

# Acceptance of International Criminal Justice

## A Review

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INTERNATIONAL  
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Friederike Mieth<sup>1</sup>

### 1. Introduction

On July 20, 2015, the Extraordinary African Chambers at the District Court in Dakar, Senegal, opened the trial of the former Chadian dictator Hissène Habré. It was an unprecedented and historic moment, as for the first time a former ruler of an African state was put on trial before a court of another country on the continent. For the victims, who had lobbied for this moment for over 25 years, this trial may finally provide the acknowledgment they have been waiting for. At the same time, such historic moments serve as opportunities to reflect on the accomplishments and challenges faced by international criminal justice, and reinvigorate discussions about the ways it should ideally be administered.

With its origins in the Nuremberg and Tokyo War Tribunals set up by the Allied Forces after the Second World War, the idea of international criminal justice only gained appreciable traction after the end of the Cold War. Since the 1990s, international criminal justice mechanisms have investigated 18 situations. Two ad hoc tribunals were set up to deal with the atrocities in the former Yugoslavia and Rwanda. In 1998, international efforts culminated in the drafting of the Rome Statute that eventually led to the establishment of the International Criminal Court (ICC) in 2002. The ICC has opened investigations in the Central African Republic (CAR), Democratic Republic of the Congo (DRC), Cote d'Ivoire, Kenya, Libya, Mali, Sudan, Uganda and, more recently, Georgia. In addition, so-called hybrid courts – institutions that combine elements of both international and national justice – have been established to deal with war crimes or other serious crimes in Bosnia and Herzegovina, Cambodia, East Timor, Kosovo, Lebanon, and Sierra Leone. Another hybrid court is in planning in the CAR. The trial of former Chadian ruler Habré before the chambers of the Senegalese court can similarly be understood as a hybrid court; while the trials take place within a domestic institution, there is significant international participation.<sup>2</sup> In addition to these 18 situations, the ICC has examined but not yet opened formal investigations in at least 11 other settings: Afghanistan, Colombia, the Comoros, Guinea, Honduras, Iraq, Nigeria, Palestine, South Korea, Ukraine, and Venezuela, of which some are ongoing.

After more than two decades of concerted efforts to establish an international criminal court, however, little of the initial euphoria that accompanied the creation of the ICC remains. As many cases drag on, evaluations of the Court, as well as ad hoc and hybrid courts, are increasingly

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<sup>2</sup> Although the Extraordinary African Chambers are typically not described as a hybrid court, the mechanism is similarly internationalized like the Cambodian Extraordinary Chambers. The African Union was and remains heavily involved in the creation and staff appointment procedures of the EAC. See Article 11 of the Statute (HRW, 2015b).

mixed. In some contexts the support for international justice seems to wane. Against this background, it is all the more important to study *acceptance* of international criminal justice in the countries where such institutions operate. Looking at the reasons why various actors accept (or, do not accept) international courts, tribunals or certain laws, will ultimately contribute to making international criminal justice more relevant for the affected populations<sup>3</sup> and may offer ideas for reforms and innovations.

This review maps the existing literature related to the acceptance of international criminal justice. It is based on a study of academic literature, as well as NGO and media reports. However, most of the literature reviewed does not discuss *acceptance* directly. Therefore, the main objective of this review is to delineate the different issues that could be related to acceptance, and highlight areas that need more research in the future. The review is organised along the lines of the main debates in international criminal justice that can be related to the topic of acceptance and covers literature on all countries in which international criminal justice is currently active. However, only selected aspects of the preliminary ICC examinations (i.e. situations, for which formal investigations have not yet opened) are mentioned, as little material is available for some of these situations.

## 2. Multiple Dimensions of Acceptance

First and foremost, it is necessary to scrutinise *acceptance* as a concept. With few studies available that discuss acceptance of international criminal justice directly, this review relies heavily on information deduced from literature that looks at perceptions of international courts and tribunals, as well as studies of related issues such as legacy, impact, legitimacy, and compliance in this field. In this way, the question of what could contribute to acceptance is at the heart of this literature review.

Therefore, in lieu of providing a definition of what acceptance means, this section discusses four basic questions regarding the concept. First, when looking at acceptance of international criminal justice, it must be acknowledged that there is a multitude of actors who could ‘accept’ or ‘not accept’. In other words, an important question to ask is *who accepts* international criminal justice. There are many stakeholders in the realm of international criminal justice, including political actors, the domestic and international judiciary, the ‘international community’, international and domestic civil society, those directly affected by the violence, such as victims, perpetrators, or survivors, the broader population in a situation country, the media, and so on. Obviously, the array of actors will vary between countries and the significance and consequences of their acceptance or non-acceptance are context-dependent. What is more, tensions often arise when certain actors accept international criminal justice, while others do not. When reviewing the relevant literature, it must therefore always be established which actors are at the centre of each analysis.

Second, when studying the acceptance of international justice, it must be clearly distinguished what the ‘object’ of acceptance is, and why acceptance takes place. In other words, it is

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<sup>3</sup> ‘Affected populations’ is used throughout this paper to generally describe those members of the populations in situation countries who feel affected by the initial human rights violations and/or the international criminal justice institutions designed to address the former. It is acknowledged that this is a blurry concept that glosses over the heterogeneity in situation countries, where a multitude of groups - victims/survivors, perpetrators, bystanders, etc. - are affected differently by international criminal justice.

necessary to ask *what is accepted*. For example, there can be situations where the idea of an international court is rejected in its entirety. In other cases, an institution of international justice may be accepted, but for reasons unrelated to its mandate of delivering justice. In yet another situation, a court may be accepted but its outcomes are not. And more often than not, people directly affected by human rights violations will partially accept international criminal justice, or accept it only under certain conditions. There is thus a need to take a close look at what is accepted: the idea of international justice, the particular justice institution, or (part of) its outcome? Again, when reviewing the relevant literature, it must be acknowledged which of the above is under scrutiny.

Third, there is a temporal dimension to acceptance of international justice, in that acceptance is a dynamic process that may change over time. The important question here is *when acceptance occurs*. There can be situations where courts may be wished for initially, but due to their inability to deliver justice in a fair and transparent way, or at appropriate cost, or their inability or unwillingness to engage in meaningful communication, they lose their initial acceptance. In other instances, international courts may initially be rejected but later valued due to specific achievements or in the light of other developments. It is therefore crucial to evaluate the available literature with regard to the respective period in which they study international justice mechanisms.

While these different dimensions highlight the complex and fluid nature of acceptance, a fundamental methodological aspect of studying acceptance remains: How discernible is acceptance? How do we know if certain actors accept or not? Studying resistance to transitional justice, Jones et al. (2013: 15), for example, find that in order for an act to be counted as resistance, it must be an *intentional* act: “resistance is a purposeful act intended by the actor to work against, prevent or disrupt the intended or implemented formal transitional justice process”. Could acceptance then be conceptualised as an intentional act? Or would a mere tolerance still count as acceptance? These considerations can be captured in a fourth question; *how* is international criminal justice accepted?

Here, it is also difficult to clearly delineate acceptance from a number of other concepts related to international criminal justice, such as legitimacy or compliance, as this would require a clear definition of acceptance. In the same vein, broader terms like tolerance, non-resistance, approval, agreement, consent, appreciation, or support may all overlap with acceptance.

In sum, with few studies available on acceptance itself, this review mostly relies on literature that discusses negative reactions to international criminal justice, and attempts to distil from these findings aspects and factors that may lead to *acceptance* of these institutions or ideas by the respective actors. It is therefore assumed that this exploration leads to a better understanding of what acceptance would entail. Studies that directly focus on acceptance are much needed and will address a gap in current research on international criminal justice.

### **3. Local Critiques**

Much of the literature on international criminal justice discusses tensions between the local and international realms in which these processes take place. As discussed in the following sections, many studies indicate that acceptance is mediated by the ways in which international justice mechanisms come into being, as well as how ‘distant’ – socially, geographically, psychologically,

etc. - they feel. As international justice always also takes place in a local context, this means that quite fundamental questions are raised by the affected populations, including whether the kind of justice offered by international trials may not be the right one for them.

### 3.1 'Imposed' International Justice

How an international justice institution is established influences the acceptance by affected groups, be they victims, civil society, or political leaders. Orentlicher (2004) notes that when justice is delivered from a court or tribunal that feels 'imposed' from the outside, then its potential contribution to a post-conflict transformation is limited.

This has been most poignantly the case in some ICC situation countries where initiatives to open investigations were based on a referral from national governments that are perceived as far away from the actual scene of conflict, such as the DRC, where the capital is more than a thousand kilometres away from the locations in which the crimes took place. Among other aspects, this has led to repeated debates about how the referral to the ICC by a distant government can actually help the local population affected by the violence (Laborde-Barbanègre & Cassehari, 2014).

The feelings of 'imposition' seem particularly critical in contexts where international justice mechanisms threaten to jeopardise peace in a certain region. Two much-debated situations in this regard are Northern Uganda and the Darfur region, both investigated by the ICC. In these instances, the ICC investigations were instigated by *perceived* outside actors. From the perspective of Ugandans living in the north of the country, the referral by President Museveni of the situation to the ICC can be seen very much as an 'outside' intervention, as was the UN Security Council decision to open investigations for the Darfur region. It has been claimed that when victims of war crimes and other affected groups feel that their immediate need for peace is not mirrored by actions of an international body such as the ICC, the latter will not be appreciated (see Allen, 2006; Apuuli, 2006; Branch, 2007; and O'Brien 2007 for Uganda; and ICG, 2009; and Oola, 2008 for Darfur).

When international justice feels imposed, a typical reaction is to question whether the crimes should be dealt with at an international level rather than domestically, which can ultimately affect acceptance of the respective institution which becomes involved.

Such debates can be seen in some of the recent cases that have experienced ICC engagement, such as Côte d'Ivoire, Kenya, and Mali. Particularly in Mali, where the investigation has only recently begun, there are mixed reviews of international criminal justice by various actors. While the situation in the country was referred to the ICC by the Justice Minister in 2012 and an investigation was opened in 2013, Malian legal practitioners strongly believe that the country should be supported in dealing with past atrocities domestically, rather than opening an investigation by the ICC. Civil society organisations and international experts, on the other hand, argue that the Malian justice system would be unable to deliver justice for the past violations due to a serious lack in resources and the difficulty of bringing politically sensitive cases against government officials (Ladisich, 2014).<sup>4</sup>

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<sup>4</sup> This hinges upon the principle of complementarity, under which the Court operates. Accordingly, the principle provides that the ICC can only have jurisdiction over a case when the country in question is either unwilling or unable to investigate or prosecute the case at a

In Côte d'Ivoire, a questionable demonstration of domestic prosecutions may well have changed the minds of observers who initially opposed an international trial. In 2012, the ICC announced indictments against former President Laurent Gbagbo, his wife Simone Gbagbo, and his aide, Charles Blé Goudé for their role in inciting violence during the 2011 election violence. While former President Gbagbo and his aide were taken to The Hague, the country decided against sending Simone Gbagbo to The Hague in 2013 amidst growing disquiet among African leaders that the ICC was biased against Africans. However, when Simone Gbagbo, together with 82 co-accused, was tried before national courts in Côte d'Ivoire and received an unusually high sentence of 20 years, announced after only six weeks of trials, Ivorians were rather divided. The proceedings at national and international level raised concerns about the state of the Ivorian justice system (Caldwell, 2015; Louw-Vaudran, 2015).

The Kenyan case shows how a government has consistently and effectively employed the rhetoric of 'imposed international justice' throughout its ICC proceedings. Particularly after ICC suspects Kenyatta and Ruto won the 2013 elections as President and Vice-President respectively, the government increased the anti-ICC rhetoric up to the point of accusing civil society groups of being the tools of Western powers, which eventually weakened their call for accountability (Hansen & Sriram, 2015). In an even stronger reaction, the Sudanese government refused to cooperate with the ICC after the ICC prosecutor announced the first arrest warrants. One of the indictees was later appointed by the government as chair of a human rights commission, which was interpreted by a Sudanese human rights activist and lawyer as a demonstration of the government's rejection of the ICC (Sudan Tribune, 2015; Horowitz, 2013). Members of the Sudanese government consistently argued that the ICC was a political tool of the West (De Waal, 2008: 29).

In contrast to these cases are situations where populations themselves have asked for international criminal justice, which may result in much greater acceptance by the people. The initial stages of the ICC investigations in the CAR,<sup>5</sup> for example, were regarded very positively, particularly among victims' groups. Even though investigations started after a referral from the government, the referral itself was the product of extensive lobbying by CAR civil society and victims were optimistic at the start of the ICC proceedings (Glasius, 2008). Unfortunately, less information is available on how this changed in the subsequent years. Nonetheless, research by Vinck & Pham, (2010a) indicates that, in 2009, perceptions of the ICC were still overly positive.

In other situations, people may expressly wish for international justice, as it is perceived as the only measure to reach meaningful justice. Hence, this depends very much on the context and nature of the crimes, as well as the past and current political landscape. In the case of East Timor, for example, 'hybrid' justice was perceived as a failure, because it was not powerful enough. While the Special Panels for Serious Crimes, set up by the UN in 1999, indicted an impressive number of high-ranking officials who perpetrated crimes against humanity during the Indonesian occupation in East Timor, it is virtually impossible that the indictees will face trial in East Timor as Indonesia refuses to extradite them. Timorese and foreign observers agree that justice has not been done and some advocate for an international tribunal that would be

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national level (Articles 17 and 18 of the Rome Statute). One could argue that a state's self-referral is in itself evidence of this unwillingness or inability to prosecute domestically; however, this does not prevent the Court from completing its complementarity assessment in due course.

<sup>5</sup> This refers to CAR Situation I. The ICC has distinguished the current investigations from the first situation.

able to bring all perpetrators to justice (Drexler 2010; Reiger & Wierda 2006; Robinson 2003). Thus, acceptance of international courts or tribunals increases when they are perceived as the *legitimate actors*, on the right ‘level’, to preside over dealing with past injustices.

Finally, those affected by violence may also debate whether criminal justice should be pursued at all, and the availability or feasibility of other options like amnesty may influence the acceptance of international criminal justice. In three separate surveys, victims of the Lord’s Resistance Army (LRA) violence in Northern Uganda were asked about their perceptions of peace and justice. In 2005, during a period of high violence and with little prospect of peace, 54 percent of respondents indicated they would choose ‘peace with trials’ and 46 percent would have chosen ‘peace with amnesty’, if given the choice. By contrast, in 2007 when peace prospects had improved significantly, 80 percent of respondents opted for ‘peace with amnesty’ (Vinck & Pham, 2014a: 117). This is interesting as these surveys took place during a time when the ICC investigations were being heavily debated as threatening the peace, and they show how people’s perceptions may have been influenced by, amongst other factors, their wish for peace.

In addition to these ambiguous findings, there are also more pragmatic stances in the debate on whether international criminal justice should be pursued by domestic or international institutions. Some argue that international courts are often just as powerless as national proceedings as they depend on the same institutions to collaborate, and thus not all situations are actually served better by international justice (Fiss, 2009).

### **3.2 Distance of International Justice**

One of the often raised concerns that affects acceptance of international courts or tribunals is their perceived distance from the lives of the affected populations. For example, both of the ad hoc tribunals ICTR and ICTY have been described as less meaningful for their respective populations because of their geographical distance (Uvin & Mironko, 2003). While the ICTR is based in Arusha, Tanzania, the ICTY is located even further away, in The Hague, Netherlands. It seems that across a number of post-conflict countries, affected populations prefer trials to take place within their countries, regardless of whether these trials will take place in a domestic or international court (Vinck & Pham, 2010b: 3).

In theory, the geographical disconnection should be less palpable in the case of the so-called ‘hybrid’ tribunals, which, for the most part, operate in the countries where the crimes were perpetrated. Particularly for the hybrid courts of Cambodia, East-Timor, and Sierra Leone, this was an unspoken assumption (Cohen, 2007). Yet, some of these hybrid courts were in fact so internationalised that they seemed aloof even when based in the respective countries, and some authors point out that the distance is not so much geographical but social and psychological (Fiss, 2009; Uvin and Mironko, 2003).

Why is it so difficult for international courts to break down this distance? Some authors argue that this is the result of the traditional dominance of legalism in the international justice field, with courts and tribunals developed and understood as state-like institutions that are often not equipped to include local customs or directly engage with the population. This may lead to grass-roots resistance, as people will feel overlooked. The difficulty is that when “actors in such institutions develop a self-image of serving higher goals such as ‘re-establishing the rule of

law”, they may view victims and affected communities merely as “constituencies which must be managed”, instead of citizens to whom they are actually accountable (McEvoy, 2007: 424).

### 3.3 The Limits of Retributive Justice

The debates on distance are connected with another aspect that heavily influences acceptance; the different understandings of what justice actually constitutes. Here, authors scrutinise the concept and assumptions related to justice in international, legalised discourses and discuss their differences with local and alternative ideas of justice. One debate stands out; retributive vs. restorative justice. While, again, acceptance is not a central concept in this body of literature, it is clear that the more local ideas of justice differ in context from what current international justice mechanisms can offer, the less the latter are accepted.

A limit to the Western-based models of international justice is their primary focus on prosecuting individuals (Fletcher & Weinstein, 2002). In many African societies there is often an additional communal dimension of culpability which points more to the necessity of reconciliation rather than punishment (Villa-Vicencio, 2010). This is an argument that can well be extended beyond Africa. Some authors argue that victims experience the trials as only scratching the surface of a wider collective dimension of guilt. Bosnian victims, for example, reported that there is a collective dimension of guilt that was not on trial before the ICTY. They argued that those members of the other ethnic groups who did not do anything to prevent violence, or to offer help or shelter to those being persecuted, were also partly culpable for the atrocities (Clark, 2009: 472).

More generally, a range of authors argue that as international courts and tribunals only perform retributive justice, they are seldom able to tackle or even point out structural causes of war and conflict. Some authors point out that individual trials are particularly ill-suited to deal with community-based conflicts characterised by the collapses of entire systems (Fletcher & Weinstein, 2002). Others have criticised international justice as a neo-liberal project since it avoids discussions that would challenge Western norms such as when economics are actually at the root of the conflict, and not individuals (Lundy & McGovern, 2008: 274). On the level of the affected populations, however, it is less about the theoretical argument and more about the acknowledgement that injustice often has greater dimensions. Here, a large body of literature describes how international justice does not make sense for populations for whom justice would include the tackling of socio-economic inequality (see, *inter alia*, Carranza, 2008; Mani, 2002; Miller, 2008).

This leads to a range of important questions including how justice is defined in situation countries, and what the expectations of different stakeholders are of international criminal justice institutions. When studying acceptance in a given local context, it is crucial to ask such questions. As Mani put it, “if ideas and institutions about as fundamental and personal a value as justice are imposed from outside without an internal resonance, they may flounder, notwithstanding their assertion of universality” (Mani, 2002: 49). Very often people in affected regions want restorative and distributive justice, as well as punitive justice.



### 3.4 Negative Experiences with Formal Justice Systems

People's previous experiences with domestic judicial systems influence the acceptance of international justice. In many regions where international justice operates, people are faced with inadequate and often corrupt domestic justice systems. In Sierra Leone, for example, the author found that citizens' low interest in the Special Court for Sierra Leone was partly rooted in the low expectations in judiciary procedures in general, which stemmed from their negative experiences with both the formal and customary justice systems in the country (Mieth, 2013). These two justice systems coexist, but are perceived equally corrupt and unfair (Maru, 2005). Similarly, a 2010 study in Kenya on attitudes towards transitional justice found that the majority of the respondents sampled in regions most affected by the 2007-2008 post-electoral violence, did not trust their justice system as it was perceived to be extremely corrupt (Backer et al., 2010). A study of people's perception of justice and peace in the eastern DRC revealed overall negative perceptions of the national justice system, citing that people found it corrupt, non-existent, favouring the rich, or requiring payment (Vinck & Pham, 2014b). Finally, in Mali, respondents to a small assessment on transitional justice in the country explained that "justice isn't really respected here. We resolve many of our problems among ourselves, rather than going to the formal justice system", as one artist was quoted as saying (Ladisch 2014: 12).

Such perceptions pose further challenges on international justice projects and need to be considered when studying acceptance in certain contexts. Advocates for international justice often argue that populations will ultimately benefit from international justice, especially when administered through locally present hybrid courts such as the SCSL, as it is assumed to have a strengthening effect on domestic justice systems in the long run. Yet, this argument falls short of reality in those contexts where the reach of the 'formal' justice system is severely limited, and where local populations do not trust their formal justice system to begin with. For example, in 2013, ten out of eleven judges serving in Sierra Leone were based in the nation's capital, with inhabitants of rural areas using mostly the customary justice system. In the eyes of many Sierra Leoneans, even a better national justice system would not affect their lives (Mieth, 2013).

### 3.5 International Justice as one Ingredient of Societal Transformation

By mere virtue of their design, international criminal courts may not be the mechanism of choice to tackle the concerns of those directly or indirectly affected by violence, simply because a judicial body could in no circumstances address their needs. This means that, notwithstanding their importance for other purposes in a post-war society, in some instances international courts or tribunals will not make sense for survivors or victims simply because of their function as courts and tribunals. They can therefore not be 'fixed' to make them more meaningful for these groups (Mertus, 2000: 189).

However, this does not necessarily mean that these courts and tribunals will not be *accepted* as they may ultimately depend on the clear and honest communication of these inherent limits. Rather, this means that the acceptance of international justice mechanisms often depends on how the wider socio-political arena - including other institutions, initiatives, or political developments - is experienced by the affected groups. In other words, acceptance of international justice may be influenced by factors that lie outside a particular institution's influence. Acceptance of international courts may be increased by setting up or supporting additional avenues of dealing with past injustice, such as truth commissions, memorials,

education initiatives, reparations programs, and other initiatives. It is widely agreed that, depending on the context, international tribunals and courts should not be promoted as stand-alone mechanisms to deal with past injustice, but rather should be linked to other initiatives that can facilitate societal transformation (Call, 2004; Clark, 2009; Mertus, 2000).

#### **4. Satisfactory Justice?**

Notwithstanding the more fundamental debates discussed in the previous sections, once international justice is at play, it will be scrutinised by the affected population and observers alike. The largest body of literature available on the subject discusses how the actual design, procedures, and actions of the courts affect the acceptance of international trials, both in the situation countries, and the international community (e.g. Damaska, 2008; deGuzman, 2012; Du Plessis et al., 2013; HRW, 2011).

The issue of selectivity stands out in these discussions. Of course, it is the nature of international criminal tribunals and courts to only focus on those most responsible for war crimes and crimes against humanity, with lower-level perpetrators either receiving an amnesty or being tried by national courts. However, when international justice mechanisms limit their investigations to certain regions, certain perpetrators, certain crimes, or certain periods in a way that does not adequately capture the actual scope of the crimes, it will not only result in negative feelings among those affected by the violence, but ultimately harm the purpose of international justice. Thus, according to many observers, international trials risk their legitimacy when they are selective on issues that are important to the affected population (HRW, 2011).

##### **4.1 Selected Perpetrators**

Many authors highlight that the acceptance of international justice is hampered when there seems to be a selection of cases in favour of one side to the conflict. If such a suspicion is justified, it is a significant shortcoming of the international justice mechanism in question. For example, the ICC has been criticised for its selection of cases (HRW, 2011), such as in Uganda, where the investigation focuses solely on members of the LRA rebel group, but not on crimes committed by government forces (Allen, 2006: 96; Branch, 2004). Using materials from interviews conducted in 2004, Allen argues that, because of this bias, civil society leaders did not see the ICC as a mechanism to improve accountability (Allen, 2006: 98).

International courts or tribunals disappoint when they only indict lower-level perpetrators and those in higher levels of command remain unpunished. The DRC trials before the ICC have all focused on rebel leaders, while these rebel groups are believed to have been influenced by the governments of the DRC, as well as neighbouring countries (HRW, 2011: 12).

In other situations, however, it would be appropriate to include *more* lower-level perpetrators if international justice were to be a meaningful intervention. In the case of Sudan, it has been argued that by only focusing on top-level perpetrator and not on governors and other administrators at the regional governance level of Darfur, the ICC risks alienating exactly those for whom it seeks justice. With President Al-Bashir evading arrest, and no consequences to fear at the regional level, these administrators continue to incite violence in Darfur, where the population has not experienced any palpable change in their situation since the Darfur investigations were initiated in 2005 (HRW, 2011: 34).

To study acceptance with regard to the indictments, it would be insightful to look at how populations perceive international criminal justice in situations where courts selected cases in a representative manner, such as in Sierra Leone and the former Yugoslavia. In both situations, members of all sides were indicted. First findings indicate that representativeness of indictments at the ICTY did little to dissuade the antagonist sides of the conflict from assuming they were unfairly targeted. In Sierra Leone, the population viewed representativeness of the indictments rather neutrally or positively. However, this may be less significant as the antagonism between the fighting factions has not continued in post-war Sierra Leone.<sup>6</sup>

## 4.2 Inadequate Charges

International justice also seems unfair to victims when the accused individuals are only charged with certain crimes and not others. When a known perpetrator is indicted, but only charged with selected crimes, victims will not feel acknowledgement. A woman in the CAR, for example, wondered, why Bemba would be prosecuted for her rape but not for her husband's murder, since "it's the same suffering" (Glasius, 2008: 58). The same court case also upset victims in the neighbouring DRC, where Bemba was thought responsible for war crimes in the Ituri province, and yet he was only indicted for his involvement in the neighbouring country. This was particularly irritating for the DRC victims as the prosecutor relied on evidence from atrocities committed in the DRC to argue that Bemba must have known that his troops would do the same in the CAR (HRW, 2011: 31). A petition by DRC victims to review Bemba's responsibility in the DRC was then denied for procedural reasons (FIDH, 2010). This shows that victims do not only want to see perpetrators tried, they want them to be tried for the specific crimes they committed.

Similarly, the case of Lubanga from the DRC, the first trial to open before the ICC, irritated victims owing to the crimes for which he was accused. Lubanga was only charged with conscripting child soldiers, which seemed particularly insensitive as information had been gathered by human rights organisations which suggested that Lubanga and the armed group he directed were involved in a range of crimes against humanity, including sexual crimes on a massive scale. Victims made efforts to expand the charges against Lubanga, but remained unsuccessful. The Court explained this selection by its inability to collect enough evidence while being pressured to open its first case (Laborde-Barbanégre & Cassehgar, 2014). Such experiences may add to the frustration of victims rather than give them a feeling that justice was done.

## 4.3 Limited Investigations

Acceptance may decrease when the investigation itself does not cover the full scope of the violence or human rights violations. Perceptions of courts and tribunals turn negative when victims and affected populations realise that the court in question is not willing or able to tackle more structural issues. In fact, some scholars wonder if it is even possible to judge modern conflicts with the means of current international criminal law (Clark, 2013; Fletcher & Weinstein 2002). Highly complex conflict situations like the one in the DRC seem to pose many

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<sup>6</sup> Findings of the DFG project "The Politics of Building Peace: Transitional Justice, Reconciliation Initiatives and Unification Policies in War-torn Societies", at Center for Conflict Studies, Philipps University Marburg, 2009-2012, of which the author was a member. See [https://www.uni-marburg.de/konfliktforschung/personal/buckley-zistel/dfg\\_tj](https://www.uni-marburg.de/konfliktforschung/personal/buckley-zistel/dfg_tj)

challenges for a large institution like the ICC, which finds itself unable to collect (and control) evidence. Yet limited investigative scope means that outcomes will inevitably be disappointing for some stakeholders. The ICC investigation in the DRC was monitored with great enthusiasm by the national human rights community, only to later be met with disappointment when merely relatively low-level perpetrators were indicted.

In addition to the fact that this makes the court seem unwilling to pursue DRC and neighbouring countries' government officials, this focus on the more locally committed war crimes masks the regional dimensions of the conflict. According to voices from the Congolese legal community, if the ICC wants to have a meaningful impact in the DRC, it must widen its scope and pursue those most responsible for the crimes (Kambale, 2014).

In other situations, victims' groups have similarly expressed their concern that the investigations are not wide enough in scope. For example, Bosnian victims of the massacre in Srebrenica point out that the Dutch government should have been held responsible for the atrocities, as Dutch peacekeepers were perceived to have played a role in the massacre (Clark, 2009). In the case of the Special Tribunal for Lebanon that investigates the assassination of former president Hariri, the complex political landscape in the country and wider region is left out of the narrow mandate of the tribunal. While many people in Lebanon agree with the investigation of the assassination and directly connected crimes, these events did take place in greater political turmoil and in a context of widespread impunity. The human rights community in Lebanon therefore views the Tribunal with scepticism, notwithstanding its achievements (Wierda et al., 2007).

#### **4.4 Perceived Impact**

Despite the large volume of literature available, the actual impact of transitional justice continues to be debated and there is still limited empirical knowledge available (Hazan, 2006; Thoms et al., 2008: 12; 2010: 335). This is due to the fact that much of the transitional justice literature is based on assumed impacts rather than actual data that would support either positive or negative impacts. When examining acceptance, a logical assumption would be that it correlates with a perceived positive impact of the institution in question; however, this has yet to be shown in research.

First and foremost, a lack of impact of an international (ised) court clearly affects its acceptance, locally and internationally. The Serious Crimes Panel in East-Timor is regarded as a failure by the local population and observers alike, chiefly because it was unable to try high-ranking Indonesian military leaders, as they were not extradited by Indonesia. This was an expected outcome from the beginning and, together with poor planning and underfunding, led to a major legitimacy crisis of the Special Panels (Reiger & Wierda, 2006). Others argue that, in addition to its failure to secure the indictees, the Court did little to uncover and address the history of systematic violence in East Timor (Drexler, 2010). This case illustrates that poor planning and support for an international criminal justice institution may actually contribute to greater injustice felt by the affected population. Similarly, it highlights the importance of a clear strategy of courts and tribunals if they are to gain acceptance by all stakeholders.

The studies that systematically surveyed the concerned populations' opinions in their countries have found very mixed results regarding the impact of the respective international criminal

justice institutions. In the DRC, for example, only 20 percent of the respondents of a regional cross-sectional survey in the Eastern regions indicated that the impact of the ICC on peace was positive and only 22 percent saw a positive role of the ICC in terms of justice. Roughly half of the respondents were neutral in these questions, and only 28 percent and 27 percent found that the ICC had a negative impact on peace and justice (respectively) (Vinck & Pham, 2014b: 72). What do such findings tell about acceptance? In this case, it would be interesting to find out more about the reasons why people develop these perceptions.

In contrast, in CAR, an overwhelming majority of those respondents who knew about the ICC viewed its impact as positive: 95 percent indicated that the ICC's work is important in the country because people felt a need for justice and accountability and that victims must be compensated. In the same vein, 91 percent believed the ICC would have an impact because they felt it would bring justice, accountability, and peace (Vinck & Pham, 2010a: 34). These contrasting views of the same institution point to the fact that the role that international justice plays is highly dependent on the context – both the history of the violence in question, as well as the context of how the international justice process came into being.

## **5. Politics**

A recurring topic in the literature is the relationship between international criminal justice and politics - at the local, national and international level. International courts and tribunals always operate in a particular political context, and in some instances may themselves be perceived as politically motivated. This body of literature, discussed below, suggests that when a court's actions are seen as being influenced by politics, it may have negative implications on its acceptance by the population and particularly those directly affected by violence.

### **5.1 Political Will**

One of the dilemmas of international criminal justice remains its dependence on political support, both internationally and locally. Therefore, understanding acceptance or non-acceptance by various actors, such as political leaders or parties, civil society, the media, and the general population, requires consideration of the particular political context.

The impact of political will can have both positive and negative effects on the acceptance of international justice. On the one hand, in the cases of CAR and the Hissène Habré trial, it can be assumed that the role of the respective governments in establishing or activating the institutions was rather large, which had a positive impact on acceptance. In the CAR, the civil society managed to convince the then President Bozizé to make a government referral to the ICC, after evidence brought out by civil society was disregarded by the ICC prosecutor (Glasius, 2008). In the case of the trial of former Chadian dictator Habré before the District Court in Dakar, it was only after the election of a new Senegalese President in 2012 that preparations for a trial were finally made in earnest (HRW, 2015a). Both cases are examples of how victim representatives and human rights advocates have successfully influenced politicians and in both cases the trials were eagerly awaited (see Glasius, 2008 for CAR; ICTJ, 2015 for Chad). These cases show that where local demands for justice and political will are in agreement, (initial) acceptance of international criminal justice can be very high.

Conversely, a lack of political will of national leaders can be the cause of frustration among victim groups and civil society, but how this affects acceptance of international criminal justice is difficult to establish. In Guinea, for example, at the time of writing victims were still waiting for accountability of a number of alleged perpetrators, some of them active politicians, for a massacre that occurred in September 2009. The situation was under preliminary examination by the ICC, national authorities had confirmed they were willing to pursue domestic trials for the perpetrators, and a special court facility had since been tasked with collecting the necessary evidence. Yet, concrete actions on behalf of the government were still missing as of 2012 and the process was in danger of stalling (HRW, 2012). People's hopes for justice may indicate their acceptance of international criminal justice but if their experience becomes characterised by waiting for something that seems more and more unlikely to happen, their views may change.

Another example is East Timor, where there seems to be a lack of international political will to enforce justice. To the dismay of East-Timorese victims, the great majority of the individuals indicted by the East Timor Serious Crimes Panel live freely in Indonesia and it has been questioned whether a hybrid tribunal was the right mechanism to begin with (Reiger & Wierda, 2006). Neither has any major power intervened in this situation, which has been perceived as a significant shortcoming of justice for the victims of the former Indonesian occupation (Call, 2004).

## 5.2 Politicisation

The earlier discussion on selectivity already touches on many of the problems related to the politicisation of international justice. If a court only indicts members of one group, or only investigates certain crimes but not others, it may give rise to suspicions of political influence or bias. This concerns all aspects of a court: its design, mandate, strategy or outcomes may all be subject to perceived political interference.

Politicisation influences acceptance by local populations depending on the particular political constellation in the situation country, the history of the mass violence, and the perceived power and motives of those suspected of political interference. Suspicions of political bias are particularly strong when international justice mechanisms seem to carry out 'victor's justice'. Particularly in group-based conflicts, indicting only members of one side is detrimental to a court's legitimacy in the eyes of the affected population and may lead to suspicions of victor's justice. Rwanda and the ICC investigation in Côte d'Ivoire are cases in point. The former only indicted members of the Hutu militia that were responsible for the Rwandan genocide, although members of the Tutsi ethnic group also allegedly perpetrated war crimes, and the latter only focused on former President Gbagbo's side. Both courts risk alienating victims of the other side of the conflict and creating feelings of frustration or resentment (see Humphrey, 2003 for Rwanda; Louw-Vaudran, 2015, for Côte d'Ivoire).

Politicisation is an important concern in divided societies. The ICTY was heavily politicised on several levels in the respective countries. Amongst the affected populations, some groups rejected the tribunal outright because they thought of it as a politicised entity, or felt that it was entirely imposed from the outside. In Bosnia and Serbia, members of certain ethnic groups or from certain regions were opposed entirely to such a tribunal (Arzt, 2006; Call, 2004: 105). In Croatia, many thought that the ICTY was there to 'criminalise the Homeland War' (Akhavan, 2001: 22-23), while reactions were more moderate than in Serbia (cf. Arzt, 2006). Such

suspicious can be aggravated by the Court's actions or inaction. The ICTY did not use opportunities to communicate with local populations but 'left the field' to media and national/local politicians, particularly in its first decade (Pentelovitch, 2008). It was thus regarded as a political instrument by those loyal to these politicians and media.

The acceptance of international criminal justice by political actors seems in many cases driven by political motives. For example, due to the changes in the wider political environments, with EU promises of an eventual end to certain sanctions for Serbia and the integration of Croatia into the EU, many politicians in these countries viewed cooperation with the ICTY as a means to an end (Subotic, 2009). In Serbia, many viewed the ICTY as an unavoidable and enforced precondition of Serbia's full return to the world community, and simply the price that Serbia had to pay. Many Serbians continued to oppose each ruling against a Serbian national, and found their views resonating with politicians and one-sided media. Such views completely sidelined the issue of the guilt of those indicted by the ICTY (Bandovic, 2004: 93; cf. Subotic, 2009).

Acceptance by victims, civil society groups, and the general population may wane when it becomes obvious that political leaders use international justice for their own advantage. The Ugandan referral of the LRA crimes to the ICC has remained a much debated controversy ever since it was announced by ICC prosecutor Moreno-Ocampo and Ugandan President Museveni. It seemed that these investigations served both sides: Uganda had been unable to contain LRA crimes, and the Ugandan situation would be a first high-profile case for the ICC. Observers soon debated if the ICC would be biased and in favour of the Ugandan government, which is at the same time a party to the conflict under investigation. Indeed, only members of the LRA were indicted by the ICC and not members of government forces that also perpetrated crimes against the population in Northern Uganda (Allen, 2005; Branch, 2004; 2007). This case appears even more suspicious due to the lack of investigation by the ICC of Ugandan troops in the DRC. It thus appears as a trade-off between the ICC and the Ugandan government (Kambale, 2014). The concern here could be that even if international justice brings concrete outcomes for the affected population, its image may remain tainted.

Further to more obvious cases of political motivation, the case of the Bosnian War Crimes Chamber (BWCC) in Sarajevo highlights how a court's location and composition can aggravate perceptions of political bias and undermine acceptance in parts of the population. The BWCC enjoys little support from Bosnian Serbs (Ivanisevic, 2008: 33). They argued that, not only was the Court located in a building where Serbs were detained during the war, but that it was also biased against Serbs as during the first trials, 23 of the 24 accused were ethnic Serbs, while the majority of the court staff and judges were ethnic Bosnians. This was heavily criticised by Serb media and politicians. It has been argued that such a bias may not necessarily exist in reality, as the majority of crimes were indeed perpetrated by Serbs, and that the fact that Sarajevo's population is mostly ethnic Bosnian may explain their predominance among court staff. Yet, measures could have been devised to rule out suspicions, such as offering relocation packages to court staff from outside of Sarajevo (Ivanisevic, 2008: 34). This example shows that in politically charged environments, even such explainable biases have to be anticipated and tackled in order to increase acceptance among the population.

It is also interesting to look at situation countries where international justice seems less politicised, such as the Special Court for Sierra Leone. While some authors argue that it is being used by the US as a tool for regime change in Liberia (Mahony, 2015), or by the current

president to demobilise the main rebel leader and ward off potential political rivals (Kelsall, 2006: 595), the acceptance or non-acceptance among the general population was much less mediated by political fault lines. Some credit this to the fact that the prosecutor decided to indict individuals from all fighting factions, even though one high-level arrest was highly contested (Tejan-Cole, 2009). When looking more closely at the situation, however, it becomes apparent that the war was relatively less politicised in post-conflict Sierra Leone. This, then, could explain why there were no earnest attempts by politicians or the media to discredit international justice. This again shows the importance of the particular politico-historical context in the situation countries.

A range of authors suspect that the establishment of many international tribunals courts is, *de facto*, influenced by politically motivated decisions, including detailed aspects such as the scope of investigations, down to the case selection (Branch, 2007; Mahony, 2012). Advocating for those courts as neutral and impartial institutions and suggesting that they will automatically bring justice just by being a court – something that is often implied in statements of court officials (McEvoy, 2007) – depoliticises these institutions. This carries the risk of alienating victims and affected communities, who may be very well aware of political motivations behind such institutions, or who suspect political bargaining.

### 5.3 Power Politics

On a more global level, international criminal justice has been criticised for its apparent arbitrariness. This is particularly the case for the ICC, which has not met the high expectations it created at the time it was established. A general observation appears to be that individuals from wealthy countries are less likely to be indicted before international courts (Call 2004). This may not be the ICC's 'fault', as it too depends on international political power structures (such as in cases of referral, or the lack of it). Nevertheless, this affects opinions of various actors in situation countries who have no reason to show understanding of the complex political environment in which the ICC operates: "I don't support the ICC [...] as long as Bush is not arrested and tried I don't trust the ICC", a human rights activist was quoted in a recent study on transitional justice in Mali (Ladisch, 2014: 10). In the same vein, other affected populations such as in the case of the Srebrenica massacre in Bosnia, observe that members of peacekeeping forces are not indicted, while they may have nonetheless inflicted suffering (Call, 2004: 109). People in Sierra Leone point out, for example, that Nigerian peacekeepers deployed during the civil war engaged in atrocities and pillaging, but were excluded *a priori* from the Special Court for Sierra Leone's mandate (fieldwork material on file with author).

Such a global power imbalance is also visible in the ongoing situations where powerful governments may be perceived to hinder or block investigations: the ICC's preliminary examinations of Afghanistan and Palestine have dragged on without any developments. While this may be due to jurisdictional proceedings (as, for example, the gravity of the crimes must first be established before formally opening an investigation), to observers the ICC simply seems unwilling or unable to pursue these cases, either for a lack of political will, or a lack of resources, or both. The ICC is therefore criticised for being politically biased and giving ground to the accusations by (*inter alia*) African leaders that it is a tool for the powerful (Dugard, 2013). Yet, the ICC may be the wrong institution to blame as these challenges are symptoms of a much greater power imbalance, particularly in the United Nations Security Council. Still, this may well impact on the acceptance of the ICC in situation countries and elsewhere.



Such perceptions may change when there are cases before international courts that indict Western individuals. An important case in point will be the outcome of another current preliminary examination by the ICC of UK nationals' involvement in systematic torture and abuse in Iraq during the 2003-2008 military operations of the multinational forces.

## 6. Communication

Arguably, many of the above discussed aspects related to the acceptance or non-acceptance of international justice are influenced by the way in which international courts and tribunals communicate with the affected population and observers. Surveying the literature, it becomes clear that communication is more than an outreach activity, as acceptance may be mediated by the ways in which international courts interact with the affected populations.

### 6.1 Outreach

In contrast to national courts, international courts need to explain their actions to a range of constituencies and, according to some, those most affected by the violence should be the first among them (HRW, 2011: 4; Weinstein et al., 2010). Indeed, when determining the need for a Special Tribunal for Lebanon, the Secretary-General found that justice must not only be done “but also that justice must be seen to be done” (Secretary-General cited in Pentelovitch, 2008: 451). Outreach is directly related to acceptance. From a pragmatic point of view, transitional justice can only function if the public is aware of it. For example, testimonies will more likely be given when it is clear what this means and when the respective mechanism is perceived as legitimate (Vinck & Pham, 2010b: 422). Knowledge of the transitional justice mechanisms can also be an end in itself, as public awareness could help societal transformation. Finally, outreach and consultations can be means to learn about the needs and expectations of the affected populations and at the same time increase their participation (Vinck & Pham, 2007; 2010b).

A first question in this regard is whether better awareness of international criminal justice also correlates with acceptance of these procedures. This is important as outreach activities of international courts are often criticised when affected populations demonstrate poor knowledge of international justice mechanisms. A survey from 2013 conducted in the DRC, where the ICC has opened investigations in 2004, showed that only 9 percent of respondents thought their knowledge of the Court was good or very good (Vinck & Pham, 2014b: 72). Similarly, only 6 percent of Ugandans surveyed in 2010 thought that they had a good knowledge of the ICC (Pham & Vinck, 2010a: 42). In both surveys, the expectations of the Court were comparatively low. At the same time, there are cases like Sierra Leone, where a survey showed broader support by the population of both the Special Court for Sierra Leone and the Truth and Reconciliation Commission, with only 15 percent having a ‘good’ understanding of how the court works (10 percent for the Commission) (Sawyer & Kelsall, 2007: 44). Furthermore, there are cases like Rwanda, where higher levels of knowledge about the Tribunal were related to *less* support for both trials by the ICTR or the local *gacaca* system (Pham et al., 2004). Such findings point to the importance of other factors in the acceptance of trials and knowledge alone does not seem to be related to the acceptance a population has.

It may also be insightful to look at how many people are interested in informing themselves about international criminal justice proceedings. Comparative studies show that while in Uganda only 6 percent of those who had heard about the ICC had actively sought information

about the Court, in the CAR over 50 percent of survey respondents indicated they actively searched for information about the ICC (Pham & Vinck, 2010a: 42). Such findings raise many questions: does the higher interest by respondents in the CAR mirror the fact that the ICC investigations there were driven by civil society (Glasius, 2008)? Is the lower interest by Ugandans attributed to inadequate outreach programs, or does it hint at other underlying causes for an apparent lack of interest in the ICC? Here, more comparative, mixed method research would be needed to understand these differences.

While little systematic research has been done as to how effective outreach functions and operates (Vinck & Pham, 2010b), some authors wonder if better outreach activities could bridge the observed disconnect between local populations and international justice institutions. Both the ICTR and ICTY started outreach programmes very late in the process and thereby undermined their legitimacy among the affected populations and failed to create ownership (Clark, 2009; Hussein 2005; Pentelovitch, 2008). There are congruent findings that outreach activities of international courts have been a missed opportunity, even after lessons from these earlier unsuccessful strategies were available, for example in Sierra Leone (Kerr & Lincoln, 2008) and the CAR (Glasius, 2008). An evaluation of the outreach activities of the ICC in CAR has shown a tentative correlation between better knowledge of the ICC's work and a more positive evaluation of the Court. These findings are difficult to compare, however, as the overall support for the ICC in the country was very high to begin with (95 percent) (Vinck & Pham, 2010b: 439).

It is also important to look at the role that victims are given in the international justice mechanism. The ECCC in Cambodia is an example of how a court can include victims in international criminal justice by enhancing their role in the proceedings. The ECCC made it possible for more than 4,500 victims to act as full civil parties and file complaints to the Court. The first trial was heavily attended with over 4,000 visitors, which could be interpreted as an indication of strong interest by the victims (Burns, 2010). However, victims may have many different reasons for attending such trials and while some of the participating victims in Cambodia were very satisfied with the judgment in the first trial, their expectations of justice may have not been fulfilled (Hoven & Scheibel, 2015). In addition to the ECCC, the ICC and Special Tribunal for Lebanon are the only other international criminal justice institutions that have separate victims units. At the latter, victims have significant power during the trial, such as making statements, calling witnesses or putting questions before the accused, all through a legal representative (de Hemptinne, 2010). Further research is needed to explore possible links between victims' participation and acceptance by victims and the greater population of the respective court.

So far, however, no international criminal justice mechanism has established *systematic* consultations with victims and local populations. It would therefore be very interesting to see if acceptance of international criminal justice increases when systematic, two-way consultation processes between local populations and institutions are in place (Lambourne, 2012; Vinck & Pham, 2010b).

## 6.2 Time and Timing

Although less often mentioned, appropriate timing of communication and outreach activities may also influence acceptance of a court or tribunal. Inappropriate timing of certain actions or

an unnecessary delay of communication may also result in a waning acceptance by various stakeholders.

In Sierra Leone, for example, the timing of publicising the indictment of Charles Taylor attracted severe criticism from various quarters, and undermined the legitimacy of the Special Court for Sierra Leone in the region. In 2003, the prosecutor unsealed the hitherto concealed indictment against Taylor while the latter was attending a West African peace meeting hosted by Ghana to end the civil war in Liberia. The Special Court's prosecutor saw this as an opportunity to detain Taylor and requested the Ghanaian authorities to arrest him. The move came unannounced to the Ghanaian authorities, who had also not received the necessary documents from the Special Court. Contrary to the Court's request, Taylor was not arrested, but given a presidential plane back to Liberia. The move caused irritation among West African leaders who had tried to persuade Taylor to negotiate for peace in Liberia and who felt embarrassed and frustrated at the failed peace meeting. While the arrest of Taylor would probably have been possible had West African governments been properly informed, this action was proof to African leaders that the Court was acting in the interests of the United States (Geis & Mundt, 2009: 3; Tejan-Cole, 2009). Such apparently insensitive actions may also reverberate negatively among the affected populations, in this case mostly in Liberia. The incident was later used by Taylor and his defence lawyer when arguing that the Court was a Western device for controlling Africa and managing regime changes (Glasius & Meijers, 2012).

The perception of international criminal justice is further affected by the length of time such trials take. This makes an appropriate outreach strategy all the more important, as many people have little knowledge and understanding of the lengthy procedures. The ICTY and ICTR did not start their outreach programme until more than five years after their establishment (Vinck & Pham, 2010b: 423). In CAR, even after the negative outreach experiences in the DRC and Uganda, it still took the ICC months to open an office in the capital, Bangui. This caused people in the country to wonder whether the investigations actually took place (Glasius, 2008: 59), and shows the need for a systematic, early engagement of international justice institutions.

### **6.3 Managing Expectations**

Meaningful communication is an aspect that cuts across all dimensions of the relationship of an international justice mechanism with its various stakeholders. Those affected by an international criminal justice process all have expectations, some of which are too high, others overly negative. If a court wishes to be accepted, then appropriate and adequate information about both its potential and limits is crucial.

The direct impact of communication by a court as an institution or by its members has received little attention in the literature. In Uganda, the ICC has sparked criticism because it stays silent on the issue of whether there will be indictments of government forces. Further to the fact that the one-sided selection of cases undermines the credibility of the ICC among those communities that suffered from abuses by government soldiers, the absence of clear communication on these issues only increases suspicions among the general population and civil society (Branch, 2004; HRW, 2011: 27).

It is widely agreed that international justice institutions should strive to improve communication with their constituencies. Several authors suggest that the solution to the

perceived shortcomings of international justice is not necessarily to expand the activities of international criminal courts to address these limitations, but rather to ensure that court officials and administrators show awareness of the challenges and better communicate their decisions to the affected groups (McEvoy, 2007; Mertus, 2000; Stover, 2007: 144; Villa-Vicencio, 2010). McEvoy, for example, proposes a demonstration of ‘legal humility’, meaning that lawyers should acknowledge the limitations of international criminal justice mechanisms on the one hand, and the often complex situations in which they operate on the other. This awareness could be communicated, for example, by court officials using less legal language (McEvoy, 2007).

## 7. The Dynamics of Acceptance

A final aspect to be addressed here is the temporal dimension of acceptance. As mentioned earlier, acceptance is a dynamic process rather than a static entity. It is thus crucial to situate findings on acceptance or non-acceptance in the particular time frame of the international justice process. Studying relevant attitudes and perceptions over time, for example, may be informative when trying to understand how acceptance is mediated by different factors in a particular situation country. Such factors may be relevant to many of the aspects mentioned in this review.

About a dozen surveys attempt to document attitudes and perceptions of international criminal justice over time. The Human Rights Center of the University of California, Berkeley, together with various partners conducted a number of assessments in several countries and successive surveys in Cambodia, Northern Uganda and the DRC (for Cambodia see Pham et al., 2009; 2011; for Uganda see Pham et al., 2005; 2007 and Vinck & Pham, 2009; for the DRC see Vinck et al., 2008 and Vinck & Pham, 2014b; for a discussion of several surveys, see Vinck & Pham, 2014a). The United Nations Development Program conducted two surveys on the perceptions of transitional justice in Kosovo (UNDP, 2007; 2012).

The surveys in Northern Uganda were conducted in 2005, 2007, and 2010 with more than 2,000 respondents each, who were sampled in a way to represent the ethnic, regional, and socioeconomic diversity of the population (Pham et al., 2005; Vinck & Pham, 2009). Taken together, they show important trends in the attitudes and perceptions of the local population. For example, knowledge about the ICC changed over the years. It was highest in the second survey when the arrest warrants against prominent LRA leaders were the subject of heated debates, but dropped again in the 2010 survey. The authors cite possible changes in the research sample as a cause for this drop, but also suggest that the interest of respondents in the work of the ICC may have diminished. At that stage, the ICC may not have been mentioned much in the media, or the improved security situation meant that respondents had other priorities such as reconstruction and moving on (Pham & Vinck, 2010: 42).

Two surveys in Cambodia in 2008 and 2010 illustrate rather positive perceptions of the ECCC, and some indicators even improved after the first trial was concluded (Pham et al., 2009; 2011). Respondents of the surveys were asked about their perceptions of the fairness of the trials, the impact of the ECCC, and their overall views about justice and the national judiciary. The studies show how the idea of the ECCC delivering justice increased slightly over these two years, and the authors suggest that the proceedings may have influenced people’s perceptions (Pham et al., 2011). More qualitative research would enhance the understanding of both the overall positive

evaluation, as well as the changes that may have been attributable to the conclusion of the first trial.

A number of baseline studies have surveyed perceptions related to international justice before international criminal justice mechanisms were established or became involved in the situation. The Afghan Independent Human Rights Commission published a report about perceptions of justice based on a survey in 2005, concluding that the overwhelming majority (88 percent) of Afghans believed that there must be accountability for human rights violations and that trials should best be held in Afghanistan (80 percent) (AIHRC, 2005). Backer et al. (2010) looked at attitudes and perceptions of the Kenyan population towards the ICC just before the opening of the investigations, and Gibson et al. (2010) surveyed how Cambodians felt about the ECCC before it opened.

To capture the dynamic nature of acceptance, it would therefore be necessary to commission more long-term studies, especially with qualitative or mixed methods that track opinions over time and provide more detailed information about the reasons for these changes.

## **8. Conclusion**

By looking at a number of general debates, this chapter outlined some of the dimensions of acceptance of international criminal justice. It is evident that this is only a selection of relevant aspects, which may or may not be significant depending on the context in which an international court or tribunal takes place. By way of a very general conclusion, it can be said that acceptance of international criminal justice relates to issues that lie outside the control of courts and tribunals, and to actions of these institutions themselves. Where local populations may have different understandings of what 'justice' entails, acceptance of an international court may depend on the existence of other policies to address past wrongs, such as other transitional justice mechanisms. The literature from many situation countries strongly suggests that acceptance of international criminal justice increases when the relevant institution is not perceived as an imposed entity, and when it is seen to operate in an unbiased and apolitical manner. Finally, findings from several countries demonstrate the importance of effective and meaningful communication at an early stage, particularly in situations that are at risk of politicising messages by national or regional actors.

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