Over the past twenty years, the global community has shown a renewed commitment to the pursuit of international criminal justice. A hallmark development in this regard is the establishment of the permanent International Criminal Court (ICC). A central asset of the court is victim and witness participation, based on an assumption that this approach will benefit those who have been affected by the crimes and their communities. This policy brief explores the therapeutic potential and pitfalls of this approach based on a literature review, relevant studies in the field and initial interviews at the ICC.

**Brief Points**

- A sense of confidence in the system and a feeling of security are vital in order for the ICC to have a positive impact on victims and their communities.
- The possibility of reparation is important, but can also have adverse effects if perceived as a way of silencing victim’s accounts.
- The court process may represent a form of social recognition and acknowledgement of what happened which has an important healing potential.

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The hopes of international criminal prosecutions of crimes committed in armed conflicts

Criminal prosecution of crimes committed in times of armed conflict has increased since the end of the Cold War. Combating impunity for mass violence is the aim of these endeavors and new crimes, such as gender-based violence are now being prosecuted in numbers the world has never seen before. Different legal mechanisms have various mandates, but the International Criminal Court (ICC) is the only permanent court mandated to address crimes committed in armed conflicts, albeit under specific requirements. The ICC is therefore a particularly important court to study in order to improve our understanding of the possible therapeutic potential international criminal courts might have for those impacted by the crimes in question. And by therapeutic we here refer to how these trials may become meaningful in the lives of those who have suffered and help them in their onwards process in life. If these courts are to be seen as reconciliatory arenas for conflict resolution and peacebuilding, the possible gain for those affected by the crimes must be scrutinized.

Setting the stage for creating a therapeutic potential

Since the mid-1970s, social psychologists and legal scholars have surveyed people around the world who have participated in judicial proceedings involving crimes committed in domestic jurisdictions to understand what it is about such processes that leads participants to consider them fair or unfair, and ultimately to accept or reject the outcome of such proceedings. Almost universally, these procedural justice studies have found that witnesses define a “fair process” as one that is based largely on three criteria (from Stover, 2013):

- **benevolence**, the degree to which they perceive that the court officials, from judges to social workers, care about them and their experiences;
- **neutrality**, the extent to which they have been able to talk about their experiences in a neutral and unbiased forum; and
- **respect**, the extent to which they have been treated in a professional and dignified manner.

Those involved in judicial processes are looking for signs that they can trust court officials. For this reason, showing the utmost respect to victims and witnesses at all phases of a judicial proceeding is a key component for building trust in a court’s authority and legitimacy, and ultimately the reconciliatory and therapeutic potential.

A brief backdrop of the ICC

In 1993, the United Nations established two ad hoc international tribunals for genocide and crimes against humanity committed in the former Yugoslavia and Rwanda. Ten years later, the ICC began its operations and has currently opened investigations into nine situations; the Democratic Republic of the Congo, Uganda, the Central African Republic I, Darfur, Sudan the Republic of Kenya, Libya, the Republic of Côte d’Ivoire, the Republic of Mali, and the Central African Republic. Meanwhile, national and hybrid war crimes tribunals have been established in ten countries. Thousands of people have given testimony before these courts.

- Most have **survived or witnessed horrific crimes**, including mass killings, rape, torture, inhumane imprisonment, forced expulsion, and the destruction of their homes and villages.
- For many, **testifying in an international court requires an act of great courage**, especially as they are well aware that war criminals still walk the streets of their villages and towns.
- In addition, **being confronted with the perpetrators of the crimes committed against them**, and being part of a process that frequently represents a reliving of deep wounds and trauma, require a level of security and accessibility to support and council.

Yet, despite these risks and stresses involved, little scholarly attention has been paid to the experiences of victims and witnesses who have testified or have been engaged as victim participants by the ICC.

Who are defined as victims?

Rule 85 of the ICC Rules of Procedure and Evidence (RPE) define the “victims” as “natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the ICC”. The RPE further provide that “victims may include organizations or institutions that have sustained direct harm to any of their property, which is dedicated to religion, education, art or science or charitable purposes and to their historic monuments, hospitals and other places and objects for humanitarian purposes”. The kind of harm which is considered includes:

- **physical harm** to a person’s body;
- **psychological harm**, by which a person’s mind has been affected by what he or she has experienced or witnessed; or
- **material harm**, by which goods or property have been damaged or lost”.

The use of the term “victim” was revolutionized by the adoption of the Declaration on Basic Principles of Justice for Victims of Crimes and Abuse of Power (United Nations, 1985) The Victims Declaration laid the foundation for the negotiations on the definition of victim to be adopted in the texts of the ICC.
victims in the International Criminal Court system are afforded with a number of groundbreaking rights:

- They can provide information to the Prosecutor asking for investigations to be initiated.
- They have the right to participate in proceedings and request reparations, implying that they not only may testify as witnesses but present their views, concerns and personal interests at all stages of the proceedings.
- This is usually done through their legal representatives, something which is also a right to have.

Who are defined as witnesses?

Whereas a ‘victim’ in the ICC jurisdiction is a person who has suffered harm as a result of the commission of a crime within the ICC’s jurisdiction, a witness is a person who testifies before the Court, giving a statement as evidence, often called by either the Prosecution or Defense. This means in other words that a victim can also be called as a witness; in these cases the term ‘double-status’ and ‘victim-witness’ is being used.

Support to victims and witnesses

Being part of a legal procedure, either as victim or witness represent potentially very stressful situations for those whose trauma stories and losses are dealt with. Either one is present in the proceedings or is represented by a legal counsel the victims/witness know that their painful stories are being dealt with, by not only people they may never see, but in court rooms far away, with procedures, rules and regulations very distant from what seems familiar and known. And in addition, submitting information about the violations experienced may also represent a danger or threat, to the person him or herself or family. People whose cases are being presented in the court have per definition been exposed to the most hideous of crimes and the consequences of this may be experienced on many different levels. Among such after effects is lack of trust in others, fear and anxiety, feelings of not being in control of own life, an unsafe and unpredictable future, often combined with painful re-experiences and intrusive memories. In addition there may be loss of livelihood, reduced ability to function as before, because of serious physical injuries or severe psychological distress. The need for information as well as psychosocial and practical support before, under and after the court procedures is obvious. The ICC deals with this in different ways. At the court itself two units have been established within the Registry. These are the:

- Victims Participation and Reparation Section (VPRS), and the
- Victims and Witnesses Unit (VWU).

The VPRS assists victims in relation to their applications for participation in the proceedings or for reparations, or both. It also assists victims in obtaining legal advice and organising their legal representation. Finally it provides protection and psychological support to witnesses, victims who appear before the Court and others who are at risk on account of the testimony they have given. The VWU provides advice, training and assistance to other parts of the Court on how to ensure the safety and well-being of victims and witnesses. Special attention is given to the particular needs of children, the elderly, persons with disabilities and victims of sexual violence or gender based crimes. A very important role is also played by the local community-based organizations and their facilitators, known as “intermediaries”. These have been approved by the judges and are vital for the processing of applications from victims who wish to be recognized as “victim participants” in specific ICC cases.

Therapeutic expectations and possible gains

The inclusion of victims in the ICC proceedings complements the efforts to hold to account individuals who are responsible for the most serious crimes of concern to the international community. The very important ambition and principle behind this practice is that true justice is achieved when voices of victims are heard and their suffering is addressed. But the question is what are the expectations and hopes of the victims? What can victims of serious human rights abuses expect to receive in return, even from a victim friendly court, aiming at strengthening and including the voices and perspectives of the victims? And what are the expectations with regard to reparation, including health care and rehabilitation? And how are such expectations compatible with a court of justice whose main objective is to apply the law and ensure that there is no impunity for crimes against humanity? Over the years there have been studies exploring victims’ expectations as well as the possible healing qualities of justice, from the point of view of mental health and life-satisfaction (Hamber, 2009; Victims’ Rights Working Group; Stover, 2005; Sveaas et al, 2014). Studies seem to suggest, as noted above, that security and sense of confidence in the system are vital. For many the possibility of obtaining reparation seems to be one way of receiving something tangible in return, whereas others may reject the possibility of economic reparation, as it may be understood as a way of silencing the affected ones or “paying one’s way out”. To most victims or survivors, a court process may represent a form of social recognition and acknowledgement of what happened. It may be the first time that their stories are told publicly and this may be experienced as an important confirmation of the suffering. For many it may also be a moment of truth, and parts of the story not known may be disclosed in
Victims and witnesses have in some contexts also expressed the moral obligation to tell the story, in respect of those who died and who no longer have a voice. Studies do suggest that from a psychological point of view, engaging in trials is important, and that it carries meaning in their lives, even if it can be burdensome and often representing stressful periods in their lives. This relates among others to the duration of trials, the limited outcome in terms of punishment for the responsible and compensation to the victims, and the fact that the victims often are involved in a number of trials and never seem to see the end to the process. But still, and despite all of this, many will say, it is worth it. It would have been impossible not to engage. And through this there is some hope there is a future to be pursued, and some sense of justice being done. Further studies in relation to the ICC in particular, may give a fuller picture of this, and perhaps also contribute to the discussion about forms of trials, international, hybrid or domestic.

Cited works


Notes

2. Ibid.
4. www.vrwg.org

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