

Acceptance of International Criminal Justice in Situation Countries. 10 Key Findings

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The following 10 key findings are distilled from a research project entitled *Exploring Multiple Dimensions of the Acceptance of International Criminal Justice in the Post-Nuremberg Era* at the International Nuremberg Principles Academy. Between 2015 and 2017, research fellows, from situation countries where international tribunals, hybrid courts or the International Criminal Court are active, conducted research on the acceptance of international criminal justice (ICJ) in their own countries. The research focused on forms of social, political and legal acceptance in Cambodia, Colombia, Cote d'Ivoire, Lebanon, Kenya, Kosovo, Nigeria, Palestine, Rwanda, Serbia, Uganda, and Ukraine.

Acceptance is defined as the agreement, either expressly or by conduct, to the principles of ICJ in one or more of its forms (legal systems, institutions, or processes). This includes a range of actions from recognising, to giving consent, to expressing outright approval. Acceptance is thus understood to be more than a mere acknowledgement of ICJ, but rather entails an active reception or approval by various actor groups.

- 1. Dynamic process.** Acceptance of ICJ is dynamic and changes over time. Over a period, internationalised courts engage in different activities such as establishing the court, selecting suspects, holding trials, and delivering verdicts, and these activities may elicit different responses from different groups of society. While some activities such as the establishment of the court might be accepted, others might be seen more critically. Acceptance might also change with some temporal distance from the end of a trial.
- 2. Diverse societies.** Societies marked by violence, like all societies, are composed of many often highly diverse identity groups, amongst which acceptance of ICJ can vary. Political interest groups, victims and their organisations, veterans, faith groups, civil society representatives and many others offer forms of social belonging and group identity which may also be defined by their attitude to the past, particularly if they were directly affected by the violence. There is thus not one society which accepts ICJ, but many groups with very diverse views regarding acceptance.
- 3. Interdependence of different justice mechanisms.** ICJ is based on the principle of retributive justice. In some contexts, alternative forms of providing justice such as restorative mechanisms are equally important so that the acceptance of ICJ also depends on the availability and/or success of other justice mechanisms. Social and monetary restorations in form of reparations are often vital to victims, in particular if they continue to live in precarious economic situations.
- 4. Unfulfilled expectations.** In contexts where the national justice system was destroyed by violence, where the political climate is so tense that no fair trials are to be expected, or where corruption and nepotism obstruct justice systems, people in situation countries – or certain groups amongst them – place very high hopes on ICJ. It often seems like the last resort amidst a culture of impunity, leading to (initially) high levels of acceptance. At the same time, the intervention of ICJ, particularly in the form of establishing a court, is often announced as an important contribution to justice, and sometimes even as a contribution to reconciliation and



sustainable peace, further raising expectations amongst members of a society. Such messages create an overestimation of what a court can achieve, and carry the risk of later disillusionment and disappointment.

5. **Inadequate communication.** In many situation countries there seems to be inappropriate communication, or a degree of miscommunication, between ICJ courts and people of situation countries, leading to poor understanding. From the perspective of the people affected, in many cases, acceptance is thus hampered by a lack of knowledge of the workings of courts and the inherent logics of their proceedings. This manifests itself in, *inter alia*, frustration over lengthy processes, appropriateness of verdicts, selection of the defendants and prosecution strategies. What is required, though, is not simply better knowledge about a court such as that sought by outreach programmes, but a better cognitive understanding of how it operates.

6. **Restrictive Institutions.** For courts, there are limited channels to receive the views of people from situation countries and, in cases where they can be communicated, restrictive structures and rules leave little flexibility to adjust to the feedback. This is particularly relevant regarding victims' demands for compensation following a trial if there are no provisions for a court to pay reparations.

7. **Selectivity of ICJ mechanisms.** Acceptance of ICJ can be hampered if court activities seem selective, such as only investigating members of one party to the conflict, or by limiting its mandate or operations to particular time spans, geographical areas, or crimes. This can lead to allegations of 'victor's justice', or of ignoring other crimes. Selectivity can also have negative repercussions on existing conflict dynamics by worsening the frictions between the parties to the conflict.

8. **Politicisation of ICJ.** By definition, ICJ takes place in contexts of violence or post-violence. These contexts are almost always marked by a deeply fractured society reflecting different parties such as (former) opponents, new political leaders, and other political interest groups who all have a stake in the future of their country and who want to assert their role. One way of doing so is by having strong views about the violent past. In the national public discourse, they can demonstrate this by their attitude towards ICJ, and thus influence public acceptance or rejection of this process. Consequently, ICJ often gets between the lines of national politics. This is particularly strong if political parties were themselves involved in the conflict, either in a perpetrating or in a receiving position, or, as is often the case, in both.

9. **Legal acceptance.** The intervention of ICJ can have a positive effect on the development of new legal norms in situation countries, and the development of the justice sector. Adjusting existing law to international criminal law by amending it (for instance, by abolishing death penalty) or by structural changes such as establishing a special chamber for international crimes in a national court are significant developments. If countries want to live up to the standards of complementarity as required by the International Criminal Court to be able to prosecute international crimes nationally or to have cases transferred by courts or third countries, this constitutes a positive form of acceptance.

10. **Incentives for legal acceptance:** Legal acceptance of ICJ norms by their domestication into national law is more successful if there are clear incentives for a government. This might include political gains such as the potential accession to some supranational body such as the European Union, or the referral of suspects for national prosecution from an international court or a third country.