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Introduction

Ugandans have a complicated relationship with the International Criminal Court (ICC). The armed conflict and atrocities against civilians that took place in northern Uganda undoubtedly deserved international attention and censure. When the ICC trained its sights on the Ugandan situation in 2004, many welcomed its intervention. But its impact has been mixed. There have been accusations that the Court promoted a form of justice at odds with cultural practices of northern Ugandans, ignored crimes by the Ugandan military, and hindered peace talks with the Lord's Resistance Army (LRA). However, since the collapse of the Juba process in 2008, the ICC has largely faded from the headlines. Today, eight years after the Court began its investigations in Uganda, there have been no arrests, no trials, and no reparations. The ICC is winding down most operations in Uganda, although it remains ready to ramp-up again if arrests occur.

What role can the ICC play in Uganda going forward? To address that question one must not only look at the actions of the ICC but also at the approaches or standards it seeks to advance. A key principle of the Rome Statute is complementarity—the ICC will only intervene if a state is unwilling or unable to pursue accountability in a way that meets the ICC's standards. Some argue that other ICC standards, such as witness protection, reparations, or victim participation should also be promoted. Whether or not there are arrests, some states and civil society organizations will push for these standards to be met.

This policy report addresses the ICC's approach to transitional justice and its past work in Uganda, based on conversations with victims of conflict and members

of civil society. To identify major questions and concerns about the ICC from victims' perspectives we convened focus group discussions (FGDs) in three communities that were particularly affected by the civil war: Barlonyo in Lango sub-region and Lukodi and Palabek Kal in Acholi sub-region. Participants were purposively selected to achieve input from men and women, and to engage with individuals who experienced diverse forms of harm, ranging from abduction to murder of loved ones to sexual violence to destruction of property. In two communities we held separate discussions with groups of men and women. In another community we met with one group of formerly abducted persons (FAPs) and one group of local opinion leaders. In total we met with 19 women and 20 men.¹ All community members who participated in these discussions considered themselves victims of the conflict.

In addition to these discussions, we interviewed members of 14 different civil society organizations that work extensively on transitional justice issues. These meetings were held in Soroti, Gulu, and Kampala. We also include a short column by the regional program officer of the Trust Fund for Victims (TFV) explaining its policies in Uganda.²

¹ Participants were guaranteed anonymity. They were expressly told that the researchers were not working with or for the ICC, and that no harm or benefit would come as a result of their participation. Group discussions were conducted in Luo or Lango and were later translated into English to be analyzed.

² Several requests for clarification were also sent to the ICC's Office of the Prosecutor in the weeks before this policy report was published. No response was received.

We cannot make claims about the views of all northern Ugandans based on this limited number of conversations. However, we believe that these targeted FGDs and civil society discussions give us insight into key opinions and concerns for victims. Our findings are organized according to several of the major transitional justice issues. While victims and civil society members had diverse and sometimes conflicting opinions on the ICC's legacy and its ongoing relevance, several positions seemed to be widely held:

- First, there is a great desire for an institution with the capacity to hold accountable leaders who oversaw widespread violence. Victims were sceptical that the Ugandan court system could advance such accountability, or that traditional justice practices could address leaders responsible for widespread atrocities. Despite the appeal of accountability by the ICC, discussants felt it had partly failed thus far—no LRA leaders have been arrested and there is little evidence that the Court investigated possible crimes by the Ugandan military. For that reason, one of our respondents referred to the ICC as “the barking dog that does not bite.”³ Going forward, impartial and effective accountability should be promoted.
- Second, victims greatly desire rehabilitation and reparations. The TFV has provided assistance to victims and would be the organ that implements ICC reparations should they be ordered upon convictions. However, few victims or civil society actors were well informed about TFV assistance programs. In the future, reparations that are sensitive to victims, and designed through consultation, should be promoted. Regardless of whether the ICC gives reparations to victims, other donors – especially the Ugandan government – will need to contribute.
- Third, while the Court's outreach operations have helped inform many people about its major activities, many of our discussants wanted more information about the ICC's work and a greater voice in its operations. Although the Court's approach to victim participation remains largely untested in Uganda, discussants overwhelmingly expressed a desire to participate in judicial proceedings and to have a lawyer advance their interests. They also requested greater transparency and engagement from the Court, whether or not there are new judicial proceedings.

³ Male respondent, interview in Soroti, Teso sub-region, 9 July 2012.

In sum, victims and civil society members expressed a general desire for enforcement of key principles of the ICC—complementarity, accountability, impartiality, victim participation, and support for reparative justice. However, many felt that the operationalisation of these principles has left much to be desired. Going forward, the ICC and civil society supporters will need to see how victims' expectations and Court behaviour can be brought into closer alignment.

A Brief History of the ICC in Uganda

Armed conflict has plagued northern Uganda for several decades. Most prominent has been the civil war between the Ugandan government and the LRA. In late 2003, at a high point in this conflict, the Ugandan government referred the situation to the ICC.

The ICC was created by the Rome Statute, a treaty negotiated by many countries in 1998 that entered into force in 2002. Given the opposition the Court faced from countries like China, Russia, and the United States under George W. Bush,⁴ many believed that the ICC would win more support from the international community if it involved itself in non-controversial cases. Uganda seemed a good fit. The humanitarian crisis in the northern part of the country was getting attention from aid groups and the United Nations, the LRA was not supported by any major powers, and the Ugandan government itself invited the ICC's involvement.

Investigations began in Uganda in early 2004. In mid-2005 the ICC issued arrest warrants for Joseph Kony, the LRA leader, and four of his commanders: Vincent Otti, Okot Odhiambo, Raska Lukwiya, and Dominic Ongwen. They were accused of committing war crimes and crimes against humanity, ranging from murder to sexual enslavement. To date none of the charged persons have been captured, although Lukwiya and Otti have since died.⁵

During peace negotiations between the LRA and the Ugandan government, many observers feared that the ICC's involvement would obstruct a peace deal.⁶ The government created the International Crimes Division

⁴ There are now 121 members of the ICC, called States Parties, including many countries of Europe, Africa, and South America. The United States is not a member and it does not contribute to the ICC's budget, but under President Barack Obama the United States has offered some cooperation and diplomatic support.

⁵ Lukwiya was killed in a clash with the Ugandan military in 2006. Otti was executed on Kony's orders in 2007.

⁶ For a nuanced treatment of the topic, see [Refugee Law Project Working Paper No. 22](#), October 2012.

ICC IN UGANDA TIMELINE

14 Jun 2002	Uganda ratifies the Rome Statute
16 Dec 2003	President Museveni refers the situation concerning the LRA to the ICC
9 Jul 2004	ICC Prosecutor (OTP) opens its investigation into the Uganda situation
6 May 2005	OTP submits a request for warrants of arrest for Joseph Kony, Raska Lukwiya, Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Ruska Lukwiya
8 Jul 2005	Pre-Trial Chamber II of the ICC (PTC II) issues sealed warrants of arrest
13 Oct 2005	PTC II unseals the warrants for arrest, making this knowledge public
11 Jul 2007	Proceedings against Raska Lukwiya were terminated following his death
26 May 2008	Ugandan government sets up a special War Crimes Court (International Crimes Division since 2011) with the mandate to try the LRA
9 Jul 2008	Uganda confirms that a peace agreement was not signed in Juba and that it remains committed to continuing to seek the arrest of indictees
10 Mar 2009	PTC II determines that the <i>Kony et al.</i> case is admissible under the Rome Statute
16 Dec 2009	Appeals Chamber of the ICC confirms admissibility of the <i>Kony et al.</i> case
9 Mar 2010	Ugandan Parliament passes the International Criminal Court Act
11 Jul 2011	Thomas Kwoyelo trial before the ICD begins

Victims' participation before the ICC

In the proceedings related to Uganda, PTC II issues five decisions in relation to victim participation and grants participation status to total of 62 victims.

of the High Court (ICD) to try domestically the same kinds of crimes as the ICC pursues, including genocide, crimes against humanity, and war crimes.

Various sections of the ICC have been operating in Uganda:

- The Office of the Prosecutor (OTP) investigates crimes to build cases against perpetrators.
- The outreach section seeks to inform the public about the Court.
- The Victims Participation and Reparations Section (VPRS) helps victims apply to participate in legal processes.
- The TFV funds assistance and rehabilitation for victims of crimes that fall under ICC jurisdiction,

and would assist reparations processes after a conviction.

The ICC is currently pursuing a "maintenance strategy" in Uganda, because there have been no arrests or significant judicial developments for several years. The Court, which faces budgetary pressures, is shifting resources and staff to other situations. If there are arrests, the ICC will need to ramp up investigations, outreach, victim participation, and possibly TFV operations. It therefore seeks to sustain its relationships with civil society, victims, and other actors.

Key Findings

Accountability

It has been argued that the ICC's retributive approach to accountability will not resonate with northern Ugandans. In our community discussions, however, many participants expressed a desire for international assistance to pursue accountability against LRA commanders and Ugandan government and military leaders. This section looks at this support for the ICC's approach to accountability and at discussants' main criticisms of the Court's activities to date.

Support for Criminal Accountability

The vast majority of focus group participants supported the ICC's pursuit of criminal legal responsibility for top leaders. Community members explained that it was the leaders who decided to use force to resolve their differences, who set policies for the mistreatment of civilians, and who failed to hold accountable the direct perpetrators of atrocities. As one man explained, "There is a saying that 'It is the commander of the black ants that searches for the termites and calls its comrades to feast on them.'... To me both the government and the LRA leaders are responsible for the damage caused."⁷

⁷ Male respondent, FGD in Palabek Kal, Lamwo district, Acholi sub-region, 7 July 2012.

Community members almost unanimously proposed that children who were abducted and conscripted by the LRA should go through rehabilitation and traditional justice practices. They felt that abducted persons had little choice but to participate in violence and should therefore not be held fully responsible for their actions.

Support for ICC accountability for leaders, but not other combatants, fits well with Court practice. The OTP's policy is to focus on perpetrators who "bear the greatest responsibility" for war crimes and crimes against humanity.⁸ At the same time, the OTP encourages states to prosecute lower level perpetrators in domestic courts.⁹

The ICC provides an appropriate form of accountability for leaders, many community members told us, because it gives the opportunity for public testimony about crimes committed and the punishment of those responsible. Several participants argued that the crimes in Uganda were so grave that they warrant the attention of the world, which the ICC helps to provide.

Among focus group participants there was less consensus on appropriate punishment for perpetrators. Some proposed that once leaders are tried and convicted, they should get a chance to admit their crimes and be forgiven. Others expressed concern that convicted persons would live in a luxurious prison. Several formerly abducted persons insisted that LRA leaders deserve severe punishment. As one young woman said, "Kony deserves a slow and painful suffering for months or years, to match whatever suffering he caused to the people of northern Uganda."¹⁰ Further discussions with victims and affected communities are necessary to explain ICC approaches to sentencing and to see if some agreement on appropriate punishment is possible. The ICC does give victims the possibility to present their views on sentencing, though it is not yet clear how much impact these contributions will have.

Is the ICC the best way to hold leaders accountable? Many but not all focus group participants held this

⁸ Most community members were aware that the ICC took this approach. However, former members of the LRA told us that their commanders promoted quite different views. For example: "While we were in captivity we heard about the ICC but we were deceived. We thought that once we escaped back home we would be arrested by the ICC and killed." [Female respondent, FGD in Palabek Kal, Lamwo district, Acholi sub-region, 7 July 2012.]

⁹ ICC, Prosecutorial Strategy 2009-2012, 1 February 2010, para. 19.

¹⁰ Female respondent, FGD Palabek Kal, Lamwo district, Acholi sub-region, 7 July 2012.

position. Respondents were sceptical towards accountability processes led by the Ugandan judicial system, which they believed would be corrupt or biased against LRA suspects, and which would ignore crimes committed by the Ugandan government or military. This scepticism extended to the International Crimes Division. Community members had little knowledge about it, and wanted assurances of its impartiality and effectiveness. While several civil society members echoed these concerns, some supported the development of the ICD as a domestic accountability option. However, they cautioned that it needs to address concerns about neutrality, proper treatment of witnesses and victims, and past amnesties, all of which troubled the trial of Thomas Kwoyelo.¹¹

A more viable alternative to the ICC, according to our discussants, is traditional or customary justice. A few community members suggested that Kony and other LRA leaders could be forgiven and reconciled with communities if they would come out of the bush and apologize. However, many thought traditional justice would not work for such leaders. Some pointed out that LRA commanders had been offered amnesty and community forgiveness in the past but had ignored these opportunities. Several members of civil society organizations noted that traditional justice mechanisms might not be fit for perpetrators whose crimes affected many communities, including those belonging to different cultural groups.

Criticisms of the ICC's Approach to Accountability

Discussants had three main criticisms of the ICC's approach to accountability: its impact on peace negotiations, its failure to get arrests, and its apparent disregard of alleged crimes by the Ugandan military.

The ICC's intervention in Uganda began during a period of negotiations between the LRA and the government. The "peace versus justice" debate in Uganda has been extensive, and some discussants – particularly civil

¹¹ Thomas Kwoyelo, a former LRA commander, is the first person tried before the ICD. His trial commenced in July 2011. However, in September 2011 the Constitutional Court ruled that he is entitled to amnesty under the 2000 Amnesty Act. Consequently the ICD ceased the trial and deferred Kwoyelo's release to the Department of Public Prosecutions (DPP) and Amnesty Commission (AC). The two bodies refused to release Kwoyelo and grant him an amnesty certificate, due to the charges of war crimes pending against him. In January 2012, the High Court reaffirmed that Kwoyelo should be granted an amnesty certificate and released immediately. Upon government's application, the Supreme Court has stayed the High Court's order and Kwoyelo remains in custody.

society members in Acholi sub-region – continue to hold the ICC responsible for sabotaging peace talks. However, many community members credited the ICC with helping to bolster the relative peace that has held in recent years. Some stated that the ICC frightened Kony and other LRA leaders away from Uganda. Others claimed that the Ugandan government became more active in protecting civilians in the north, and that the military significantly improved its treatment of civilians, because of the ICC's attention. Views on the ICC's contribution to peace and security were therefore mixed, but most community members claimed that they would like the ICC to continue with its work until its mission in Uganda is completed.¹²

Second, many discussants expressed disappointment that no arrests have been made. Several initially held great hope that the ICC would capture LRA leaders, bringing peace and accountability. Those hopes were dashed when they learned that the ICC has no police or army, and so would primarily rely on the Ugandan military to make arrests.

Third, we encountered great frustration and disappointment at the ICC's apparent disinterest in crimes committed by the Ugandan military. Some discussants mentioned violent acts by the Ugandan People's Defense Force (UPDF) in their own communities. Human rights organizations have accused the UPDF of considerable violence against civilians over the years of conflict with the LRA, and some argue that the government's policy of forcing people into IDP camps may have violated international law.¹³

The OTP has claimed it did look at acts committed by the UPDF, but that those acts either occurred before July 1, 2002,¹⁴ or were not sufficiently grave to warrant further investigation. In 2005, former chief prosecutor Luis Moreno Ocampo said, "We analyzed the gravity of all crimes in Northern Uganda committed by the LRA and Ugandan forces. Crimes committed by the LRA

were much more numerous and of much higher gravity than alleged crimes committed by the UPDF. We therefore started with an investigation of the LRA."¹⁵ Moreno Ocampo has also claimed that the displacement of civilians in northern Uganda does not fall within the ICC's jurisdiction.¹⁶ Nevertheless, the OTP's official claim is that it is still pursuing evidence of military and government responsibility for crimes.¹⁷ However, there is little information available to convince the public that substantive investigations continue.

In sum, FGD participants supported the ICC principles of seeking accountability for leaders through an impartial and public process. Victims' interest in such accountability may be increasing as relative peace and security continue in northern Uganda. According to one civil society member, "The debate about the ICC has somewhat changed ... now victims feel there is peace and they need justice. They now are realizing that 'OK, even though peace has returned I still feel hurt about what this person did and this cannot go unpunished.'"¹⁸ While several civil society members agreed with this statement, others considered the ICC's search for accountability as unnecessary, possibly leading to re-victimisation, and of little relevance to victims' future wellbeing.

There was also support for the ICC principle of complementarity – that the Court should pursue accountability when it cannot be achieved by national judicial systems or other means. Many discussants emphasized the principle of impartiality, and felt that it was essential that the ICC is impartial in its processes. However, it is possible that many discussants would support an alternative to the ICC that was neutral, focused on leaders, and publicly recognized crimes that affected victims.

Assistance and the Trust Fund for Victims

The issue of compensation and reparations for atrocities in northern Uganda has long been on the agendas of victims and civil society. Unlike previous

¹² For example, "The ICC cannot go without finishing what brought them in northern Uganda, because the war has not yet ended. If they go the war will definitely return and we the civilians will suffer again." Female respondent, FGD in Lukodi village, Gulu district, Acholi sub-region, 29 June 2012.

¹³ For example: Adam Branch. (2008). "Against humanitarian impunity: Rethinking responsibility for displacement and disaster in northern Uganda." *Journal of Intervention and Statebuilding* 2 (2): 151-173; Human Rights Watch. (2011). *Unfinished Business: Closing Gaps in the Selection of ICC Cases*. <http://www.hrw.org/reports/2011/09/15/unfinished-business-0>.

¹⁴ The ICC has no jurisdiction over crimes that occurred anywhere in the world before July 1, 2002, the date that the Rome Statute came into force. The Ugandan government had no control over this start point for ICC jurisdiction.

¹⁵ 'Statement by the Chief Prosecutor on the Uganda Arrest Warrants', The Hague, 14 October 2005, at 2-3.

¹⁶ IBA Webcast interview with ICC's former Chief Prosecutor, Luis Moreno Ocampo, 17 October 2012, available at: <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=FAF88BE9-7F76-4697-B592-A426621BB2D5>.

¹⁷ Report on the activities of the Court, 9 October 2012, ICC-ASP/11/21.

¹⁸ Interview, civil society member, Gulu, Gulu district, 3 July 2012.

international criminal tribunals, the ICC can pursue reparative justice measures through the TFV.¹⁹

This section gives voice to respondents' views on assistance and compensation and addresses their awareness and concerns about the TFV.

Victims views on assistance

"To seduce our hearts from the painful memories, something should be given to us."²⁰

We repeatedly heard that prosecutions alone would not provide justice, since victims would still be suffering the material and social effects of violence. Some focus group participants claimed that compensation was the primary means of attaining justice and referred to traditional practices that paired compensation with forgiveness of perpetrators. Others made a clear distinction between compensation and justice through accountability stating that one cannot replace the other.

FGD participants had clear expectations regarding assistance, which can be lumped into two categories of requests: general assistance for all northern Ugandans and specific requests tailored to those victims who were most affected during the conflict.

"Honestly the war has not ended; we have only rested from the sound of gunshots. There are yet three bigger wars that make us continue to suffer if we don't open our eyes: shortages of food, lack of access to education, and diseases ... All these came as a result of the war."²¹

Calls for general assistance – for instance to improve education, healthcare or local infrastructure – were based on the opinion that communities continue to suffer from material and social problems caused by the conflict. Respondents often linked these requests to the wellbeing of their children and future generations.

The second category of requests emphasizes the needs or predicament of those most harmed by conflict. Often, the forms of assistance requested were similar to the first category – support for education, healthcare, and economic livelihoods – but directed toward specific categories of persons.²²

¹⁹ Article 75 of the Rome Statute.

²⁰ Female respondent, FGD in Barlonyo village, Lira district, Lango sub-region, 9 July 2012.

²¹ Male respondent, FGD in Lukodi village, Gulu district, Acholi sub-region, 29 June 2012.

²² Community members proposed that such victims include people with physical deformities, formerly abducted persons,

Several respondents stressed the need for counselling and rehabilitation projects to address social conflict or ostracism in communities for formerly abducted persons, child mothers, and children whose upbringing was marred by life in IDP camps.

"Our people here do not care that these victims passed through hardship in life...You would not imagine the trouble I go through in this community; some people blame me for having had children with the rebels."²³

Discussants explained the need to analyze victims' situations in order to provide assistance that is suited to individual and community needs. Some pointed out that assistance from the government, an NGO, or the ICC, could cause serious difficulties if it is unfairly distributed or diverted by corrupt officials. Because of the possible impact of assistance and reparations on community reconciliation, discussants stressed the need for a community-based approach, whether through sensitizing entire communities or providing group compensation.

Trust Fund for Victims

When speaking of assistance, respondents rarely mentioned a role for the ICC unless they were prompted by facilitators. They considered the government, aid agencies and NGOs to be the appropriate sources of assistance.

The TFV is a quasi-independent agency of the ICC created for the benefit of victims of crimes within the jurisdiction of the Court.²⁴ Decisions about where and how assistance is provided are made by the TFV's Board of Directors and their in-country staff. TFV assistance can take the form of physical rehabilitation, psychological rehabilitation, or material support. Funding for assistance comes from donations that states or individuals voluntarily make to the TFV. In Uganda, it has spent approximately \$0.9 to \$1.3 million (€0.7 and €1.0 million) a year from 2008 through 2012.²⁵ Please see the Q&A with TFV regional officer Scott Bartell for more information on the TFV's work in Uganda.

female returnees with children born in captivity, returnees infected with HIV/AIDS, children born in the IDP camps, those who lost their family members, and above all orphans and widows.

²³ Female respondent, FGD in Palabek Kal, Lamwo district, Acholi sub-region, 7 July 2012, 7 July 2012.

²⁴ Article 79(1) Rome Statute.

²⁵ This budget is not particularly large. By comparison, the United States Agency for International Development has an annual budget for Uganda of approximately \$320 million. See <http://uganda.usaid.gov/programs>.

Q&A WITH SCOTT BARTELL OF THE TFV

Scott Bartell is a Regional Programme Officer for the Trust Fund for Victims, based in Kampala, for five years. More information on projects can be found at www.trustfundforvictims.org/projects.

1. The TFV has mandates to deliver assistance and reparations. Can you explain the difference?

The dual mandate of the TFV sees the possibility for victims and their families to receive assistance separate from and prior to a conviction by the Court, using voluntary contributions to the TFV. While this support is distinct from awards for reparations, in that it is not linked to a conviction, it is instrumental in helping repair the harm that victims have suffered. First, the TFV can provide assistance to victims in a timelier manner than may be allowed by the judicial process. Second, assistance is targeted to victims within the broader situation before the ICC, regardless of whether the harm they suffered stems from particular crimes charged by the Prosecutor in a specific case.

2. Who makes the decision about where the TFV operates and how much assistance it provides?

The TFV is seized of a situation when its Board of Directors (BoD) considers it necessary to provide physical or psychological rehabilitation or material support for victims and their families, and has consulted with the relevant Chamber of the Court.

3. How did the TFV identify victims who would get assistance and organizations that would become TFV partners in Uganda?

In 2007, an injury assessment was conducted to determine what injuries were associated with the conflict and which injuries fell within the TFV's mandate. We consulted with stakeholders including victims, local officials, local organizations and international organizations. Following approval of the BoD to initiate projects in Uganda the TFV sought and obtained judicial assent for the proposed projects. The TFV conducted competitive proposal review and selection process to award project implementation grants to partners.

4. How much assistance has the TFV provided in Uganda?

An estimated 39,750 victims in Uganda have benefitted from TFV projects in the areas of material support, psychological rehabilitation and/or physical rehabilitation since 2008. The TFV has supported 18 projects in partnership with local community-based organizations, local NGOs, international NGOs, faith-based organizations, cultural institutions, and business associations. A signature component of the TFV Uganda program is the physical rehabilitation projects which have helped over 1,300 victims of torture, mutilation, disfigurement, amputation, burns and other medical problems. The TFV has also provided integrated victim support through livelihood projects, improved agricultural assistance, psychological rehabilitation, trauma counseling, and Village Saving and Loans Associations.

5. Why is the TFV transitioning away from Uganda now?

In 2012, the BoD decided to phase out the material support activities in northern Uganda because of other domestic recovery efforts. This transition process is being managed to mitigate the impact on victims and affected communities by developing sustainability plans for each of the initiatives. Apart from providing technical support, the TFV Secretariat is advocating to find potential donors who may be interested to take over some of the projects.

6. What is the TFV's exit strategy? What will happen to victims who are currently benefiting from TFV programs?

The TFV will continue to support physical and psychological rehabilitation assistance projects and the selective application of material support initiatives in northern Uganda. TFV implementing partners will also continue to offer integrated assistance to survivors of sexual and gender-based violence. This includes fostering community awareness by reaching over 100,000 people through working with local leaders, women's grassroots organizations and other community groups to sensitize communities about the rights of women, and particularly, the rights of survivors of sexual and gender-based violence.

7. The Ugandan government has stated that victims deserve reparations, even in the absence of ICC trials. Is the TFV involved in the development of the reparations policy by the Ugandan government?

The Trust Fund continues to seek greater engagement with the government and initiatives intended to address victim injuries whether assistive or reparative in nature.

“I think the ICC through its Trust Fund for Victims can come down to the grassroots and identify who the victims are one by one. Otherwise we at the local level do not have direct access to their service and we do not know where their offices are!”²⁶

When asked about the TFV, respondents had either not heard of it or their knowledge of its programs was vague.²⁷ While in a few instances discussants mentioned assistance programs they benefited from, they could not tell if these were linked to the ICC.

Once informed of the existence of the TFV, community members became interested in its past and future projects. Regardless of their views on accountability and ICC judicial processes, some stressed that TFV’s assistance would provide a tangible form of justice for many victims. However, we have also encountered frustration. In the words of one community member, “The ICC is just selling itself... [T]here is no help from the ICC and when they talk about the Trust Fund I don’t believe in it.”²⁸

It is not clear why our FGD participants lacked knowledge of the TFV, and we cannot tell from our limited sample of discussants whether their unawareness of TFV activities is widespread. If the TFV does have a low profile, there could be both positive and negative implications. On the positive side, a low profile could limit unwanted associations between the ICC’s accountability-seeking and TFV assistance. Indeed, we have not heard of situations where TFV beneficiaries were stigmatized for such a link to the ICC. A low profile for the TFV could also reduce the problem of unduly raised expectations. On the negative side, victims may have difficulty recognizing the difference between regular aid provided to them by many agencies and programs delivered by the TFV as a form of reparative justice. The ICC may not benefit from the legitimacy of being linked to assistance and rehabilitation programs.

Both victims and civil society members considered it necessary for the TFV to improve its outreach and to continue providing assistance to victims. To what extent these expectations can be fulfilled remains

questionable, given the TFV’s limited resources and the fact that it is phasing out of Uganda.

To sum up, discussions on assistance and reparations were focused on three areas. First, there is a great desire for broad reparations program to help communities recover from the conflict. The ICC is unlikely to contribute to such a program, given that there have been no convictions in the Ugandan case before the ICC. The scope of such reparations programs would also be limited to victims of the particular cases prosecuted. Second, both assistance and targeted reparations are needed for those who suffer the greatest hardship from conflict. The TFV has played an important role through its assistance mandate. Its resources are limited, however, and it is currently phasing out of Uganda. Finally, reparations and assistance may either promote or disrupt community reconciliation, depending on how they are designed and administered.

Engaging Victims through Outreach and Participation

There are two principal ways in which the Court includes victims in its processes. The first is the opportunity for victims to become participants in the Court’s judicial proceedings. In most cases victims will participate through a legal representative (a lawyer). The second is to engage victims and their communities through outreach programs run by the Public Information and Documentation Section.²⁹

Victim Participation

The ICC statute gives victims the possibility to present their views and concerns on issues arising before the ICC which affect their personal interests, if not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.³⁰ In the Lubanga case, for instance, lawyers for victims presented statements in court, questioned witnesses, and filed legal motions. Some participants appeared in court, speaking on behalf of victims rather than as witnesses for the defense or prosecution.

To participate, victims must submit forms that show the harm suffered from an alleged crime under the ICC’s

²⁶ Male respondent, FGD in Lukodi village, Gulu district, Acholi sub-region, 29 June 2012.

²⁷ An exception: We did a second round of focus groups in a community the day after an ICC Outreach officer made a presentation and discussed the TFV, and community members then had more opinions about it.

²⁸ Male respondent, FGD in Lukodi village, Gulu district, Acholi sub-region, 27 June 2012.

²⁹ Outreach activities are directed towards communities affected by situations and cases before the Court to build awareness and understanding of the Court’s role and activities and provide access to the Court’s judicial proceedings. Outreach aims to address specific information needs of communities engaged and to contribute to their participation in the process, Report of the Court on the Public Information Strategy 2012-2013, ICC-ASP/9/29.

³⁰ Article 68(3) of the Rome Statute.

jurisdiction. The VPRS coordinates with victims in the field and makes sure that they are informed about the process, often working together with civil society organizations, other sections of the Court, and legal representatives of victims or applicants. In the proceedings related to Uganda, Pre-Trial Chamber II has granted participation status to 62 victims. Many more have submitted application forms.³¹ The VPRS staff occasionally meet with victims to discuss their application forms or to update them on the situation. However, in the absence of judicial proceedings – such as confirmation of charges hearings or trials – victims have not yet had a real opportunity to exercise their right to participate.³²

“If the perpetrators have been captured and trials are taking place the victims can go, listen to the trials and learn how judgment will be passed. That would at least make victims feel at peace and get consolation from the fact that the person who committed atrocities against her is being punished.”³³

We did not ask discussants whether they have been accepted as participants before the ICC. We asked if and how they would like to engage with the Court. All community members wanted to have their interests represented before the ICC. Some, if given the opportunity, wanted to attend hearings in The Hague.

“Some of us do not even know the direction where the ICC is located. It is better if the lawyer goes to the ICC and later comes back and reports to us the victims the proceedings that have transpired at the ICC.”³⁴

The idea of being represented by someone who would gather victims' views and evidence, present them in court and report back to victims was widely supported by respondents.³⁵ They considered it practical, given the large number of victims and emphasized that their representative should know the victim communities well,

³¹ In the most recent decision on victim participation in the situation of Uganda, the judges asked the VPRS to try to complete the assessment of all the applications it has received over the years within six months.

³² Note that Article 8 of the Juba Peace Agreement on Accountability and Reconciliation obliges the government to promote effective and meaningful participation of victims in accountability and reconciliation proceedings.

³³ Female respondent, FGD, Lukodi village, Gulu district, Acholi sub-region, 27 June 2012.

³⁴ Female respondent, FGD in Barlonyo village, Lira district, Lango sub-region, 9 July 2012.

³⁵ They considered it practical, given the large number of victims. They emphasized that such a representative should know the victim communities well, should be unbiased, and should have relevant professional skills.

should be unbiased, and should have relevant skills. Many discussants were ready to give evidence of what happened and the harm they suffered, provided their security was assured. This willingness to testify was not only driven by the desire to punish wrongdoers, but also by the belief that trials may facilitate further reconciliation and create an impartial record of the conflict for the benefit of future generations. Some victims seem to also believe that the ICC can combine formal and informal justice elements – documentation, accountability, and reconciliation. The victim participation scheme certainly corresponds with some of our respondents' desires. However, to what extent all their expectations can be met through a formal justice process remains to be tested.

ICC Outreach and Community Awareness

Given the lack of judicial proceedings one wonders whether the ICC has offered a relevant forum for northern Ugandans to engage more directly in formal justice processes. Over the years the ICC has tried to reach out to communities to keep them informed about its activities. As noted in the introduction, we expect that our discussion participants have greater knowledge of the ICC and more interactions with ICC officials than most northern Ugandans. In Barlonyo and Lukodi, two communities that are well-known sites of massacres, the majority of our respondents claimed to have encountered Court staff or attended ICC outreach meetings at least twice. In our third community, Palabek Kal, few had encountered ICC officials but many had heard about the Court on the radio.

“The ICC always come here to consult with us. We always give them the information they want. They go and do not come back, denying the opportunity to know what would be happening.”³⁶

Those who had met with ICC staff sometimes felt that their voices were heard but that the Court had not addressed their requests or concerns. To improve the situation, some suggested that the ICC should, for instance, establish regional offices in the field. Civil society representatives, for their part, also stressed the need for consultation with communities, and expressed concern that such communication would decrease as the ICC scales down its presence in Uganda.

Community members' hopes for engagement are very high. Given the reduced resources of the ICC in

³⁶ Male respondent, FGD in Barlonyo village, Lira district, Lango sub-region, 9 July 2012.

Uganda, the Court will need to rely on civil society organizations or local leaders to meet such expectations. Civil society members who have acted as intermediaries³⁷ for the ICC expressed some ambiguity about working with the Court. They realize that they are critical to helping the ICC engage with victims. However, several told us they feel undervalued. As one said:

“Intermediaries enable the Court to do its work, but they are not recognized... If there is a problem, there is nothing for you. Your security is not there. To make it worse, anything you do for the Court they take it as something that helps them, but support to ensure you are recognized is not there.”³⁸

While intermediaries are necessary, there may be a danger for the Court to rely on them too extensively—for help with investigation, collecting application forms from victims, or even outreach. As one civil society member noted, some community-based organizations lack the training or resources to do such work without assistance or supervision from the Court. Another pointed to irregular flow of information from the Court, which seriously hinders the intermediaries’ ability to meaningfully engage with victim communities: “They will ask, What has happened to the participation forms we filled? And we have nothing to tell them. From the Court, there is a kind of blackout.”³⁹

Regardless of whether the arrest warrants are executed or not, the ICC must continue building its legitimacy among affected communities. Despite the disappointments there still is a forum for the Court to consult, to listen and to deliver a clear message as to what the ICC has done in Uganda, what it is capable of doing, and what it cannot do and why. The question is how to do it efficiently.

Future Policies

We propose several policy recommendations to address issues raised by community members and civil society organizations. These suggestions apply to the ICC’s current “maintenance strategy” and would

³⁷ Intermediaries are: people who work between one person and another; who facilitate contact or provide a link between one of the organs or units of the Court or Counsel on the one hand, and victims, witnesses, beneficiaries of reparations or affected communities more broadly on the other. *ICC Draft Guidelines Governing the relations Between the Court and Intermediaries*, August 2011.

³⁸ Male respondent, interview in Soroti, Teso sub-region, 9 July 2012.

³⁹ Male respondent, interview in Soroti, Teso sub-region, 9 July 2012.

also lay the groundwork for a more effective ramping-up of ICC activity should there be arrests. Moreover, they aim to broaden the array of actors that want to promote ICC approaches to justice.

Promoting Accountability

The ICC’s impact in Uganda would have been different if its arrest warrants were executed and trials were ongoing. The Court must continue to lobby supporters and State Parties, including the Government of Uganda, to secure cooperation and achieve arrests. Furthermore, the ICC must continue to publicly advance its mandate and the principle of individual accountability for better understanding of the ICC processes and its similarities or differences with traditional justice mechanisms. The Court might also promote accountability for leaders by providing appropriate assistance and information to the ICD. It should encourage ICC standards of witness protection, impartial judgment and victim participation. Given years of investigations, the ICC should finally deliver a clear message regarding the scope and state of investigations, including a reasoned explanation as to why no one from the government or military has been indicted. Both Human Rights Watch, in its reports and press releases,⁴⁰ and the Uganda Victims’ Foundation have asked the OTP to provide some basic information about their efforts to investigate UPDF abuses. The authors of this report have made a similar request of the OTP but have received no response. While confidentiality of investigations is critical, perhaps some public disclosure of OTP investigations could reassure conflict victims of the Court’s impartiality and would strengthen the ICC’s legitimacy in northern Uganda.

Advancing Assistance and Reparations

The ICC cannot address victims’ needs on its own. Assistance through the TFV is important but, in the context of tens of thousands of victims, limited. If there are reparations these will only come upon convictions, which in Uganda will happen years in the future if at all. Moreover, these reparations will focus on victims of the particular crimes prosecuted, leaving many victims out. The TFV has accumulated considerable experience in implementing assistance programs not only in Uganda but also in the Democratic Republic of the Congo and the Central African Republic. It has also begun work on designing and distributing reparations to victims linked to the Lubanga case in

⁴⁰ See, *Human Rights Watch, Unfinished Business, Closing Gaps in Selection of ICC Cases*, 2011, p. 28.

the DRC.⁴¹ It is therefore important that the TFV and those who support ICC standards of reparations for victims promote a more comprehensive and prompt reparations scheme.

The TFV's assistance to victims may be its most tangible ICC contribution to justice for Uganda's victims to date. The TFV should, as far as is prudent, continue to inform the public about the projects it has supported in Uganda and its selection criteria for those projects. As it transitions out of Uganda, the TFV should lobby donors, local organizations, and the Ugandan government to continue assistance programs for the most-affected victims.

Outreach and Victim Engagement

Active engagement of victims in formal justice processes can have a significant bearing on how victims experience justice and on their sense of ownership over it. Victim participation is also one of many ways to contribute to individual and communal healing processes. For these reasons it is extremely important for the Court to regularly reach out to victims in northern Uganda to inform them of their rights, to clarify misperceptions, and to update them on the process and the status of submitted applications. This effort should be done despite the lack of judicial developments in the case, in order not to aggravate victims' disappointment with the ICC. To increase its consultation capacity and reliability the Court should clarify and confirm the rules of engaging other stakeholders, including local partners, in the process.

Given victims' inclination to participate in a formal justice process and the Juba Peace Agreement on Accountability and Reconciliation provision to promote effective and meaningful participation of victims in accountability and reconciliation proceedings,⁴² the ICC and its supporters can also encourage and assist development of a scheme for victim participation at the ICD.

Finally, the Court should consider whether it can contribute to truth-telling by making publicly available

some of the information it has gathered on the conflict and the situation of victims in northern Uganda.

Conclusion

From our discussions with community members and civil society organizations it is clear that opinions on the ICC are decidedly mixed. Many endorsed its objectives of impartial accountability for international crimes and reparative justice for victims. But while some appreciated the role the ICC played, many believed its achievements so far have fallen short of their expectations.

"To me it seems like the ICC is in a learning process. It's like a pilot project which will be of very little relevance today, but probably beneficial for future generations. But these people whom crimes have been committed against, they will never benefit, they will not."

We think the above evaluation is partly correct. The ICC is in a learning process and Uganda was its first, difficult lesson. The involvement of an international institution raised expectations that the Court was unable to meet. At the same time, some victims of crimes have benefited from the Court, whether directly from programs funded by the TFV or indirectly from increased international scrutiny of the war in the North.

What can be done about the gulf between victims' hopes for the ICC and its real accomplishments? On the one hand, the Court's capabilities can be improved, such as through better cooperation from states to secure arrests, more political support to enable it to pursue genuinely impartial justice, and more funding for the TFV. At the same time, some expectations of the ICC were unrealistic—it does not have the forces, the clout, or the resources to achieve all that community members desired. Ultimately, the ICC is but one of many players in the search for transitional justice, and not necessarily the most important one.⁴³ Even if this barking dog had more bite, victims deserve much more assistance, empowerment, and justice than the ICC was ever established to provide.

⁴¹ See for instance: Trial Chamber I, Situation in the Democratic Republic of the Congo in the case of the Prosecutor v. Thomas Lubanga Dyilo, Decision Establishing the Principles and procedures to be applied to reparations, 7 August 2012, ICC-01/04-01/06-2904; Observations on Reparations in Response to Scheduling Order of 14 March 2012, 25 April 2012, ICC-01/04-01/06-2872.

⁴² Note that Article 8 of the Juba Peace Agreement on Accountability and Reconciliation, obliges the government to promote effective and meaningful participation of victims in accountability and reconciliation proceedings.

⁴³ This recommendation aligns with the Court's Revised Strategy on Victims, which emphasized that the principle of complementarity is key to promoting victims' rights as framed by the Rome Statute. The Court recognized that it must inevitably cooperate with other actors, from State Parties to community-based organizations, in order to fully address the rights of victims. See Court's Revised strategy in relation to victims, ICC-ASP/11/38, Distributed on 5 November 2012, paras 12-13.

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Front Cover Photo: ICC-CPI. On 12th May 2011 the ICC Outreach team Kampala engaged members of the affected community of Rusia village, Pacele sub-county in Adjumani district, Madi sub region.



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