

## Procedural Justice In Transnational Contexts

STEPHEN CODY\* AND ALEXA KOENIG\*\*

*Procedural justice scholarship shows that perceptions of judicial fairness can strongly influence a court participant's satisfaction with judicial outcomes, as well as the perceived legitimacy of the dispute resolution forum. What is largely unknown, however, is how procedural justice plays out in transnational contexts. Most previous studies focus on adjudication in domestic forums. Here, drawing on 622 semi-structured interviews with victims in cases before the International Criminal Court ("ICC"), we document how four core procedural justice principles—voice, neutrality, trust and respect—are interpreted differently in transnational rather than in national contexts. We also identify additional factors—including participants' concerns over physical safety and lengthy judicial processes—that condition participants' subjective evaluations of procedural fairness. These empirical findings force us to rethink the meaning of core principles of procedural justice in transnational settings and shed light on the subjective experiences of victim participants in international criminal proceedings.*

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\*JD, PhD, Research Fellow, Human Rights Center, UC Berkeley School of Law.

\*\*JD, PhD, Executive Director, Human Rights Center, UC Berkeley School of Law; Lecturer, UC Berkeley School of Law.

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## I. INTRODUCTION

How do survivors of grave international crimes of violence (“atrocities”) experience judicial processes related to those crimes? When they join criminal proceedings, do they assess the fairness of judicial procedures and value core principles of procedural justice in the same way as plaintiffs or defendants do in domestic contexts? Are there common patterns in their assessments across different cultural contexts?

We sought to answer these questions by conducting in-depth, semi-structured interviews with victims participating in criminal cases before the International Criminal Court (“ICC”). Through our interviews with 622 victims in four African countries — Democratic Republic of Congo, Ivory Coast, Kenya, and Uganda — we discovered that survivors of mass violence in international criminal proceedings think and talk about procedural justice — judicial participants’ perceptions of fairness — differently than the existing literature on procedural justice in domestic forums predicts. Respondents’ expectations of and aspirations for judicial process in these transnational contexts, we believe, shed new light on four core principles of procedural justice — the desire for their voice to be heard, for unbiased judges, for respectful treatment, and for trustworthy institutions — and reveal that cultural and institutional factors cannot be taken for granted in procedural justice studies.<sup>1</sup> For example, we find that existing studies typically overlook several factors — including participants’ sense of personal safety and the long timeline of many judicial processes — that deserve greater attention in future empirical work. Victims’ diverse and multifaceted experiences of judicial process in transnational contexts force us to re-

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1. Some other scholars have also emphasized the importance of social context. *See generally, e.g.*, Kwok Leung & E. Allan Lind, *Procedural Justice and Culture: Effects of Culture, Gender, and Investigator Status on Procedural Preferences*, 50 J. PERSONALITY & SOC. PSYCHOL. 1134 (1986); Karin A. Beijersbergen et al., *Procedural Justice, Anger, and Prisoners’ Misconduct: A Longitudinal Study*, 42 CRIM. JUST. & BEHAV. 196 (2015); Justice Tankebe, *Public Cooperation with the Police in Ghana: Does Procedural Fairness Matter?*, 47 CRIMINOLOGY 1265 (2009); Michael D. Reisig et al., *Compliance with the Law in Slovenia: The Role of Procedural Justice and Police Legitimacy*, 20 EUR. J. ON CRIM. POL’Y & RES. 259 (2014); Lorraine Mazerolle et al., *Shaping Citizen Perceptions of Police Legitimacy: A Randomized Field Trial of Procedural Justice*, 51 CRIMINOLOGY 33 (2013); Kristina Murphy, *Does Procedural Justice Matter to Youth? Comparing Adults’ and Youths’ Willingness to Collaborate with Police*, 25 POLICING & SOC’Y 53 (2015); Ben Bradford et al., *Obedying the Rules of the Road: Procedural Justice, Social Identity, and Normative Compliance*, 31 J. CONTEMP. CRIM. JUST. 171 (2015); Rick Trinkner & Ellen S. Cohn, *Putting the “Social” Back in Legal Socialization: Procedural Justice, Legitimacy, and Cynicism in Legal and Nonlegal Authorities*, 38 LAW & HUM. BEHAV. 602 (2014); Denis Rosenbaum et al., *Measuring Procedural Justice and Legitimacy at the Local Level: The Police-Community Interaction Survey*, 11 J. EXPERIMENTAL CRIMINOLOGY 335 (2015); Kristina Murphy et al., *Motivating Compliance Behavior Among Offenders: Procedural Justice or Deterrence?*, 43 CRIM. JUST. & BEHAV. 102 (2016); Emma Antrobus et al., *Community Norms, Procedural Justice, and the Public’s Perceptions of Police Legitimacy*, 31 J. CONTEMP. CRIM. JUST. 151 (2015); Rachael Killiean, *Procedural Justice in International Criminal Courts: Assessing Civil Parties’ Perceptions of Justice at the Extraordinary Chambers in the Courts of Cambodia* 16 INT’L CRIM. L. REV. 16 (2016); Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054 (2017).

conceptualize the very meaning of procedural justice after violence, with implications for both international and domestic courts. We find that participants in international criminal trials understand procedure in ways that are not anticipated by current conceptions of procedural justice.

In this article, we explain how procedural justice principles play out in victims' views of transnational legal proceedings. We proceed in five parts. First, we provide an overview of the role of victims in international criminal trials, focusing on their participation in cases before the International Criminal Court. Second, we review our findings relevant to four core principles that underlie existing procedural justice scholarship. We argue that while some procedural justice concepts have received significant scholarly attention — legitimacy, for example — others are under-theorized or bound to dominant common law interpretations developed through domestic proceedings. Third, we show how governing procedural justice principles fail to explain or predict victims' understandings and expectations of judicial process in the ICC cases we examined. Fourth, we argue that victims' subjective perceptions of procedural fairness depend on a wide array of previously unacknowledged factors in transnational contexts, including participants' perceptions of their personal security and the lengthiness of investigations and trials. Finally, we conclude that neglected extra-judicial factors often determine culturally and institutionally contingent interpretations of judicial process. Subjective assessments of procedural fairness may hinge, for example, on issues of protection, care, and support of court participants.

## II. VICTIM PARTICIPATION AT THE INTERNATIONAL CRIMINAL COURT

The International Criminal Court came into being in 1998 with the adoption of the Rome Statute, the legal treaty that established the court.<sup>2</sup> By 2002, the Rome Statute had received the necessary number of ratifications from member states for the new court to commence operations, though some countries, including the United States, never ratified the treaty.<sup>3</sup> From the beginning, one of the court's greatest challenges was to establish its legitimacy on the world stage.<sup>4</sup> Such legitimacy would be necessary to induce

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2. See M. Cherif Bassiouni, *Negotiating the Treaty of Rome on the Establishment of an International Criminal Court*, 32 CORNELL INT'L L.J. 443, 467 (1999).

3. See BENJAMIN N. SCHIFF, BUILDING THE INTERNATIONAL CRIMINAL COURT 173 (2008).

4. See generally DAVID BOSCO, ROUGH JUSTICE: THE INTERNATIONAL CRIMINAL COURT IN A WORLD OF POWER POLITICS (2013); THOMAS M. FRANCK, THE POWER OF LEGITIMACY AMONG NATIONS (1990); THE LEGITIMACY OF INTERNATIONAL CRIMINAL TRIBUNALS (Nobuo Hayashi & Cecilia M. Bailliet eds., 2017); Stuart Ford, *A Social Psychology Model of the Perceived Legitimacy of International Criminal Courts: Implications for the Success of Transitional Justice Mechanisms*, 45 VAND. J. TRANSNAT'L L. 405 (2012); Ian Hurd, *Legitimacy and Authority in International Politics*, 53 INT'L ORG. 379 (1999).

state compliance in conducting investigations and effectuating arrests, as well as in contributing to political stability in the aftermath of war crimes, crimes against humanity, and genocide.<sup>5</sup>

Part of the court's strategy for gaining attention and affirming support from its donor states and international organizations relied on legal innovations that granted victims expanded rights to participate in cases.<sup>6</sup> Perhaps most notably, the Rome Statute gave victims a right to be heard on issues that affected their personal interests, as well as the right to receive reparations.<sup>7</sup> In contrast to earlier *ad hoc* tribunals established under UN auspices — including the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and the International Criminal Tribunal for Rwanda (“ICTR”), which limited the participation of survivors — victims in cases brought before the ICC, for the first time in international trials, had the right to comment on decisions to open an investigation, to narrow or broaden the scope of charges, and to issue legal submissions to judges overseeing their cases.<sup>8</sup> Through their legal representatives, victims could even question witnesses or make representations to the court about the nature and extent of any prospective reparations.<sup>9</sup> Rather than simply watching international trials as spectators, victims were finally invited to be part of the action.<sup>10</sup>

The legal authority for this new form of participation can be found in Article 68(3) of the Rome Statute, which reads:

Where the personal interests of victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and

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5. See generally ERIC STOVER, VICTOR PESKIN & ALEXA KOENIG, *HIDING IN PLAIN SIGHT: THE PURSUIT OF WAR CRIMINALS FROM NUREMBERG TO THE WAR ON TERROR* (2016).

6. See generally Laurel Fletcher, *Refracted Justice: The Imagined Victim and the International Criminal Court*, in *CONTESTED JUSTICE: THE POLITICS AND PRACTICE OF INTERNATIONAL CRIMINAL COURT INTERVENTIONS* (Christian De Vos et al., 2015); Kjersti Lohne, *Global Civil Society, the ICC, and Legitimacy in International Criminal Justice*, in *THE LEGITIMACY OF INTERNATIONAL CRIMINAL TRIBUNALS* (Nobuo Hayashi & Cecilia M. Bailliet eds., 2017); Symposium, *Pursuing Global Justice Through International Criminal Law*, 13 J. INT'L CRIM. JUST. 73 (2015); Peter Dixon & Chris Tenove, *International Criminal Justice as a Transnational Field: Rules, Authority and Victims*, 7 INT'L J. TRANSITIONAL JUST. 393 (2013).

7. See Elisabeth Baumgartner, *Aspects of Victim Participation in Proceedings of the International Criminal Court*, 90 INT'L REV. RED CROSS 409, 413 (2008).

8. See generally Fiona McKay, *Victim Participation in Proceedings Before the International Criminal Court*, 15 HUM. RTS. BRIEF, no. 3, 2008, at 2.

9. See T. MARKUS FUNK, *VICTIMS' RIGHTS AND ADVOCACY AT THE INTERNATIONAL CRIMINAL COURT* 153 n. 28, 198 (2010).

10. See generally Mariana Pena & Gaelle Carayon, *Is the ICC Making the Most of Victim Participation?*, 7 INT'L J. TRANSITIONAL JUST. 518 (2013); Claire Garbett, *From Passive Objects to Active Agents: A Comparative Study of Conceptions and Victims Identities at the ICTY and ICC*, 15 J. HUM. RTS. 40 (2016).

concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence.<sup>11</sup>

Although this provision granted new rights to victims, the Statute did not articulate how such participation should work in practice. The court outlined broad strategies for victim communication, protection, participation, and reparations, but it failed to develop a coherent approach or effectively coordinate victim-related activities.<sup>12</sup> Various ICC sections — including the Public Information and Outreach Section (“PIOS”), the Victim and Witnesses Section (“VWS”), the Office for the Public Counsel for Victims (“OPCV”), the Victim Participation and Reparations Section (“VPRS”), and the Trust Fund for Victims (“TFV”) — simultaneously set objectives and developed programs in relation to victims.<sup>13</sup> While many observers saw the ability of victims to participate in proceedings as essential to the legitimacy of international criminal interventions and the new court, especially in communities affected by the violence under judicial review, it remained unclear what model of participation would best engender among the victims a sense, when warranted, that justice had been served and they had been given an opportunity to make positive contributions to the process.<sup>14</sup> Ultimately, ICC judges created different models of victim participation as a means to reconcile the desire to include victims with the pragmatic realities of conducting trials.<sup>15</sup>

Jurists and scholars have extensively debated the value of permitting victims to participate expansively in international cases.<sup>16</sup> Proponents of expanded participatory rights argue that victim participation provides a

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11. Rome Statute of the International Criminal Court art. 68(3), July 17, 1998, 2187 U.N.T.S. 90.

12. Gaele Carayon & Jonathan O’Donohue, *The International Criminal Court’s Strategies in Relation to Victims*, J. INT’L CRIM. JUST. 567, 568 (2017).

13. *Id.* at 568–71.

14. See ICC Assembly of States Parties, *Report of the Bureau on Victims and Affected Communities and the Trust Fund for Victims and Reparations*, ¶ 24, ICC-ASP/11/32 (Oct. 23, 2012); REDRESS, REPRESENTING VICTIMS BEFORE THE ICC: RECOMMENDATIONS ON THE LEGAL REPRESENTATIVE SYSTEM (2015).

15. See generally Sergey Vasiliev, *Victim Participation Revisited: What the ICC Is Learning About Itself, in THE LAW AND PRACTICE OF THE INTERNATIONAL CRIMINAL COURT* (Carsten Stahn ed., 2015); ICC Assembly of States Parties, *Report of the Court on the Review of the System for Victims to Apply to Participate in Proceedings*, ICC-ASP/11/22 (Nov. 5, 2012).

16. See generally, e.g., Christine Van den Wyngaert, *Victims Before International Criminal Courts: Some Views and Concerns of an ICC Trial Judge*, 44 CASE W. RES. J. INT’L L. 475 (2011); KAMARI MAXINE CLARKE, FICTIONS OF JUSTICE: THE INTERNATIONAL CRIMINAL COURT AND THE CHALLENGE OF LEGAL PLURALISM IN SUB-SAHARAN AFRICA (2009); CONTESTED JUSTICE: THE POLITICS AND PRACTICE OF INTERNATIONAL CRIMINAL COURT INTERVENTIONS (Christian de Vos et al. eds., 2015); STEPHEN CODY ET AL., HUMAN RIGHTS CTR. AT BERKELEY LAW, THE VICTIMS’ COURT? A STUDY OF 622 VICTIM PARTICIPANTS AT THE INTERNATIONAL CRIMINAL COURT (2015); THOMAS OBEL HANSEN, IMPUNITY WATCH, IN THE SHADOW OF POLITICS: VICTIM PARTICIPATION IN THE KENYAN ICC CASES 16-17 (2016).

sense of pride to victims acting on their own behalf in the process, contributes to community “healing” and rehabilitation, and brings to light facts and evidence that may not otherwise emerge.<sup>17</sup> However, the ICC judges also recognized that victims’ procedural rights must be balanced against the rights of other court participants, most especially the accused.<sup>18</sup> Even the *Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power*, hailed as the Magna Carta for crime victims, recognizes that victim participation should not infringe on defendants’ due process rights.<sup>19</sup>

Finding the right balance between defendant and plaintiff procedural rights can be difficult, especially without a deep body of jurisprudence or experience to guide judicial decision-making. Indeed, detractors fear that participatory rights may enable victim participants to run roughshod over a defendant’s right to a fair trial; prolong proceedings and increase their expense; hinder the prosecutor’s ability to conduct a focused investigation; and provide legal recognition to certain categories of victims and not to others.<sup>20</sup> Additionally, victims who fall outside the scope of charges are

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17. See generally Hans-Peter Kaul, *Victims’ Rights and Peace*, in VICTIMS OF INTERNATIONAL CRIMES: AN INTERDISCIPLINARY DISCOURSE 223 (Thorsten Bonacker & Christoph Safferling eds., 2013); CONOR MCCARTHY, REPARATIONS AND VICTIM SUPPORT IN THE INTERNATIONAL CRIMINAL COURT (2012); LUKE MOFFETT, JUSTICE FOR VICTIMS AT THE INTERNATIONAL CRIMINAL COURT (2014); Jo-Anne Wemmers, *Where Do They Belong? Giving Victims a Place in the Criminal Justice Process*, 20 CRIM. L.F. 395 (2009).

18. See generally YVONNE McDERMOTT, FAIRNESS IN INTERNATIONAL CRIMINAL TRIALS (2016); John D. Ciorciari & Anne Heindel, *Victim Testimony in International and Hybrid Criminal Courts: Narrative Opportunities, Challenges, and Fair Trial Demands*, 56 VA.J. INT’L L. 265 (2016) (“[V]ictim testimony can also lead to re-traumatization and may compromise the fairness or efficiency of the judicial process if emotional distress undermines its relevance, credibility, or focus. Inherent tensions exist because the aspects of the courtroom experience that tend to threaten victims — such as pointed questioning and cross-examination on the details of painful events — are essential for a fair trial.”); Mirjan Damaska, *The Competing Visions of Fairness: The Basic Choice for International Criminal Tribunals*, 36 N.C.J. INT’L L. & COM. REG. 365 (2010); Jennifer DePiazza, *Denial of Fair Trial as an International Crime: Precedent for Pleading and Proving It Under the Rome Statute*, 15 J. INT’L CRIM. JUST. 257 (2017); Scott T. Johnson, *Neither Victims nor Executioners: The Dilemma of Victim Participation and a Defendant’s Right to a Fair Trial at the International Criminal Court*, 16 ILSA J. INT’L & COMP. L. 489 (2010); Michael Wabomba Masinde, *Victims’ Right to a Fair Trial at the International Criminal Court: Reflections on Article 68(3) of the Rome Statute*, 4 INT’L J. HUM. RTS. & CONST. STUD. 280 (2016); Susana SáCouto & Katherine Cleary Thompson, *Regulation 55 and the Rights of the Accused at the International Criminal Courts*, 21 HUM. RTS. BRIEF, no. 1, 2014, at 17; Salvatore Zappalà, *The Rights of Victims v. the Rights of the Accused*, 8 J. INT’L CRIM. JUST. 137 (2010).

19. See generally G.A. Res. 40/34 (Nov. 29, 1985).

20. See generally Harvey Weinstein, *Victims, Transitional Justice and Social Reconstruction: Who Is Setting the Agenda?*, in JUSTICE FOR VICTIMS: PERSPECTIVES ON RIGHTS, TRANSITION AND RECONCILIATION 161 (Inge Vanfraechem et al. eds., 2014); Sara Kendall & Sarah Nouwen, *Representational Practices at the International Criminal Court: The Gap Between Juridified and Abstract Victimhood*, 76 LAW & CONTEMP. PROBS. 235 (2014); Solange Mouthaan, *Victim Participation at the ICC for Victims of Gender-Based Crimes: A Conflict of Interest?*, 21 CARDOZO J. INT’L & COMP. L. 619 (2013); Susana SáCouto, *Victim Participation at the International Criminal Court and the Extraordinary Chambers in the Courts of Cambodia: A Feminist Project?*, 18 MICH. J. GENDER & L. 297 (2012).

denied opportunities to participate in proceedings in some cases.<sup>21</sup> Many critics are also concerned that the court's stature encourages unreasonable expectations on the part of survivors — expectations that the court, with its limited mandate and resources, may be unable to fulfill.<sup>22</sup>

Ultimately, all of these issues may affect the court's perceived legitimacy and participants' overall satisfaction with the justice of the trials.<sup>23</sup>

### III. PROCEDURAL JUSTICE

Until the 1970s, scholars investigating court participants' views of justice, including the legitimacy of the legal systems in which they were participating, focused almost exclusively on distributive justice — that is, whether participants were satisfied with case outcomes.<sup>24</sup> However, seminal research by Thibaut and Walker in 1975 demonstrated that the *form* of the dispute resolution process — for example, whether a process was adversarial or inquisitorial — could affect perceptions of both fairness and the legitimacy of the dispute resolution mechanism.<sup>25</sup> Over the last four decades, subsequent scholars have studied the circumstances under which participants consider dispute resolution fair or unfair and come to accept or reject case outcomes.<sup>26</sup> Almost unanimously, researchers have concluded

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21. See generally ELIZABETH EVENSON, HUMAN RIGHTS WATCH, MAKING JUSTICE COUNT: LESSONS FROM THE ICC'S WORK IN COTE D'IVOIRE (2015); SUSANA SACOUTO & KATHERINE CLEARY THOMPSON, WAR CRIMES RESEARCH OFFICE, OBTAINING VICTIM STATUS FOR PURPOSES OF PARTICIPATING IN PROCEEDINGS AT THE INTERNATIONAL CRIMINAL COURT (2013); Maria Juliana Machado Forero et al., *The Victims Who Are Not Quite Victim Enough: How the International Criminal Court Creates Divides Within Victim Communities*, in DIE FRIEDENS-WARTE 207-31 (2013); Masinde, *supra* note 18; Brianne N. McGonigle, *Bridging the Divides in International Criminal Proceedings: An Examination Into the Victim Participation Endeavor of the International Criminal Court*, 21 FLA. J. INT'L L. 93 (2009).

22. See, e.g., CARLA FERSTMAN, THE PARTICIPATION OF VICTIMS IN INTERNATIONAL CRIMINAL COURT PROCEEDINGS: A REVIEW OF THE PRACTICE AND CONSIDERATION OF OPTIONS FOR THE FUTURE (2012), [https://redress.org/wp-content/uploads/2017/12/121030participation\\_report.pdf](https://redress.org/wp-content/uploads/2017/12/121030participation_report.pdf); ERIC STOVER, THE WITNESSES: WAR CRIMES AND THE PROMISE OF JUSTICE IN THE HAGUE 148-50 (2005); Charles P. Trumbull IV, *The Victims of Victim Participation in International Criminal Proceedings*, 29 MICH. J. INT'L L. 777, 802-20 (2008).

23. See Stephen Smith Cody, *Legitimacy, Procedural Justice, and Victim Participation in Uganda*, in THE LEGITIMACY OF INTERNATIONAL CRIMINAL TRIBUNALS (Nobuo Hayashi & Cecilia Baillet eds., 2017).

24. See Lawrence B. Solum, *Procedural Justice*, 78 S. CAL. L. REV. 181, 183-90 (2004); Laurens Walker et al., *The Relation Between Procedural and Distributive Justice*, 65 VA. L. REV. 1401 (1979).

25. See generally JOHN W. THIBAUT & LAURENS WALKER, PROCEDURAL JUSTICE: A PSYCHOLOGICAL ANALYSIS (1975).

26. See generally E. ALLAN LIND & TOM R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE (1988); Tom R. Tyler, *What Is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, 22 LAW & SOC'Y REV. 103 (1988); TOM R. TYLER, WHY PEOPLE OBEY THE LAW: PROCEDURAL JUSTICE, LEGITIMACY, AND COMPLIANCE (1990); Jo-Anne Wemmers et al., *What Is Procedural Justice: Criteria Used by Dutch Victims to Assess the Fairness of Criminal Justice Procedures*, 8 SOC. JUST. RES. 329 (1995); E. Allan Lind et al., *Voice, Control, and Procedural Justice: Instrumental and Noninstrumental Concerns in Fairness Judgments*, 59 J. PERSONALITY & SOC. PSYCHOL. 952 (1990); Tom



that the manner in which a trial is conducted and the extent to which participants feel they have a “voice” in the proceedings are major influences — though not the only ones — on their satisfaction with judicial decisions.<sup>27</sup>

A person’s view of the fairness of a court procedure can, in turn, also significantly affect how he or she evaluates a judicial outcome independent of other factors.<sup>28</sup> Multiple studies of national domestic courts, for example, have shown that whether trial participants feel that they have been fairly treated can help to determine not only their satisfaction with court judgments but also their willingness to accept those judgments and their views of the legitimacy of criminal courts more generally.<sup>29</sup>

Over the years, Tom Tyler and his collaborators have conducted numerous studies of procedural justice, mostly in common law courts in North America and Europe.<sup>30</sup> They have examined the impact of both the “quality of decision making” and “quality of interpersonal treatment” on

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R. Tyler, *Social Justice: Outcome and Procedure*, 35 INT’L J. PSYCHOL. 117, 117-25 (2000); Tom R. Tyler & Steven L. Blader, *The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behavior*, 7 PERSONALITY & SOC. PSYCHOL. REV. 349 (2003); Kees van den Bos et al., *Procedural and Distributive Justice: What Is Fair Depends More on What Comes First Than on What Comes Next*, 72 J. PERSONALITY & SOC. PSYCHOL. 95 (1997).

27. See generally, e.g., Robert Folger, *Distributive and Procedural Justice: Combined Impact of Voice and Improvement on Experienced Inequity*, 35 J. PERSONALITY & SOC. PSYCHOL. 108 (1977); Tom R. Tyler et al., *Influence of Voice on Satisfaction with Leaders: Exploring the Meaning of Process Control*, 48 J. PERSONALITY & SOC. PSYCH. 72 (1985); E. Allan Lind et al., *Voice, Control, and Procedural Justice: Instrumental and Noninstrumental Concerns in Fairness Judgments*, 59 J. PERSONALITY & SOC. PSYCHOL. 952 (1990) [hereinafter Lind et al., *Voice, Control, and Procedural Justice*]; TOM R. TYLER ET AL., *SOCIAL JUSTICE IN A DIVERSE SOCIETY* (1997); TOM R. TYLER & YUEN J. HUO, *TRUST IN THE LAW: ENCOURAGING PUBLIC COOPERATION WITH THE POLICE AND COURTS* (2002) [hereinafter TYLER & HUO, *TRUST IN THE LAW*]; Tom R. Tyler, *Procedural Justice, Legitimacy, and the Effective Rule of Law*, 30 CRIME & JUST. 283 (2003) [hereinafter Tyler, *Effective Rule of Law*].

28. See generally Jonathan D. Casper et al., *Procedural Justice in Felony Cases*, 22 LAW & SOC’Y REV. 483 (1988); John Thibaut & Laurens Walker, *A Theory of Procedure*, 66 CAL. L. REV. 541 (1978); Robert J. MacCoun & Tom R. Tyler, *The Basis of Citizen’s Perceptions of the Criminal Jury: Procedural Fairness, Accuracy, and Efficiency*, 12 LAW & HUM. BEHAV. 333 (1988); TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (reissue ed. 2006) [hereinafter TYLER, *WHY PEOPLE OBEY THE LAW*].

29. See generally, e.g., Tom R. Tyler, *Multiculturalism and the Willingness of Citizens to Defer to Law and to Legal Authorities*, 25 LAW & SOC. INQUIRY 993 (2000).

30. See generally E. Allan Lind & Tom R. Tyler, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* (1988) [hereafter, LIND & TYLER, *SOCIAL PSYCHOLOGY*]; TOM R. TYLER & STEVEN L. BLADER, *COOPERATION IN GROUPS: PROCEDURAL JUSTICE, SOCIAL IDENTITY, AND BEHAVIORAL ENGAGEMENT* (2000); Tom R. Tyler & Steven L. Blader, *The Group Engagement Model: Procedural Justice, Social Identity, and Cooperative Behavior*, 7 PERSONALITY & SOC. PSYCHOL. 349 (2003) [hereinafter Tyler & Blader, *The Group Engagement Model*]; Tom R. Tyler et al., *Procedural Justice and Cooperation*, in *ENCYCLOPEDIA OF CRIMINOLOGY AND CRIMINAL JUSTICE* 4011 (Gerben Bruinsma & David Weisburd eds., 2014); Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 LAW & SOC’Y REV. 513 (2003) [hereinafter Sunshine & Tyler, *Role of Procedural Justice*]; Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement*, 20 PSYCHOL. PUB. POL’Y & L. 78 (2014); Justice Tankebe, *Public Cooperation with the Police in Ghana: Does Procedural Fairness Matter?*, 47 CRIMINOLOGY 1265 (2009).

perceptions of dispute resolution mechanisms.<sup>31</sup> Quality of decision-making includes whether participants had adequate opportunities to voice their concerns, whether the decision maker was neutral and the decision-making process transparent, and whether the decision makers were competent. Quality of interpersonal treatment includes participants' assessments of how they were treated by judges and other court personnel, including whether or not they felt they were treated with dignity and respect. Both the quality of decision-making and the quality of treatment predict whether participants believe a process is fair, which in turn influences participants' overall experiences of that process.<sup>32</sup>

Positive procedural experiences can “cushion” participants' evaluations of unfavorable court decisions, the literature shows.<sup>33</sup> When a process is viewed as fair, study respondents cope better with losing,<sup>34</sup> though procedural justice cannot always prevent feelings of estrangement or alienation.<sup>35</sup> And respondents, not surprisingly, still express frustration and disappointment, even as they more willingly accept unfavorable outcomes.<sup>36</sup> Subsequent research has reinforced this finding that disputants value fair procedure regardless of outcome.<sup>37</sup> In short, as Robert J. MacCoun has put it, affected individuals “care deeply about the process by which conflicts are resolved and decisions are made, even when outcomes are unfavorable or the process they desire is slow or costly.”<sup>38</sup>

Empirical studies have shown that at least four principles influence subjective evaluations of judicial fairness.<sup>39</sup> First, court participants want opportunities to *voice* their concerns as part of the process and with the expectation that they will be listened to.<sup>40</sup> Second, they want court personnel

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31. See generally Tyler & Blader, *The Group Engagement Model*, *supra* note 26; TYLER, WHY PEOPLE OBEY THE LAW, *supra* note 26; TYLER & HUO, TRUST IN THE LAW, *supra* note 27; Tom R. Tyler, *Understanding the Force of Law*, 51 TULSA L. REV. 507 (2016).

32. See generally Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice in Shaping Public Support for Policing*, 37 LAW & SOC'Y REV. 513 (2003).

33. See generally, e.g., Jo-Anne M. Wemmers, *Restoring Justice for Victims of Crimes Against Humanity*, in REPARATION FOR VICTIMS OF CRIMES AGAINST HUMANITY: THE HEALING ROLE OF REPARATION 38 (Jo-Anne M. Wemmers ed., 2014).

34. See generally Tom R. Tyler, *Conditions Leading to Value-Expressive Effects in Judgments of Procedural Justice: A Test of Four Models*, 52 J. PERSONALITY & SOC. PSYCHOL. 333 (1987).

35. See generally Monica C. Bell, *Police Reform and the Dismantling of Legal Estrangement*, 126 YALE L.J. 2054 (2017).

36. See generally LIND & TYLER, SOCIAL PSYCHOLOGY, *supra* note 26.

37. See generally, e.g., Tom R. Tyler, *Psychological Models of the Justice Motive: Antecedents of Distributive and Procedural Justice*, 67 J. PERSONALITY & SOC. PSYCHOL. 850 (1994).

38. Robert J. MacCoun, *Voice, Control, and Belonging: The Double-Edged Sword of Procedural Fairness*, 1 ANN. REV. L. & SOC. SCI. 171, 171–72 (2005).

39. See generally, e.g., Tyler, *Effective Rule of Law*, *supra* note 27; Steven L. Blader & Tom R. Tyler, *Relational Models of Procedural Justice*, in THE OXFORD HANDBOOK OF JUSTICE IN THE WORKPLACE 351 (Russell Cropanzano & Maureen L. Ambrose eds., 2015).

40. See generally Lind et al., *Voice, Control, and Procedural Justice*, *supra* note 26.

— judges, lawyers, and judicial staff — to treat them with *respect*.<sup>41</sup> Third, they want a court they can *trust*.<sup>42</sup> And, finally, they want court procedures and practices to be *neutral*, or unbiased in their application.<sup>43</sup> Studies have soundly established the importance of voice, respect, trust, and neutrality for national domestic courts.<sup>44</sup>

The current study is a first attempt to understand how procedural justice is interpreted by participants in transnational contexts. We find that these four factors can look very different in national domestic, versus transnational, proceedings. In addition, while previous studies focus almost exclusively on the experience and interpretations of plaintiffs and defendants or applicants and respondents, our work focuses on the role of victims in courts, which also represents uncharted territory.

#### IV. METHODS

This research grew out of conversations with lawyers and field staff at the International Criminal Court who expressed concerns that victims did not have meaningful opportunities to participate in trials and other court proceedings as required by the Rome Statute. Between July 2013 and February 2014, our team of researchers at the Human Rights Center at the University of California, Berkeley School of Law, interviewed 663 people to assess how victim participation was working in practice.<sup>45</sup> Of these, 622 people reported that they were registered as victim participants or had submitted applications for consideration to serve as victim participants. We also interviewed forty-one court staff and victims' advocates to better understand the court's victim programs. The interviews were conducted in the Netherlands (N=27), Uganda (N=151), Democratic Republic of the Congo (N=154), Kenya (N=204), and Ivory Coast (N=127). Interviews varied in length from twenty minutes to more than two hours, with an

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41. LIND & TYLER, SOCIAL PSYCHOLOGY, *supra* note 26, at 229-30.

42. See generally Emily C. Bianchi et al., *Trust in Decision-Making Authorities Dictates the Form of the Interactive Relationship Between Outcome Fairness and Procedural Fairness*, 41 PERSONALITY & SOC. PSYCHOL. BULL. 19 (2015).

43. Tyler, *What Is Procedural Justice?*, *supra* note 26, at 112; Tom R. Tyler, *The Psychology of Procedural Justice: A Test of the Group-Value Model*, 57 J. PERSONALITY & SOC. PSYCHOL. 830 (1989); Tyler & Blader, *The Group Engagement Model*, *supra* note 26; Daniel S. Nagin & Cody W. Telep, *Procedural Justice and Legal Compliance*, 13 ANN. REV. L. & SOC. SCI. 5 (2017); John Hagan & Valerie P. Hans, *Procedural Justice Theory and Public Policy: An Exchange*, 13 ANN. REV. L. & SOC. SCI. 1 (2017).

44. See, e.g., JUDICIAL COUNCIL OF CALIFORNIA, PROCEDURAL FAIRNESS IN THE CALIFORNIA COURTS 2 (2007).

45. Author Stephen Cody conducted 272 of these interviews. Human Rights Center Research Fellow Mychelle Balthazard conducted 251 interviews. The remaining interviews were conducted by Human Rights Center Faculty Director Eric Stover and Human Rights Center researchers Peggy O'Donnell, Nina Jehle, Pauline Whitemeussen, and Kim Keller.

average interview lasting thirty to forty minutes. All interviews were anonymous and confidential.<sup>46</sup>

Study respondents included victim participants in ICC prosecutions of Joseph Kony and members of the Lord's Resistance Army in Uganda,<sup>47</sup> accused warlords Thomas Lubanga Dyilo, German Katanga, Mathieu Ngudjolo Chui, and Bosco Ntaganda in Democratic Republic of the Congo,<sup>48</sup> President Uhuru Muigai Kenyatta, Deputy President William Samoei Ruto, and Joshua Arap Sang in Kenya,<sup>49</sup> and former President Laurent Gbagbo and Charles Blé Goudé in Ivory Coast.<sup>50</sup>

Random sampling was impossible due to imperfect information about affected communities, victim applicants, and ongoing security concerns at post-conflict research sites. Instead, we recruited volunteers from among victim participants using purposive sampling in rough proportion to their appearance in the victim population by geography, ethnic affiliation, ICC case affiliation, applicant status, and sex.<sup>51</sup> Purposive sampling, in contrast

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46. STEPHEN CODY ET AL., HUMAN RIGHTS CTR. AT BERKELEY LAW, THE VICTIMS' COURT? A STUDY OF 622 VICTIM PARTICIPANTS AT THE INTERNATIONAL CRIMINAL COURT (2015).

47. Although Uganda victim respondents in our study had submitted applications to participate in ICC cases against LRA commanders, no prosecutions had yet begun at the time of the interviews. In January 2015, however, Dominic Ongwen, a brigade commander in Joseph Kony's Lord's Resistance Army (LRA) and a fugitive of the International Criminal Court (ICC), surrendered to Seleka rebels in the Central African Republic. More than a decade after the ICC issued the arrest warrant for Ongwen on July 8, 2005, he was flown to The Hague to face charges for war crimes and crimes against humanity. His trial began in December 2016. *See generally* Prosecutor v. Kony, Case No. ICC-02/04-01/05, Case Information Sheet (Apr. 2018), <https://www.icc-cpi.int/uganda/kony/Documents/KonyEtAlEng.pdf>; Prosecutor v. Kony, ICC-02/04-01/05-53, Warrant of Arrest for Joseph Kony (Sept. 27, 2005); Prosecutor v. Kony, ICC-02/04-01/05-54, Warrant of Arrest for Vincent Oti, (July 8, 2005); Prosecutor v. Kony, ICC-02/04-01/05-55, Warrant of Arrest for Raska Lukwiya, (July 8, 2005); Prosecutor v. Kony, ICC-02/04-01/05-56, Warrant of Arrest for Okot Odhiambo, (July 8, 2005); Prosecutor v. Kony, ICC-02/04-01/05-57, Warrant of Arrest for Dominic Ongwen, (July 8, 2005).

48. *See generally* Prosecutor v. Dyilo, Case No. ICC-01/04-01/06, Case Information Sheet (Oct. 21, 2016), <http://www.tju.edu.cn/law/alzx/alzx1/201704/W020170406520717931468.pdf>; Prosecutor v. Katanga, Case No. ICC-01/04-01/07, Case Information Sheet (Mar. 20, 2018), <https://www.icc-cpi.int/drc/katanga/Documents/KatangaEng.pdf>; Prosecutor v. Chui, Case No. ICC-01/04-02/12, Case Information Sheet (Feb. 27, 2015), <https://www.icc-cpi.int/drc/ngudjolo/Documents/ChuiEng.pdf>; Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06, Case Information Sheet (Jan. 2017), <https://www.icc-cpi.int/drc/ntaganda/Documents/NtagandaEng.pdf>.

49. *See generally* Prosecutor v. Kenyatta, Case No. ICC-01/09-02/11, Case Information Sheet (Mar. 13, 2015), <https://www.icc-cpi.int/kenya/kenyatta/Document/s/KenyattaEng.pdf>; Prosecutor v. Ruto, Case No. ICC-01/09-01/11, Case Information Sheet (Apr. 5, 2016), <https://www.icc-cpi.int/kenya/rutosang/Documents/RutoSangEng.pdf>.

50. *See generally* Prosecutor v. Gbagbo, Case No. ICC-02/11-01/15, Case Information Sheet (Mar. 31, 2015), <https://www.icc-cpi.int/iccdocs/PIDS/publications/Gbagbo-and-BleGoudeEng.pdf>; Prosecutor v. Goudé, Case No. ICC-02/11-02/11, Decision on the Confirmation of Charges Against Charles Blé Goudé (Dec. 11, 2014), [https://www.icc-cpi.int/CourtRecords/CR2015\\_05444.PDF](https://www.icc-cpi.int/CourtRecords/CR2015_05444.PDF).

51. *See generally* Dolores C. Tongco, *Purposive Sampling as a Tool for Informant Selection*, 6 ETHNOBOTANY RES. & APPLICATIONS 147 (2007); Charles Teddlie & Fen Yu, *Mixed Methods Sampling: A Typology with Examples*, 1 J. MIXED METHODS RES. 77 (2007).

to convenience or snowball sampling methods, had clear advantages for our study because it allowed us to target a diverse range of respondents who had been affected by mass violence in each situation. In so doing, we were able to recruit disparate groups of survivors who had decided to participate in ICC cases, often for very different reasons. We conducted in-depth, semi-structured interviews with victims whose harms fell within the scope of ICC criminal charges (case victims), as well as with victims who were affected more generally by the mass violence that gave rise to the cases (situation victims). Victim respondents represented all major ethnic groups, age cohorts, and political factions, and included widows, child soldiers, and survivors of sexual violence.

Interview questions were designed to explore the social, psychological, and material dimensions of respondents' experiences with the court. Specifically, we wanted to understand how victims made sense of their participation and whether they: 1) felt they had a *voice* in ICC proceedings; 2) viewed the ICC as a *neutral* arbitrator; 3) *trusted* the ICC; and 4) felt *respected* by court staff.

We also inquired about the physical security of participants who applied to join ICC cases and their expectations with regard to reparations, including monetary compensation, in their cases. Specifically, we asked whether they: 1) felt *safe* being associated with the court; and 2) wished to receive *reparations*.

Understanding local political dynamics in the various locations was essential to mitigate the potential for exacerbating ongoing tensions between individuals or among groups. To overcome potential problems, we worked closely with local intermediaries to assess social and political sensitivities and to address short and long-term security concerns.<sup>52</sup> Before interviews, we reviewed our questionnaires with intermediaries and sought advice on local translation. We also asked for advice on where to hold meetings to avoid inadvertently compromising confidentiality. To minimize risks of retraumatization, we did not ask respondents about any specific harms they may have suffered, although many interviewees raised such harms on their own.<sup>53</sup>

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52. Intermediaries serve as essential links and cultural brokers between affected communities and the courts. ICC outreach, education, and participation programs could not currently operate without them. See Leila Ullrich, *Beyond the 'Global-Local Divide': Local Intermediaries, Victims and the Justice Contestations of the International Criminal Court*, 14 J. INT'L CRIM. JUST. 543 (2016).

53. The Committee for the Protection of Human Subjects at the University of California, Berkeley approved our study protocol. Approval to conduct interviews was also obtained from local authorities where required. Oral informed consent was obtained from all respondents. Neither monetary nor material incentives were offered for participation, although we provided travel reimbursement to respondents who journeyed to interview sites. Interviewees were also offered sodas and pastries or tea and lunch during the interviews.

The intermediaries, who were known to the relevant communities and spoke English or French in addition to any other language spoken by the respondents, were also used as interpreters when needed.<sup>54</sup> The use of local intermediaries helped to establish rapport and may have generated more candid responses than otherwise, especially given the trauma that many of the respondents had previously experienced. Respondents also reported that using intermediaries assuaged security concerns — limiting their exposure to non-community members — and helped put them at ease. Nevertheless, the lack of professional translation sometimes resulted in confusion as interpreters struggled to translate complex concepts. In addition, conversations frequently shifted from the first to the second person. Given these realities, we have taken greater liberties than we might have otherwise in editing victims' statements for grammar and clarity while making every effort to preserve the original meaning and substance of each statement.

All interviews were transcribed and coded using the qualitative coding software *Atlas.ti*.<sup>55</sup> Both inductive and deductive coding methods were used to develop the final coding scheme, which included 206 qualitative codes. First, we deductively created thematic codes based on the study questionnaire and concepts in the procedural justice literature. Then, as part of our initial coding process, we inductively identified additional topics and themes by reading through respondents' comments, questions, and priorities. These new codes emerged from the words of respondents. We added these inductive codes to build our final coding schema and then recoded all interview data. As a veracity check, we also created a dataset that included sixty-seven dichotomous or ordinal variables to record demographic characteristics of the population and generate internal counts of victims' opinions to confirm patterns revealed through the interview data. All interviews were semi-structured, meaning that interviewers frequently asked follow up questions to explore topics beyond the scope of the common questionnaire. We therefore avoid the quantification of the interviews in light of the variability in responses.

While this study was conducted as rigorously as possible, as with all empirical work, some limitations must be acknowledged. First, as with any non-random study, we cannot confidently generalize our findings to the

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54. In Uganda, local languages or dialects included Acholi, Ateso Gimara, Kumam, Lugbara, Lango, and Madi. In Dem. Rep. Congo, local languages included Congolese Kiswahili, Hema, and Lingala. In Kenya, local languages or dialects included Kiswahili, Luo, Luhya, and Kisii. In Ivory Coast, respondents spoke French or Dyula.

55. *Atlas.ti* coding software widely used by researchers in the social sciences and empirical socio-legal researchers to systematically analyze unstructured or semi-structured text from interviews or other sources. Using the software, a researcher can locate, code, and annotate specific text. During analysis and writing phases of studies, the researcher can then retrieve all text for a specific code, which can help in evaluating its commonality and importance. The researcher can also organize coded material into groups and subgroups and visualize complex qualitative data.

relevant population as a whole or to other populations. While we managed to interview a broad cross-section of victim participants from a large number of communities affected by the crimes being prosecuted at the ICC, some affected communities were too difficult to reach or, in a few cases, were deemed too unsafe.

Second, we cannot be sure that all intermediaries acted in a neutral manner. Some may have had independent agendas and therefore may have skewed results through selective recruitment or inaccurate interpretation. Respondents, however, including those whose responses were translated by the same intermediary, expressed diverse and critical views about the court and its victim participation program, suggesting that whatever bias existed did not prevent respondents from critically evaluating their ICC participation.

Third, the time and cost required to participate in the interviews possibly created a bias in who volunteered to participate in the study. Those people able to forego work and to travel to speak with us may have differed in some relevant ways from the general population of victims.

Fourth, as with any qualitative study, respondents may have been influenced by a desire to please the interviewer — a “social desirability” bias.<sup>56</sup> We worked to make clear our independence from the ICC, but some respondents still viewed us as associates of the court. Respondents might also have wanted to please court intermediaries, who often had high social standing in the community.

Finally, in some cases, respondents may have had ongoing concerns about personal safety that prevented them from providing completely honest answers to some questions for fear of reprisals.

Respondent answers also varied across different national populations. Participants in Uganda and Ivory Coast tended to feel more secure in speaking openly about their participation in ICC cases. Few said they had concerns about making public statements about the ICC. In contrast, respondents in Democratic Republic of the Congo and Kenya expressed greater concern about public participation in ICC cases. Some said they continued to feel under threat from either the Kenyan government, which engaged in an active campaign to identify and intimidate witnesses in the ICC cases, or local militia forces in Democratic Republic of the Congo, which had threatened to target those connected with the ICC affiliates. In

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56. See generally Anton J. Nederhof, *Methods of Coping with Social Desirability Bias: A Review*, 15 EUR. J. SOC. PSYCHOL. 263 (1985); Ivar Krumpal, *Determinants of Social Desirability Bias in Sensitive Surveys: A Literature Review*, 47 QUALITY & QUANTITY 2025 (2013); Stanley Presser & Linda Stinson, *Data Collection Mode and Social Desirability Bias in Self-Reported Religious Attendance*, 63 AM. SOC. REV. 137 (1998).

spite of these differences, however, victim participants expressed remarkably similar sentiments about procedural justice at the ICC.

Procedural justice studies emphasize the character and life course of legal proceedings, in contrast to instrumental approaches to justice which emphasize the effectiveness of legal proceedings.<sup>57</sup> Rather than focus on outcomes — such as arrests, convictions, and punishment — procedural justice considers the relationships and processes between court participants and judicial authorities in different contexts.<sup>58</sup> Relevant scholarship considers the extent to which voice, neutrality, trust, and respect influence perceptions of court legitimacy and case outcomes.<sup>59</sup> Below we examine how these core principles of procedural justice are expressed in transnational legal proceedings.

## V. VOICE

Procedural justice scholarship shows that individuals in national domestic contexts value opportunities to have their voices heard during administrative and judicial processes.<sup>60</sup> People want to explain their side of events prior to any resolution. The ability to voice concerns positively affects court participants' evaluations of the fairness of judicial processes and their acceptances of court outcomes.<sup>61</sup>

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57. See generally Lind et al., *Voice, Control, and Procedural Justice*, *supra* note 26.

58. See generally Tom R. Tyler, *Social Justice: Outcome and Procedure*, 35 INT'L J. PSYCHOL. 117 (2000); Leung & Lind, *Procedural Justice and Culture: Effects of Culture, Gender, and Investigator Status on Procedural Preference*, *supra* note 1; Raymond Paternoster et al., *Do Fair Procedures Matter? The Effect of Procedural Justice on Spouse Assault*, 31 LAW & SOC'Y REV. 163 (1997); Kevin Kwok-yin Cheng, *Prosecutorial Procedural Justice and Public Legitimacy in Hong Kong*, 57 BRIT. J. CRIMINOLOGY 94 (2015); Jonathan D. Casper et al., *Procedural Justice in Felony Cases*, 22 LAW & SOC'Y REV. 483 (1988); Avshalom Tor et al., *Fairness and the Willingness to Accept Plea Bargain Offers*, 7 J. EMPIRICAL LEGAL STUD. 97, 97 (2010).

59. See generally, e.g., Steven L. Blader & Tom R. Tyler, *A Four-Component Model of Procedural Justice: Defining the Meaning of a "Fair" Process*, 29 PERSONALITY & SOC. PSYCHOL. BULL. 747 (2003); Tyler, *What Is Procedural Justice?*, *supra* note 26; Tom R. Tyler, *Procedural Justice and the Courts*, 44 CT. REV. 26 (2007); Ben Bradford, *Voice, Neutrality and Respect: Use of Victim Support Services, Procedural Fairness and Confidence in the Criminal Justice System*, 11 CRIMINOLOGY & CRIM. JUST. 345 (2011); Ben Bradford et al., *Obeying the Rules of the Road: Procedural Justice, Social Identity, and Normative Compliance*, 31 J. CONTEMP. CRIM. JUST. 171 (2015).

60. See generally, e.g., ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS AND STATES (1970); Michael R. Bashshur & Burak Oc, *When Voice Matters: A Multilevel Review of the Impact of Voice in Organizations*, 41 J. MGMT. 1530 (2015); TINNEKE VAN CAMP, VICTIMS OF VIOLENCE AND RESTORATIVE PRACTICES: FINDING A VOICE (2014).

61. Tom R. Tyler, *Social Justice: Outcome and Procedure*, 35 INT'L J. PSYCHOL. 117, 117–25 (2000); Rebecca Hollander-Blumoff & Tom R. Tyler, *Procedural Justice in Negotiation: Procedural Fairness, Outcome Acceptance, and Integrative Potential*, 33 LAW & SOC. INQUIRY 473, 477 (2008); ROBERT J. MACCOUN ET AL., INST. FOR CIVIL JUSTICE, ALTERNATIVE ADJUDICATION: AN EVALUATION OF THE NEW JERSEY AUTOMOBILE ARBITRATION PROGRAM 56–57 (1988); E. Allan Lind et al., *Individual and Corporate Dispute Resolution: Using Procedural Fairness as a Decision Heuristic*, 38 ADMIN. SCI. Q. 224, 224 (1993); Anthony Bottoms & Justice Tankebe, *'A Voice Within': Powerholders' Perspectives on Authority and*



We found that ICC victim participants also value voice. “We would be forgotten without the court,” declared one respondent. “The court is there so our voice is heard. Without the court we will be nothing today.” As predicted by procedural justice scholarship, ICC victim participants appreciated opportunities to express their views and concerns to judicial officials. However, we found that victim-respondents mostly wanted to voice their concerns in local, extra-judicial contexts, such as town hall meetings or individual interviews — *not* so much in foreign judicial proceedings in The Hague, as previously assumed by the ICC and its critics.

Few ICC victims wanted to express their views in a courtroom. When asked if they wanted to travel to The Hague and confront the accused, most victims said “no.” They often remarked on the long way from their homes — in rural villages in northern Uganda or eastern Democratic Republic of the Congo, in small Kenyan towns, or in the capital of Ivory Coast — to the court’s headquarters in the Netherlands. Most respondents saw travel to the court as expensive, unnecessary, and, in some instances, dangerous. Nearly every respondent said their appointed lawyers or ICC staff could adequately represent their stories to the court because those stories had been recorded in their victim applications or through personal meetings in their home countries.

Further, victims preferred to speak with ICC representatives — including field staff of the Victims Participation and Reparations Section and lawyers in the Office of Public Counsel for Victims — in their home villages, towns, and neighborhoods, rather than meet with court officials in field offices or at ICC headquarters in The Hague. Many respondents expressed concern about the potential costs involved in obtaining travel documents, traveling to national airports, or foregoing wages during their trip, even if the court paid for flights and accommodations to attend trial proceedings. The prospect of traveling by plane to a foreign place without family or friends frightened some respondents. Most respondents said they preferred to meet with ICC representatives in places already familiar to them, and they wanted to do so on a regular basis.

In addition, to our ICC respondents, having a voice meant something different than expressing individualized concerns at a single time point in the judicial process. For victims in transnational contexts that we encountered, “voice” required an ongoing dialogue about mostly *collective* harms — especially about the ways that local killings, village destruction, and the theft of livestock had affected community life. Having a voice, for most respondents, meant engaging in a local dialogue with court personnel about their particular conception of justice and pragmatic strategies to

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*Legitimacy*, in LEGITIMACY AND CRIMINAL JUSTICE: AN INTERNATIONAL EXPLORATION 60 (Justice Tankebe & Alison Liebling eds., 2013).

achieve it. While victims documented their stories in ICC applications for lawyers and judges, they said that meaningful recognition of their suffering required ongoing communication and face-to-face interactions with court staff in their home countries. These latter interactions satisfied physical and emotional needs, as compared with legal ones. Being “heard” demanded procedures that fostered community-court dialogue and required court representatives to both listen and respond and do so consistently.

One respondent, when asked if victims have a voice in court proceedings, said, “We need more feedback. You know the judicial processes takes a while, but we require updates, even locally here, locally here in this place. That process alone motivates you to feel like, ‘I am on the track of access to justice.’” Another explained: “I was happy to be recognized as [a] victim because before nobody came to talk to us. But during the application process, people listened to us and we could talk about our difficulties openly and freely.”

For ICC victims, voice was also a collective matter. Telling their stories and sharing their views was important for spotlighting community suffering, not just personal harms, respondents said. The voice of victims was directed at serving group interests as well as individual ends. In many cases, victims claimed to speak on behalf of their ethnicity or tribe: “I feel that my voice should be heard through the world because it is not going to help only me, but the whole clan, the whole Acholi tribe,” said one Ugandan respondent.

Sometimes victims spoke on behalf of other villages or genders or age groups, such as child soldiers. They told personal stories because those stories represented common harms, not in order to prioritize their personal needs or experiences: “I participate in the court because I want my views to be heard about the suffering and how the suffering has affected us,” said one respondent. “We were displaced from home, our properties were looted. This made us poor. It became hard to pay the fees for our children to attend school because most of our properties were looted and destroyed. So we need perpetrators arrested. We need judgment.”

In a few cases, victims even said they felt obliged to join cases on behalf of those who could not, such as lost loved ones: “Morally, I feel relieved,” explained one respondent. “I do not know how to explain. It did not change anything physically, but morally, it is one way for me to honor people who perished during the crisis.” Communication with judicial officials in affected villages and towns was an important mechanism for survivors to publicly acknowledge and document the unlawful killing of family and other community members.

The voice of testimony was also seen as instrumental. In contrast with current procedural justice findings based on national common law courts, which demonstrate the symbolic and expressive role of voice, victims of the atrocities investigated by the ICC articulated their concerns for mostly

pragmatic reasons. “They need our voice,” said one respondent. “There is no case without us. We are the evidence. The case shall have to stand on us.” Having a voice was less about securing a fair hearing than achieving an instrumental outcome, such as reparations in the form of money or materials for rebuilding lost property. Said one victim participant: “We are the victims. It is not possible to pay for the death of my children but those children were helping me.... Now, I pay the rent and raise children. It is difficult for me. If they could take the role of those who were helping me, this is what I want.” Voice frequently meant victims having opportunities to advocate for conceptions of justice that required retributive and reparative payoffs.

Victims’ instrumental aims were not only demands for convictions and compensation. Some respondents also wanted perpetrators brought to them to apologize for their crimes or for vengeance. A few survivors sought to communicate with court officials about their cases to ensure that after trials ended the accused perpetrators would also face the wrath of the community. These victim participants often scoffed at the idea that imprisonment could ever be sufficient punishment for the crimes committed by perpetrators. Some directly called for mob justice at the conclusion of proceedings.

Distance between court proceedings and victims’ homes complicated the operation of voice in transnational cases, and led some victims to be skeptical that they had, in fact, been heard. “I don’t know whether my voice is being heard,” confessed one respondent. “I’m not even aware if my forms are read.” Victims lived thousands of miles from the court’s headquarters in The Hague and had to rely on multiple stages of representation to communicate with court actors. In general, victims’ regular communication with the court is through local intermediaries, usually community leaders who have volunteered to liaison with ICC personnel in the country field office. These intermediaries talk, typically by phone, with field representatives or legal representatives, who in turn communicate with ICC staff in The Hague. Comments or questions victim participants may have therefore usually travel through at least three layers of bureaucracy before they are conveyed to prosecutors or judges. Thus, voicing concerns can amount to a global game of whisper-down-the-lane. “I am not sure if the ICC listens to me,” said one victim, expressing a common sentiment. “I am in the dark. I do not know what is happening.” Another simply asked: “What are you telling the court? Are you telling them your mind or are you telling them my mind?” Geographic distance and the number of go-betweens often generated apprehension among victims that their views would not reach court officials. Participants might wait weeks or months or longer before receiving responses from the court. These delays in communication raised participants’ suspicions of the court and its motives.

## STEPS IN THE JUDICIAL PROCESS



Applications, victim-respondents said, were ultimately the best mechanism for conveying information and testimonial evidence to the court. Most victims' applications provided space for a personal biography and an opportunity to document the individual and collective harms a person had experienced. Victims generally felt that this paperwork was sufficient to make their stories known to prosecutors, judges, and other members of the court. Said one victim-respondent: "My voice is heard in the court because my story will be read, and will be known, and I will be represented." Even absent confirmation that clerks filed applications in court records or judges reviewed them, participants generally appreciated the chance to document their experiences and harms and those of their families and neighbors.

In summary, victims did not feel they needed to express views and concerns during formal legal proceedings. Traditional notions of having voice in legal proceedings — the opportunity to express personal concerns in open court before an issued judgment or to submit filings for judicial review — appealed to few respondents. Instead, victims expected judicial procedures to allow information to flow not only to the court, but also back to local communities. The process of giving voice was expected to be reciprocal, not unilateral. Some victims did worry that their written testimonies might never reach their intended destination, and as a consequence sought assurances from court visitors that they would return to discuss the court's response. In practice, the voice process was often reciprocal and victim participants' testimonies were actually taken into account, but few respondents were satisfied with the regularity of meetings with ICC personnel. Victims demanded more frequent and substantive

outreach and participation programs. As for content, the testimonies usually emphasized collective harms, not just individual ones, and aimed to secure pragmatic, versus symbolic or expressive outcomes. In this transnational context, having voice involved dialogue with court officials about the collective harms suffered and tangible efforts to address them. Meaningful legal participation required extra-judicial efforts at inclusion through community meetings and educational and cultural exchanges.

## VI. NEUTRALITY

Neutrality is one of the most under-explored and under-theorized principles of procedural justice. Tom Tyler defines neutrality as “making decisions based on the consistent application of rules based on proper procedure rather than on personal opinions or prejudices.”<sup>62</sup> In the relevant literature, neutrality is described as a quality of dispute-resolution mechanisms that participants both value and expect.<sup>63</sup>

Upon initial inspection, this conceptualization makes sense. But the presumption that parties to a case expect or value neutrality quickly falls apart when scrutinized through the lens of our research. Respondents in our sample did not suppose they would encounter unbiased judicial authorities or the consistent application of rules. On the contrary, victims in our study assumed that courts are biased and corrupt, and instead they welcomed decision-making procedures that would help level any imbalance of power. Many felt marginalized by justice processes in their home countries and hoped that ICC investigators, prosecutors, and judges — all international actors — would take their side against the more powerful, domestic accused. Victims thought judicial neutrality was a never-land fantasy and instead favored a judicial process that would be allied with their interests. They had already identified the perpetrators and wanted a court aligned against those perpetrators. Consistent and neutral procedures, in the eyes of many victims, jeopardized prospects for convictions and reparations. Local hopes for justice relied on properly calibrated judicial bias, not its elimination. Victim participants, then, desired judicial institutions that favored their rights to offset powerful allies of the accused perpetrators.

That our respondents presumed bias should not be surprising. Most are from regions without fair application of the rule of law. They perceived court outcomes, especially in the criminal justice field, as dependent on political negotiation, power, and money. Victims said they had grown

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62. Jonathan Jackson et al., *Legitimacy and Procedural Justice in Prisons*, 191 PRISON SERV. J. 4, 7 (2010).

63. See generally Tyler & Blader, *The Group Engagement Model*, *supra* note 26; TYLER, WHY PEOPLE OBEY THE LAW, *supra* note 26; TYLER & HUO, TRUST IN THE LAW, *supra* note 27; TYLER ET AL., SOCIAL JUSTICE IN A DIVERSE SOCIETY, *supra* note 27.

accustomed to seeing perpetrators with resources go free, and victims without resources languish without justice. The poor, they said, could suffer arbitrary or prolonged detention even when innocent, while the “big fish,” the men and women with resources, enjoyed impunity. Few victims believed in an apolitical justice system at the local level that would or could hold powerful defendants accountable for their crimes. One respondent said: “We were being tortured every day, we were being killed every day, our children were being forcefully enlisted into the army.... Each time you crossed to your village from the camp, you could be killed. So I looked around for anyone who could intervene and help stop this situation because the government did not have the capacity. When we heard about the ICC, we felt the ICC would intervene and promote peace.” Given victims’ recognition of the political nature of justice in their home countries, few demanded unbiased prosecutors or judges on the international stage. Instead, they hoped the partiality of any interventions from international institutions like the ICC could balance out the inequalities that disadvantaged them.

For most, the key question was not whether the international court was biased — to them, all courts are biased — but whether the bias would serve their interests in convicting the accused and receiving compensation. And when judicial processes sputtered or halted, victims worried that the delay was due to corruption or political interference. For example, when the case against Kenya’s president, Uhuru Kenyatta, began to falter, one victim asked: “Was there someone who was bribed? Because it seems this case is no longer proceeding.”

Respondents approached internal politics at the ICC with a similar pragmatism. One participant said: “The politics that go on, you know, between the different sections of the court, have huge implications and effects on victims and on our communities. In their work with stakeholders, someone wants to own the victims. Our victim is not your victim. I think that’s challenging...But we are definitely still going to give it our support in terms of mobilizing and awareness. I think we’re still more than willing to carry on.” Even as victim participants expressed their dismay with institutional struggles, many still supported the court as the best justice mechanism available.

Victim participants vigilantly watched for signs of corruption, but with few reliable news sources they often based their ICC assessments on community gossip and speculation. When accused perpetrators remained at large or ICC cases stalled, victims shrugged off the ICC intervention as no better than the crooked efforts of local politicians. Many study victims adopted a sober utilitarianism with regard to accountability and reparations. The value of judicial institutions, including the ICC, depended on participants’ calculus of likely symbolic and material rewards.

These relational assessments — that is, evaluations based on the plausible alternatives for victims — translated into pragmatic calculations on the part of victim participants. “In Uganda,” said one respondent, “nobody trusts that there’s any local judicial system which will replace the ICC if they withdraw. There’s no local judicial system which is strong enough to replace the position of ICC. So the ICC came and brought a lot of hope to the victims.” The ICC might be corrupt, victims reasoned, but probably not as corrupt as domestic courts. Thus, victims chose to participate in international trials because these proceedings, even if political, remained their best chance for legal accountability and material reparations. Many Ugandan victim participants, for example, complained about the one-sidedness of ICC investigations into Joseph Kony and the Lord’s Resistance Army. They said government forces should also be investigated and prosecuted for widespread violations during the conflict. Yet, for many of these same respondents, the partial pursuit of justice, while imperfect, still offered opportunities for justice. Said one respondent: “Kony has to be arrested and he must face judgment. The case cannot be brought back to the government of Uganda to handle it, but rather it must be handled by the ICC.” Considerations of comparative utility often eclipsed idealistic hopes for procedural neutrality or consistency. Victim participants focused on the ICC’s relative power to effectively prosecute accused perpetrators and secure reparations.

## VII. TRUST

Procedural justice scholarship shows that the extent of participants’ trust in judicial processes shapes assessments of judicial outcomes in both the short and long-term, and thus plays a key role in perceptions of legitimacy.<sup>64</sup> Ultimately, people are more likely to obey the law when they trust the legal process.<sup>65</sup> Trust, in turn, typically depends on whether judges or other court actors are believed to exercise their authority in a fair

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64. See generally TYLER & HUO, TRUST IN THE LAW, *supra* note 27; Tom R. Tyler & Jonathan Jackson, *Popular Legitimacy and the Exercise of Legal Authority: Motivating Compliance, Cooperation, and Engagement*, 20 PSYCHOL. PUB. POL’Y & L. 78 (2014); Jonathan Jackson et al., *Why Do People Comply with the Law? Legitimacy and the Influence of Legal Institutions*, 52 BRIT. J. CRIMINOLOGY 1051 (2012); Mike Hough et al., *Legitimacy, Trust and Compliance: An Empirical Test of Procedural Justice Theory Using the European Social Survey*, in LEGITIMACY AND CRIMINAL JUSTICE: AN INTERNATIONAL EXPLORATION (Justice Tankebe & Alison Liebling eds., 2013); Elise Sargeant et al., *Ethnicity, Trust and Cooperation with Police: Testing the Dominance of the Process-based Model*, 11 EUR. J. CRIMINOLOGY 500 (2014).

65. See generally TYLER, WHY PEOPLE OBEY THE LAW, *supra* note 26; Tom R. Tyler, *Legitimacy and Criminal Justice: The Benefits of Self-Regulation*, 7 OHIO ST. J. CRIM. L. 307 (2009).

manner.<sup>66</sup> Participants' perceptions of the fairness of judicial decision-making can determine their faith in the justice system itself.

However, among our respondents, trust correlated more closely with perceptions of judicial concern for their personal physical safety and the length of trials than with the exercise of legal authority. Few study respondents said the exercise of judicial authority during proceedings in The Hague influenced their assessments of ICC trustworthiness. Instead, participants' faith in the court hinged on its ability to safeguard sensitive personal data and to deliver swift convictions and reparations.

Victims understandably cared a great deal about whether information they provided to the court remained confidential and whether the court would and could take adequate precautions to keep them safe. In this sense, the capacity of the court's administrative personnel and field staff to protect personal information and coordinate communication and meetings in secure ways mattered far more to victims than judges' fair exercise of judicial authority. One respondent explained: "What I'm saying is that one way the ICC provides protection is whenever they come here, they don't expose us. They give us protection when they interview us or when they organize workshops. They don't organize in the open, they protect us. So this makes me happy." ICC actions that showed a commitment to confidentiality gave victim participants confidence in the court and generated trust. For many, safety concerns were paramount in their assessments of the ICC's trustworthiness.

Our research also strongly suggests that trust can erode over time. Judicial delays and long periods of radio silence in court communications fostered mistrust of the judicial process and concern that it was rigged against them. Victims hoped and expected to receive ongoing updates about their cases, regardless of whether there had been developments. One victim, who had not heard from court personnel in a while, said: "Initially, it was good, and I trusted that I would get my justice. But now, I'm fearing that will not happen."

Waiting for communications and actions from the ICC cultivated frustration and disappointment among court participants. Said one respondent: "I feel that the ICC failed to do the right thing. Because they promised to fulfill their mandates, but then they kept quiet and did nothing. They created so much mistrust in us and it affected me. I didn't feel like

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66. See generally Mike Hough et al., *Trust in Justice and the Legitimacy of Legal Authorities*, in THE ROUTLEDGE HANDBOOK OF EUROPEAN CRIMINOLOGY 243 (Sophie Body-Gendrot et al. eds., 2013); Ben Bradford & Jonathan Jackson, *Public Trust in Criminal Justice: A Review of the Research Literature in the United States*, in REVIEW OF NEED: INDICATORS OF PUBLIC CONFIDENCE IN CRIMINAL JUSTICE FOR POLICY ASSESSMENT (A. Jokinen et al. eds., 2009); Jonathan Jackson & Jacinta M. Gau., *Carving Up Concepts? Differentiating Between Trust and Legitimacy in Public Attitudes Towards Legal Authority*, in INTERDISCIPLINARY PERSPECTIVES ON TRUST 49–69 (E. Schockley et al. eds. 2016); Mike Hough et al., *Procedural Justice, Trust, and Institutional Legitimacy*, 4 POLICING 203 (2010).



there was anyone left who could help me in any way. They were the only hope I had.” Another said: “They took so long, but the promises they made to me have never been fulfilled. So it is a fact that they have lied to me.” A third respondent said: “I am so disappointed...Now the court that we trusted is quiet. Where do we run to? I am so frustrated.” Procedural justice scholarship largely neglects the temporal dimensions of the judicial process, but our research suggests that cases’ time horizons can play an essential role in participants’ assessments of judicial fairness, at least in transnational contexts. As time goes on with no outcome or minimal communication, victims begin to worry that the court has been bribed or otherwise corrupted, that their identities will become known to the defendant, and that they will be targeted for reprisal. One respondent explained: “The ICC delays are making me frightened. It’s a common thing that happens in Uganda. When a court case is delayed, people are always maneuvering to manipulate the case or taking bribes to end it. The government might actually right now be trying to maneuver to ensure that the case is dropped.” Judicial delay generated community anxiety and mistrust. “They’re playing us,” said one respondent. “They’re turning their back to us. How can we trust them at all? Will they come back to see us? How will they use our information now?”

#### VIII. RESPECT

Previous studies have shown that respectful interactions between court personnel and participants generate relatively positive experiences with judicial processes, contributing to perceptions of fairness and ultimately legitimacy.<sup>67</sup> However, in contrast to what transpires in national common law contexts, in the ICC cases, formal acknowledgement of the victims by judicial authorities wasn’t enough to signal respect. Instead, victims expected ongoing recognition of their collective and individual harms, regular communication about their cases, and material support. Building on concerns about voice, respect required a sense of being heard and taken seriously.

To feel respected, victims especially wanted court personnel to recognize their suffering. One respondent explained: “The court has really given me a lot of respect because we have really seen the court all the time talking about the victim. All the time, they look at the victims as people who really suffered in this case.” Unlike survivors in some other contexts,<sup>68</sup> many

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67. See generally Lind et al., *Voice, Control, and Procedural Justice*, *supra* note 26; Tyler & Blader, *The Group Engagement Model*, *supra* note 26; TYLER, *WHY PEOPLE OBEY THE LAW*, *supra* note 26; TYLER & HUO, *TRUST IN THE LAW*, *supra* note 27.

68. See generally, e.g., Kristin Bumiller, *Victims in the Shadow of the Law: A Critique of the Model of Legal Protection*, 12 *SIGNS* 421 (1987) (discussing how individuals may shun the label of victim).

embraced the title of “victim” and expressed gratitude that ICC personnel had both visited them and acknowledged the crimes that they had survived. “The way they talk to us; they are not like soldiers, but like our brothers,” said one respondent. However, such recognition required more than a single visit to their community. Victims sought and welcomed regular community meetings and updates via phone or text messages. True recognition required an ongoing dialogue.

Face-to-face encounters with court personnel played a particularly important role in communicating respect. “The court has shown us respect by sending people to interact with us,” said one respondent. “I have been respected because of how the ICC has done follow-ups,” said another. A third said: “They are treating us with respect in their way of coming, and coming again, and talking to us.” In-person visits were, by far, the acts most often cited as evidence of the court’s respect.

But personal visits were not always enough. Respect often required more than “just words,” particularly in societies where patron-client relations were a dominant feature of the social structure. As much as victim participants appreciated visits from ICC personnel, many also sought tangible support. “The ICC does not see our realities or understand our grievances. I want something concrete, some results in our daily life,” explained one respondent. Material goods, including reparations, mattered a great deal. In the absence of such support, some said they would ultimately feel that the ICC had disrespected them. Many said that they expected reparations to accompany any ICC judgment.

For most respondents in our survey, feeling respected was tied to acquiring some form of compensation for the losses they had suffered. As one respondent said: “I can illustrate why the ICC is not respectful. The victims are miserable. Each time we are reminded of our lost loved ones, our lost possessions, of our past life. It is difficult. It is painful. Each time, the lawyer comes and talks to a person without trying to console her. In Africa, consoling someone means doing something. When someone’s house has burned, consoling means to bring a stick, or some other material so that person can rebuild his house. People from the court say they will do something. At first, we were spirited. Everyone was coming. But now, people are tired. The only thing that is happening is that they remind us of our past. We find it difficult.”

## IX. CONCLUSION

Our research builds on previous scholarship that shows the relevance of context in views of procedural justice.<sup>69</sup> However, showing that context matters only begins the inquiry into how procedural justice operates in practice. Our study expands understandings of how participants in international criminal trials experience judicial processes and evaluate judicial fairness. Our findings complicate long-standing theories of how procedural justice works and challenging existing conceptualizations of core procedural justice principles—including voice, neutrality, trust, and respect.

Procedural justice research, at its core, seeks to understand how a person's experience of judicial processes shapes his or her view of judicial outcomes and the legitimacy of judicial institutions. Our study supports the central insight of procedural justice scholarship that participants value fair legal processes and that perceptions of fairness generate relatively positive assessments of court decisions, as well as the overall legitimacy of courts. Our findings also show, however, that the criteria used to evaluate legal procedure and the meanings associated with procedural justice can differ for participants in transnational contexts compared to the national domestic contexts they are used to. Voice, neutrality, trust, and respect, while all still relevant and salient aspects of procedural justice, can embody different meanings depending on geographic and social context.

Based on these differences, we conclude that procedural justice may play out differently in domestic contexts than in transnational settings. While the core principles of procedural justice retain their salience, international victim participants evaluate those principles based on local understandings and priorities.

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69. See generally Leung & Lind, *supra* note 1; Casper et al., *supra* note 28; Tom R. Tyler, *What is Procedural Justice?: Criteria Used by Citizens to Assess the Fairness of Legal Procedures*, 22(1) LAW & SOC'Y REV. 103, 103 (1988); Kees Van den Bos et al., *When Do We Need Procedural Fairness? The Role of Trust in Authority*, 75(6) J. OF PERSONALITY & SOC. PSYCHOL. 1449, 1449-50 (1998).

	Conventional Expectations of Procedural Justice	Our Findings
Voice	<ul style="list-style-type: none"> <li>• Fair hearing in court</li> <li>• Personal harms</li> <li>• Not Instrumental</li> </ul>	<ul style="list-style-type: none"> <li>• Dialogue outside of court</li> <li>• Community harms</li> <li>• Instrumental</li> </ul>
Neutrality	<ul style="list-style-type: none"> <li>• Expectation of neutrality</li> </ul>	<ul style="list-style-type: none"> <li>• Expectation of bias</li> </ul>
Trust	<ul style="list-style-type: none"> <li>• Fair exercise of legal authority</li> </ul>	<ul style="list-style-type: none"> <li>• Personal safety</li> <li>• Timely resolution</li> </ul>
Respect	<ul style="list-style-type: none"> <li>• Recognize legal rights</li> </ul>	<ul style="list-style-type: none"> <li>• Recognize suffering</li> <li>• Provide feedback</li> <li>• Provide material support</li> </ul>

Empirical investigations of these differences in the meaning of voice, neutrality, trust, and respect in different geographic and cultural contexts may generate novel insights for both international *and* domestic courts. First, our findings demonstrate that legal scholars cannot take social context for granted in the study of judicial procedure. Core principles of procedural justice are contingent on local cultural and institutional factors. Even geography can affect subjective evaluations of judicial fairness, such as the physical distance between participants and courts. Second, perceptions of personal safety and the duration of court cases, especially in volatile political and social situations, can influence procedural justice assessments. This finding may be as relevant for domestic cases — for example, cases that involve victims in neighborhoods plagued by high levels of corruption and violence — as international ones. Third, our findings indicate that victims may have diverse goals, many of which are unrelated to punishment of the perpetrators. Victims may want to document community suffering, participate in judicial decision-making, or seek reparations. Judicial procedures at the transnational level often fail to acknowledge court participants' needs or presume punitive goals are primary, which can jeopardize the legitimacy of the proceedings in the eyes of the victims. How courts handle all of these disparate issues and concerns contributes to overall perceptions of judicial fairness.

Finally, our research underscores the relational character of procedural assessments. In evaluating judicial process in transnational contexts, participants depend on comparisons with the domestic courts familiar to

them. A court participant may feel that a judicial procedure is biased and still view that procedure as the best option for seeking justice. It is not absolute fairness that counts so much as relative comparisons with courts in the participants' homeland that contribute to the perceived legitimacy of international courts.

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