

# HUMAN RIGHTS CENTER

UC Berkeley School of Law



## THE VICTIMS' COURT?

A Study of 622 Victim Participants at the  
International Criminal Court

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




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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# EXECUTIVE SUMMARY

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**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.<sup>1</sup> 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.”<sup>2</sup> 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.<sup>3</sup> 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.”<sup>4</sup>

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.<sup>5</sup>

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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 Participation 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*:

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 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.

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*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.

## 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.



