from ICC officials. Regular opportunities to learn about, discuss, and debate ICC activities and developments are necessary for meaningful participation in trials. These interactions also promote feelings of safety, provide reassurances of confidentiality, and signal continued interest in victims' perspectives. The court should consider employing more legal assistants to achieve these goals.

Find ways to speed up the trial process. Current timelines for cases make victim participants feel anxious, resentful, and even abandoned. It is important to communicate a clear horizon for cases and provide timely updates to victim participants, who should not have to wait more than five years for trial outcomes and reparations decisions. ICC policies of limited outreach during lulls in cases should be reexamined in light of our study findings.

Train ICC staff and their representatives to be extremely clear about what the court can and cannot provide victim participants. Our research shows that most victims join ICC cases because they believe that prosecutions will result in convictions and individual reparations. Many also develop unrealistic hopes for what the court can provide: Some develop these expectations on their own, while others develop them because of what they were told by ICC staff and their representatives. Further, the level of protection, care, and other support available from the ICC, including the scope of services and support that can or will be provided by the Trust Fund for Victims, must be made clear to victim participants.

Recommendation to the States Parties:

Support the International Criminal Court by investing in outreach and robust educational programs for victim participants, particularly in rural areas. Meaningful victim participation in ICC cases will remain a myth without more widespread victim education about the court, its processes, and its procedures. The legal process is complex and often disconnected from the needs and concerns of victims. More outreach and training is needed, particularly in rural regions, to ensure that victim participants understand their rights, their options for participation, and the limitations of the court's mandate. The court must also ensure accurate, detailed, and frequent information about cases. Victim participation regimes that operate outside of victims' understandings fall short of legal requirements in Article 68(3) of the Rome Statute. States Parties and other donors should support the ICC so that it can increase its victim-related services and field staff in situation countries and greatly improve its use of communications technologies. For example, the court should find ways to use mobile phone networks and SMS systems to establish regular channels of communication about new cases, especially with victims in rural areas.

APPENDIX 1: AUTHORS AND ACKNOWLEDGEMENTS

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APPENDIX 2: VICTIM PARTICIPANT QUESTIONNAIRE

Human Rights Center
University of California, Berkeley School of Law

Victim Participation Questionnaire

Background Information

- Date
- Location
- Sex
- Language
- Victim of the case/Victim of the situation/Other victim

General Information

- Where do you live? Is this where you were at the time of the violence?
- Do you identify with a tribe or ethnic group?
- How old are you?
- Do you have any dependents? If so, how many?
- What is your primary type of work?

Applications

- How did you learn that you could participate in the ICC case?
- What are your reasons for filling out the ICC application?
- Do you know what happened to your application?
- Who do you believe will read your application?
- Who would you like to read your application?
- Is it important to you that a judge reads your application? Please explain.
- Did you experience any problems completing the application? Please explain.
- How would you improve the application process?

Security

- Has engaging with the ICC created security concerns for you?
- What would make you feel safer?

Knowledge about the court

- Can you briefly tell me what you know about the ICC?
- How do you get information about the ICC?

Relations with the court

- Has the court communicated developments in your case to you?
- How often have you met with people from the court?
- How often do you feel people at the ICC should visit you?
- What would you want to discuss with them?

Legal Representatives

- Have you met a legal representative? How many times?
- How do you feel about your legal representative?
- What do you expect your legal representative to do for you?
- How important is it for you to meet with a legal representative?
- How often would you want to meet with your legal representative?

Procedural Justice

- Do you believe you have a voice in the proceedings? How so?
- Do you feel that people at the court know your personal story?
- Has the ICC has treated you with respect? How so?
- Do you trust the court? Please explain.

Expectations/Aspirations

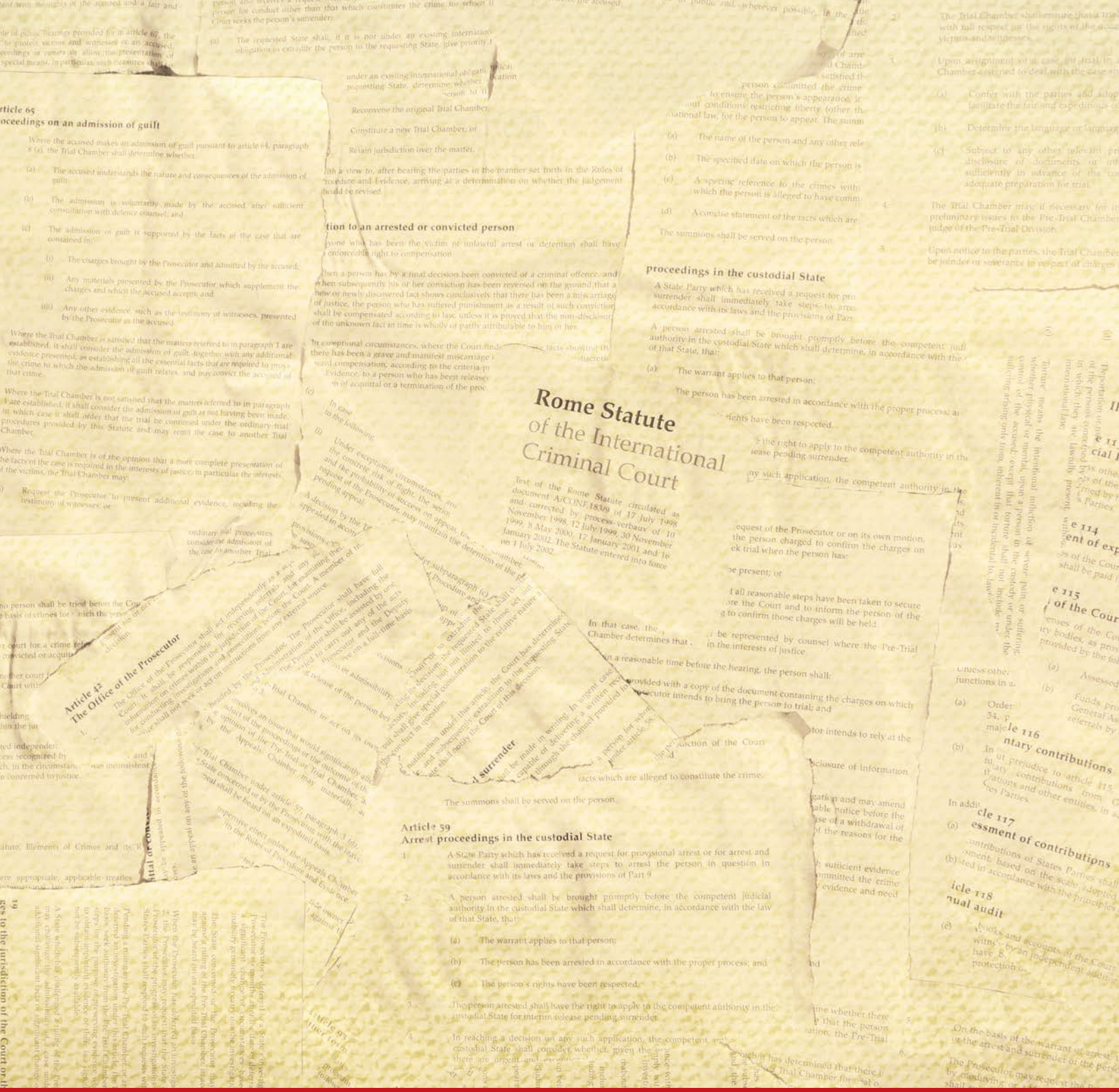
- Other than submitting an application, do you want to participate in the case in other ways? Please explain.
- What do you expect will happen as a result of your participation in the case?
- After what you have experienced, what would constitute "justice" for you?
- Has participating in the case changed your life in any way?

Reparations

- Can you explain to me your understanding of reparations?
- Are reparations the main reason that you filled out the application?
- Do you have other reasons for participating in the case?
- How will you feel if no reparations are awarded in your case?
- How will you feel if the perpetrators are convicted but no reparations are awarded?
- If there are reparations, do you think they should be given to individuals or collectively to the community? Please explain.

Conclusion

- Is there anything else that you think it is important for me to know about your participation in this case?



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