



The Impact of the Rome Statute System on Victims and Affected Communities

April 2010

Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victims' right to the following as provided for under international law:

- a) Equal and effective access to justice;*
- b) Adequate, effective and prompt reparation for harm suffered; and*
- c) Access to relevant information concerning violations and reparation mechanisms*

Article 11 – UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, UN A/Res/60/147, 16 December 2005

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Introduction

Context

On 17 July 1998, the international community historically adopted the Rome Statute establishing the International Criminal Court (ICC). After it received 60 ratifications, the Rome Statute entered into force on 1 July 2002 heralding in a new era of accountability for the most serious crimes under international law. At the heart of the Rome Statute is the affirmation of the centrality of victims' experiences to the calls for justice; that "during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity".¹ The ICC introduced an innovative victims mandate, which affords victims the right to participate in legal proceedings, benefit from legal assistance, and claim reparations with due consideration for respecting their dignity, privacy and needs for protection and assistance. Victims also have the right to be informed of decisions that concern them.² These provisions mirror the spirit and vision of the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation³ and the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁴

In accordance with Article 123 of the Rome Statute, seven years after its entry into force⁵, the Secretary General of the United Nations is convening a Review Conference. This is now scheduled to take place from 31 May to 11 June 2010 in Kampala, Uganda. The Review Conference will consider amendments to the Statute and will conduct a 'stocktaking exercise', that is to consider the overall impact and effectiveness of the Rome Statute System. Following a proposal by Chile and Finland made in November 2009, which received strong support from various States Parties and NGOs, the 8th session of the Assembly of States Parties formally adopted the "**Impact of the Rome Statute system on victims and affected communities**" as one of the items to be discussed in the context of the Stocktaking exercise of the Review Conference.⁶ Other issues to be considered include aspects of complementarity, cooperation and in relation to peace and justice.

As recognised by the ICC's Strategy in Relation to Victims, "a key feature of the system established in the Rome Statute is the recognition that the ICC has not only a punitive but a restorative function. It reflects growing international consensus that participation and reparations play an important role in achieving justice for victims."⁷ While at the *ad hoc* tribunals for the former Yugoslavia and Rwanda, victims and affected communities were

¹ Rome Statute of the International Criminal Court, Preamble.

² See, VRWG paper on Obligations to undertake Outreach to victims under the Rome Statute and Rules of Procedure November 2006, www.vrwg.org/Publications/01/VRWG_Outreach-November2006.pdf; see also Rule 50(1); Rule 92(3); Rule 96; Rules 16(1)(a) and 92.

³ UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted by General Assembly Resolution 60/147 of 16 December 2005.

⁴ Adopted by United Nations General Assembly Resolution 40/34 of 29 November 1985.

⁵ Article 123, Rome Statute.

⁶ Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009 (International Criminal Court publication, ICC-ASP/8/20), vol. I, part II, resolution ICC-ASP/8/Res.6, para. 5 and annex IV.

⁷ *Report of the Court on the strategy in relation to victims*, ICC-ASP/8/45, 10 November 2009, Introduction, paragraph 3; http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-45-ENG.pdf. Report of the ICC on the strategy in relation to victims, ASP/8/45.

effectively excluded and largely uninformed of the trial processes that most concerned them, the ICC mandate recognises both how important justice is to victims and the important role victims play in the pursuit of justice.

The stocktaking exercise comes at a propitious time; the Court is hearing its first cases, and there are already a range of initial comments that can be made about the Court's impact and further potential.

Report Methodology

The Victims' Rights Working Group (VRWG) is a network of national and international civil society groups and experts created in 1997 under the auspices of the NGO Coalition for the International Criminal Court. Its members include international NGOs and experts and NGOs from a wide array of countries around the world including those countries affected by ICC investigations and prosecutions.

This Report is presented to the resumed 8th Session of the Assembly of States Parties, New York 22-25 March 2010, as a contribution to the stocktaking exercise on "the impact of the Rome Statute system on victims and affected communities" from the perspective of victims, affected communities and civil society organisations working with them.

The VRWG welcomes the draft discussion papers prepared by Chile and Finland⁸ especially the proposal that "the overarching goal of the stocktaking exercise with regard to this topic be, through an inclusive approach, to engage victims and affected communities in the Review Conference and to recall the importance of the Rome Statute system and the Court for victims and affected communities."

As part of our work to consult members of the VRWG, many organisations and networks working in 'situation' and non-'situation' countries expressed an interest in carrying out more intensive consultations with local actors and victims communities on the ground in order to involve victims and inform them of the process as far as possible. Thus, the VRWG endeavoured to seek the views of victims and affected communities as well as the groups working most closely with them. A questionnaire on the stocktaking exercise was circulated to the 350+ members of the Victims' Rights Working Group in January 2010.⁹ In Uganda, the Ugandan Victims' Foundation (UVF), which includes members from the 14 districts of the North of Uganda, further circulated the questionnaire to its members requesting that they consult with 50 victims from each district. These consultations were discussed in a workshop organised by the Uganda Victims' Foundation and REDRESS on the topic, which took place in Lira, Northern Uganda, from 15-17 February 2010. During this workshop, members from the 14 districts presented their findings based on the questionnaire.

From the theoretical discourse to the realities of the field, no one can better speak in the names of victims than the victims themselves. This Report seeks to profile the concerns that victims and individuals working within affected communities have raised, and seeks to afford

⁸ See Draft discussion paper on the Stocktaking exercise of the Review Conference: Impact of the Rome Statute system on victims and affected communities, submitted by the facilitators, Chile and Finland, 5 March 2010.

⁹ See Annex I : Questionnaire circulated to the VRWG on the stocktaking exercise.

an opportunity for them to explain how they have experienced and perceive the Rome Statute system, and how it has impacted, if at all, on their daily lives.

This Report provides a compilation of the responses to the VRWG questionnaire on stocktaking as well as the result of numerous outreach activities undertaken by civil society to consult with victims and affected communities. In order to ensure that the words expressed by victims or individuals working stand out within the report, these have been provided in italics throughout. The non-italicised text was drafted by REDRESS, with the input of VRWG members, and seeks to provide the context and draw out the significance of the statements collected through the questionnaire process. The VRWG hopes that these views, and recommendations, will contribute positively to the discussions that will be taking place in advance of and during the Review Conference.

Acknowledgements

This Report was drafted by Gaelle Carayon and Mariana Goetz of REDRESS, with preliminary assistance from Justin Haccius, pro bono consultant, on behalf of the Victims' Rights Working Group. Member organisations that actively participated in the process of drafting the questionnaire, undertaking outreach, collecting responses and providing input include local organisations in Democratic Republic of Congo (DRC) including the Caucus des femmes congolaises du Sud-Kivu pour la paix and individual organisations in Ituri, the Kivus and Katanga such as LIPADHO, AFEM/SUD-Kivu, VICO, LDF, and Centre Olame. In Uganda 12 community based organisations working with victims undertook sensitisation exercises and consultations on the basis of the ***VRWG Questionnaire on Stocktaking on the Impact of the ICC on Victims and Affected Communities (Annexed)***. The organisations covered all 14 districts of northern Uganda. In addition, the Uganda Victims' Foundation facilitated a workshop in Lira from 15-17 February 2010 bringing together the results of the consultations of its members. Furthermore, organisations in Colombia and Burma also responded to the Questionnaire with their insights, thanks to the dissemination undertaken by the International Federation of Human Rights (FIDH). Unfortunately no feedback was received from Darfuri victim communities and those from Central African Republic (CAR) or Kenya. International members of the Victims' Rights Working Group who also provided advice, support and/or input into the questionnaire, the process of collecting responses or content that led to this report include Amnesty International, the Coalition of the International Criminal Court (CICC), Human Rights Watch, International Federation of Human Rights (FIDH), No Peace without Justice, Rights and Democracy, Women's Initiatives for Gender Justice.

1. The importance of outreach for meaningful impact

The Court has recognised that not all victims will want to have the same level of information about the Court and its proceedings or will want to engage with the Court in exactly the same way.¹⁰ Some victims may only wish to have general information while others will want to engage more directly with the Court, for example by bringing to the Office of the Prosecutor information on the commission of crimes, testifying as a witness, participating in legal proceedings, or benefiting from the assistance of the Trust Fund. It follows that victims should be informed about the different ways in which they may engage with the Court, what they can expect from such engagement, what support or protection is available for them, and how they can proceed to establish contact with the Court.

The crucial role of information exchange is at the centre of this Report. Indeed, there is an inherent tension between the restricted mandate of the ICC (and thus its limited capacity) and the high expectations of victims and affected communities. Thus, when considering the impact of the Rome Statute on victims and affected communities, one must distinguish between the actual “experiences” of victims of the ICC system and their perceptions and expectations of what the ICC is or how it should be impacting them and their communities. The latter perceptions and expectations may reflect insufficient information or a poor understanding of the Court’s mandate, and thus underscores the need to ensure accurate and widely available information on what the Rome Statute is, and what it can and cannot do.

1.1 Outreach appreciated: but more needs to be done

Since the Rome Statute entered into force, outreach activities have been strongly encouraged by civil society organisations and by the VRWG. Victims and their communities have welcomed the efforts undertaken by the Court to inform them about its mandate and activities. The Court’s field offices and outreach staff have undertaken targeted and regular activities aimed at reaching out to victims, local and religious leaders, students and NGOs in ‘situation’ countries. The use of media techniques like radio broadcasting and listening clubs have been highly praised by local communities. Where some community members have had the exceptional opportunity to view video footage of proceedings, such as civil society organisations in Ituri (North Eastern DRC), they have been appreciated the opportunity and have been fascinated by the proceedings.

However, it must be noted that the affected areas in ‘situation’ countries are vast and the nature of the crimes coming within the ICC’s jurisdiction inherently imply large numbers of victims. In addition, some regions are inaccessible, there is a lack of infrastructure, and sometimes insecurity will hamper access to information. Given that the ICC has only one or two dedicated outreach staff in the ‘situation’ countries, it is clear that current levels of outreach are insufficient in light of the combination of these factors. For instance, whilst it is known that the Court has undertaken excellent gender specific outreach in certain locations in northern Uganda, there are many victims in the neighbouring villages, towns and regions

¹⁰ *Report of the Court on the strategy in relation to victims*, ICC-ASP/8/45, 10 November 2009, p. 4, http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-45-ENG.pdf.

that will never have heard of such activities. For instance, feedback was received from organisations working with victims in Gulu district, Northern Uganda, stating that in spite of outreach in Gulu district, the victims they consulted and sensitised about the ICC and the Review Conference “*did not know about the ICC and what it had done for them*”.

In spite of the acute limitations in relation to victims’ needs, victims communities recognise that where outreach activities have taken place, there is an increased knowledge amongst victims and affected communities about the ICC and its mandate - a first step towards exercising at least their right to be informed.

Victims in DRC (South Kivu), have indicated that “*visits of the delegates of the ICC for outreach and sensitisation have been reassuring*”.¹¹ In Uganda (Apac District), the impact of an ICC outreach programme undertaken in 2009 was mentioned and victims were reported as saying that “*the existence of the ICC has brought awareness of the rights to justice, and that many victims have knowledge about the ICC, its role, and its strength [...]*” Similar reports were provided in other districts in Uganda where it was said that “*the ICC [was] on the ground and much has been going on such as sensitisation through radio*.”

1.2 Further efforts needed to reach victims in remote areas

While the effects of outreach are beginning to be felt by victims and their communities, the post-conflict context and the remoteness make the task all the more difficult. In villages, electricity is generally unavailable as is internet access. While radio is used by community members, a vast number of victims do not have radios or batteries and are simply struggling to survive. As pointed out by women’s NGOs in Ituri, East DRC, “*direct victims that live in remote places, that are illiterate and that do not own a radio, are also ignorant of the existence and the work of the ICC*.”¹² While radio is very important and useful, it cannot be relied upon as the only means of reaching victims, many of whom are children, women, elderly or disabled and may well be suffering from medical as well as psychosocial challenges. Face to face contact, where individuals can ask questions in their own time has been highlighted by victims that have been consulted as particularly necessary. For example, victims in Ituri have highlighted the fact that outreach staff “*are always in a hurry and do not spend enough time interacting with victims*.”¹³

The difficulty in reaching rural areas was highlighted by NGOs in DRC (South Kivu) who indicated that, “*the majority of the population is not informed about the ICC. In urban areas there are informed persons but outreach in rural areas remains very weak*”.¹⁴

Others stated that, “*victims, who are civilian populations, are not able to petition the ICC insofar as they are not, for the majority of them, informed of the activities of the ICC*.”

¹¹ « *Aussi des visites des délégués de la CPI pour le plaidoyer et la sensibilisation sont du moins rassurantes.* »

¹² « *Les victimes directes qui vivent dans de localités éloignées, qui sont analphabètes et qui n’ont pas de postes de radio ignorent l’existence et le travail de la CPI.* »

¹³ « *ces sensibilisateurs sont toujours pressés, ils ne prennent pas assez de temps pour échanger avec les victimes* »

¹⁴ « *La majorité de la population n’est pas informée sur la CPI. En milieux urbains, il y a des personnes informées mais la sensibilisation en milieux ruraux reste très faible.* »

It was highlighted that *“the horrific acts that victimised them were not only committed in towns where the ICC holds conferences and meetings with the population.”*¹⁵ Furthermore some have indicated that *“broadcasting information on the radio is a novelty in some parts of the planet, and access to such information is difficult. Distance and the means available of those being targeted is an issue”* thus *“so far the impact of the existence of the ICC have not been positive, having regard to victims’ expectations.”*¹⁶

The ICC’s outreach unit appears to be having an impact with the activities it has managed to undertake with its limited resources. Nonetheless, the reality of victims’ living conditions needs to be taken into account in the planning of further outreach activities. In particular the means to access those who are most dispossessed needs to be at the forefront of considerations in planning information campaigns and outreach. Local approaches such as street theatre and training of trainers featured prominently amongst the suggestions received.

1.3 Repeated and accurate information needed to manage expectations

Some of the limitations of the ICC are inherent to the Rome Statute and the mandate of the Court. It is important to clearly explain the limitations of the mandate of the Court to victims and affected communities. The mandate restrictions of the ICC are not obvious or easily understood and this should be taken into account in how they are explained. As the mandate of the Court is both complicated and abstract, it is necessary that some groups are trained more extensively on these issues, and that outreach is followed up with at least second meetings, if not more when possible and beneficial.

Common limitations that need repetitive explanation include:

- The start date of the Court’s jurisdiction being 1 July 2002 because that is when the treaty entered into force (the rationale for the start date is not to exclude specific groups from liability, which is commonly thought to be the motive);
- That the Court depends on States to execute its arrest warrants and does not and cannot have a police force or army of its own;
- The court will only prosecute a small number of those bearing the greatest responsibility for the most serious crimes; it does not aim to prosecute all of those who took part in hostilities;
- Procedures will take a long time;
- The accused has rights; he or she is presumed innocent until proven guilty;
- The Prosecutor needs evidence to convince judges to issue an arrest warrant;
- There is no death penalty.

¹⁵ *« Les victimes qui sont les populations civiles ne sont pas en mesure de saisir la CPI dans la mesure où elles ne sont pas, dans la grande majorité informées des activités de la CPI. Car les actes ignobles dont elles ont été victimes ne se sont pas commis seulement en ville où la CPI tient des conférences et rencontres avec la population. »*

¹⁶ *« Et aussi, l’information diffusée à la radio est une nouveauté dans certains coins du globe terrestre où l’accès à l’information est difficile. Il y a aussi un problème de distance et moyens pour ceux- là qui sont informés. Ceci dit, que l’impact de l’existence de la CPI jusque là n’est pas positif sur les attentes des victimes. »*

The importance of explaining the Court's limitations has for instance been raised by organisations in Uganda during their recent consultations. It has been indicated that: *"Too much expectation [was] raised about the ICC by early outreach programme"* and that *"victims got disappointed on realising the true nature of the ICC's work with arrests to be made by state actors"*.

The issue of the start date of the ICC's jurisdiction continues to be a sore point of disappointment even in areas where numerous and repeated outreach campaigns have been undertaken. DRC organisations reported that victims in remote parts of Eastern DRC were still questioning why the Court was not concerned by events, which occurred before 2002 that affected them.

Victims and community organisations have also questioned *"why the ICC is only issuing arrest warrants to African suspects [when] the operations of the ICC should be universal"*. This highlights that the process of opening investigations and issuing arrest warrants needs to be clarified and explained and made readily available to victims and affected communities.

As an example of how important it is to provide regular and sustained information, Ugandan organisations reported that as a result of their outreach and consultations on the questionnaire, it became clear that, some victims in Uganda were hoping that *"the Review Conference [would adjust the Rome Statute] to cater for crimes from 1986."* They also reported that there was still *"inadequate knowledge about the ICC, thence need for sensitisation of the local community."* Misplaced expectations are damaging to the perceived impact of the ICC and it is thus crucial that sensitisation, whether by NGOs or the Court's outreach programme provide accurate information on a regular basis.

1.4 More Public information in non-'situation' countries needed

Responses to the questionnaire clearly indicated that the impact of the ICC is highly dependant on whether communities have been specifically targeted by outreach activities. Thus while 'situation' countries and regions under investigations have had a concentration of outreach, in non-'situation' countries little or no sensitisation has taken place.

For instance, NGOs in Burma have reported that *"[u]nfortunately, in the case of Burma, ICC's direct activities (investigations, proceedings, trials, outreach, public information, projects of the Trust Fund for Victims, etc.) have not yet taken place,"* and that *"in the case of Burma, a large majority of victims have not yet received sufficient information about the existence of the ICC given that the military regime prohibits information dissemination as well as legal education trainings enormously."* They conclude by saying that *"as such, in the case of Burma, although existence of ICC has impacted on many human rights NGOs, it has not been the case for a large majority of victims."*

2. The wider impact of the ICC on victims

While many victims seek legal recognition and the ability to raise their views and concerns directly through the ICC's proceedings (see part 3 below), many others will experience the ICC in a broader sense, simply because they are victims concerned with the process and outcome.

2.1 The awaited impact of a first conviction

For a large number of victims, the most significant impact of the ICC will be the outcome of a trial and possible conviction. For many, the outcome of a conviction is pointed out as being perhaps more meaningful than the ability to participate in proceedings. However, victims and affected communities in DRC note that while some trials are underway, no conviction has resulted in spite of the years that have gone by since the first arrest warrants in 2006. Some groups working with victims in Ituri, have reported that “ [victims] who are sick say that they will die before the perpetrators are really held to account”¹⁷, thus, as put by a caucus of NGOs in South Kivu: “the impact is imperceptible for the less informed as until now no conviction has been pronounced in DRC”.¹⁸

Thus while victims and affected communities might not yet feel like the Rome Statute system has enabled them to access and obtain justice, most are confident or hope that the ICC will have a positive impact in the future and welcome its existence.

2.2 Unexecuted arrest warrants

The issuance of an arrest warrant generates a lot of publicity and interest. However, if it is not followed up with an arrest, this can lead to frustrations amongst victims. Many indeed do not see the point in indicting suspects who are unlikely to face justice. Victims in Uganda have indicated, “the ICC has failed to have the LRA leaders arrested and its prosecution process is very slow and has [thus] not met the expectations of the victims for justice.” Indeed, in some districts like Pader, victims “feel disappointed [...] it seems like the ICC is stuck, [with] no cooperation.”

While victims in South Kivu believe the ICC has had a positive impact due to the fact that “their concerns were taken into account by the international community”, they highlight that this impact is not yet maximised “because the perpetrators of the crimes in South Kivus are moving freely and that it is taking time with no judgment in sight”.¹⁹

Despite the arrest warrant issued against Bosco Ntaganda, the DRC government has so far refused to hand him over to the ICC. This has hindered victims' expectations of obtaining

¹⁷ « Celles qui sont malades disent qu'elles mourront avant que leurs bourreaux ne soient réellement inculpés. »

¹⁸ « L'impact non perceptible encore pour les moins avisés (enquêtes, audiences, procès, sensibilisation, information publique, projets de fonds au profit des victimes) car jusque là aucune condamnation exemplaire n'a été prononcée pour la RDC (au niveau de la CPI à part les procès en cours). »

¹⁹ « Oui parce que avec l'arrestation de 4 inculpés, les victimes ont vu que leurs préoccupations étaient prises en compte par la Communauté Internationale. Non parce que les auteurs des crimes au Sud-Kivu courent librement et ça tire à longueur et aucun jugement. »

justice and reinforces the fact that cooperation from State Parties is crucial if victims' right to obtain justice is to be respected. As summed up by some Eastern DRC women's organisations: *"the existence of the ICC in itself gave hope but it will need to become effective and manage to arrest those who commit the crimes."*²⁰

Furthermore, local organisations working with victims point out that governments sometimes use peace as an excuse for not effectively cooperating with the ICC. Victims' communities are calling for their governments to cooperate in handing over suspects to the Court. In DRC for instance, a caucus of community organisations stated that, *"at the national level, in the case of the arrest of Bosco Ntaganda, our government has declared to privilege peace rather than justice thus it is at the national level that things are going wrong. The ICC should not work without the national government. If the ICC relies on the government with its weaknesses, then the perpetrators will never be judged."*²¹

2.3 The remoteness of the ICC

While many NGOs have been raising the issue of the distance between the Court and the victims, this aspect has become more and more important especially as the first trials are underway. While it is encouraging that *in situ* hearings are being considered and an ICC Liaison Office is planned in Addis Ababa, NGOs still emphasise in different ways that the ICC has a decreased impact due to its remoteness. As pointed by an organisation in Amuria District (Uganda), *"the ICC had not been able to work properly because [it is] far away from the people, hence the ICC should decentralise their operations and services."*

In situ trials are highly recommended to bring the ICC's full impact where it is most needed. Furthermore, the discrepancy between the difficult living conditions of the victims and the somewhat perceived as luxury conditions of the accused, once transferred to The Hague has caused some resentment among the communities. As some women focused NGOs in Ituri have stated, *"they say that these criminals who created their suffering, live in The Hague in better conditions, while they, [the victims] remain in their misery."*²²

²⁰ « L'existence de la CPI en soi donne l'espoir mais il faut que ça devienne effectif et qu'on arrive à arrêter ceux qui commettent les crimes. »

²¹ « Au niveau national : pour le cas d'arrestation de Bosco Ntagabda, notre gouvernement a déclaré qu'il privilégie la paix que la justice donc c'est au niveau national que ça cloche, la CPI ne doit pas travailler sans le gouvernement national. Si la CPI compte sur le gouvernement avec ses faiblesses donc les auteurs ne seront jamais arrêtés ni jugés. »

²² « Ils disent que ces criminels qui les ont plongé dans ces souffrances vivent à la Haye dans les meilleures conditions, au moment où eux, croupissent dans la misère. »

3. The impact of slow and limited selection of cases

3.1 Questions about slow and limited investigations in DRC

In the DRC, the impact of the ICC varies greatly depending on whether a region is under investigation or not. Because the first investigations and cases are in Ituri, there is evidently a greater understanding and knowledge about the ICC there. However, victims and the community organisations that work with them are disappointed at the limited number of arrest warrants so far, and are dismayed that high ranking officials have not been mentioned. The Prosecutor's policy on selection of cases is not understood by victims. A common question is *"why is one war criminal indicted when many more remain free?"*

In Ituri, where the first DRC cases are pending before the ICC, victims who are from localities that are not covered by the charges do not understand why *"victims who suffered from the same atrocities, by the same groups, were not taken into account by investigators, [thus] creating frustrations"*.²³

In the Kivus (DRC) it is sometimes known that the ICC is conducting investigations, but victims and local organisations are frustrated at the delays in issuing arrest warrants. This demonstrates victims' belief that the ICC is an important means to obtain justice. However, there is also concern that crimes continue to be committed and that the ICC is not proving to have the deterrent effect it could have.

As pointed out by some victims and communities in South Kivu *"until now, there is no concrete impact of the ICC in South Kivu considering that [...] perpetrators like Laurent Nkunda and others are not yet in the pipeline."*²⁴ Others have pointed out that *"the ICC has no impact in South Kivu as the perpetrators of crimes sought by the ICC are running free."* They add that *"barbarous acts are continuing, in particular the burning of homes, killings and massacres of Kiwandja in North Kivu and that so far no one has been arrested; and the trial will be a long and slow process. We have been waiting and as yet do not know when the 4 already chosen (indicted) will be judged."*²⁵

3.2 Perceptions of bias

"When two elephants fight, it is grass around there that gets spoiled".

²³ « Non seulement les affaires ont été limitées mais les localités où se menaient les enquêtes aussi; ainsi les mêmes victimes qui ont subi les mêmes atrocités par les mêmes groupes n'ont pas été pris en compte par les enquêteurs; Ceci a constitué une grande frustration. »

²⁴ « Jusque là il y a pas d'impact concret de la CPI au Sud- Kivu étant donné qu'aucun jugement n'est sorti jusque là pour les auteurs des crimes de guerre et crimes contre l'humanité au Sud- Kivu. D'autres auteurs comme Laurent NKUNDA et autres ne sont pas encore dans les rouages. »

²⁵ « La CPI n'a pas d'impact au Sud-Kivu parce que les auteurs des crimes recherchés par la CPI courent librement. Oui les investigations ont commencés mais peut être en secret, nous ne pouvons pas savoir les perceptions des victimes parce que nous ne savons pas qui est concerné par les procédures en cours. » They also add « Les actes de barbarie continuent au Sud-Kivu notamment les maisons brûlées, les tueries et les massacres de Kiwandja au Nord-Kivu et jusque là personne n'est arrêté ni jugé et le jugement est une longue procédure car on ne sait pas à quand les 4 retenus seront jugés. »

In Uganda, many victim communities negatively perceived the ICC as biased because it has only issued arrest warrants against the LRA (Lord's Resistance Army) without equally holding government forces to account: *"The ICC looks at only the LRA as the perpetrators of insecurity and yet forces like the UPDF did the same and the ICC has not handled them."* Some also state that *"there is evidence in some parts in Northern Uganda to prove that UPDF victimised people and witnesses are ready to testify in court."*

In Colombia, it has been indicated that: *"Even though the victims have some expectations regarding the effects of the ICC over Colombia's situation, the truth is that [the ICC] keep following the possibility of action from a distance. This is due not only to the time elapsed between the public prosecutor's visit to Colombia, but also because they believe the visit of ICC advisors, which they considered would impact the demobilisation and reintegration of the paramilitary, would also generate results regarding the truth..."*

In Colombia, NGOs have also indicated that, *"there is the impression that some of the reasoning in the examination of [admissibility] is not clear in recent ICC jurisprudence. In this regard, the impression of the majority is that the attention of the ICC over Colombia could correspond more to political situations rather than juridical necessities, in an environment where crimes against humanity and war crimes keep on happening."* In Burma as well, it is said that, *"in the case of Burma, the existence of the ICC has not yet impacted on victims' expectations of obtaining justice. However, it has impacted on many human rights NGOs working for the rights of victims."*

In Colombia there is recognition that the world knows about their plight. *"One can consider that at the international level there is a fairly accurate understanding of the complicated situation of the victims in Colombia, mainly due to the denunciations of human rights organisations and the Victims' Movement itself. In the same way are the efforts of these groups to demand that the impact of the ICC should have a dissuasive effect."*

However in Colombia it has been pointed out that the attention brought to the violations by the ICC visit has given rise to only an "appearance" of victims being heard. *"Nonetheless, one cannot evade the efforts of the Colombian State to show the country the unreal post conflict conditions that erroneously sustain the idea of a transitional justice, of a transition that in fact does not exist. Those efforts are precisely what impede the victims to be properly heard nationally and internationally, in environments that differ from those of the human rights movement."*

3.3 Disappointment at ICC's jurisdiction starting 1 July 2002

One aspect that comes back repeatedly in nearly all interactions with victim communities in both DRC and Uganda is the fact that the Court can only investigate crimes committed after 1 July 2002. Indeed, there is no statute of limitations for serious crimes under international law. Here it can only be emphasised that it is the primary responsibility of States to legislate, investigate and prosecute such crimes. It is recommended that, when enacting implementing legislation in relation to the ICC, states should ensure that earlier crimes can be prosecuted at the national level.

Victims and community organisations working with them systematically raise this difficulty: *“there is the problem of crimes committed before 2002 which do not enter into the mandate of the ICC.”*²⁶ Or, *“the timeframe taken by the ICC leaves out other atrocities committed before the Rome Statute came into being”*.

For example in North Katanga Province (DRC), local NGOs report that *“the ICC has no impact in North Katanga simply because all the violence and crimes committed there occurred before July 2002.”* Thus *“only a few persons who listen to Radio OKAPI (MONUC’s Radio) have heard about the ICC and more or less follow the hearings of Bemba, Thomas Lubanga, Germain Katanga ...”*. They also indicate that, *“they are more interested in traditional justice which they have heard about.”*²⁷

²⁶ « Il se pose aussi le problème des crimes commis avant 2002 qui n’entrent pas dans la compétence de la CPI. »

²⁷ « Au Nord Katanga, la CPI n’a pas d’impact tout simplement car toutes les violence et crimes commis ici, ont eu lieu avant juillet 2020. seules quelques personnes qui suivent la radio OKAPI ont entendu parler de la CPI et suivent plus ou moins avec intérêt les audiences de BEMBA, THOMAS LUBANGA, GERMAIN KATANGA.... Nous sommes plus concernes par la justice traditionnelle dont nous avons entendu parler mais sans suite palpable. »

4. Direct impact of the ICC on victims

*“Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to [...] equal and effective access to justice” – Principle 11(a), UN Basic Principles*²⁸

4.1 Impact on victims’ hopes and ability to obtain justice

Numerous victims in Ituri (North East DRC) and northern Uganda have applied to participate in the ICC’s first investigative proceedings and trials. For these victims, and some of the broader communities affected, the ICC has a real and specific meaning in enabling direct access to justice. Many see the opening of an investigation as an opportunity to access justice and see the wrongs committed against them recognised and repaired.

There are approximately one hundred victims whose legal status as victims has been recognised in the Lubanga case, and over 350 in the Katanga case. Many hundreds more have requested to participate at the investigation phase of the ‘situation’, before the issuance of an arrest warrant against a named suspect. To a certain extent, the participating victims and those who assist them have expressed frustrations with the system of participation in ICC proceedings. The application forms are lengthy and abstract, there is little feedback about the processing of their applications, and the procedures are slow and remote. It is important to keep in mind however, that some of the frustrations relate to the inherent limitations of the Statute and the relatively complicated procedural hurdles contained therein.

For many victims directly involved in proceedings, a general feeling of *“lassitude”* is felt. The first case commenced in 2006 and the trial is still ongoing. The procedures to apply for participation and reparation can be daunting. Some victims in some parts of Uganda have even felt that applying was *“a waste of time”* particularly as they did not receive livelihood support for the days it took to complete the forms and provide necessary documentation, which can be detrimental for those struggling on a daily basis.

In Ituri (DRC), victims feel that they are:

“shadows, without a face, without a voice, without light, wondering when the truth on [...] the crimes will be unveiled.” In South Kivu, some indicate that *“the long and daunting procedure of the ICC creates some discouragement amongst victims, with some fearing for their security, thus refusing to denounce [perpetrators] as the ICC only prosecute the “big fish” who might have their collaborators or troops in the areas where victims are, thereby sowing fear and desolation amongst the population.”*²⁹

²⁸ Article 11(a), UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, *op.cit.*, footnote 3.

²⁹ « Les victimes directement impliquées aux procédures sont à un certain niveau satisfaites des procédures et du travail que réalise la CPI. Toutefois, la procédure lourde et longue de la CPI crée un certain découragement dans le chef des victimes. D’autres victimes craignent pour leur sécurité refusant ainsi de dénoncer car la CPI ne poursuit que les grosses légumes qui auraient leurs collaborateurs ou troupes vivant dans les milieux des victimes semant ainsi peur et désolation au sein de la population. Ceux qui ne sont pas liées, s’intéressent moins. »

For victims and affected communities, international justice is slow resulting in *“informed victims [becoming] impatient and some [...] losing hope of obtaining reparations.”*³⁰

When asked how they perceive the process, victims often reply that it is “bureaucratic”, “heavy and long”, “heavy and slow” or “heavy and strict”. NGOs in DRC indicate, that “[m]ost of the crimes were committed in circumstance where it is very difficult and even unrealistic to gather evidence and only testimonies are available.”³¹ Thus, it is recommended that, “The ICC [should] review the procedure and make it lighter if possible so that it can be effective. It should define differently the evidence needed to be realistic as during war time it is [difficult] to gather them.”³²

Furthermore, victims often suffer from diseases, related or not to their victimisation and it is not always understood why the accused might get treatment in The Hague while *“investigators are not able or do not have the possibility to treat [the victim] before subjecting her to interviews. Somehow it is as if the human being is not taken into account despite what is written in the beautiful texts.”*³³

These hurdles should not overshadow the fact that, as a caucus of NGOs in South Kivu reported, *“victims directly involved in proceedings are to some extent satisfied by the procedures and the work undertaken by the ICC.”*

4.2 Direct impact of participation in proceedings: dignity & recognition

Article 68(3) enables victims to participate in proceedings where their personal interests are affected.³⁴ Furthermore, the ICC’s Strategy in Relation to Victims recognises that the way in which victims “are treated by officials of the Court will be very important for victims and how they feel about the justice process before the Court;”³⁵ and that, “victims also bring a unique perspective to the judicial process.”³⁶ It has been recognised that victims’ participation will contribute to the justice process at the Court and will make the proceedings more sensitive to victims. The mechanisms contained in the Rome Statute have

³⁰ « *Sinon l’administration lourde et lente des juridictions de la CPI laisse les victimes les moins avisées impatientes, et il y en a qui perdent espoir de réparations.* »

³¹ « *La procédure paraît lourde et très stricte quant aux conditions pour répondre aux besoins en justice des victimes. La plupart des crimes ont été commis dans des circonstances telles qu’il est difficile voire irréaliste de constituer les preuves (images, photos, ...). Seuls les témoignages sont disponibles.* »

³² « *S’agissant de la procédure de la CPI, il convient de noter que c’est une procédure lourde et longue. La CPI devrait revoir la procédure et l’alléger si possible afin qu’elle soit effective. Définir autrement les preuves pour être réaliste car tant de guerre c’est possible de les réunir.* »

³³ « *Même quand la victime est malade, l’équipe des enquêteurs ne sont pas capable ou n’ont pas les possibilités de la soigner avant de la soumettre aux interviews. Quelques part c’est comme si l’être humain ne pas pris en compte malgré les beaux textes.* »

³⁴ Article 68(3) of the Rome Statute provides that : “Where the personal interests of the 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 and 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”.

³⁵ See Report of the Court on the strategy in relation to victims, ICC-ASP/8/45, 10 November 2009, paragraph 12; http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-45-ENG.pdf.

³⁶ *ibid.*, paragraph 2.

allowed numerous victims to engage with various organs of the Court, seeking to participate in proceedings as well as to present their “views and concerns”. Over the last years, the ICC has seen a real impact by victims on its procedure and developing jurisprudence, where victims are not passive but active participants in the proceedings that concern them.

Those working with victims have indicated *“there [has been] a positive impact as it [has] allowed victims to feel valued through their implication in the legal process even though through legal representatives.”*³⁷ And that, justice can have a healing power and *“the ICC [can] play [a role] on the psychological aspects of war victims by guaranteeing them their freedom and their socio economic and cultural rights”* as some in DRC have pointed out. If the process is right, the bare fact of having gone through the process will affect victims positively. As some have indicated in DRC that, *“the ICC has had an impact on the fact that the views and concerns of victims have been heard at the national and international level. Victims receive legal assistance ensuring their effective participation to the proceedings and the preservation of their rights.”*³⁸

4.3 Impact on victims’ awareness of their rights

The Court has recognised that “victims must first be aware of their right to participate so that they can take informed decisions about whether and how to exercise it, and must be assisted to apply to participate throughout if they wish to do so. The Court recognizes that these can most effectively be carried out in partnership with individuals and organizations that are close to victims.”³⁹

However, the lack of information and remoteness of victims means that there is still a lot work for them to be sensitised about their rights. In South Kivu (DRC), community groups explain that, “the population is not at all informed about its rights. This is a reason why most experience difficulties in seeking justice [...]. If the ICC was to give adequate means to NGOs who work toward sensitisation of the law in rural areas, then the impact could be real and visible.”⁴⁰

Local groups working at grass roots level play an essential role in outreach, dissemination and sensitisation of victims, they also assist victims in liaising with various organs of the Court. For organisations working with victims the process has sometimes been frustrating as

³⁷ « Il y a un impact positif parce que cela a permis aux victimes de se sentir valorisées à travers leur implication dans le processus judiciaire bien que cela soit fait par leurs représentant légaux. »

³⁸ « La CPI a eu un impact sur le fait que les vues et préoccupations des victimes soient entendues au niveau nationale et international. Les victimes reçoivent une assistance juridique assurant ainsi leur participation effective à la procédure et la préservation de leurs droits, la CPI joue sur l’aspect psychologique des victimes, des guerres en garantissant à chacune leur liberté et leurs droits socio-économiques et culturels. »

³⁹ See Report of the Court on the strategy in relation to victims, ICC-ASP/8/45, 10 November 2009, p. 4, http://www.icc-cpi.int/iccdocs/asp_docs/ASP8/ICC-ASP-8-45-ENG.pdf.

⁴⁰ « Ici, la population n’est pas du tout informée sur leurs droits. Raison pour laquelle la plupart de cette population a mal à saisir le tribunal lorsqu’elle est victime d’un acte. Cette spécificité de préjudices, vous comprendrez avec moi qu’elle aura contribué moins aussi longtemps que l’information n’a pas encore circulé au sein de la population en général et les victimes ; Le recrutement des enfants de moins de 15 ans dans des groupes armés, les victimes de violences sexuelles, les victimes institutionnelles, etc. Ce sont des infractions contenues aussi dans certaines législations nationales, mais qui ne s’appliquent pas pour des convenances politiques. Mais la CPI si elle mettait les moyens aux ONGs qui oeuvrent dans la vulgarisation des lois dans des milieux ruraux, l’impact pouvait être visible et réel. »

while they are usually much needed in supporting the victims, they have received little recognition from the Court itself for their central role and call for more training as well as protection.

In Uganda some organisations working with victims have urged the “ICC to recognise the status and role of intermediaries including training, enumeration and protection” and NGOs in Eastern DRC have called “for more respect”⁴¹ for intermediaries.

4.4 Impact of assistance from the Trust Fund for Victims

The Trust Fund for Victims can use “resources other than those collected from awards for reparation, fines and forfeitures” to provide physical or psychological rehabilitation or material support for the benefit of victims and their families.”⁴² So far the Trust Fund has implemented projects in both DRC and Uganda and is in the process of notifying the relevant Chamber of projects intended for Central African Republic. For many, the work of the Trust Fund in providing assistance to victims under its “other resources” mandate, might be the most tangible impact they will experience from the ICC.

Direct beneficiaries report positive impact

Direct beneficiaries recognise the Trust Fund’s positive impact: *“The implementation of the activities funded by Trust Fund for victims of the ICC developed hope, trust, confidence and a sense of belonging by the victims. This move as it stands has developed peace of the mind and trust among the victims and the affected communities.”*

In Uganda, discussions with two organisations which benefited directly and indirectly from projects funded by the Trust Fund for Victims, reported that:

“Families and communities appreciated the projects because they brought both psychosocial and physical healing: stigmatisation, social misfit, and shame reportedly disappeared. There was positive re-integration where they built confidence in one another, in their families and communities. There was also family reunion: broken families were normalised as wife and husband. The victims were also counselled, building absolute confidence in themselves.”

They also highlighted that beneficiaries were usually more than the victims themselves with communities benefiting indirectly from the project: *“It has brought hope and confidence to victims the fact being their plights have been recognised.”*

Further projects and information needed

While direct beneficiaries praised the impact of the Trust Fund, for the victims who have not benefited there has been inevitable disappointment. In this respect, it is important that the choice of beneficiary organisations is explained. Although many beneficiaries understand that the Trust Fund only has limited funds available to it, thus cannot address every victim’s

⁴¹ « Nous intermédiaire ; nous demandons plus de respect dans la collaboration ; le personnel de la CPI devront être des gens qui ont un sens élevé de droit humains, comprendre les situations difficile et délicate dans lequel les intermédiaires opèrent. »

⁴² Regulation 50(1)(a) of the Regulations of the Trust Fund for Victims.

need, many victims and affected communities also believe the Trust Fund's resources to be much larger than they are in reality, and in both Uganda and DRC, they have raised questions on the criteria being used to decide which projects are chosen.

Some NGOs in DRC have pointed out that, *"a lot of funds are said to be allocated to victims, but their destination is unknown and victims do not seem to benefit from them,"*⁴³ in particular they regret that *"the Fund as far as [they] know, does not take into account victims of grave violations who accepted to provide information [to the Court]."*⁴⁴

The same point was also made by other community organisations, reporting that *"we note a high mobilisation of funds for victims, unfortunately the destination of these funds is not known and we cannot stop wondering whether victims are indeed benefiting [...]."*⁴⁵

Another issue raised was that it is not always clear to victims where funding for projects originates. For instance, it was reported in Uganda (Amuria District) that, *"the victims were not sure whether the assistance they got was from the ICC (Trust Fund) or from the NGOs."*

Community organisations working with victims encouraged that *"State parties should make strong commitments to the TFV and give liberally."*

4.5 Impact of future reparations orders

Expectations have been raised of obtaining reparation through the ICC's justice process. However, dedicated information and sensitisation on reparations needs to be undertaken by the Court in order to provide accurate information about what will and will not be possible. Expectations may otherwise not match the relatively narrow legal framework. Awards for reparation as a result of a conviction by the Court will never fully restore the extent of the suffering undergone. Assistance projects or compensation cannot bring relatives back to life or undo the atrocities, rapes and brutal abductions. In addition, the Court's reparations order will be linked to convictions, and may therefore be limited to the criminality identified in particular cases. Thus, it is important to note that it still falls upon the territorial state to establish national mechanisms to assist and repair victims of serious crimes under international law as a matter of urgency.

While so far there has not been an award for reparation by the Court, victims and affected communities have begun to discuss what their needs are for rehabilitation and restitution. In Uganda, hopes for reparation include rehabilitation, in particular of physical and psychosocial harm, and also enabling livelihoods of those who are suffering materially as a result of the victimisation. Community organisations that see the ICC's impact limited by the need to arrest the top LRA leaders emphasise that, *"reparation should not be tied to the*

⁴³ « *Beaucoup de fonds qui seraient alloués aux victimes mais qu'on ignore la destination et les victimes semblent ne pas en bénéficier.* »

⁴⁴ « *Le fond jusque là ne prend pas en compte du moins à ce que nous sachions les victimes des graves violations et qui ont accepté de fournir les informations.* »

⁴⁵ « *On note une forte mobilisation des fonds pour les victimes mais hélas, la destination de ces fonds ne pas connue et l'on ne cessera de se poser la question des savoir si les victimes en bénéficient. Il faut redéfinir la politique de gestion des ces fonds. Les droits des victimes ne sont pas pris en compte et aucune réparation ni indemnisation à part la loi qui réprime les violeurs mais pas appliqué, donc il faut faire un plaidoyer pour l'indemnisation des victimes, leur accès à la réparation.* »

outcome of the Court". This calls for national reparations programmes to be put in place without delay. Indeed, Ugandan community organisations highlight that, "*Reparation should clearly be differentiated from government programs (NUSAF, PRDP,⁴⁶ etc.). Expectations of victims need to be managed through more systematic outreach, capacity building of intermediaries and the standardising of information. Issues of reparation should be made explicit within the Special Division of the High Court.*"

In DRC, community organisations stress the need for reparation to happen soon: "*There is no impact yet as the ICC has not yet rendered a judgment [...]. Victims have not yet been given justice or been rehabilitated into society. We want to see victims' access reparation.*"⁴⁷

While reparations are to be funded through resources collected by the Court through fines, forfeiture and awards for reparation against a convicted person; it is likely that the sums collected will be insufficient to repair victims. The Trust Fund may complement these sums with its voluntary income. However, there are concerns amongst victim communities that there will only be a few convicted, and that there will not be enough resources to repair the victims. Local concerns highlight that an order for reparation that cannot be implemented due to the lack of funds could potentially make victims feel used by the process and forgotten in the outcome.

Efforts are needed to ensure identification of assets and pro-active cooperation of States in freezing and seizing assets and in enforcing reparations orders. Organisations working on victims' issues have noted that States Parties to the Rome Statute may have inadequate implementing legislation to fully give effect to victims' right to reparation under the Statute. States will need to continue to adopt effective legislation to ensure meaningful cooperation to safeguard assets.

⁴⁶ NUSAF is the Northern Uganda Social Action Fund (World Bank); The Peace and Recovery Development Plan (PRDP) is a Ugandan government initiative officially launched in October 2007.

⁴⁷ « *Il n'y a pas encore d'impact car la CPI n'a pas encore rendu un jugement et surtout que sa procédure longue et lente. C'est ainsi que les victimes ne sont pas encore rétablies dans leurs droits ou réhabilitées dans la société. Nous voulons voir les victimes accéder à la réparation* »

5. The ICC's impact on peace

In the immediate post-conflict context, when armed groups are still operative and peace is either being negotiated or is fragile, peace and justice can sometimes be pitted against each other. Victims and civil society organisations working with victims are often afraid to voice the need for accountability or rights to obtain justice in a context in which peace is not yet entrenched. The prevailing emphasis on reconciliation needed to enable peace talks to progress can trump discussions about victims' rights to a remedy and reparation for the harm they have suffered. Ultimately victims have voiced demands for both peace and justice, yet their interest in justice is usually voiced only when it is safe enough to do so.

For example, in Burma local organisations have indicated that, *"[...] leaders within Burma's democratic movement still have concerns that if an ICC campaign is implemented, a tripartite dialogues to take place between the SPDC military regime, democratic forces led by Aung San Suu Kyi and ethnic leaders may be hindered."*

5.1 Impact on Peace in Uganda

Ugandan victims and community organisations responded overwhelmingly to questions on the ICC's impact on the Juba peace talks and the relative peace that now prevails. Many see this as the most significant impact of the ICC on their lives. Some of the insights and the nuances of the ICC's impact on peace in Northern Uganda are provided here.

As expressed by one community organisation, *"As much as the indictment of top LRA commanders initiated and forced the LRA rebels to talk peace with the government [...] it also frustrated the peace talks as the rebels demanded the withdrawal of the indictment as a condition to continue with the peace [...]. This will in the long run impact negatively on the current peace realised by the people in the region."* Indeed, it is said that while there is relative peace in Uganda, the ICC indictment only *exported* the problem to DRC: the *"LRA [has now moved] to torture people in DRC."* *"Many issues have not been resolved by the ICC [and] the LRA still continues to destabilise the region."*

Some victim communities in northern Uganda hold that, *"The ICC has promoted justice over peace [...] which has scared away the rebels [...] from coming out and facing the traditional justice system which is regarded [by their communities] as the best method of bringing total peace. The traditional justice system cannot bring total peace but can only appease."*

Victims' communities in Amuru district, Uganda have reported that, *"ICC created fear on LRA which backed up the peace process hence reducing atrocities in Northern Uganda."* Others stated that, *"[t]he indictment of the top LRA commanders has led to the realisation of peace, as the rebels have withdrawn from the region [...]. The communities who had been forced into the camps have returned to their villages and are rebuilding their communities anew [...]."* They also highlighted that *"These positive changes among the returning victims had not been realised before the arrest warrants against the LRA. Therefore the move undertaken by the ICC has contributed to this."*

Many recognise that while it is the primary responsibility of the State to secure peace, peace was only achieved after the ICC got involved: *“The protection of the people and their property is the mandate of the government hence the sole provider of peace and security of people, a role that has not been done by government to the people of Northern and North Eastern Uganda. However peace in the region has only been realised after the indictment of the top LRA commanders a credit ICC has taken.”*

However, there are fears that a failure to arrest the LRA will give them time to regroup, re-arm and re-initiate hostilities. *“LRA commanders who are still at large may give the rebels an opportunity to reassemble, get organised once more and attack the resettling victims in the areas of return hence renewed insecurity destabilising the current peace.”*

5.2 Impact on deterring crimes

Many have pointed out that the fear of the ICC, the improved knowledge that crimes should not go unpunished, and the fact that the international community is watching, have had a positive effect on deterring the commission of further crimes.

Community organisations in DRC argue that the ICC’s arrests of warlords put an end to part of the violence: *“for victims, the ICC has had an impact on the peace process at the national (or regional) level. [...]. When warlords were arrested, it allowed the Demobilisation, Disarmament and Reintegration process to move forward.”*⁴⁸

Some victim communities in South Kivu (DRC) have highlighted that: *“[while] exactions and massive human rights violations [...] continue to be observed on a large scale, [...] the ICC [...] deters, dissuades.”* However the lack of an arrest warrant in South Kivu for these crimes militates against this positive perception.

For some women’s organisations, *“the existence of the ICC has not had a concrete impact [...] due to the fact that leaders are prosecuted to answer for the acts of their troops without demobilising the men who are still active on the ground. [...] Nevertheless, the arrest of these leaders could be an example.”*⁴⁹

In Uganda some community members state that the ICC has had a deterrent effect on people financing and supporting war criminals. Ugandan civil society members point out *“[t]here were individuals and institutions both internally within Uganda and in the Diaspora who may have been aiding, promoting and collaborating with the LRA by giving financial, material or technical support to the LRA rebels. The issue of arrest warrants for the top LRA leaders scared this category of collaborators and promoters who eventually gave up with the acts, for fear of being indicted by the ICC [...].”*

⁴⁸ « Pour les victimes l’instance de la CPI a eu un impact sur le processus de paix au niveau national (ou régional) par l’intervention, par représentation à la Cour, les victimes ne peuvent se rendre à la Haye. Lorsque les seigneurs des guerres étaient arrêtés cela a permis le processus de Démobilisation, Désarmement et Réinsertion. »

⁴⁹ « L’existence de la CPI d’une manière concrète n’a pas eu d’impact sur le processus de la paix au niveau national ou régional du fait que ce sont des leaders qui sont poursuivis pour répondre des actes de leurs troupes, sans dissoudre effectivement ses hommes qui restent actifs sur terrain. Et la paix dans ce cas dépend. Toutefois, l’arrestation des ces chefs peut être un exemple aux autres leaders des troupes. »

Victims in Oyam district (northern Uganda) *“appreciated the contribution of the ICC, and say it strengthened justice to people, leaders, hence leaders fear to commit crimes.”*

5.3 Rebuilding peace /trust amongst communities

An important aspect of the relative peace in Uganda is the opportunity for communities to start talking to each other after years of conflict. Some see that the impact of the ICC on the peace talks sparked a debate and multiple outreach activities amongst victims’ communities on the peace process. As explained by one community organisation:

“Before the ICC issued arrest warrants to the LRA top commanders, there were accusations and counter accusations over who was involved in causing grave atrocities to the people and absence of peace in the region.

The neighbouring regions to the Acholi Sub-region continuously blamed the Acholis of killing them and causing insecurity and absence of peace, while the Acholis blamed the government for killing them and failing to provide security and peace to the Acholi people. On issuing arrest warrants indicting the LRA top commanders, the LRA forces withdrew from the region and accepted to talk peace with Government. The peace talks eventually involved all the people bordering Acholi in which confidence and trust was built and a clear understanding of who did what during the war was developed. The local & cultural leaders, the local communities and the entire region learnt to recognise each other, and begin to live together in harmony and peaceful coexistence.”

Some community members also believed that the ICC impacted on improved relations between Uganda and Sudan: *“The presence of the LRA and their inhuman activities brought tension between Uganda and Sudan in which each accused the other for aiding the rebels. The ICC indictment of and issue of the arrest warrant against the LRA top commanders improved inter-territorial peace with increased cross border trade.”*

6. Impact on child recruitment and gender violence

6.1 Child soldiering recognised as unlawful

It is difficult to attribute increased awareness of child recruitment to the ICC's prosecution of conscripting, enlisting and actively using children below the age of fifteen in armed groups. However, some groups consider that the ICC's prosecution of these crimes is backing civil society initiatives to advocate for a cessation of the practice. For example, Burmese organisations, when asked about the impact of the Rome Statute system on the recognition of specific crimes, responded that the issue of child recruitment was being raised as a concern by Burmese civil society organisations, who have highlighted the issue in their recent calls for accountability.⁵⁰

The arrest of warlords, accused of recruiting children in their armed groups has been perceived as a positive impact of the ICC in DRC. In response to the question regarding the impact of the ICC's prosecution of certain specific crimes, such as child recruitment, some community organisations have said that *"the recognition of certain specific types of harm has meant [national level] arrests of the warlords who recruited children below fifteen and allowed their soldiers to rape and attack civilians and institutions."*⁵¹

Some have gone further to say that the Rome Statute system can be directly linked to a decrease in child recruitment in the DRC armed forces. A caucus of community organisations considered that, *"the ICC contributed to the prevention of child recruitment in the armed forces [as] some belligerents are now afraid of being dragged into international justice proceedings."*⁵²

NGOs working directly with victims in Ituri have also indicated that *"[i]t is with the beginning of the ICC that child soldiers were informed that they could be considered as victims and have a claim to justice and reparation, they who were generally considered in the society as perpetrators."*⁵³

The impact though is not perceived by everyone and in some regions of DRC, the impact on recognition of specific types of harm has *"not been tangible, even for child soldiers, with*

⁵⁰ The Burma Constitutional Conference, conducted by Forum of Burmese in Europe (U.K), held at London South Bank University on 19-20 December 2009, resolved to "Systematically uncover the issues of the under age children who are forcefully conscripted by the SPDC army for military service". Human rights groups such as Guiding Star led by lawyer U Aye Myint inside Burma, as well as the office of the International Labour Organization (ILO) operating there have been raising the issue. According to Burmese organisations, "since a few months, four Burmese radios - BBC, Radio Free Asia (RFA), Democratic Voice of Burma (DVB) and Voice of America (VOA) has been highlighting the issue of child soldiers in Burma."

⁵¹ « L'impact sur terrain sur la reconnaissance des certains types spécifiques de préjudices : est l'arrestation des seigneurs des guerres qui ont recrutés les enfants de moins 15 ans, ont permis à leurs militaires de violer d'attaquer, les victimes institutionnelles. »

⁵² « La CPI a permis de prévenir le recrutement des enfants dans l'armée. Certains belligérants ont désormais peur d'être traînés dans le rouage de la justice internationale. »

⁵³ « C'est avec l'avènement de la CPI que les enfants soldats ont été informés qu'ils pouvaient être considérés comme victimes et prétendre à la justice ainsi qu'à la réparation, eux qui étaient généralement considérés dans la société comme des bourreaux. »

*children still being recruited, and the same continuation of sexual violence. The last report of UNFPA is of 11,000 women raped. The impact is not really visible as impunity continues and people do not care about the ICC, journalists are assassinated without any outside pressure to request investigations.*⁵⁴

6.2 Impact on the prevention of gender based crimes

With the charges against Jean Pierre Bemba focused on sexual violence, victims and affected communities have sought to evaluate what impact the emphasis on gender-based crimes has had on violence in DRC.⁵⁵ Consultations amongst women's organisations in the Kivus indicate mixed views on whether the ICC has had any impact in preventing further sexual violence. However, there is some consensus that the ICC's attention on gender-based crimes has helped raise awareness and reduce the marginalisation of victims.

As regards the actual impact on the occurrence of sexual violence, it is clear that in the most conflict-ridden regions, sexual violence is still rife. Some community organisations in DRC (South Kivu) have indicated that *"until now acts of rape and sexual violence are still occurring despite the existence of the ICC, in remote places but also in towns as it is used as a weapon of war. Discrimination towards women continues and it is even worse in rural areas. That is to say that women still do not have the same consideration as men in DRC."*⁵⁶

Others have similarly reported that, *"the impact of the ICC on victims of gender based crimes at the absolute minimal level. In DRC [rape] cases increase every day [...]"*⁵⁷

However, some organisations in DRC have praised the Rome Statute system indicating that it backs their initiatives, decreasing "mass sexual violence." They go further, adding that, *"[...] gender violence has decreased, as criminals are afraid of being brought before the ICC. The noise that women's organisations are making has scared perpetrators."*⁵⁸

The same seems to be said by another group of women's organisations, who reported that *"as for sexual violence, the impact has not yet been perceived especially as so far the*

⁵⁴ « *L'impact n'a pas été tangible quand bien même pour les enfants soldats, le recrutement des enfants continue, même que les violences sexuelles. Le dernier rapport de l'UNFPA est de 11.000 des femmes violées. L'impact pas vraiment visible car l'impunité continue et les gens font fief de la CPI, les journalistes sont assassinés sans qu'il y ait une pression extérieure pour exiger les enquêtes.* »

⁵⁵ Unfortunately, feedback from community groups in Central African Republic was not obtained. Jean Pierre Bemba is allegedly responsible for the widespread gender-based violence committed in CAR, to be prosecuted by the ICC. The Trial against Jean Pierre Bemba is due to commence on 1 July 2010.

⁵⁶ « *Jusque là les actes de viols et violences sexuelles se commettent toujours malgré l'existence de la CPI dans des milieux reculés, même aussi dans des villes, car sont actuellement utilisés comme arme de guerre. Aussi la discrimination à l'égard de la continue et c'est pire encore dans des milieux ruraux. Ce dire que la femme jusque là n'a pas encore trouvé la même considération que l'homme en RDC.* »

⁵⁷ « *L'impact de la CPI pour les victimes des crimes liés au genre, aux violences liées au genre représente une infime considération au niveau le plus bas de sa perceptibilité. Pour le cas de la RDC, où ces cas ne cessent de croître en chiffres au jour le jour, le processus de stabilisation et de reconstruction devra fonctionner à la même vitesse que la réhabilitation de l'appareil judiciaire en rassurant aux victimes, témoins directs et intermédiaires des garanties de protection.* »

⁵⁸ « *L'impact sur terrain de l'existence de la CPI pour les crimes liés au genre est que la violence sexo-spécifique est diminuée, ces criminels ont peur d'être traduit devant la CPI. Les Associations de droits des femmes fassent tellement des bruits, donc les bourreaux qui s'engagent ont peur de faire ça.* »

perpetrators of these crimes in South Kivus have not been brought to justice. Nevertheless victims have a new hope with international justice, that one day justice will be done. A new engagement and impetus in the fight against this plague can be observed amongst local activists and human rights defenders despite the lack of protection from the ICC. At the moment fighters refrain from or avoid taking women and girls as targets. This international protection mechanism has [thus] contributed to breaking the silence considering that testimonies of victims are being widely broadcasted and that these crimes are currently at the heart of international debates.”⁵⁹

In Uganda a view has been that “[i]n some few instances we can say that the ICC has had some impact on gender violence, but in the greater picture, the ICC has not really impacted on gender based violence,” especially as “many victims have not been able to report their cases since ICC has not yet brought any indictment against state actors”. Indeed, “So far no perpetrators of gender violence during the war have been successfully prosecuted by the ICC. No arrest warrants have been executed and this has disappointed some victims.”

Girls from Oyam District, Uganda, have indicated that they “returned home as a result of their war husbands hearing about the ICC hence feared being responsible for their acts.”

6.3 Increased recognition of gender based crimes

It is difficult to attribute changes to the ICC alone, nonetheless, when asked about the ICC’s potential impact on victims of gender violence, women’s organisations working in South Kivu (DRC) indicated that “we observed an impact on the women who received [ICC] outreach and information, this led some of them to report harm that they are suffering or have suffered to NGO workers. Nevertheless, some are hesitant, often scared of stigmatisation and for fear of being thrown out by their husbands.”⁶⁰

In DRC some organisations have also highlighted the link between a new law on sexual violence being passed and the ICC Statute, stating that, “there have been changes brought by the ICC Statute [in how the law deals with gender based violence]. This is the case with the new law on rape and sexual violence in DRC of 2007 which brings new characterisation of acts of rape and sexual violence.”⁶¹

⁵⁹ « Quant aux violences sexuelles l’impact n’est pas perceptible d’autant plus que jusque là les auteurs de ces crimes ici au Sud Kivu n’a été mise à la bars, néanmoins les victimes ont un nouveau espoir avec un nouveau espoir avec cet instance international, elles espèrent qu’un jour elles seront rétablies dans leurs droits. Un nouvel élan et engagement dans la lutte contre ce fléau s’observent dans le chef des activistes locaux et défenseurs des droits humains, qui malheureusement ne sont pas protégés par la CPI. Actuellement quelques belligérants s’abstiennent ou évitent de prendre les femmes, filles, fillettes pour cibles. Ces mécanismes de protection internationale a contribué au brisement du silence étant donné que le témoignage des victimes bénéficient d’une large diffusion et ces crimes s’inscrivent actuellement dans le débat international. »

⁶⁰ « L’on observe un certain impact car avec la sensibilisation et information pour ceux là qui la reçoivent, certaines victimes essayent déjà de contacter des ONG oeuvrant dans ce domaine de défense des droits humains pour leur informer des actes dont elles sont ou ont été victimes. Toute fois, d’autres hésitent souvent de peur de stigmatisation et même d’être chassées par leurs maris. »

⁶¹ « Il y a eu des aménagements apportés par le statut de la CPI, certains Etats s’y conformes. Tel est le cas pour la nouvelle loi sur les viols et violences sexuelles en RDC de 2007 qui apporte des nouvelles qualifications aux actes des viols et violences sexuelles. »

In Uganda some organisations highlighted that *“some victims of gender based violence were able to participate in pursuing justice by filling in the participation forms; the gender outreach component of the ICC has helped some women to open up and speak in protected settings about their experiences of the LRA war.”*

While it is unclear how much one can connect changes to the Rome Statute system, organisations do assert that at least the gender crimes and prosecutions back up and provide impetus to their activities. In Burma, organisations have linked their activities on gender violence to the ICC: *“Within Burma's democratic movement, the women organisations led by Women League of Burma (WLB) have focused on gender-based violence, in connection with the ICC. For instance, in cooperation with Nobel Women's Initiative, the WLB is going to hold an international tribunal on crimes against women of Burma in New York in March, 2010. The Tribunal is a women-directed and women-centered justice and advocacy initiative. Judges will hear testimony from several women of Burma who will share their personal stories of surviving human rights violations and crimes under military rule in Burma.”*

6.4 Breaking the silence: enabling rehabilitation

The social stigma attached to sexual violence is often hard to break. Community groups in both DRC and Uganda undertake concerted efforts to sensitise both the victims and their communities about the issues. Several organisations have also mentioned the efforts of gender specific ICC outreach and the impact on breaking down social stigma. In order to commence social rehabilitation, victims must first decide to speak out. Breaking the silence is all the more difficult in communities where women are considered “spoilt” if they have been raped. Many women and girls abducted by armed forces return injured, sometimes with illegitimate children, countless others are raped. Medical issues such as fistula are widespread and need to be addressed. While efforts under the Rome Statute system to address gender-based violence are noticed in some circles, victims are calling for more to be done to help tackle the problem at all levels.

As highlighted by community organisations in Uganda (Adjumani District), many victims *“are too traumatised to talk about their past hence the silence is still there.”*

The same group also highlighted that *“the sensitisation work of ICC outreach has contributed, alongside that of NGOs, to reduce stigma against women and children who are victims of gender-based violence from the communities.”* In Teso district, (Uganda) it was said that, *“the ICC and civil society organisations have sensitised and helped in breaking the silence about gender based violence.”* The same was said in Ituri, DRC where NGOs working with victims have said that *“For victims of sexual violence, mainly women, the ICC enabled them to little by little find a place back into society and to break their silence, which was generally making them victim of rejection, considering that the crimes they suffered constituted a shame for them, and they had to keep them silent.”*⁶²

⁶² « Pour les victimes des violences sexuelles dont principalement les femmes, la CPI leur a permis de reprendre peu à peu leur place dans la société et de rompre leur silence, elles qui faisaient généralement l'objet de rejet du fait que les crimes dont elles ont été victimes constituaient de la honte pour elles et étaient obligées de les taire. »

It was reported by Ugandan community organisations that *“some few victims of gender-based violence in northern Uganda have benefited from the Trust Fund for Victims medical assistance program like the reconstructive surgery for mutilated body parts, removal of retained bullets. This was as part of general assistance to victims, not targeted at women as a special group.”*

While recognising progress, community organisations stressed that *“Victims of gender violence have not been specifically targeted early enough in ICC outreach activities to help them. It is difficult to get evidence against the perpetrators of the gender based crimes [and victims need advice in this regard]. Also because of fear of reporting cases of gender violence committed by perpetrators, many victims have decided to remain silent [...]. ICC has not yet come up with clear mechanisms and strategies to help women and children victims of gender violence to break the barriers of silence imposed b culture on sexual matters”.*

They call for more information *“about ICC, its roles, mandates and clear understanding about gender violence.”* They add that *“victims of gender violence feel disappointed that ICC has not recognised them as a special category of victims who have suffered a special vulnerability due to the war and their given gender roles in society (e.g raped women becomes a single mother, living with HIV/AIDS and loses land / property rights). Victims of gender violence have not generally benefited from programmes that should have been created by ICC to respond to the effects of gender violence, e.g. psycho-social support, medical and legal aid services.”*

7. The Impact on victims' rights at national level

If they have not already done so, States shall, as required under international law, ensure that their domestic law is consistent with their international legal obligations by:

- (a) Incorporating norms of international human rights law and international humanitarian law into their domestic law, or otherwise implementing them in their domestic legal system;*
- (b) Adopting appropriate and effective legislative and administrative procedures and other appropriate measures that provide fair, effective and prompt access to justice;*
- (c) Making available adequate, effective, prompt and appropriate remedies, including reparation, as defined below;*
- (d) Ensuring that their domestic law provides at least the same level of protection for victims as that required by their international obligations.⁶³*

As a result of the ICC's role in complementing States' primary obligations to investigate and prosecute serious crimes under international law, victims should be able to access justice either through the ICC or at national level.⁶⁴ In practice however, it has been a slow process for states to adopt national legislation to implement their obligations under the Rome Statute and there are a range of additional practical and procedural barriers impeding progress with domestic trials. At the same time it is clear that the ICC will only ever be in a position to consider a small fraction of the crimes potentially coming within its jurisdiction, thereby creating what is commonly being called "*the impunity gap*".

Despite these serious constraints, civil society organisations working with victims in Northern Uganda, have reported that the existence of the ICC has to a certain extent and in a general manner meant that victims "*have hope for justice,*" where no thought or hope of justice existed before. The increased recognition given to victims by their own governments has been welcome. Victims and communities in DRC have pointed out that, "*despite sometimes an imperceptible impact due to political disturbances, victims are being heard at the national and international level, with the latest demonstration having been the presence of the Congolese Justice Minister Luzolo Bambi to advocate in favour of Ituri victims at the Court in The Hague.*"⁶⁵

7.1 Increased knowledge of victims' rights

The Rome Statute system has shed light on victims' right to a remedy and reparation at national level, enabling greater understanding of victims issues with "*individual dignity,*

⁶³ UN Basic Principles and Guidelines on the Right to a Remedy and Reparation, *op.cit.*, footnote 3.

⁶⁴ The Preamble of the Rome Statute recalls that "it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes" and that "the International Criminal Court [...] shall be complementary to national criminal jurisdictions".

⁶⁵ « *Oui, la CPI, même si l'impact est imperceptible, suite peut être aux agitations politiques récurrentes politiques, comme le cas des pays de la sous région des grands lacs africains, là des victimes sont [entendue] au niveau national et international, le dernier cas en date, c'est la présence du Ministre congolais de la justice, M. Luzolo Bambi à la cour de la Haye pour plaider aux côtés des victimes de l'Ituri.* »

physical well being and respect for privacy [being] respected and [...] the remission and rehabilitation of victims [being] done through assistance.”⁶⁶

The impact of the ICC on the recognition of victims’ rights to reparation and justice at the national level has also been described by some in the DRC as “*a moral satisfaction*” with examples of how it has influenced “*reparation between [...] families, assistance towards justice and medical [support].*”⁶⁷ The same has been reported in Adjumani district in Uganda where it is said that, “*the existence of ICC has enabled communities to recognise their rights.*”

7.2 Impact on initiatives raising accountability issues

In Uganda, victims have highlighted that the main duty to protect them falls on the government and that “*the government should apologise to the people for the atrocities committed by the LRA and recognise that it was out of its failure to provide security to the people.*”

In Uganda, community organisations have also called for cooperation between their government and the ICC encouraging the “*ICC and Government [to take] the role of investigating the top UPDF commanders and or other soldiers who allegedly perpetrated crimes during the LRA war.*”

As pointed out by some NGOs working with victims in DRC (South Kivu), the ICC has impacted on victims and the organisations that work with them raising their views and concerns. It has enabled victims’ communities to raise concerns for justice nationally. They highlight that it is “*irresponsible for government not be able to judge its own citizens,*” and that victims organisations are beginning to hold their own governments to account for establishing a legal system able to guarantee their rights and that “*an effort is needed at the legislative level so that implementation of the Rome Statute is effective*”.⁶⁸

Organisations working with victims in DRC highlight that States need to set up national mechanisms to facilitate victims’ access to justice: “*regarding individual dignity, physical and mental well being, respect for privacy, rehabilitation of victims, the ICC can not do it alone. States should put in place mechanisms at the level of civil society, especially organisations defending human rights, who are close to victims and can take their cases to the relevant jurisdiction [...].*”⁶⁹

⁶⁶ « *La dignité individuelle, bien être physique et psychologique, le respect de la vie privée est respectée rétablissement et la réhabilitation des victimes se fait par accompagnement.* »

⁶⁷ « *L’impact de la CPI sur la reconnaissance au niveau national du droit des victimes à la justice et à la réparation est : satisfaction d’ordre morale, la réparation entre les deux familles, l’accompagnement à la justice et médical.* »

⁶⁸ « *Les droits des victimes à la justice et à la réparation semble être un acquis. Cependant, l’effort doit être fourni au niveau législatif pour qu’une loi sur la mise en œuvre du statut de Rome soit effective.* »

⁶⁹ « *Au niveau de la dignité individuelle, du bien être physique et psychologique, du respect de la vie privée, du rétablissement et la réhabilitation des victimes, seule la CPI ne peut pas y parvenir, d’où les Etats concernés devraient entrevoir des mécanismes coopératifs plus élargis au niveau de la société civile surtout des organisations locales de défense de droits humains détenant une assise de proximité pour accompagner des cas vers des juridictions compétentes à cet effet, tout en tenant compte des réalités géopolitiques, et ce faisant consolidant la restauration durable de la gouvernance politique. La dignité individuelle ne sera possible que*

Further afield in Burma for example, while recourse to the ICC is not an option, its existence has had an impact amongst victims communities and groups: *“[i]n terms of the more general effect of the ICC's existence [...] organisations working to end impunity and seeking criminal accountability in Burma have been gaining more and more support from both national and international communities.”* For instance, a recent conference gathering Burmese Diasporas was held in Frankfurt,⁷⁰ and called upon the Security Council to form a Commission of Inquiry to investigate international crimes taking place in Burma. This initiative was backed by 442 Members of Parliament from 29 countries, who issued a statement to that effect; such action may in the view of Burmese civil society be the first step for victims to access to ICC.⁷¹

7.3 Impact on national laws and justice systems

The ICC's consideration and attention to 'situations' under analysis or investigation has had a catalytic effect. It can contribute to increased activity with respect to accountability mechanisms at the national level, including the drafting and implementation of new laws and the creation of national institutions capable of judging war crimes or crimes against humanity. The following responses were with respect to the ICC's impact on victims' rights being given effect at national level.

Democratic Republic of Congo

Organisations working with victims in DRC have reported that, *“the Rome Statute system plays an important role in the recognition of victims' rights to obtain justice and reparation in our country which is stuck with difficulties in the legal structure. Better results could be obtained with the adoption of the draft law implementing the Rome Statute, which is being worked on in the Congolese parliament. It would enable the Congolese judiciary to judge a high number of suspects who cannot be judged by the ICC.”*⁷²

Some community organisations think that the implementation of the draft law should be undertaken under foreign supervision. The potential in the Rome Statute system is often reiterated. NGOs in DRC and Uganda are calling for their State to *“integrate the provisions related to the rights of victims into their domestic legislation”*⁷³ adding that *“since the court is complementary to the national justice system, the government should enact laws that enable it to handle some of the cases.”*

Women's organisations working in DRC (South Kivu), praise the positive impact between the ICC Statute and the new Congolese law on sexual violence, stating that, *“there have been*

quand le droit sera véritablement rendu et la victime réhabilitée et réinsérée socio économiquement. La réussite, c'est la coopération par une représentativité régionale du corps de la magistrature de la CPI »

⁷⁰ Conference of the Forum of Burmese in Europe, held in Frankfurt 16-17 January 2010.

⁷¹ Letter to Ban Ki-moon from Ambassador Michel Kafando et al., 10 Dec. 2009, available at <http://uscampaignforburma.org/wp-content/.../12/442-MPs-Letter-to-UNSC.pdf>.

⁷² *« La CPI joue un rôle important dans la reconnaissance du droit des victimes à obtenir justice et réparation dans notre pays buté aux difficultés d'organisations judiciaires mais un meilleur résultat pourra être obtenu avec le vote de la loi de mise en œuvre du Statut de Rome en chantier au parlement congolais pouvant permettre à la justice congolaise de juger un grand nombre de suspect ne pouvant pas être jugé par la CPI. »*

⁷³ *« Les Etats intègrent dans leur législation nationale les dispositions relatives aux droits des victimes. »*

changes brought by the ICC Statute [in how the law deals with gender based violence]. This is the case with the new law on rape and sexual violence in DRC of 2007 which brings new definitions for acts of rape and sexual violence.”⁷⁴

With respect to prosecutions taking place at national level, local civil society organisations expressed dismay at the state of the Congolese justice system: *“local justice does not at all reassure us. The perpetrators do not stay in prison for long and easily obtain conditional release.”* Women’s groups explain that because of the ineffectiveness of the system, they are now *“beginning to look into amicable settlements so that the victim and family can benefit from compensation however small, in accordance with customs in the different areas concerning sexual violence issues.”⁷⁵*

Uganda

In Uganda the ICC has triggered a national debate on accountability as part of the Juba Peace talks, which saw both the government and LRA negotiating teams conducting consultations with affected communities. Both civil society and the government sought to rely on accountability mechanisms at national level as a priority. The debate concluded with the signature of Annexure 3 on “Accountability and Reconciliation” of the Juba Peace Agreement by both the government and LRA negotiating team in March 2008. While the talks collapsed in November 2008, the momentum for the general framework for accountability continued, with the establishing of the Special War Crimes Division of the High Court of Uganda in July 2008. The War Crimes Division was prevented from commencing its work due to the delay in passing legislation incorporating crimes within the ICC’s jurisdiction into domestic law. The newly adopted ICC Bill, adopted by Parliament on 10 March 2010 makes genocide, war crimes and crimes against humanity, as defined by the Rome Statute punishable offences under domestic law.

Ugandan civil society organisations working with victims had expressed concerns in relation to the draft Bill with respect to victims’ rights being recognised therein. Concerns included issues of protection for victims and witnesses, whether government forces and LRA would be treated equally under the law, as well as reparation for victims.⁷⁶

With respect to the national justice system, lack of trust in national justice systems is an important issue in relation to the impact of the ICC. As pointed out in Uganda, *“victims/people do not believe in the national legal system’s competence and integrity [... and] most victims have not been given opportunities to participate in past cases.”* The lack of confidence in national systems contributes to the often unrealistically high expectations of the ICC, which in turn contributes to disappointments that the ICC cannot single-handedly respond to the justice needs of a country, and must rely on the State to also do its part.

⁷⁴ « Il y a eu des aménagements apportés par le statut de la CPI, certains Etats s’y conforment. Tel est le cas pour la nouvelle loi sur les viols et violences sexuelles en RDC de 2007 qui apporte des nouvelles qualifications aux actes des viols et violences sexuelles. »

⁷⁵ « La justice locale ne nous rassure pas du tout. Les bourreaux ne font pas long feu en prison et obtiennent la liberté provisoire. Ainsi nous commençons à nous pencher vers l’arrangement à l’amiable pour que la famille de la victime et la victime profite d’une indemnité si petite soit-elles conformément aux us et coutumes dans les différents milieux concernant la question des violences sexuelles. »

⁷⁶ See Uganda Victims’ Foundation Position Paper on the International Crimes Bill, November 2009: <http://www.vrwg.org/Publications/02/UVF%20Position%20Paper%20International%20Crimes%20Bill%20of%202009.pdf>.

Colombia

Implementing legislation has an enormous potential to facilitate access to justice if it encompasses victims' rights and is correctly implemented. However, in Colombia, some feel that the efforts to reform the laws are in fact disguising impunity.

"In this sense, the victims notice that the Colombian State has created the so called Peace and Justice Law, to attempt to discourage international opinion about the possibilities of studying Colombia's situation on the ICC. This is happening in a context where armed conflict and socio-political violence is still occurring and no social, political or economic measures have been taken to allow a negotiated political solution to the conflict, as well as the application of International Humanitarian Law to effectively protect the civil population.

Likewise, this complex normative setting is seen as an instrument of impunity, not only due to the insignificant sanctions that will be imposed to those responsible of serious crimes, but also because their right to truth and redress have not been assured. Moreover, the sacrifices made in the matter of justice also failed to contribute to the deactivation of the structures, since they keep acting and committing crimes while, officially, allusion is made to a type of persecution of impunity that does not exist in reality."

Organisations working with victims in Colombia state that, *"[...] crimes against humanity are still occurring in Colombia. These are international crimes, particularly torture, persecution and genocide against the indigenous population. They are all largely the doings of paramilitary groups, while the possible deterrent effect of the ICC would require a real proximity rather than politics of the ICC."* Civil society organisations in Colombia have reported that *"[s]adly, in the most emblematic of cases, the language of the International Criminal Court Statute has not been incorporated in the classification of crimes against humanity and its forms, such as persecution."*

There is still a gap between theory and practice and for example victims have highlighted that, while *"the so called Law of Peace and Justice, [in Colombia], in a theoretical level can be incorporated to the conceptualisation of the rights to truth, justice and redress, [...] in practice these are not respected."* They also mention attempts to pass a "victims' law" in Colombia which have been ruined by lack of political will.

NGOs in Colombia have said that *"Similarly, the work done by human rights organisations through presentation of information and submissions to the [ICC] had an internal impact, considering that it boosted the investigation of cases through fear of procedures by the ICC."*

7.4 Impact on capacity building and skills transfer at national level

Another area of the ICC's impact is the transfer of skills and knowledge of those working in relation to the ICC's proceedings back to national jurisdictions. The opportunities for visiting professionals and interns to spend time at the ICC are seen as important tools for exchange.

Furthermore lawyers representing victims in the ICC's proceedings often come from 'situation' countries. There is a potential transfer of expertise on international crimes from their experience at the ICC to their practice at the national level, increasing national capacities for the prosecution of the most serious international crimes. Efforts to initiate domestic accountability measures, such as in Uganda, also result in the creation of a cadre of legal professionals in the country who acquire significant expertise in international criminal justice.

Recommendations for the ICC:

1. Importance of outreach for meaningful impact:

- Increase the coverage of outreach activities with specific emphasis on those who are most difficult to reach including women, children, elderly and disabled;
- Ensure outreach activities are started as soon as an investigation is announced;
- Ensure specific strategies to reach victims living in rural areas taking into account the reality of their living conditions;
- Ensure that radio is not the only means of reaching rural populations; consider street theatre and training of trainers as means of spreading information;
- Ensure specific information is available to victims on how they can petition the Court and safely provide information to the Prosecutor;
- Ensure that the Court's limitations are clearly and repeatedly explained in order to manage expectations;
- Increase public information in non-situations countries, particularly for "situations under analysis."

2. The wider impact of the ICC on victims:

- Ensure trials deliver an outcome as speedily as possible;
- Undertake *In situ* hearings whenever feasible, or at least hold some hearings, such as the opening statements, in situation countries.

3. Disappointment at slow and limited selection of cases:

- Clarify and make available a policy on admissibility of situations;
- Avoid perceptions of bias by not aligning publicly with political leaders that might be linked to past or present conflicts;
- Apply a systematic, rather than expedient, approach to investigating known war criminals in order to maximise deterrence;
- Ensure that the analysis of admissibility and threshold of criminality are considered equally for different countries.

4. Direct impact of ICC on victims:

- Review the procedure for applying to participate in proceedings, to make it more accessible and effective;
- Rectify existing application forms to make them shorter and less complicated;
- Provide more feedback on processing of application forms, including more direct contact;
- Ensure that the kinds of evidence required are realistic given the difficult war time conditions;
- In order to ensure the protection and effective participation of victims, those working with them at ground level (also known as "intermediaries") should have their status and role recognised, ensuring training, remuneration and protection as appropriate;
- As regards assistance from the Trust Fund for Victims, a communications strategy for engaging directly with affected communities is suggested as a means of explaining the

criteria used in awarding project grants and ensuring appropriate transparency of how assistance is working amongst the affected communities;

- Ensure that the Trust Fund for Victims' communication and outreach strategy is integrated in the Public Information and Outreach strategy of the Court.

5. The ICC's impact on peace:

- In order to ensure a deterrent effect, selection of cases must be systematic and not based on expedience;
- Increased outreach should be undertaken also amongst former combatants (both State and non-state actors) to explain the mandate of the Court.

6. Impact on child recruitment and gender violence:

- Increase the profile and outputs of gender specific outreach, and systematise across all situation countries;
- Ensure that gender specific outreach is available from the commencement of work in a new situation country;
- Develop child specific outreach, including the development of child-friendly materials and tools that can engage children according to their evolving capacities in a protective and enabling environment;
- Ensure that outreach staff receive training in dealing with trauma (including trauma related to crimes of sexual violence) and in child protection and participation issues.

Recommendations for States:

1. Importance of Outreach for meaningful impact:

- Support the ICC in increasing its outreach budget to ensure it can provide for sufficient outreach to be conducted in each situation country from the moment investigations are announced in order to ensure that affected communities are appropriately informed about their rights and the decisions that affect them, as well as given accurate information about what the ICC can and cannot do thereby minimising misplaced expectations;
- Support the ICC's outreach function by recognising that non execution of arrest warrants for a number of years renders outreach activities of the utmost importance to continue to make justice relevant to affected communities and upholding the actual level of outreach in situation countries such as Uganda.

2. The wider impact of the ICC on victims:

- Ensure high level cooperation on executing arrest warrants, establishing task forces or other multilateral mechanisms that may be required to conduct arrests;
- Ensure that those named in arrest warrants, such as Joseph Kony and Bosco Ntaganda are handed over without delay;
- Ensure that the ICC receives support from States and intergovernmental bodies in organising *in situ* hearings whenever feasible.

3. Disappointment at slow and limited selection of cases:
 - Ensure that national mechanisms are in place to undertake investigations into genocide, crimes against humanity and war crimes; and that these are used to maximise deterrence of such crimes;
 - Ensure that crimes committed prior to July 2002 can be prosecuted at national level in order to fill “impunity gaps”.
4. Direct impact of ICC on victims:
 - States are requested to contribute “liberally”, while the Trust Fund should also develop a dynamic fundraising strategy;
 - Provide accurate sensitisation on reparations to affected populations in order to explain what may and may not be possible for the Court to undertake;
 - Ensure that mechanisms to assist and repair victims of gross violations of international human rights and serious violations of international humanitarian law are established at national level in accordance with international law;
 - Undertake proactive cooperation with the ICC in identifying, freezing and seizing assets in view of potential reparations orders.
5. The ICC’s impact on peace:
 - Redouble efforts to execute arrest warrants against the leaders of the LRA, exploring innovative cooperation structures amongst States;
 - Ensure pro-active cooperation to track down those funding the activities of rebel groups and organised criminal activity.
6. Impact on child recruitment and gender violence:
 - With actors being held to account for child recruitment at national level (eg DRC), States must put in place specific child protection measures with respect to potential child witnesses;
 - Ensure that underage recruitment is a crime under national law and that the minimum age for recruitment is raised to 18, if it is not already so.
7. Impact on victims’ rights at national level:
 - States should ensure that crimes contained in the Rome Statute can be prosecuted at national level when enacting implementing legislation;
 - Implementing legislation should give effect to victims’ right to a remedy and reparation in accordance with the UN Basic Principles and Guidelines on the right to a remedy and reparation for gross violations of international human rights law and serious violations of international humanitarian law;
 - States which have the expertise should provide bi-lateral technical assistance to Situation Countries enabling capacity building on investigations, including investigations into crimes of gender violence, witness protection, as well as structures and trained personnel to support and assist victims in accessing justice.

Annex : VRWG Questionnaire on the Impact of the ICC on Victims and Affected Communities

Questions for dissemination in relation to the Review Conference Stock-taking exercise on “the impact of the Rome Statute system on victims and affected communities”

When answering these questions, please ensure that you consider both the impact of the ICC's direct activities (investigations, proceedings, trials, outreach, public information, projects of the Trust Fund for Victims) as well as the more general effect of the ICC's existence and how this has impacted upon local, national or regional developments.

- How has the existence of the ICC impacted on victims expectations of obtaining justice? [including those directly involved with ICC, those in ‘situations’ but not cases, ‘situations’ under analysis, victims in unrelated ‘situations’]. For victims in general, can the ICC constitute an obstacle against peace?
- How has the existence of the ICC impacted on victims' views and concerns being heard within their communities, nationally and internationally? [the healing role that justice can play for victims is largely centred on recognition of victimisation at the personal, community, national and international levels and it would be good to reflect this in the discussion.]
- How has the existence of the ICC impacted on recognition of specific types of harm on the ground? eg. for children formerly associated with armed groups; victims of gender-based violence; institution or organisation victims; victims of attacks?
- What has been the ICC’s impact on the ground for victims of gender-based violence? How has the existence of the ICC impacted on breaking the silence around gender violence, deterring gender-based violence, or finding justice for victims of gender-based crimes?
- What has been the ICC’s impact on the ground on individual dignity, physical and psychological well-being, respect of privacy, healing and rehabilitation of victims?
- How has the existence of the ICC impacted on victims’ rights to justice and reparation being recognised nationally, particularly for specific groups of victims (e.g., women and children)? Have States integrated provisions concerning victims’ rights into their national laws and policies?