

**[Expert consultation process on general issues
relevant to the ICC Office of the Prosecutor:]**

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**Needs for demographic and statistical expertise at the Inter-
national Criminal Court**

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There is often a need to know the numbers of victims in war crimes trials, especially in connection with genocide charges: How many people were killed? How many were deported? What is the age and sex composition of the victims? How thorough was the ethnic cleansing? What was the population size and ethnic composition before and after the armed conflict? Such concerns are the major rationale for the need for expertise in demography and population statistics at international criminal courts.

The Statute of the ICTY, and the identical Statute of the ICTR, specifies in Article 4 that Genocide "... means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, such as (a) killing members of the group; ...". This article does not state, however, the *number* or *proportion* required for a genocide charge. It is generally just assumed that the number or proportion needs to be significant.

Lack of data, especially of authenticated data, is the most serious problem when estimating the number of victims in a war, in particular the number of deaths. Identifying and acquiring such data are important but difficult tasks. The quality of the data, when available, varies tremendously and much time has to be spent checking and revising the data. Thus, it is an important task for a demographer to identify, acquire, validate and improve relevant data. Much time has to be spent contacting national and international governmental and non-governmental institutions and organisations.

In my view, it is much more convincing to a court and the world at large to present reliable estimates of, say, 7,000 deaths in a given conflict, than poorly documented estimates of, say, 10,000 deaths. Thus, the estimation of numbers of victims has to be very cautious and conservative - much more conservative than what is usually required according to academic standards. If the deaths of only a handful of victims are seriously questioned in a trial the credibility of the total estimate may be weakened.

For legal purposes not all war-related deaths may be included in the documentation of a war crime. For example, deaths in combat or deaths resulting from collateral damage need to be excluded as such deaths are not covered by war crime definitions. To be on the conservative side the prosecution may in some cases choose to exclude war-related deaths occurring to all men of military age, often defined as widely as 15-60 years, even if most of the men were unarmed civilians when they were killed. But this depends on the actual situation. For the events following the fall of Srebrenica in 1995, for example, all men were included in the estimates of the number of missing persons, as few of the men were combatants at the time they disappeared.

In addition to the needs of the prosecution in a trial, there are many other reasons why people want to have estimates of the population changes due to the war, including political motives. Some groups want the estimates to be as *high* as possible, including victims and groups feeling attacked, whereas other groups would like the estimates to be as *low* as possible, such as those accused of attacks or crimes or of being responsible for not preventing atrocities. Political and other interest groups may produce estimates that cannot be trusted. On the other hand, it is important for posterity, including the reconciliation process, that there exist uncontested estimates of the number of victims that are accepted by all parties. This is, for example, the case for the number of Jews killed by the Nazis - the number 6 million has not been seriously challenged.

Civil registration and vital statistics systems often cease to function or are severely hampered during conflict periods. Records and buildings are often destroyed accidentally or wilfully. The division of a country into several administrative territories may contribute to

the problems of compiling data on the effects of the war on the population. Moreover, a traditional civil registration system is usually not set up to handle the effects of an armed conflict. To estimate the number of war-related deaths, for example, we would need to have good records on the *cause* of death. Moreover, even if cause of death were well recorded, we would usually not know whether a person was an *indirect* victim of the war, as a person may have died of a non-violent cause such as pneumonia due to inadequate housing, nutrition or medical treatment.

When discussing the data needs of an international criminal court it may be useful to distinguish between macro and micro data, which are of a very different nature.

Macro, or aggregate, data are usually compiled and estimated by international or national institutions, and some times by individuals. Macro data are usually made by aggregating micro data but they are sometimes derived using indirect estimation techniques. The quality of such statistics is varying and often unknown. With regard to estimates of the number of deaths, for example, we cannot be sure that the same deaths have not been included more than once or that some deaths have been omitted altogether, both of which are difficult to avoid in a chaotic situation. Consequently, estimates of the number of deaths are often wrong. They may be too low or too high, sometimes depending on the political perspective of the people producing the statistics.

Micro data, or data on individuals, some times called raw data, are usually easier to verify. If there are lists of deaths with particulars about the dead persons, such as name and date of birth, it can be checked that the persons listed as dead have not been double counted and that they actually existed and lived in a given area before the conflict started. The greatest advantage of working with primary data is, however, that it allows the analyst to run his or her own tables and do his/her own analysis, and not least, that micro data enables the linking of data from different sources. This is useful both for corroborating the data and for obtaining additional information about the victims, such as ethnicity and place of residence before the conflict. Different sources of data for the same individuals can also be used to check that people claimed to be killed or missing do not reappear after the conflict in a voters' lists, for example. The great drawback of micro data is, however, that acquiring and cleaning the data can be very complicated and time-consuming. We should also not forget that data on individuals may also be of poor quality, requiring the analyst to look at how the data was collected and to check the quality through various demographic and statistical procedures. But generally, it is more difficult to lie with micro than with macro data, because it is more feasible to cross-verify micro than macro data.

To sum up, a demographer or population statistician may contribute to an international criminal court in several ways:¹

First, regarding aggregate data:

- Acquire and evaluate relevant publications containing population data and analyses. This may seem a trivial task but investigators and lawyers are usually not familiar with demographic literature and statistical publications.
- Evaluate different data sources. This requires a thorough knowledge of systems for collecting population data.
- Check the consistency of various estimates of population change, for example, of war-related deaths.
- Estimate population trends based on published data, such as the expected population growth and the number of deaths under normal, i.e. non-conflict, circumstances.

Regarding micro data:

- Acquire, compile and computerise, if necessary, lists or databases on both the pre- and post-war population, as well as relevant events such as deaths, exhumed bodies, missing persons, internally displaced persons, refugee movements, and victims of rape, torture and other injuries. Studies of surviving family members, neighbours and witnesses are important data sources.
- Check and improve the quality of the available data, such as misprints in names, inconsistent dates of birth and identification numbers, removal of duplicate records, etc.
- Compare and check different data sources covering the same population and events, e.g. of missing persons and exhumed bodies.²
- Link or match individual-level data from different sources, such as lists of missing persons and deaths, censuses, local and central population registers, sample surveys and voters' lists.
- Estimate the number of victims, such as the number of dead and missing persons and the level of ethnic cleansing, if any.

In general:

- Advise investigators and lawyers on the availability of data, description of variables and of standards (e.g. cause of death, disability) and the interpretation and use of various estimates of victims and population change due to the armed conflict in question.
- Write reports to be used in investigations and/or trials.

¹ The job description in the 2000 announcement for the position as my successor at ICTY describes quite well the role of a war crimes demographer: "*Functions*: Under the supervision of the Senior Research Officer, the incumbent will participate in current investigation processes, by undertaking demographic projects as set, liaise with both Prosecution and Investigation teams to establish prioritisation of projects for court purposes as well as authenticate data and assess data both aggregate and individual. He/she participates in briefing and planning conferences, prepares reports and briefs, participates when appropriate, in the presentation of prosecution briefs, testifies in formal proceedings of the Tribunal and performs administrative functions pertaining to the implementation of policies and procedures. *Qualifications*: University degree in demography or related field. Extensive experience in applied statistics required. Four to eight years of experience with applied demography or statistics, international experience would be desirable. Excellent computer skills."

² In the trial against Radoslav Krstić I presented and noted the similarity between the age distribution of missing persons and that of exhumed bodies related to the fall of Srebrenica in July 1995. This similarity was pointed in the Judgement. We also matched the list of missing persons with the (few) exhumed bodies for which the identity was known.

- Provide expert witness testimony at trials.
- Review and assess reports and statements presented by the defence in a trial.

Moreover, a conflict demographer should be familiar with the literature in the field,³ including methods, data sources, and estimates of the number of victims in well-documented major violent periods, such as the Holocaust and Stalin's regime, as well as conflicts in Cambodia, the former Yugoslavia and Rwanda.

It should perhaps be added that a demographer is usually not able, based on demographic data, to say anything about *who* the perpetrators were and *why* they committed the atrocities. He/she can only attempt at making reliable estimates of the number and distribution of the victims.

Thus, there is a need for a permanently employed population statistician and/or demographer that is familiar with the literature and methods for estimating the number of victims in armed conflicts. This person or persons should also be familiar with basic population statistics and mathematical statistics.⁴ For particular cases of investigations or trials, there may also be a need for hiring one or more consultants on a temporary basis, as well as data-entry staff, sometimes for several years, to collect and analyse the data relevant to the conflict being investigated. The most challenging and time-consuming of such tasks is the collection of individual-level data on the number of victims, the population before and after the conflict. But this has also the greatest chance of resulting in high-quality evidence.

The organisation of demography and population statistics needs to be flexible, to allow for the needs of specific trials. At the same time, it is important to have a small permanent staff that is familiar with the basic issues, methods and data. This would require a long-term commitment by the ICC. It takes time to build up the expertise and experience in this field. It takes a considerable amount of time for demographers working on this to learn about the methods and data sources but also about the statistical needs of lawyers and investigators. On the other hand it may also take some time for the *lawyers* to learn about and appreciate the kind of evidence that a demographer may provide. The gradual build-up of demographic expertise at the ICTY, over about 5 years, from one temporary demographer to a unit of 5-6 people, is a clear indication of this, as well as the growth in the number of expert testimonies by demographers at the ICTY.

There is a risk that a small demography unit may be too isolated in an international criminal court, which may lead to a gradual deterioration of the qualifications of the staff as well as making it difficult to keep highly qualified people for an extended period. To overcome the risks of isolation the office can do several things:

- Let the demographers work together with other staff doing historical, social and political analysis, and also in close cooperation with lawyers and investigators.
- Facilitate contact and cooperation with people doing related work in other international and national courts.

³ This is not yet a well-established field. However, the International Union for the Scientific Study of Population (IUSSP) has recently formed a Working Group on the Demography of Conflict and Violence. The first activity of this group will be a scientific seminar in Oslo, 8-11 November 2003.

⁴ There may also be a need for a person trained in mathematical statistics. It is my impression, however, that estimates derived using complicated and/or indirect methods, are often not properly understood by judges, or they may be challenged by the defence, and consequently contribute little or nothing to the collection and presentation of evidence.

- Encourage and support participation in professional activities outside the court, such as participation in conferences and seminars, publishing in scientific journals, etc.