TRANSITIONAL JUSTICE AND THE ROLE OF INTERNATIONAL CRIMINAL LAW IN THE PROTECTION OF VICTIMS OF HUMAN RIGHTS VIOLATIONS*

Abstract
It has been a daunting challenge assisting societies devastated by conflict or emerging from repressive rule to re-establish the rule of law and come to terms with gross human rights violations. It is more challenging especially within a context marked by broken institutions, exhausted resources, diminished security, a distressed and divided population. Experience has demonstrated that promoting reconciliation and consolidating peace in the long-run requires the establishment or re-establishment of an effective governing, administrative and justice system founded on respect for the rule of law and the protection of human rights. Transitional justice is the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. It seeks to allow post conflict societies to deal with past atrocities in circumstances of radical change. It is believed that by providing victims with an opportunity to be part of the justice process boosts their confidence in the justice process, and by ensuring that consideration is given to their suffering, they have hope that their sense of dignity and self worth are not taken for granted. Consequently, they view the justice process as relevant rather than as remote, technical, and irrelevant. This research analyses the rights of victims of international crime to justice. It studies the extent to which international criminal law has responded to the aspirations of Victims of Human Rights Violations through the mechanism of transitional justice. The research seeks to address the role of international criminal court if any, in addressing victims’ needs beyond their participation in criminal trials. The aim is to attain truth, reform and change that will be necessary to break a cycle of impunity and develop social and government institutions that respect and enforce the rule of law and human rights.

Keywords: Transitional Justice, International Criminal Law, Protection of Victims, Human Rights Violations

1. Introduction

The growth and development of any legal system often lies in the ability to manage the experience of the past, correct errors and positively impact the future. The impetus for incorporating victim provisions within the ICC statute came mainly from victims’ dissatisfaction with the ad hoc tribunals in providing them with more meaningful and tangible justice.¹ The International Criminal Tribunals for the former Yugoslavia and Rwanda² only included victim protection measures, with no provisions for victims to participate in proceedings or to claim reparations. Thus, where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.³ It is not generally a novel phenomenon to have victims of crime participate in criminal trials. Historically, victims have in some instances even borne the responsibility for bringing criminal cases to

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¹ The ICTY and ICTR
² International Criminal Tribunals for the former Yugoslavia and Rwanda (ICTY/R)
³The Rome Statute of the International Criminal Court, Article 68 (3).
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However, incorporating victims into criminal prosecutions other than as witnesses is more common in countries with civil law traditions than in countries with common law traditions, like United Kingdom and Nigeria where the practice tends to focus on the adversarial nature of criminal proceedings. In recent decades, France and Cambodia have received the most attention for their inclusion of victim participation in trials of war crimes suspects.

However, the ICC, like the ICTY and ICTR, is a blend of common law and civil law. It intends to achieve a restorative aim to give satisfactions to the victims of the perpetrated crimes by allowing their active participation in trial proceedings. Nonetheless, Victims’ procedural rights have their limits and challenges. Their interests must be balanced against the rights of others, most especially the accused. This paper will among other things consider the role of the ICC as Human Security Agents beyond Victims’ Participation in Criminal Trials. The work is divided into four parts. The first part bears the introduction and evolution of transitional justice. The second part discussed the victims of international crimes their needs, expectations and rights under International Criminal Law. Part three is on international criminal law and transitional justice where it discussed the role of the International Criminal Court as Human Security Agents beyond Victims’ Participation in Criminal Trials using the mechanism of transitional justice. Finally, part four is on the prospects and challenges in adopting the mechanism of transitional justice with recommendations and conclusion.

2. Meaning of Transitional Justice

Transition means the process or a period of changing from one state or condition to another. According to the United Nations, transitional justice is the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. Transitional justice consists of both judicial and non-judicial processes and mechanisms, including prosecution initiatives, truth-seeking, reparations programmes, institutional reform or an appropriate combination thereof. It aims at taking account of the root causes of conflicts and the related violations of all rights in order to prevent further conflict, achieve peace building and reconciliation. The concept of transitional justice bring together the notions of ‘‘transition’’ and ‘‘justice.’’ Transition is commonly seen as a move by a society towards a more legitimate form of governance and peace in the wake of repressive rule and mayhem. In some cases crimes may have

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5In France, scores of victims of crimes committed during World War II participated as parties civiles, “civil parties,” in three prominent trials of alleged Nazi war criminals and sympathizers, those of Klaus Barbie (head of the Gestapo in Lyon, convicted in 1991); Paul Touvier (leader of a Vichy-run paramilitary group under the direction of Barbie, convicted in 1994), and Maurice Papon (a police official in the Prefecture of Bordeaux, convicted in 1998). Similarly, in Cambodia, civil parties have been a regular feature in the trials of former commanders and leaders of the Khmer Rouge.
6This fundamental concept is enshrined in the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, adopted by the UN General Assembly on 29 November 1985.
ceased long before the transition takes place.\textsuperscript{10} Other times they may have been committed up until the transition time.\textsuperscript{11} At some other times still, crime commission may be in continuation even during the transition.\textsuperscript{12} In such situations, transitional justice seeks a holistic sense of justice instead of relying solely on a classical, retributive notion of justice.\textsuperscript{13} Thus, the instruments of civil or criminal trial; truth-seeking; reparations and reforms are primarily employed.\textsuperscript{14} Although amnesties are not considered to be part and parcel of transitional justice, they have been employed in exceptional situations in many post-conflict contexts in order to foster national reconciliation and peaceful transition to a democratic society.\textsuperscript{15} However, the nature of amnesties may vary from self-serving measures enacted by outgoing regimes\textsuperscript{16} to seemingly sincere attempts to deal with post-conflict legacies.\textsuperscript{17} A transitional-justice approach to past atrocities is faced with inevitable conflicting priorities.

**Evolution of Transitional Justice in International Criminal Law**

While victims have long enjoyed substantive rights, such as the right to life and liberty, and the procedural rights to enforce substantive claims in many civil law jurisdictions, they have historically been relegated to the role of witnesses in domestic common law trials and international criminal proceedings. The evolution in thinking about victims resulted from a confluence of forces, including the success of domestic victims’ rights movements, the growth of human rights norms worldwide that promoted victim-oriented justice.\textsuperscript{18} There is also an acknowledgement on the part of state officials and lawyers that previous tribunals including the International Criminal Tribunal for the former Yugoslavia and Rwanda\textsuperscript{19} failed to fully take into account the experiences and opinions of victims.

### 3. Components of Transitional Justice

Transitional justice consists of both judicial and non-judicial processes and mechanisms, including prosecution and facilitating initiatives in respect of the right to truth, delivering reparations, institutional reform and national consultations.

**Prosecution Initiatives**

The aim of Prosecution initiatives is to ensure that those responsible for committing crimes, are tried in accordance with international standards of fair trial and punished where appropriate. The credibility and legitimacy of prosecution initiatives require that they are conducted in a non-discriminatory and objective manner, regardless who the alleged perpetrators may be. States have the primary responsibility to exercise

\textsuperscript{10}As in the case of Spain.
\textsuperscript{11}For example Timor Leste.
\textsuperscript{12}For example Uganda.
\textsuperscript{15}L J, Laplantesupra.
\textsuperscript{16}Chile
\textsuperscript{17}South Africa.
\textsuperscript{19}ICT Y/R.
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jurisdiction over these crimes.\(^{20}\) Therefore, in relation to the alleged crimes committed in the context of the conflict or repressive rule, transitional justice programmes will seek to reinforce or develop national investigative and prosecutorial capacities. It seeks for an independent and effective judiciary, adequate legal defense, witness and victims’ protection and support, as well as humane correctional facilities.\(^{21}\) It is essential then to have a National legislation that is in conformity with international human rights law and international criminal law together with an effective legal system. States emerging from years of conflict or repressive rule may be unable or unwilling to conduct effective investigations and prosecutions. In such situations, international and hybrid criminal tribunals may exercise concurrent jurisdiction. The European Court on Human Rights has influenced deeper protection of human rights. Some of its case-laws can be viewed as transitional justice since it deals with mass human rights violations in repressive past.\(^{22}\)

**Facilitating Initiatives in Respect of the Right to Truth**

Truth-seeking processes assist post-conflict and transitional societies to investigate past human rights violations. They are usually undertaken by truth commissions, commissions of inquiry, or other fact finding missions.\(^{23}\) The right of individuals to know the truth is supported by several treaty bodies, regional courts, and international tribunals.\(^{24}\) Truth commissions are non-judicial or quasi-judicial investigative bodies, which map patterns of past violence, and unearth the causes and consequences of these destructive events. Each truth commission is a unique institution, but their core activities usually include collecting statements from victims and witnesses, conducting thematic research, including analysis of gender and children violations, causes and consequences of the violations, public hearings and other awareness programs. This calls for a strong national archival system.\(^{25}\) Moreover, transitional justice programmes generate documents of their own, which should be subsequently archived, as they represent a rich source of information regarding the history of conflict or repressive rule.

**Delivering Reparations**

Reparations programmes seek to redress systemic violations of human rights by providing a range of material and symbolic benefits to victims. It includes monetary compensation, medical and psychological services, health care, educational support, return of property or compensation for losses. It may also include official public apologies, building museums and memorials, and establishing days of commemoration. In the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the General Assembly has reaffirmed the right of victims to reparations.\(^{26}\) Redress may include restitution, compensation, rehabilitation, satisfaction\(^{27}\), and guarantees of non-repetition.\(^{28}\) Experience has shown that the most successful reparations programmes are designed in consultation with affected communities,

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\(^{20}\) *Supra* (n 6).

\(^{21}\) UC-Berkeley’s Human Right Center(n 6).

\(^{22}\) *Sandru and others v. Romania* App no 22465/03 (ECHR, 8 December 2009). (n 24) 4.


\(^{26}\) A/RES/60/147.

\(^{27}\) Like official declaration or a judicial decision restoring the dignity, reputation and the rights of the victim; public apology acknowledgement and acceptance of responsibility.

\(^{28}\) Ensuring effective civilian control of military and security forces; ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality; strengthening the independence of the judiciary.
particularly victims and women groups. Official programmes and initiatives in memory of victims, educate society and preserve historical memory.

Institutional Reform
Public institutions that helped perpetuate conflict or repressive rule must be transformed into institutions that sustain peace, protect human rights, and foster a culture of respect for the rule of law. Institutional reform enables post-conflict and transitional governments to prevent the recurrence of future human rights violations. There is need to remove from office or refrain from recruiting those public employees personally responsible for gross violations of human rights, including disbandment of military, police or other security units that may have been systematically responsible for human rights violations. The removal is to be in accordance with due process of law and the principle of non-discrimination.  

Institutional reform should further incorporate comprehensive training programmes for public officials and employees on applicable human rights and international humanitarian law standards.

National Consultations
National consultations are critical elements of the human rights-based approach to transitional justice. This is because successful transitional justice programmes necessitate meaningful public participation which reveals community needs affected by conflict or repressive rule and allow States to draft an appropriate transitional justice programme. Moreover, the consultative process helps victims and other members of civil society to develop local ownership of the resulting programme. The UN Secretary General has recommended that the UN should facilitate the process of national consultations by organizing forums for discussions, providing legal and technical advice, promoting the participation of traditionally excluded groups, such as victims, minorities, women, and children, supporting capacity building, and mobilizing financial and material resources.

There may be need for outreach to aid proper understanding and coherent communication of the programme and to address both specific groups affected and the broader community.

4. Victims’ Needs, Expectations, Rights and Justice for Victims of International Crimes
The United Nations Declaration of the Basic Principles of Justice for victims of crime and abuse of power define victims as persons who individually or collectively have suffered harm including mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within member states. It is immaterial whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of familial relationship between the perpetrator and the victim. Generally, the state or the international community is the indirect victim of the crime committed. The direct victims of the crime are the target group who suffered and/or sustained injury and hurts in the course of the Mayhem. These groups of persons are the main focus of this research work and whose needs and expectations are discussed hereunder with the aim of realising justice for them. Under the ICC Statute Rules of Procedure and Evidence, victims are natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the ICC. It may include legal entities that have sustained direct harm to any of their property dedicated to religion, education, art or

31 Ibid.
32 A/RES/40/34, 29 November 1985; Principles 12–14.
science or charitable purposes and to their historic monuments, hospitals and other places and objects of humanitarian purposes.  

**Victims’ Needs**

Generally, victims have emotional, informational and practical needs. For international crimes, emotional needs can be more obvious owing to the scale and gravity of the crimes committed, requiring medical rehabilitation to cope with their trauma, public acknowledgement of their suffering to counter impunity, supportive treatment and protection measures in judicial proceedings to avoid re-victimisation. Victims’ informational needs may include quest to know why they were targeted, who is responsible, the wider context of violations, and how they can access redress, identify prosecute and punish them. They may also need financial support, protection from further violence, provision of basic necessities, considering the gravity of destruction cause by the perpetrators of international crimes. Their needs can change over time and can conflict with others. However, justice should rather be responsive to victims’ needs.

**Victims Expectations**

Almost every victim of a crime expects and values opportunity to tell his or her stories. He wants to let the whole world know how he is suffering and come to his aid. He wants to believe that he is telling his story to a neutral person that can be trusted who is not in connivance with his assailant or has some affiliations with his perpetrator. He wants to be respected and feel respected despite his situation. In his vulnerable state he has a strong quest for security and so he wants to be in safe hands. Beneath these expectations is a wish to receive reparation and have the culprit who inflicted such pains on them to receive a retributive justice. It is therapeutic to empathisewith victims and respond to their reasonable expectations. Lack of response, feedback and delay may raise bias and notions of compromise on the minds of victims of a crime including international crimes. In Uganda case when the victims experienced lack of feedback they felt frustrated and dissatisfied. Hence, they said ‘Nobody has come from the court to tell us what happened. We need these people to come to us,’…? Nonetheless, having more than a dozen participants having a voice in the trial proceedings could make the trial cumbersome.

**Justice for Victims**

Under human rights law, victims of gross human right violations have rights to truth, justice, and reparations which impunity denies them and prevents their access to redress. Unlike impunity, justice...
affirms victims’ dignity by acknowledging their suffering and remedying their harm. It recognises that responsibility for violence can be attributed to non-state actors. Justice for victims is both procedural and substantive. While Procedural justice for victims comprises of access to redress and fair treatment within proceedings including protection measures, participation in proceedings which affect their interests, access to legal representation, assistance and support, and claim to reparations. Substantive justice encompasses the outcomes of judicial processes. It involves redressing the harm they have suffered and the causes of victimisation. This substantive justice has developed into three rights for victims namely right to truth, justice, and reparations. Thus the ICC although heralded as a victim court, is not victim-centred, but victim-orientated.

5. Rights of Victims under International Criminal Law

In human right law the victim of a crime can claim right to the truth, justice and reparation. In the ICC Statute article 75 provides for the victims right to reparation. These rights have to be balanced with those of the accused and witnesses.

Right to the Truth

This right will help to determine what type of international crimes that occurred, the context and consequences, as well as the fate and whereabouts of those who died. Though the right to the truth does not entitle victims to information on every detail or guarantees unearthing the identity of every perpetrator, it rather allows them to affirm their suffering with a public historical account of the past.

Right to Justice

The right to justice comprises of victims’ procedural access to redress and prosecution of those responsible for their pain and suffering. It does not entitle victims to a particular outcome, such as a conviction, due to limitations in evidence or other public interest concerns, rather it is concentrated on allowing access to redress against a responsible actor. In terms of truth, the Court will enable victims to present in person their views and concerns in proceedings to help the judges ‘determine the truth’ under Article 69(1). Victims’ role in such proceedings is functional in determining the truth about the facts of the case for the

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Chamber’s benefit, rather than wider notions of truth that are important to victims. In terms of justice, in the Lubanga and Katanga case victims have the view that in the sentencing of Lubanga and Katanga the Court should have ordered longer sentences than the respective 14 and 12 years handed down. The withdrawal of the prosecution’s appeal of the Katanga judgement after the defendant retracted his appeal and accepted the conviction expressing remorse to the victims failed to attract victims’ interests. They were rather displeased that the judgment did not find him responsible for sexual violence and other crimes as they expected.

The limited impact of victims’ concerns on judges’ decision is perhaps most evident in the Court’s first reparation decision in the Lubanga case, where despite representations by the victims for individual and collective reparations to help remedy their suffering, the judges instead ordered that reparations be made through the Trust Fund to benefit the community.

**Right to Reparations**

The right to reparations enables victims to avail of appropriate remedial measures to alleviate their pains. In comparison to the other two rights, it is said that reparations can provide more tangible measures to victims that can improve their quality of life. In providing for reparation to victims the ICC Statute states that the Court shall establish principles relating to reparations to, or in respect of, victims, including restitution, compensation and rehabilitation. The International Criminal Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda both only provided that the Trial Chamber shall ensure that a trial is fair and expeditious with full respect for the rights of the accused and due regard for the protection of the victims and witnesses.

### 6. International Criminal Law and Transitional Justice

#### Victim Participation Process and Model of Participation

**Victim Participation Process**

Under ICC procedure, becoming a victim participant is purely voluntary. Victims who wish to participate in a specific case seek permission from the court by filling out an application that documents personal harms suffered or by registering as a victim with a court-appointed lawyer. Applications submitted to the

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49 For example documentation of the role of neighbouring states in Mr Lubanga’s crimes- ICC, Prosecutor v Lubanga,, ICC-01/04-01/06-2135, 22 September 2009.
50 Prosecutor v Katanga and Chui, ICC-01/04-01/07-1665, 20 November 2009. See also ICC, Prosecutor v Katanga, ICC-01/04-01/07-3457-Red, 7 April 2014.
52 ICC, Prosecutor v Katanga, Observations du représentant légal relatives à la fixation de la peine, ICC-01/04-01/07-3457-Red, 7 April 2014.
53 ICC, Prosecutor v Lubanga, Decision Establishing the Principles and Procedures to be applied to Reparations, ICC-01/04-01/06-2904, 7 August 2012.
54 UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, (UNBPG) 2005. There are five main types of reparations including restitution, compensation, rehabilitation, measures of satisfaction, and guarantees of non-repetition, as appropriate in effectively remedying gross violations of human rights.
55 L Moffett (n57) 5.
56 The Rome Statute of the International Criminal Court, Article 75(1).
57 ICTY
58 ICTR
59 ICTY, Article 20(1); ICTR Article 19(1).
court by victims are generally reviewed by the Victims Participation and Reparations Section (VPRS) and then submitted to ICC judges. The judges will decide whether or not the applicant has sufficiently demonstrated his or her direct link to the specific crimes articulated in the indictment. If it is determined that the conditions have been met, the VPRS then informs the applicant that he or she has been accepted as a victim participant.\textsuperscript{60} Another determinate factor of participation is the extent of victim access to information about the court and its proceedings. Media, of course, play a key role. Victims residing in remote areas, however, often have limited or no access to television, newspapers, or the Internet. So far, radio has been the most accessible source of information in more rural communities, but news reports of ICC proceedings are rare.\textsuperscript{61} In general, the victim-related sections of the court take five steps before the court initiates the victim participation process in any given case. First, VPRS maps potential victim populations and relevant civil society organizations in the region under investigation to identify potential partners. Second, the Registry identifies, recruits, and trains local partners to act as unpaid intermediaries. Third, the intermediaries, in coordination with VPRS or other sections of the ICC conduct outreach to inform victims about the court and the victim participation process. Fourth, VPRS field staff intermediaries, or legal representatives assist victims who wish to apply to join a case. Finally, victims who are certified by judges to participate in a case are appointed legal counsel.

**Models of Participation**

The ICC Statute provides the court with little guidance on how to handle victim participation in challenging environments. The Judges are to reconcile the tension between the court’s mandate for victim inclusion and its interest in fair and efficient trials.\textsuperscript{62} Nonetheless three models of participation have been utilized in different situations namely: Individual Model, Collective Model and Hybrid Representation Model.

**Individual Model**

The individual model requires each victim to submit his or her application to the court which will be considered by the chambers and the parties. It may be either accepted or rejected.\textsuperscript{63} This was adopted in handling the Uganda and Democratic Republic of Congo cases. However, though straightforward, but it is necessarily the most efficient. It is cumbersome and expensive, and requires exhaustive efforts on the part of the Registry and local intermediaries. In response to this challenge ICC judges have developed collective and hybrid models to streamline applications, maximize victims’ access to justice, and control costs.

**Collective Model**

The collective model strives to maximize efficiency by further revising the application process.\textsuperscript{64} This model relies on a group form and a one-page declaration for individuals developed by the Registry.\textsuperscript{65} Victims can in principle apply either as individuals or as a group, but in practice direct participation by individual victims is difficult and extremely rare. Nearly all interactions with the ICC occur through a

\textsuperscript{60}https://www.law.berkeley.edu/wp-content/.../The-Victims-Court-November-2015.pdf victims of november 2015

\textsuperscript{61}Ibid.

\textsuperscript{62}Ibid.


\textsuperscript{64}ICC Pre-trial Chamber II, Decision on Issues Related to Victims’ Application Process, Situation in Côte d’Ivoire, ICC-02/11-01/11 (6 February 2012).

\textsuperscript{65}The Registry refers to Gbagbo model as a ‘partly collective application process’ because of individualized declarations. See ICC Assembly of States Parties, Report of the Court on the Review of the System for Victims to Apply to Participate in Proceedings (5 November 2012).
common legal representative. For this reason, some victim advocacy groups have expressed concerns about this approach because individual views can be overwritten by community sentiment. It was first introduced in the Côte d’Ivoire case by Judge Fernández de Gurmendi during the confirmation of charges against Laurent Gbagbo in 2013. The fear is that the collective approach may also be inconsistent with Article 68(3) of the Rome Statute. This is because it visualises groups as the rights bearers, but the language of the statute fairly clearly grants rights to individuals. Though it restricts individual direct engagement with trial proceedings, but reduces the labor-intensive process of individual-application review and more responsive to victims’ collective concerns.

Hybrid Representation Model

Hybrid representation model is an application system fashioned out by Trial Chamber V that combined collective recruitment and registration, but preserved the ability of individual victims to join cases as trial participants in response to the Kenyan case. The Kenyan cases presented new dilemmas for the ICC because of the number of potential victim participants and unprecedented security concerns for witnesses and other trial participants. Only victims who wished to appear in court, either in person or via video link, needed to submit an individual application to chambers. Under the hybrid model, the common legal representative registers victims. Court review of individual applications is eliminated, VPRS works closely with the common legal representative, most outreach and other interactions are outsourced to the legal team. It reduced the burden of processing long applications, delays in responding to individual applicants seeking victim recognition. The model also potentially provides greater security and protection to victims because detailed information is only collected on a smaller group who want to appear in court. The hybrid model has been seen to preserve the possibility of individual victims making representations at The Hague while moving towards a mostly collective approach. In July 2015, one lawyer represented 949 victims in the Ruto and Sang case.

7. The Role of the International Criminal Court as Human Security Agents beyond Victims’ Participation in Criminal Trials via Transitional Justice Mechanism

The ICC was created not only to hold individuals’ accountable for international crimes but also to provide victims of international crimes with the means to redress their situation. To assess the role of the international criminal court as human security agents beyond victims’ participation in criminal trials through the mechanism of transitional justice, there is need to examine the effort of the court in ensuring the protection and welfare of victims in cases under its purview and the effectiveness of that effort. This includes the protection and empowerment of these human individuals participating in the Court’s proceedings and whose interests are affected by the proceedings. Notwithstanding the mission to dispense justice, it may be an opportunity for the Court to advance its human security agenda of victims of international crime. This calls for sensitive and proactive approach regarding possible security risks that may be involved when intervening in a given country. The traditional notion of security has been expanded

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69While Protection involves the removal of threats to core human values, empowerment practices include initiatives that enable people to act on their behalf.
to include safety from the constant threats of hunger, disease, crime, and repression.\textsuperscript{70} As a concept, human security emphasizes the security and development of a population, which if exploited or undernourished, risks the destabilization of both the state and society as a whole.\textsuperscript{71} This role may be said to have three dimensions namely, the safety of peoples,\textsuperscript{72} rule of law, and sustainable development.\textsuperscript{73} The objective of human security is to safeguard the vital core of all human lives from critical and pervasive threats, in a way that is consistent with a long-term human fulfillment. Institutions that undertake to protect human security may not promote every aspect of human well-being but must protect this core of people’s lives.\textsuperscript{74} Thus where the Court decides to open an investigation and proceeds with a case while hostilities and violence are ongoing, or tensions from the past conflict are still palpable,\textsuperscript{75} its practices need to be informed by a human security-based approach.

As suggested in some of the transitional justice literature, the work of the ICC is not only about redressing past crimes but also contributing to peace by its “deterrent” effect on future human rights violations.\textsuperscript{76} Human security should also be utilized to complement deterrence as measures of the Court’s impact from the moment of its initial investigation into state or conflict-inflicted abuses in a given country, to the process by which it gathers evidences, witnesses, and victim testimonies, to the last stage of delivering reparations to victims, the Court acts as a human security agent.\textsuperscript{77} There is therefore need for cooperation with humanitarian organizations on the ground. Nonetheless, while the purpose of the ICC is to uphold the rule of law through its investigations and prosecutions of alleged human rights offenders, it is not meant to be the sole institution to address such abuses and atrocities. State institutions must be functional and the ICC to complement as a court of last resort. The Court is responsible not only for producing an end result that is based in justice, but also for adhering to a process that ensures the safety and protection of victims of atrocity and repressive rule. By so doing it will bring to reality the dictum that “justice today can help protect the potential victims of tomorrow.”\textsuperscript{78} The ICC is therefore called to ensure victim safety and protection, fair trial in accordance with the rule of law, reparations and Post-Conflict development in the course of it duty.

\textsuperscript{72}In this context it refers to the victims of crime.
\textsuperscript{75}For example in Libya.
\textsuperscript{77}A situation where victims are protected and no extrajudicial killing of suspects outside self defence or defence of another.
8. Prospects and Challenges in adopting the mechanism of transitional justice.
The challenges involved in victim participation and reparation before the ICC and how to manage the expectations of victims is particularly tricky especially when there is need to explain to them that, even though they suffered terrible atrocities, they do not qualify as a victim before the ICC at a particular point probably because the crime allegedly committed against them is not included in the charges brought by the Prosecutor. There is therefore need to adopt an approach to transitional justice that strives to take account of the root causes of conflict or repressive rule, and address the related violations of all rights, whether included in the charge before the court or not. This includes economic, social, and cultural rights in a comprehensive and integrated manner. There could be other challenges arising at the point of intervening especially with language. In circumstances where many victims are illiterate, reside in inaccessible locations, afraid of further violations, and wary of strangers, success is remote. The same is applicable in security situations where a conflict is still ongoing or the security situation is precarious. There is also the challenge from the contention of the Coalition for the International Criminal Court which is critical of the Trust Fund’s Advocacy and facilitation of reconciliation. It contends that this goal is beyond the Fund’s mandate because reconciliation is not part of the ICC mandate. CICC believes that the Fund’s engagement should focus solely on providing redress for victims, restoring victims’ dignity, and facilitating their reintegration into society because that would be more aligned with the mandate stated in the Rome Statute. The reparations provided by the Victims Trust Fund seem to be designed to contribute to post-conflict development programs. Though reparations may assist in restorative justice but it should not be the end-all solution to deeper structural inequalities. The Court should not expand its mission outside its scope in order to be a human security agent, but should complete its mandate in a manner consistent with human security principles.

9. Conclusion and Recommendations
The inclusion of a number of victim provisions in the International Criminal Court Statute is a welcomed development in international criminal justice system and a step to incorporate justice for victims within its proceedings and outcomes. Successful transitional justice programmes recognize the centrality of victims and their special status in the design and implementation of such processes. While there is still need to improve victim participation in the investigation and trial stages of proceedings, there is also need to consider their interests in determining outcomes. The ICC is only one international institution and represents an international effort to end impunity for international crimes and to deliver justice for victims. There is need for greater collaboration and cooperation between the ICC and NGOs, lawyers, community leaders, Local actors in the places where the ICC is investigating together with a sincere and committed support of the members of the UN and state parties. However, as the court progresses, international criminal law will continue to expand in the area of transitional justice as well as in others areas within the provisions of the statute. It is up to non-state actors, States Parties and the Court itself to make sure that the foundations laid in the legal texts, live up to the aspirations of its drafters. In the light of the above discussion this study recommends:

(1) Apart from deterrent effect the Court should pay significant attention to the welfare and securities of the populations in transition which it seeks to protect.

(2) The prosecution of political leaders accountable for their actions should be conducted in a way that protect and empower victims of violence.

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79 Ibid.
80 CICC.
81 L M Balasco, supra
(3) There is need for greater harmonisation of the victim participation regime to ensure equality for victims and other participants, especially respect for presumption of innocence of defendants.

(4) Adopt an approach to transitional justice that strives to take account of the root causes of conflict or repressive rule.

(5) Coordinate disarmament, demobilization, and reintegration (DDR) initiatives with transitional justice processes and mechanisms, where appropriate, in a positively reinforcing manner.

(6) Where a crime allegedly committed against victims is not included in the charges brought by the Prosecutor, provision should be made to take care of such gap or lapse.