



## **Turning the Lens Victims and Affected Communities on the Court and the Rome Statute system**

### **Introduction**

The Court wishes to contribute to the preparations for the “Impact of the Rome Statute System on Victims and Affected Communities” part of the Review Conference’s stocktaking exercise with this paper, which seeks to put together some of the views and voices of victims gathered in the course of the work of the Registry. The Court hopes that this paper will provide information States consider useful on the views of victims and affected communities on the impact of the Rome Statute system.

The Registry interacts with victims in two principal ways: through their participation in the judicial proceedings, as participants and witnesses, and through the Registry’s outreach work. In respect of the former, the Victims Participation and Reparations Section (VPRS) has collected the voices and opinions of victims through application forms for participation and reparations, individual meetings with victims and intermediaries, and extensive group consultations. The Office of Public Counsel for Victims (OPCV) has been acting as the legal representative to a large number of victims in the proceedings, and in fulfilling this important mandate has gathered a unique perspective on the views of victims on the Court and the Rome Statute system. The Victims and Witnesses Unit (VWU) core mandate of protection and support to victims and witnesses who testify before the Court, as well as other persons at risk on account of such testimony also gives them a privileged position to assess the views of victims. In this respect, VWU has conducted three types of questionnaires for victims and witnesses who appear before the Court; pre-testimony and post-testimony questionnaire which is conducted by the support staff of the VWU in The Hague. The long-term follow-up questionnaire is conducted six months after giving testimony and is facilitated by the VWU staff in the field. The questionnaire includes questions regarding the VWU services as well as giving victims and witnesses space to express their demands/satisfactions/suggestions. The views of victims gathered during its work on participation are presented in Part I of this paper.

In respect of its outreach work, the Registry’s Outreach Unit has engaged in a systematic two-way communication process with affected communities of cases heard before the Court. In the course of its work the Unit has collected hundreds of questions, concerns, and comments raised by participants as well as responses to surveys applied by ICC officials to participants, during interactive sessions. Data, stored in an internal website, is subject to evaluation and serves to assess impact of activities, prepare reports and adjust planning when needed. The Unit reaches consistently community leaders, affected population (displaced people, refugees,

Diaspora), civil society organizations, youth, women, teachers, students, legal practitioners and journalists. It prioritizes war-torn areas or regions where communities most affected by cases heard before the Court are concentrated. The views of victims gathered in its outreach work are presented in Part II of this paper.

It must be emphasised that the views and summaries thereof set out in this paper are not intended to be in any way definitive, or to provide a complete portrayal of the many different views of the multitude of victims in the Court's different situations. Much of the information is summarised and anecdotal. Moreover, the information reflects the views of only those victims and affected communities who have interacted with and made their views known to the Court. Nevertheless, the Court hopes that States will find this information useful.

## **Part I - Victim Participation**

### **1. Victims' general perception of the proceedings before the ICC**

#### *General observations*

- The intervention of the Court has triggered high expectations among victims, some of which are not capable of being fully met. Many indicated that they see the ICC's involvement as a sure sign that justice will be done. They expect that arrests, swift prosecution and compensation will soon follow the opening of situations. In expressing this view, victims have indicated a lack of faith in the capacity or will of national judicial systems and an expectation that impunity will prevail without international involvement.
- Some victims expressed hope that the individual incidents which affected their lives will be investigated and the persons involved at all levels will be brought to justice. Others want to appear at the Court in person, or to benefit from comprehensive protection or reparations programs.
- Victims also expressed desires for peace and stability. In Uganda, Darfur and DRC, for example, some victims have indicated they believe arrest and prosecution to be a necessary step of the peace process itself. In CAR and Kenya, victims have expressed the view that prosecution will end a cycle of impunity and pre-empt or mitigate violence that may re-erupt in the future. Frequently, the Court is initially seen as competent, impartial and the only hope for any form of justice or compensation.
- At the same time, victims have often expressed that their needs for humanitarian assistance are a more immediate concern.
- In some cases, victims have indicated a preference for local justice mechanisms or for such methods to operate in concert with international criminal prosecution.
- Victims find it difficult to fill the standard application form (either for participation or for reparations) since they feel that such forms are too elaborated and complex.
- Victims often raise the issue of the impossibility of providing the Court with documents such as proof of identity or proof of their relationship to deceased persons.

In the context of ongoing or past conflict, it is very difficult to have such documents. In any case, the administrative authorities are often not in a position to provide such documents in countries where an investigation/prosecution by the Court is ongoing.

- Over time, victims' understanding of the Court has shown changes. Victims have sometimes become frustrated by the Court's inability to make arrests. Several years after the Court's intervention began and with suspects still at large in Uganda and Sudan, there is less expectation that the Court will bring either justice or reparations. In Uganda and DRC some victims are disappointed that the Court has failed to prosecute all those responsible or that the narrow scope of charges do not reflect the reality of the conflict for them. Victims of crimes that are not linked to any ICC arrest warrant or summons, realise that they may not receive reparations through the Court

#### *General observations on victims experience in participating in proceedings*

- Regardless of their motives, many victims are initially puzzled by what participation means in practice, particularly since it is very different to what happens in national criminal proceedings. In DRC, where two cases are already under way, some want to accompany proceedings in person, or demand that the case be tried closer to home where more victims may be present.

- Information gathered in the VWU questionnaires immediately before and after testimony showed that the majority of dual status victims/witnesses were satisfied with the services provided by the VWU. They found the accompanying persons and the support team of the VWU sympathetic and helpful which helped reducing their stress level.

- In regard to testimony, the questionnaire revealed that usually victims/witnesses felt at ease during their testimony and stated that they see this as an opportunity to finally speak the truth or contribute to justice. The victims/witnesses also expressed they felt supported, encouraged and respected by the VWU and the Court as a whole.

- For victims/witnesses, the presence of their legal representative in the courtroom, as well as the possibility to contact them during their period of testimony, has been described by victims as reassuring.

- Some victims mistakenly believe that they must be present at the Court in The Hague to be able to participate, and are often relieved to find out that their presence is not required, and that they can be represented by counsel in the proceedings.

- Immediately after testimony, victims/witnesses often felt very good and described feelings of relief, happiness, calm, pride and freedom.

- Victims value information and clarity concerning their particular role in the criminal proceedings, and need to feel that the system gives them the appropriate amount of respect. Victims are more likely to feel satisfied with the criminal justice system if they feel their voices are being heard.

#### *Specific quotes*

- ❖ *"I want the ICC to investigate the violence because I want people responsible to be punished so that such crimes are never repeated because I lost my house, my husband was*

- killed, all the livestock we had was stolen. I now have no way to access help from anywhere, not even the government.” (Kenya)
- ❖ “To be a lesson to others not to be mastermind violence ever again. To prevent violence and bring peace to Kenya.” (Kenya)
  - ❖ “Only the ICC can help us, because the way that things are here, mean that the local court does nothing because the politicians here are very powerful. We will continue to live in fear and with no peace.” (Kenya)
  - ❖ “The ICC should go on with investigation so as to find the truth.” (Kenya)
  - ❖ “Why can’t the post-election violence be dealt with by the national justice system?” (Kenya)
  - ❖ “[The victims] prefer home or local forgiveness. They believe The Hague might not be a solution because it will increase pain in the upcoming peace which is now 70% gain through a hard struggle.” (Kenya)
  - ❖ “In Kenya, so far, the peace has prevailed. So for my own opinion, I would like the warring communities to forge peace and reconcile. So that it would not open the heal[ed] wounds.” (Kenya)
  - ❖ “Why has no one been arrested? These men will surely all die before they are ever brought to trial.” (Uganda)
  - ❖ “Why hasn’t the Court investigated or arrested anyone from the UPDF? They also committed crimes. They failed to protect us from the crimes of the rebels.” (Uganda)
  - ❖ “We are happy the Court has come to our aid, but things have taken so long and still Bashir is walking around Sudan as President. If the ICC is really so important, then why don’t they arrest him? Allowing him to continue is an insult to the Court and international justice.” (Darfur, Sudan)
  - ❖ “Nous regrettons ce qui s’est passé, mais nous souhaitons que la cour fasse tout pour que cela ne se reproduise plus.” (DRC)
  - ❖ “Les procédures sont longues, ça prend trop de temps; pourquoi pas les libérer ou les condamner une fois pour toute?” (DRC)
  - ❖ “There are very few initiatives to reach out to women. Can the ICC facilitate that victims who are women go to The Hague and explain their situation to the judges in person? Is this possible?” (Kenya)
  - ❖ « Il y a eu des missions des organismes internationaux qui sont venus s’entretenir avec les victimes et jusqu’à là, il n’y a pas eu quelque choses de concret dans la prise en charge des dites victimes, quid de la CPI ? » (CAR)

## 2. Reasons for wanting to participate in the proceedings

### *General observations*

- Victims’ reasons for wishing to participate vary somewhat. Many have said they are motivated by the pursuit of justice in itself. Others expressed the view that justice may ensure that such crimes may never be repeated. Some victims believe that their participation will further the likelihood of justice, while others seem to want to participate in order that they can be a part of the justice process, or to be kept informed of it.
- One of the prevalent reasons for victims’ wanting to participate is to tell their own particular story of loss/harm/grief. They wish to express what happened to them, and to have their suffering acknowledged.
- Victims have indicated that since they are the persons having lived the events, they feel that they are in the best position to provide information on what happened to them and to their communities. Furthermore, they feel that they are best placed to explain the historical and cultural background to the events and, in this sense, they feel that they can contribute to the establishment of the truth.
- Victims have indicated they want to be recognized by the international community at large as victims of the crimes committed against themselves, their families, neighbors, and ethnic groups.

- They have also said their participation in the proceedings before the Court gives victims a “coping” mechanism through which they channel their frustrations and sense of loss.
- Victims often see participation in the proceedings is another way by which they honor those relatives, friends and community members lost or injured as a result of the commission of crimes against their people.
- Many victims are also interested in the potential outcomes of a trial. They look forward to the punishment of those responsible, the establishment of the truth, and the awarding of reparations..
- When asked why they agreed to participate at the Court’s proceedings, victims/witnesses often stated the same goal – to tell the truth. They were typically enthusiastic about an international tribunal hearing “their case” and taking into account their views and concerns on it.

#### *Specific quotes*

- ❖ *“I want to participate because I believe the world must know what happened here. People must publicly acknowledge the horrible crimes that took place here.” (Uganda)*
- ❖ *“We hope that by speaking out, our voices may ensure such atrocities never happen again. Never again.” (Uganda)*
- ❖ *“President Bashir, as head of state, is responsible for the crimes that occurred in Darfur. I want to participate so the world knows what horrible things occurred and I want Bashir to pay for his crimes above all other men.” (Darfur, Sudan)*
- ❖ *“ Je suis déjà victimisé. Toute ma famille et toute ma richesse n’existe plus. Je suis prêt à témoigner partout.”*
- ❖ *« Traumatisme de la scène de la guerre qui reste inoubliable dans la vie et qui n’a pas de réparation » (DRC)*
- ❖ *“Because it is an independent organization which preserves my security and ready to listen to my views without forcing me on it.” (Kenya)*
- ❖ *“I am concern of what to tell my community. How do I explain that you selected few victims? Many victims will be left aside of this process. Everyone I know would like to have a say in this process.” (Kenya)*
- ❖ *“How do victims “hand over” cases to the ICC?” (Kenya)*
- ❖ *“Will the judges of the ICC take into consideration the opinions and concerns of Kenyans and victims when making a decision? How can we know the outcome of this process?” (Kenya)*
- ❖ *“Is VPRS going to consult with victims directly? The ICC should because community leaders might have different views with regards to the ICC involvement in Kenya.” (Kenya)*
- ❖ *“How can we victims help ICC to speed up the process so as to deter potential crimes in 2012?” (Kenya)*
- ❖ *« Je fais cette demande pour exposer les faits que j’ai vécu dans ma chair, lors du passage des éléments du MLC à Bangui » (CAR)*
- ❖ *« Dès lors et jusqu’à la mort de mon mari, je n’ai pas confié ce secret car j’ai peur qu’il abandonne mes enfants. Je ne pouvais pas me rendre à l’hôpital de peur d’être reconnu du public et faire l’objet de railleries. Mon mari est mort, j’ai avec moi des orphelins et présente des problèmes de santé...les moyens me manquent pour payer leur scolarité. Raison pour laquelle j’ai décidé de dévoiler mon secret à vous, Cour Pénale Internationale, pour que justice soit faite. » (CAR)*
- ❖ *« Avec tout ce que je viens d’expliquer, je me pose des questions pour savoir qui viendra à mon secours? N’est ce pas une sorte de morte lente? Je suis constamment malade, traumatisée alors que mes parents ont investi pour qu’à mon tour je puisse les aider, les prendre en charge. Je demande à la Cour de faire son travail afin de trouver tous les criminels de cet événement, de les juger afin que cela ne se répète plus. J’ai demandé des dommages et intérêts. » (CAR)*

- ❖ *“This is what I want to say: As he is here and I am here before the court, it was a big decision for me to take. I don’t have any parents – well, I don’t have my father. I have my mother. My father helped me greatly. He did everything for me but he is no longer alive. I took the decision to come here to testify because of the evil he has done. It is said that everything has a beginning and an end. That’s what I wanted to add. I don’t know whether I have badly expressed myself. If I have done, then please, forgive me. (Witness in Lubanga case, 20 February 2009)*

### 3. Reasons for asking reparations

#### *General observations*

- Reparations are of concern to nearly all victims and it is unequivocally the most commonly raised question in victim consultations. The ICC appears to victims to be a professional, committed institution with broad international support. As such, they rely on it as their only realistic chance of receiving reparations and being able to start a new life.

- It is difficult to explain the broader concept of reparations, as defined in the Rome Statute, to victims. In many African cultures, including all current situation countries, monetary compensation is a standard method for compensating victims through traditional justice mechanisms. In many local languages spoken in the situation countries there is no word for reparations as such, but only words denoting related concepts such as compensation.

- Once victims have gained some understanding of the concept of reparations, including the possibility of collective and symbolic measures, their responses are mixed. Many are interested in the individual material assistance needed to address the medical, livelihood or educational needs of their family. However many victims welcome the idea of measures directed at communities, including symbolic measures. In any event, victims have high expectations that sufficient means will be found to cover reparations, whether from the assets of a convicted person or from other sources.

- It is sometimes difficult for victims to understand the difference between the assistance provided by the Trust Fund for Victims and the reparations provided by the Court.

#### *Specific quotes*

- ❖ *“Who shall pay compensation? Joseph Kony surely has no money and we victims are many people.” (Uganda)*
- ❖ *“We want compensation, not symbolic monuments or apologies. We are hungry now. We need education now. One cannot eat a monument or an apology.” (Uganda)*
- ❖ *“Will they award compensation without a trial? If I die before the trial ends, will my children be taken care of?” (Uganda)*
- ❖ *“Individual compensation is the most important thing for us and it is non-negotiable. If the Government of Sudan is unable to pay it then the international community should do so. We rely on the Court to bring us justice and compensation.” (Darfur, Sudan)*
- ❖ *“Our communities have been marginalized for centuries. Darfur has been dominated and exploited by the centre, the government in Khartoum. The war has magnified that. We must rebuild our communities with health centres, schools and general development for everyone.” (Darfur, Sudan)*
- ❖ *« Je souhaiterais que les ressources m’aident à reprendre la vie en m’octroyant la maison et tous les biens que j’ai complètement perdus. A ce jour, j’ai de la peine à abriter l’ensemble des personnes à ma charge. Après on pourra penser à notre communauté. » (DRC)*
- ❖ *« Mon souhait serait que les ressources soient orientées aux premiers affectés de cette guerre que nous sommes, nous qui avons perdus des êtres chers et tous nos biens. Les*

ressources devront nous aider à trouver ne fut-ce qu'une maison pour abriter notre famille.» (DRC)

- ❖ « L'objectif de la réparation est de nous permettre de nous réconcilier avec les autres communautés [...]. La réparation va nous permettre de refaire notre vie, celle de nos enfants et de nos familles, car le métier que nous allons apprendre sera bénéfique. » (DRC)
- ❖ « La réparation peut nous aider à enlever les mauvaises pensées dans nos têtes, à oublier le passé pour voir l'avenir avec espoir. » (DRC)
- ❖ « Les projets comme l'apprentissage aux métiers de l'élevage, menuiserie, initiation au commerce pourraient nous aider à mener une vie normale. » (DRC)
- ❖ « La réparation m'empêche de faire le mal, d'avoir des bonnes idées constructives. Mais s'il n'y a pas réparation, et qu'un candidat venait nous recruter pour reprendre la guerre, nous serons les premiers à y aller, car nous sommes en colère contre ceux qui ont bénéficié du programme [de démobilisation]. » (DRC)
- ❖ « Nous n'avons pas besoin d'excuses publiques ou d'ériger un monument, par contre nous avons besoin d'être considérés comme tout enfant ou tout citoyen capable de contribuer au développement de son pays en respectant nos droits. » (DRC)
- ❖ "I would request if the offenders are found guilty that victims should be compensated." (Kenya)
- ❖ "We request the ICC to try and assist us as much as possible financially or materially to enable us go back to our normal lives. May we also be assisted socially as most of us are still traumatized" (Kenya)
- ❖ "If the accused is acquitted who will compensate the victims?" (Kenya)
- ❖ « Je demande une aide économique pour pouvoir rétablir ma vie, me soigner, réparer ma maison qui n'a pas été réparée depuis les événements. » (CAR)
- ❖ « Je souhaiterais une aide économique pour pouvoir faire réparer l'école qui a été détruite et que celle-ci puisse reprendre ses activités » (CAR)
- ❖ « Jean Pierre Bemba se doit de m'indemniser par ses ressources. » (CAR)
- ❖ « Si les ressources sont disponibles, je préfère les fonds au profit des victimes pour aider ma communauté et moi » (CAR)
- ❖ « Nous souhaitons que la Cour Pénale Internationale nous aide à rentrer dans notre village pour nous permettre de nous rétablir et retrouver notre dignité de citoyen » (CAR)

#### 4. Views on Legal Representation

##### *General observations*

▪ Victims generally feel that a lawyer should be both trustworthy and accessible. They expect that the lawyer they choose should have a sound understanding of the cultural and other background of their country. They also want their lawyers to have relevant expertise and qualifications. It is also important that the lawyer should be a person of integrity who can be trusted with confidential information.

▪ Victims value their relationship with their legal representatives. They indeed consider that counsel are their direct link with the Court and they express the wish of a constant contact with them. They understand the value of the privileged relationship between lawyer and counsel and once a trust relationship is established, they seek their legal representatives' advice on matters related to their participation in the proceedings.

▪ Of paramount importance to many victims is regular and meaningful contact with their legal representatives. The extent to which this is realized appears to have a significant impact on victims' experience of participation in ICC proceedings. Some victims feel their lawyers do not adequately communicate with them and that they receive little information from them about ongoing developments in the proceedings. In contrast, other victims have been happy with their lawyers when these representatives maintain frequent contact with their clients and are able to effectively explain what is (or is not) happening at the Court.

- Whether victims prefer a lawyer of their own ethnicity, nationality or gender varies across the situations where the ICC is working and the types of conflicts and crimes experienced. In many cases victims see a lawyer of their own nationality as more accessible and understanding of their circumstances. However some victims, for example in the DRC and CAR, prefer that their lawyer is of an ethnicity which was not involved in the conflict and which is therefore perceived as having greater independence or impartiality. In other cases, for example in Uganda, victims have expressed a preference for lawyers from their own region rather than from other parts of their country. Some victims of sexual-based crimes in particular believe that a female lawyer would be in the best position to understand their suffering and represent their interests.

- In the Katanga case, where the Chamber decided that all the victims would have a common legal representative who had not been chosen by most of them, victims initially struggled to understand why they could not retain the lawyer they had chosen. However many of them stated that the most important thing was that the new lawyer would keep them well informed.

#### *Specific quotes*

- ❖ *“The lawyers ... are very far away. How can they represent us if we hardly ever see them?” (Uganda)*
- ❖ *“We do not trust lawyers from Uganda very much. Can you help us find lawyers outside the country?” (Uganda)*
- ❖ *“We want lawyers that understand us, but we prefer people from neutral countries that are not biased or involved in the conflict. Westerners or people from democratic African nations would be our choice.” (Darfur)*
- ❖ *« Elles n’avaient jamais rencontré l’avocat qu’elles avaient désigné et en plus depuis que leurs demandes de participation ont été envoyées, c’est pour la première fois qu’elles se retrouvent en face de quelqu’un qui travaille pour la cour. Elles avaient pensé que leur dossier était jeté et ils n’avaient aucun espoir quant à ce que la cour puisse recevoir leurs demandes. Ainsi, elles souhaitent que pour remonter leur moral, que le représentant légal désigné puisse les rencontrer régulièrement et personnellement pour les tenir informées de l’évolution des procédures devant la cour. » (DRC)*

## **5. Perceptions of Security and Risk**

### *General observations*

- Levels of security risk to participating victims varies, as does victims’ perception and understanding of such risks. However many victims in all situations believe that participating in ICC proceedings creates risks for them. Victims are often wary of the ability of their national governments or law enforcement bodies to guarantee their safety

- Where victims recognize or perceive risks to their security, they look to the Court to provide security and believe that the Court has the authority and resources to keep them safe.

### *Specific quotes*

- ❖ *“These men are still out there and they may come back at any time. They can easily find me.” (Uganda)*
- ❖ *“The rebels have already committed horrible crimes against us. If they have the chance, they will do it again.” (Uganda)*
- ❖ *« Face au climat d’insécurité que nous connaissons, qui est habilité à nous contacter ? » (DRC)*



- ❖ « Ils ont peur de s'afficher à cause de menaces de la part des habitants de leur village, raison pour laquelle ils estiment qu'une réparation collective ferait une bonne affaire de tous. » (DRC)
- ❖ "We are concerned about the security and safety conditions of the victims. We urge the ICC to help us in this matter. The proceedings should take place as soon as possible." (Kenya)
- ❖ "Can the ICC put pressure on the government to enact a comprehensive and effective witness protection system? How is the ICC going to deal with intimidation and threats of victims (which are common amongst victims of the crimes related to the elections of 2007)?" (Kenya)
- ❖ « Je souhaite que la Cour Pénale Internationale assure ma sécurité ainsi que celle de ma famille. » (CAR)
- ❖ « Je crains que ses auteurs de crime de guerre et leurs amis dans le monde puisse me tuer et je crains leurs représailles sur ma famille. » (CAR)
- ❖ « Je suis maltraité par les rebelles à cause de la perméabilité des frontières centrafricaines. J'habite dans une région très proche de la RDC où des éléments de Jean Pierre Bemba sont encore présents. » (CAR)

## 6. Perception on local systems of justice

### *General observations*

- Most victims have the perception that their national courts of law are much more susceptible to corruption and undue influence than the ICC, thereby overwhelmingly preferring the latter as the court of choice to prosecute the crimes for which they allege to be victims. Along the same vein, victims often fear that the national authorities may not be willing to prosecute a case against a particular accused who has political, financial or other support from groups within the local community.
- Victims believe that the Court is better-equipped than the national authorities of their country to provide security measures to protect them if they choose to participate at any level with the Court.
- Victims have a prevalent perception that their national courts of law are ill-equipped to conduct criminal proceedings of the gravest crimes, thereby preferring that these be prosecuted before the Court.
- Victims have expressed doubts at being able to obtain legal representation before a national court, and as a consequence fear that their views and concerns with respect to the proceedings would not be taken into account.
- Some victims also believe it essential that psychological support be provided to them during the proceedings in order to avoid re-victimisation, and they worry that their national court systems is not able to provide this type of specialized assistance.
- Victims often express doubt that any reparation award granted would not be implemented by a national court, whereas they believe that the ICC would honor any reparation orders granted by a Chamber. Furthermore, some victims think that reparations would not be granted at all under their national criminal law systems since the criteria for reparations are not clear, or even non-existent.
- Some victims consider that holding trials for crimes against humanity and other grave crimes would destabilise their country and that "traditional justice" or "reconciliation" would lead to impunity.

- Yet other victims fear that if those accused of the gravest crimes are imprisoned in their own country, they may escape from prison and continue their assault on civilians. They therefore prefer that, once apprehended, these individuals be transported to The Hague for prosecution.

## **Part II - Reaching out to victims and affected communities**

For the purposes of the present paper, illustrative questions raised by affected communities to the Outreach Unit in all situation-related countries are presented, grouped below under the following thematic categories: general about the ICC and the Rome Statute; admissibility, referrals and investigations; arrest warrants; judicial proceedings and outreach.

### **1. About ICC and the Rome Statute**

During initial phases of situations, efforts are made to promote a general understanding about the ICC, build trust from the communities and manage expectations. People want to know why the Court is present in their country and how can the ICC contribute to end impunity. This part present examples of general questions about the Rome Statute and States Parties to the founding treaty, complementarity, scope of prosecutions, and international cooperation and judicial assistance.

#### **1.1. General**

- ❖ *Why and when was the ICC created? (From all situations, initial phases of outreach)*
- ❖ *What are States Parties? (Kenya)*
- ❖ *What is the legal difference between state party and state signatories? (Kenya)*
- ❖ *Is the ICC independent from the United Nations Security Council? (Sudan)*

#### **1.2. Principle of complementarity**

- ❖ *Will the ICC still intervene in Kenya should the government decide to set up a domestic court to try perpetrators?*
- ❖ *Why cannot the post-election violence be dealt with by the national justice system? (Kenya)*
- ❖ *Now that the ICC Crimes bill has become an act of parliament, what is next for the ICC? Will they discontinue with the LRA case and support the Uganda Courts in the true spirit of complementarity?*
- ❖ *There were national proceedings against one individual named in the warrant of arrest. If the ICC does not replace national systems of justice, why has an arrest warrant been issued against this person? (Sudan)*
- ❖ *Which laws does the ICC operate on, Kenyan laws or other laws? (Kenya)*
- ❖ *Can the ICC withdraw its arrest warrants? (Uganda and Sudan)*

#### **1.3 Scope of prosecutions before the ICC**

- ❖ *Will the ICC also try children involved in the northern conflict? (Uganda)*

- ❖ *We hear [that] Kony is [allegedly] committing more crimes in the neighbouring countries, does the Prosecutor intend to [request] more arrest warrants? (Uganda)*
- ❖ *If Kony were arrested today, which crime will he be tried for – those he [allegedly] committed in Uganda or those alleged crimes in neighbouring countries? (Uganda)*
- ❖ *Does the ICC have a legal right to investigate sitting heads of states or government officials? (From all situations)*

#### 1.4 International cooperation and judicial assistance

- ❖ *What happens if State Parties to the Rome Statute of the ICC fail to cooperate with the ICC? What will ICC do in a situation? (Kenya)*
- ❖ *What concrete strategies can [the] Assembly of State Parties put in place to enforce compliance of ICC orders? (Uganda and Sudan)*
- ❖ *Why doesn't the ICC ask the Security Council to impose sanctions over countries that are ignoring the Court's decisions? (Sudan)*
- ❖ *Le fait pour la Cour de dépendre des états pour l'exécution des mandats d'arrêts, n'est ce pas là un moyen de bloquer le travail de la Cour? (The Democratic Republic of the Congo)*
- ❖ *Quelles sont les sanctions prévues contre un Etat qui refuse de coopérer avec la CPI? (The Democratic Republic of the Congo)*
- ❖ *Si une personne sous mandat d'arrêt de la Cour se réfugie dans un Etat non partie, que va faire la Cour? (The Democratic Republic of the Congo)*

## **2. Admissibility, referrals and investigations**

Prior to the issuance of warrant of arrests, people want to know how situations can come to the ICC, what criterion applies to admit a situation and to authorize the Office of the Prosecutor to conduct investigations, and how investigations are conducted.

- ❖ *How can a situation come before the ICC? (From all situation-related countries)*
- ❖ *Who referred the Kenya situation to the ICC? Can ordinary Kenyans refer a case to the ICC?*
- ❖ *Can Victims make referrals to the ICC? (Kenya)*
- ❖ *Since the situation was referred by the government, can the ICC remain independent from the Governments? (From the Central African Republic, the Democratic Republic of the Congo and Uganda)*
- ❖ *How can the ICC guarantee that powerful people in Government will not interfere or influence ICC investigation? (From all situations)*
- ❖ *What criteria does ICC use to determine whether to conduct trials in a situation country [in situ] rather than doing it in The Hague? (From the Democratic Republic of the Congo and Kenya)*
- ❖ *If ICC will focus only on those who bear the greatest responsibility of the alleged crimes, what will happen to the people who did the actual killing? (From all situations)*

### 3. Arrest warrants

The majority of people engaged during outreach activities were of the view that enforcement of warrants of arrest was ICC responsibility. The Unit explains that in establishing the ICC, the States set up a system based on two pillars. The Court itself is the judicial pillar. The operational pillar belongs to the States, including the enforcement of Court's orders.

- ❖ *We are tired of hearing that Kony and his commanders are wanted by the ICC. Why can't ICC arrest Kony as soon as possible so we can continue enjoying this silence of the guns? (Uganda)*
- ❖ *Why can't State Parties of the ICC consider having its own standby force to enforce ICC arrest warrants? (Uganda)*
- ❖ *Who will arrest President Bashir since Sudan is not a member of the Rome Statute? (From all situations)*
- ❖ *Pourquoi la Cour laisse la RDC refuser de livrer Bosco Ntanganda alors que les autres congolais ont été remis à la Cour? (The Democratic Republic of the Congo)*
- ❖ *Si la CPI ne possède pas d'armée, comment procède-t-elle pour l'arrestation de ses suspects? (The Central African Republic)*
- ❖ *Comment la CPI va-t-elle procéder pour l'arrestation du président soudanais encore en exercice ? (The Central African Republic)*
- ❖ *How are we supposed to believe in the efficiency of the Court if it has not been able to enforce its own decisions? This fact shows that the ICC is weak and pointless. (Sudan)*
- ❖ *Why doesn't the ICC ask the Security Council to use its international forces to arrest Al-Bashir? (Sudan)*
- ❖ *If the Court does not have a Police force who will arrest suspects in Kenya?*
- ❖ *What will happen if Kenyan authorities refuse to cooperate with the Court and warrants of arrest are not enforced?*

### 4. Judicial Proceedings

Major topics of discussion and concerns often communicated during outreach activities are related to the length of proceedings, witnesses, court's proceedings in particular frequency of hearings held in closed session, and respect for the rights of suspects and accused.

#### 4.1. Length of the Proceedings

- ❖ *A number of victims would have died by the time the Court completes it processes, don't you think they should be compensated when they are alive? (Uganda)*
- ❖ *I am old, and the judicial process is long, why can't ICC give me assistance as a victim, instead of waiting for reparations, which will take so long and might not find me alive? (Uganda)*
- ❖ *When we heard that the LRA commanders are wanted by the ICC, we thought it was going to be an easy thing for trials to start, but it is more complex than we thought. I'm surprised*

*to know that investigations are still going on. With all the rights given to suspects at the ICC, supposed Kony is not convicted, won't he come back and kill us? (Uganda)*

- ❖ *Pourquoi la procédure devant la Cour est-elle aussi lente ? (Central African Republic and the Democratic Republic of the Congo)*
- ❖ *Le procès Jean-Pierre Bemba<sup>1</sup> aura effectivement lieu ? (Central African Republic)*
- ❖ *Why are the procedures taking too long in Al-Bashir case? (Sudan)*
- ❖ *Why are the judicial procedures too slow in the cases related to Darfur? (Sudan)*

#### 4.2. Witnesses

- ❖ *How does the Court get its witnesses to testify? (From all situation-related countries)*
- ❖ *Are witnesses paid to testify in Court? (From Uganda, the Democratic Republic of the Congo and the Central African Republic)*
- ❖ *Why are witness identity not shown to the public? Will the lawyers for accused persons accept such thing? (Uganda, the Democratic Republic of the Congo and Kenya)*
- ❖ *Since the Court allows visits to the accused persons, isn't there a likelihood that the accused will disclose the identity of the person testifying against him to his relatives? (Uganda and Kenya)*

#### 4.3. Hearings

- ❖ *Pourquoi une grande partie des procès devant la cour se déroule à huis clos ? (The Democratic Republic of the Congo)*
- ❖ *Les huis clos n'empêchent ils pas les populations de bien suivre le déroulement des procès ? (The Democratic Republic of the Congo)*
- ❖ *A la suite des auditions des témoins, certains parmi eux ont apparemment menti, peuvent-ils être sanctionnés ? (The Democratic Republic of the Congo)*

#### 4.4. Rights of suspects or accused

- ❖ *Est-il normal que des biens de [Jean- Pierre] Bemba soient saisis et qu'en même temps, il ne puisse pas bénéficier d'une assistance judiciaire ? (The Democratic Republic of the Congo)*
- ❖ *Pourrait-il [Jean Pierre Bemba] être indemnisé pour le temps passé en détention au cas où il gagnait son procès ? (The Democratic Republic of the Congo)*
- ❖ *Qu'est ce qui se passe si la personne poursuivie n'a pas l'argent pour payer son avocat?*

### **5. Public Information and Outreach**

In the course of its work the Outreach Unit staffs in the field have built trust amongst the people engaged in the concerned areas. They are seen as companions along the whole judicial process. Questions frequently asked with regard to this non judicial function of the Court show the importance that communities attach to the practice of

being consulted and heard by the Court, as well as having their questions answered and concerns addressed.

- ❖ *Why can't the Court open the Outreach Unit's office in Northern Uganda?*
- ❖ *Has the ICC any interest in what is happening in the Kivus? When are you planning to come to meet the communities here? (The Democratic Republic of the Congo)*
- ❖ *How can the ICC reach the people of Darfur?*
- ❖ *Why don't you produce television reports on the victims' rights of reparation? (Sudan)*
- ❖ *How would the victims know that their rights have been respected? (Sudan)*
- ❖ *Why doesn't the Court support initiatives in Darfur to help in the Outreach work? (Sudan)*
- ❖ *Why did it take you this long to launch a public information campaign? (Kenya)*
- ❖ *Does ICC have a mechanism to sensitise the judiciary so that they know how the Court operates? (Kenya)*
- ❖ *The information you have given us today has empowered us. Thank you for explaining us the judicial process, even if we now understand that things might not move at the speed we initially thought. (Kenya)*