

# HUMAN RIGHTS CENTER

UC Berkeley School of Law



## BEARING WITNESS AT THE INTERNATIONAL CRIMINAL COURT:

An Interview Survey of 109 Witnesses

JUNE 2014



**BEARING WITNESS  
AT THE INTERNATIONAL  
CRIMINAL COURT:**

An Interview Survey of 109 Witnesses

---

**JUNE 2014**

**HUMAN RIGHTS CENTER**

**University of California, Berkeley,  
School of Law**

2850 Telegraph Avenue, Suite 500  
Berkeley, CA 94705-7220

Telephone: 510.642.0965

Email: [hrc@berkeley.edu](mailto:hrc@berkeley.edu)

Web: [hrc.berkeley.edu](http://hrc.berkeley.edu)

Twitter: [@HRCBerkeley](https://twitter.com/HRCBerkeley)

**VISUAL DESIGN:**

Paula Airth

Daniel McLaughlin

*[justicebydesign@gmail.com](mailto:justicebydesign@gmail.com)*

# HUMAN RIGHTS CENTER

UC Berkeley School of Law

The Human Rights Center at the University of California, Berkeley, School of Law conducts research on war crimes and other serious violations of international humanitarian law and human rights. Using evidence-based methods and innovative technologies, we support efforts to hold perpetrators accountable and meet the needs of vulnerable populations. We also train students and advocates to document human rights violations and turn this information into effective action.



**EXECUTIVE SUMMARY / 3**

Conclusions / 5  
Recommendations / 7

**INTRODUCTION / 11**

Witnesses and the Victims and Witnesses Unit / 14  
Methodology / 16  
Limitations / 17  
Witness Management and Protection / 19

**PRE-TESTIMONY SURVEY FINDINGS / 26**

**IMMEDIATE POST-TESTIMONY SURVEY FINDINGS / 38**

**LONG-TERM POST-TESTIMONY SURVEY FINDINGS / 54**

**CONCLUSIONS & RECOMMENDATIONS / 65**

Conclusions / 65  
Recommendations / 67

**APPENDIX A / 71**

*Independent Review Team Public Report: Post-Incident Review of Allegations of Sexual Assault of Four Victims Under Protection of the International Criminal Court in the Democratic Republic of Congo by a Staff Member of the Court*

**APPENDIX B / 75**

Articles and Rules Relevant to Witnesses and the International Criminal Court

**APPENDIX C / 97**

Authors and Acknowledgements



## EXECUTIVE SUMMARY

---

**THIS REPORT PRESENTS FINDINGS FROM THE FIRST** interview survey of witnesses who have appeared before the International Criminal Court (ICC or the Court). The survey examined the opinions and attitudes of 109 individuals<sup>1</sup>—ranging from victims to expert witnesses—who testified in the Court’s first two trials—*Prosecutor v. Thomas Lubanga Dyilo*<sup>2</sup> and *Prosecutor v. Germain Katanga*.<sup>3</sup> Both trials took place in the Court’s chambers in The Hague and concerned serious international crimes that occurred in the Democratic Republic of Congo between July 2002 and December 2003. A total of 123 witnesses testified in both trials.<sup>4</sup>

The interview survey set out to address an overarching question: Is the International Criminal Court meeting the diverse needs of witnesses who participate in ICC trials? The specific objectives of the survey were to:

1. Capture witnesses’ views about their experiences testifying in the *Lubanga* and *Katanga* trials;
2. Understand the needs and concerns of witnesses from the pre-trial to post-trial phases; and
3. Identify ways in which the ICC’s Victims and Witnesses Unit (VWU), other ICC organs, and the Assembly of States Parties can improve witness interaction with the Court.

---

<sup>1</sup> The 109 individuals surveyed represent 89 percent of the 123 witnesses who testified in the *Lubanga* and *Katanga* trials. Any individual who testified in both cases was offered the opportunity to complete a survey for each case. In addition, three victim participants testified in the *Lubanga* trial and two victim participants testified in the *Katanga* trial. These individuals were not interviewed for the study. The Human Rights Center is conducting a separate interview survey with ICC victim participants.

<sup>2</sup> A summary of the *Lubanga* case is available at: [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200106/Pages/democratic%20republic%20of%20the%20congo.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200106/Pages/democratic%20republic%20of%20the%20congo.aspx).

<sup>3</sup> A summary of the *Katanga* case is available at: [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200107/Pages/democratic%20republic%20of%20the%20congo.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200107/Pages/democratic%20republic%20of%20the%20congo.aspx).

<sup>4</sup> By February 2014, a total of 223 witnesses and 10 victim participants had testified in all cases before the International Criminal Court.

Building on an interview survey instrument that was created for a study of victim-witnesses at the International Criminal Tribunal for the former Yugoslavia (ICTY),<sup>5</sup> Human Rights Center staff developed three questionnaires to be administered to ICC witnesses at three time points: (1) prior to testifying (N=104); (2) soon after testifying (N=109); and (3) six to twelve months after testifying (N=32). The interviews took place between January 24, 2009 and May 7, 2012. The Human Rights Center also helped the VWU create a database for storing and analyzing the interview data. For analysis, the VWU provided the Human Rights Center with de-identified survey data from all participating witnesses at each of the three time points. This study is further supplemented by in-depth interviews with VWU staff.

---

<sup>5</sup> See Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (Philadelphia: University of Pennsylvania Press 2005): Appendix A: Survey Questionnaire.

**CONCLUSIONS**

This study provides the first systematic glimpse into the world of witnesses who have appeared before the International Criminal Court. But it is only a glimpse. We have much more to learn about witness experiences, and it is our hope that the ICC will use this study as a baseline for future studies with the aim of making the process of testifying in war crimes trials as safe, respectful, and dignified an experience as possible.

**Main conclusions are as follows:**

1. *Witness perceptions of VWU services are largely positive.* The survey data indicate that witnesses' assessments of VWU services and of witnesses' interactions with the Court were generally positive. Many of the complaints raised by witnesses concerned factors beyond the control of VWU staff, such as problems with airlines or changes to the Court schedule. Some witnesses expressed concerns about the financial burdens of testifying, and many requested more generous stipends to compensate for lost wages.
2. *Witnesses feel a duty to testify.* Witnesses said they testified for a number of reasons. Some wanted the Court to hear their accounts of the facts. Others wanted to confront the accused face-to-face. Still others wanted an opportunity to tell their story. Many had survived horrific crimes that had resulted in the deaths of others and felt it was their "duty" to ensure that the killing of family members, neighbors, and colleagues was recorded and acknowledged.
3. *Witness orientation is critical for witness well-being.* The survey data suggest that pre-trial witness orientation (the sharing of information about what to expect with regard to travel to The Hague, housing during the trial, support services, protection measures, the layout of the courtroom, and those who will be present during trial, etc.) is critical for the well-being of witnesses who participate in court proceedings. This finding is significant for two reasons. First, most witnesses had no prior experience with courts, either at home or abroad. Witness orientation mitigated anxieties and provided a relatively clear road map of what to expect before and after testifying. Second, as the vast majority of witnesses who testified in the *Lubanga* and *Katanga* trials used some form of protective measure (pseudonyms and facial and/or voice distortion), it is highly likely they entered the courtroom with a heightened sense of anxiety. Witnesses may feel more in control if they have a strong grasp of the layout of the courtroom, who the principal actors are, and how the proceedings will evolve.
4. *Witness expectations of what the ICC can provide during the post-trial phase must be tempered.* Most respondents indicated a high level of satisfaction with VWU-related information and services. However, some witnesses expressed concerns about broken promises post-testimony, such as the ICC failing to pay for medical procedures or school fees. Since such services are beyond the ICC's remit, it is important that witnesses are informed of exactly what the Court can and cannot provide in the post-trial phase.

5. *Witnesses are relatively satisfied with safety and security procedures, but such measures need to be routinely monitored and, when necessary, strengthened to respond to changing conditions on the ground.* Respondents reported high levels of satisfaction with security, with women reporting slightly higher ratings than men. Of particular note, witnesses reported feeling safe both prior to and during their testimony, suggesting that most felt the security protections put in place by the VWU were effective. That said, the VWU will need to be adequately funded and staffed to monitor the safety of witnesses in the months and years following trials. This need will continue to grow as the ICC's caseload expands and increasing numbers of witnesses testify in ICC trials.
6. *Female witnesses gave slightly more positive ratings to their overall experience interacting with the Court than men.* This could be due to several factors. Women who testified may have had a somewhat different experience than men, either because their expectations were different or because VWU staff treated them differently. Women may also have been less comfortable expressing negative reactions than men. However, it's also possible that only women from relatively stable situations were able to travel to The Hague to testify, which could correlate with more positive feelings. In particular, women reported receiving more support from their family and friends than did men. These differences suggest that women may have only been able to testify if they had a relatively high degree of external support.
7. *Female witnesses were less likely than male witnesses to report that their testimony helped establish the truth.* Only 60 percent of women answered "yes" when asked whether they thought their testimony helped establish the truth or would help achieve justice, as compared with just under 80 percent of men. Further research into this disparity—as well as why both percentages aren't higher and how both percentages could be improved—would be helpful to find ways to improve witnesses' sense of their own efficacy.
8. *Most witnesses said they personally benefited from the experience of testifying and, if asked, would testify again.* Despite witnesses' relative doubt as to whether their testimony helped establish the truth or achieve justice, when asked soon after testifying whether their testimony helped them personally, both men and women indicated that it had. While encouraging, such positive assertions must be viewed with caution. It is extremely difficult to make general statements about how testifying will affect witnesses, especially survivors of mass atrocity, months or even years after the event. Long-term psychological responses to trauma, reactions to future stressors, and means of coping with old and new pressures can vary from individual to individual and change within an individual over time. Some witnesses who expressed feeling positive after testifying may come to have a different opinion if an accused is found not guilty or is given a short sentence. Moreover, the survey data from the third time point (six to twelve months post-testimony) is too limited to draw firm conclusions about how respondents viewed the impact of their testimony once they returned home or were resettled.

**RECOMMENDATIONS**

Based on our findings, we offer the following recommendations:

**To the Victims and Witnesses Unit:**

1. *Increase communication with witnesses about travel.* Some of the most negative comments from witnesses related to their experiences with travel. Many issues, such as lost luggage and a general dislike of airline food, are clearly beyond the control of VWU staff. Others, such as repeated last-minute changes to schedules may be related to ICC decisions but still beyond the control of the VWU. VWU staff should work to ensure that travel plans are made and communicated with witnesses as far in advance as feasible. More broadly, VWU staff should communicate with witnesses in advance about possible issues that may arise, such as changes to plans, potential delays in transit (for example, delays in urban centers before leaving for The Hague), as well as standard logistical issues that can arise with air travel, such as limited food choices and flight delays.
2. *Ensure promised allowances are paid.* Several witnesses indicated not receiving promised allowances, particularly when stuck in Kinshasa, the capital of the Democratic Republic of Congo. This indicates possible failures of communication about allowances or delays in payment, both of which should be investigated and rectified as appropriate.
3. *Investigate promised services.* Some witnesses indicated that promised medical services or school fee payments had not been provided, either for the witness or the witness's children. We recommend that the VWU investigate cases where witnesses state promised services have not been provided to ensure that no inappropriate assurances are being made.
4. *Revisit the survey questionnaires and revise to both clarify questions and collect additional data, such as feelings about future safety.* VWU staff explained that some questions have been difficult for witnesses to answer. Such questions should be clarified or eliminated, as appropriate. Most survey questions probe witnesses about their experience with testimony and at the courthouse, including their feelings of safety in the courtroom. These received generally positive ratings. However, in response to the open-ended questions, some witnesses described fearing for their safety upon their return home. This issue should be explicitly addressed. In particular, we suggest asking witnesses about their feelings about future security in the quantitative section of the long-term post-testimony questionnaire. Revised questions might also gather information on a wider array of services, including specialized psychosocial support.
5. *Identify individuals' experiences over time.* If possible, the VWU should track individuals across all three time points and note what factors, if any, are associated with changes in witnesses' perceptions of their experiences. Currently, due to concerns about witness confidentiality, we could not track changes in individual witness experiences and impressions across the three time points.

6. *Create a separate evaluation for witnesses in the ICC protection program.* We endorse the existing plan to have the protection subunit develop a separate evaluation for witnesses in the ICC protection program, since such witnesses' experiences differ from those of witnesses who are not in the program. This will help to ensure that each witness is questioned about issues that most pertain to his or her specific interactions with the Court. It will also enable a more fine-tuned understanding of perceptions of the Court and its various subunits.
7. *Continue to survey witnesses as verdicts are reached.* Each country, each atrocity, and each victim is unique. So far, long-term data is only available on a subset of witnesses from the *Lubanga* trial, which ended in a guilty verdict. To assess whether long-term feelings about participation are affected by case outcomes, it is important to assess witness experiences in cases with different verdicts. Additionally, witnesses in other ICC trials will come to the Court from different backgrounds, having experienced different crimes, and with different expectations than the witnesses surveyed so far. It is important for the ICC to continue its assessment of service provision as witnesses from different backgrounds travel to The Hague to participate in trials—both for an understanding of the VWU's efficacy and for a better understanding of the experiences of witnesses in international criminal proceedings more generally.
8. *Further assess the experiences of female victims.* Additional research is needed into the experiences of female victims of mass atrocity who testify before the ICC and other international tribunals. The survey data indicate that women are participating in the trials at rates far lower than men. It is important to assess why this is, specifically identifying what factors contribute to a woman's ability to testify in international criminal proceedings and what can be done to improve access. Are investigators seeking out female witnesses at lower rates, or are women unable or unwilling to testify for other reasons? What is needed to enable more women to participate in international criminal proceedings?
9. *Further assess witnesses' long-term needs.* Further research is needed into the long-term needs of witnesses. Many victims return from their testimony to extraordinarily challenging circumstances. Unfortunately, we have the least long-term information about those witnesses who return to the most remote and/or insecure regions. Additional investigation into the needs of these particularly vulnerable populations is recommended.

**To the Assembly of States Parties and Other Funders:**

1. *Adequately fund witness services.* Our study found that the VWU is fulfilling its mission to facilitate the court appearance of witnesses in a highly effective and professional manner. That said, the VWU will undoubtedly face greater challenges as more cases land on the Court's docket and the volume of witnesses increases proportionately. In particular, the VWU must be adequately funded to respond to breaches in witness protection and to develop sufficient operating procedures and training to mitigate the likelihood of witness abuse. Allegations of prosecution witness intimidation in the *Kenyatta* and *Ruto* cases in late 2013 underscore this need, as do allegations of the sexual assault of four victims under ICC protection in DRC in 2013 (see Appendix A for an independent public report summarizing findings regarding the functioning and complicity of the VWU with regards to the sexual assault allegations).<sup>6</sup> Moreover, the widespread use of protective measures in those cases that have already gone to trial highlight the perceived risks involved in testifying. Fully 80 percent of the female respondents in our study testified using pseudonyms and facial and voice distortions, as did more than 60 percent of men. This also raises issues integral to the accused's right to a fair trial. Importantly, however, increased funding should not just go to protection services; our study underscores the critical need to also adequately fund support services, so that witnesses' generally positive experiences with that subunit can be maintained.
2. *Increase resources for long-term witness follow-up.* The ICC and its supporters should increase resources to follow up with witnesses once they have returned to their home country. While surveying individuals who live a great distance from urban centers may be expensive and time-consuming, many of the potential life changes that can result from testifying are most likely to occur after a witness returns home. This may include threats, assaults, or changes in relationship or job status. Further, ICC staff report that witnesses who are contacted often readily agree to answer their post-testimony questions, indicating a desire on the part of witnesses to share their experiences. Ultimately, long-term follow-up is essential to thoroughly assess witnesses' experiences with the Court, and such follow-up is strongly recommended when it is unlikely to put witnesses at increased risk.

---

<sup>6</sup> See Gabe Joselow, "ICC Orders Arrest of Kenyan Journalist for Witness Tampering," *Voice of America*, 2 October 2013, available at: <http://www.voanews.com/content/reu-international-court-charges-kenyan-with-bribing-witnesses/1761208.html>.



## INTRODUCTION

---

**VICTIMS AND WITNESSES ARE THE LIFEblood OF** trials involving serious international crimes, such as genocide, crimes against humanity, and war crimes. Most have survived or witnessed mass killings, rape, torture, inhumane imprisonment, forced expulsion, and the destruction of their homes and villages. For many, testifying in an international trial requires an act of great courage, especially when perpetrators still walk the streets of their villages and towns. Fearing reprisals, witnesses even may hide their participation in a trial from close friends, neighbors, and family members.

In the aftermath of mass atrocities, when truth and memories are contested and social wounds fester, the act of telling one's story in a public forum can be fraught with unanticipated consequences. Psychologists have long recognized that wartime violence can negatively impact an individual's memory and conditioning; since testifying in a criminal court often means confronting an alleged perpetrator and reliving one or more crimes, there is always the danger that disturbing memories and sensations can surface and overwhelm a witness. Psychologists call this phenomenon *psychophysiologic reactivity*, in which trauma survivors "react physically as well as psychologically when confronted with reminders of the trauma. That is, while feeling fear, they may sweat, tremble, and experience their heart pounding."<sup>7</sup>

To make matters worse, international trials, like most criminal trials, have the potential to produce the unexpected at any state of the proceedings. Either side may present evidence designed to challenge a witness's credibility. Sentences meted out to the accused may seem too light or too severe. A defendant's conviction may be quashed on appeal. This constant state of uncertainty places witnesses in an intimidating position and throws into doubt the idea that bearing witness is therapeutic.

Yet, as difficult as testifying may be, it does not mean that witnesses are necessarily traumatized by the event or consider it a negative experience. A review of the extant empirical literature suggests there is little evidence that truth-telling mechanisms, including war crimes tribunals in post-war settings, either "dramatically harm individuals...[or] ease their emotional and psychological suffering."<sup>8</sup> The effects may be quite individual and varied. We simply do not know.

---

<sup>7</sup> See Richard J. McNally, *Remembering Trauma* (Cambridge: Harvard University Press 2003): 106.

<sup>8</sup> David Mendeloff, "Trauma and Vengeance: Assessing the Psychological and Emotional Effects of Post-Conflict Justice," *Human Rights Quarterly* 31 (2009): 593.

What we do know is that many witnesses, when asked to testify about international crimes, express trepidation about their own safety and the safety of their families, as well as about their own ability to withstand the rigors of recalling painful memories in a public setting. Such concerns, however, are not uniform and vary depending on individual factors as well as the cultural, political, and security dynamics of the conflict or post-conflict setting.<sup>9</sup>

Recognizing these concerns, the Rome Statute—the underlying legal authority of the International Criminal Court—requires that the Court’s Registry maintain a Victims and Witnesses Unit to “provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counseling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses.”<sup>10</sup> The Statute also provides that the VWU “include staff with expertise in trauma, including trauma related to crimes of sexual violence.”<sup>11</sup> In a sense, the VWU is the “engine room” of the Registry, unseen but providing essential support—handling requests for witnesses from prosecutors and defense attorneys, preparing orientation materials, arranging travel and security, housing witnesses in The Hague, providing protection measures and psychosocial support, and following up with witnesses once they return home.

Early in its development, the VWU asked the Human Rights Center at the University of California, Berkeley, School of Law to help design qualitative and quantitative measures to evaluate the experience of witnesses in court proceedings and to provide analysis and recommendations for better meeting their needs. Accordingly, the Human Rights Center helped design a three-part interview survey to be conducted with witnesses at three time points: (1) prior to testimony, (2) immediately post-testimony, and (3) six to twelve months post-testimony.

---

<sup>9</sup> See Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (Philadelphia: University of Pennsylvania Press 2005): 74–75. Also see Eric Stover, Mychelle Balthazard, and K. Alexa Koenig, “Confronting Duch: Civil Participation in Case 001 at the Extraordinary Chambers in the Courts of Cambodia,” *International Review of the Red Cross* 93 (2011): 503–546.

<sup>10</sup> Rome Statute, art. 43(6).

<sup>11</sup> *Ibid.*

## Witnesses and Procedural Justice

Since the mid-1970s, social psychologists have surveyed people around the world who have participated in judicial and quasi-judicial proceedings to understand what it is about such processes that leads participants to consider them fair or unfair, and ultimately to accept or reject the outcomes. Almost universally, these studies have concluded that the manner in which a trial is conducted and the extent to which participants have a voice in the proceedings are major influences—though not the only ones—on satisfaction that justice was done.<sup>12</sup>

According to these studies, individuals define a fair process as one that is based largely on three criteria: *benevolence*—the degree to which they perceive that the authorities care about them and their experiences; *neutrality*—the extent to which they have been able to talk about their experiences in a neutral and unbiased forum; and *respect*—the extent to which they have been treated in a professional and dignified manner.” Judgments about ‘how hard’ the authorities tried to be fair emerged as the key overall factor in assessing procedural justice,” writes the social psychologist Tom Tyler.<sup>13</sup> In effect, those involved in judicial processes are looking for signs that they can trust the authorities.<sup>14</sup> For this reason, showing the utmost respect to witnesses is a key component for building trust in a court’s authority and legitimacy.

<sup>12</sup> See, e.g., John W. Thibaut and Laurens Walker, *Procedural Justice: A Psychological Analysis* (Hillsdale: Lawrence Erlbaum Associates, Inc. 1975); Brianne McGonigle Leyh, *Procedural Justice?: Victim Participation in International Criminal Proceedings* (Cambridge: Intersentia 2011); Edgar Allan Lind and Tom R. Tyler, *The Social Psychology of Procedural Justice* (New York: Plenum 1988); Edgar Allan Lind, Ruth Kanfer, and P. Christopher Earley, “Voice, control, and procedural justice,” *Journal of Personality and Social Psychology* 59 (1990): 952–959; Robert J. MacCoun, “Voice, control, and belonging: the double-edged sword of procedural fairness,” *Annual Review of Law and Social Science* 1 (2005): 171–201; and David De Cremer and Constantine Sedikides, “Self-uncertainty and responsiveness to procedural justice,” *Journal of Experimental Social Psychology* 41 (2005): 157–173.

<sup>13</sup> Tom R. Tyler, “What is procedural justice? Criteria used by citizens to assess the fairness of legal proceedings,” *Law and Society Review* 22 (1988): 129.

<sup>14</sup> See Bernard Barber, *The Logic and Limits of Trust* (New Brunswick: Rutgers University Press 1983); and Tom R. Tyler, “When does procedural justice matter in organizational settings?” in Roy J. Lewicki, Blair H. Sheppard, and Max H. Baserman (eds), *Research on Negotiation in Organizations* (Greenwich: JAI Press 1986): 7–23.

## **WITNESSES AND THE VICTIMS AND WITNESSES UNIT**

The ICC's location in The Hague can present challenges for witnesses who agree to testify and for the staff who support them. Whereas witnesses who participated in trials at The Hague-based International Criminal Tribunal for the former Yugoslavia (ICTY) were largely Europeans participating in a Europe-based international process, witnesses participating in ICC trials have been predominantly African, and thus must travel not only to a foreign country, but to a foreign continent.

Many ICC witnesses have never left their home country prior to coming to The Hague. For witnesses from rural villages in the Democratic Republic of Congo or Central African Republic, everything from the weather to food to local customs in The Hague can be unsettling. Some witnesses have advanced degrees and significant exposure to modern technology; others, however, have limited schooling and come from villages without electricity and cell phone signals, and thus face significant logistical and cultural challenges to participating in trials far from home.

The VWU has put in place a number of measures, including extensive logistical and emotional support, to help witnesses overcome these barriers. While the calling parties are required to send the VWU a list of witnesses 35 days before the trial begins, the VWU aims to start witness preparation as early as possible due to possible unforeseen visa and passport application complications, as well as to assess the special needs of particularly vulnerable witnesses, witnesses with dependents, and witnesses with health issues, because of the additional time that may be required to ready such witnesses for their travel and testimony.<sup>15</sup> For example, in one extreme case, the VWU needed to prepare a witness from the Central African Republic who was malnourished and had never before seen a car, let alone an airplane. VWU staff began by providing the witness with sufficient food and medical care so that he was physically able to travel. Next, field staff mentally prepared the witness to travel to The Hague.

Even in less extreme cases, witnesses have diverse needs. These may range from warm clothing and travel documents, to cover stories used to explain their absence, to psychosocial preparation for testifying. VWU staff often accompany victims and witnesses from their villages to The Hague, as well as take extensive steps to protect witnesses' identities. While in The Hague, VWU staff provide assistance 24 hours a day, familiarizing witnesses with court processes, arranging transportation and housing, organizing child care, and hosting local excursions to combat witness boredom. Staff also support witnesses during a post-testimony cooling-off period. During this time, security concerns are reassessed and plans are made for the witness's return home. Once witnesses are home or resettled, VWU staff remain available to them, and if asked, will apprise witnesses of the trial's outcome.

---

<sup>15</sup> In some cases, witnesses are referred to the VWU well in advance of the 35-day requirement so that they can receive needed support services (such as medical treatment or counseling) or special protection services. See also "Protocol on the vulnerability assessment and support procedure used to facilitate the testimony of vulnerable witnesses" (ICC-02/11-01/11-93-Anx2) available at <http://www.icc-cpi.int/iccdocs/doc/doc1389133.pdf>.

All of the witnesses who participated in this study testified in one of two trials at the ICC, the only two trials completed by the time of this analysis. Both *Prosecutor v. Thomas Lubanga Dyilo* and *Prosecutor v. Germain Katanga*, commonly known as the *Lubanga* and *Katanga* trials, concern crimes that occurred in the Democratic Republic of Congo (DRC).

In March 2012, Trial Chamber I found Thomas Lubanga Dyilo guilty of abducting boys and girls under the age of 15 and forcing them to fight in the Ituri region of DRC. During the conflict, Lubanga and the forces he commanded abducted and recruited children from schools and villages, requiring them to kill and serve as sex slaves to ranked military members. The case stands as the Court's first guilty verdict. Lubanga is currently detained at the Detention Centre in The Hague, where he is serving a 14-year sentence. As of this writing, his case is pending appeal.<sup>16</sup> In March 2014, a majority of Trial Chamber II convicted Katanga as an accessory to the war crimes of directing an attack against a civilian population, pillaging, and destruction of property, as well as murder as a war crime and as a crime against humanity. Katanga was acquitted as an accessory to rape and for sexual slavery as a war crime and crime against humanity. He was also acquitted of the war crime of using child soldiers.<sup>17</sup>

---

<sup>16</sup> The verdict in the *Lubanga* case is available at: [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200106/court%20records/chambers/trial%20chamber%20i/Pages/2842.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200104/related%20cases/icc%200104%200106/court%20records/chambers/trial%20chamber%20i/Pages/2842.aspx).

<sup>17</sup> Additional information about the Court's decision in the *Katanga* case is available at [http://www.icc-cpi.int/en\\_menus/icc/press%20and%20media/press%20releases/Documents/986/14\\_0259\\_ENG\\_summary\\_judgment.pdf](http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Documents/986/14_0259_ENG_summary_judgment.pdf).

## **METHODOLOGY**

Building on an interview survey instrument that was created for a study of victim-witnesses at the International Criminal Tribunal for the former Yugoslavia,<sup>18</sup> Human Rights Center staff developed three questionnaires to be administered to ICC witnesses at three time points: (1) prior to testifying (N=104), (2) soon after testifying (N=109), and (3) six to twelve months after testifying (N=32). The Human Rights Center also helped the VWU create a database for storing and analyzing the interview data. For analysis, the VWU provided the Human Rights Center with de-identified survey data from all participating witnesses.

### Pre-testimony survey

The purpose of the pre-testimony survey is to record witnesses' impressions of early interactions with the court while those interactions are still relatively fresh in their minds. It is also designed to establish a baseline for understanding how each witness feels about the court pre-testimony and to familiarize witnesses with the survey process.

The pre-testimony survey has been offered to nearly all ICC witnesses in the *Lubanga* and *Katanga* cases. The survey was very rarely administered in the witness's home country (for example, when testimony was provided from the witness's home country via video link); more often, it was administered shortly after his or her arrival in The Hague. VWU support subunit staff administered surveys on a voluntary basis, with most witnesses willing to participate. Of the 123 total witnesses, 104 responded to the pre-testimony survey.

### Immediate post-testimony survey

Soon after testifying, all witnesses appearing before the Court were asked to answer a second questionnaire. Of 123 witnesses who were approached, 109 agreed to take part in the survey. VWU staff reported that the primary reason witnesses declined to participate was because they felt too tired after appearing in court or there was little or no time before their departure for home.

VWU support staff generally conducted this latter survey in the witness waiting room. However, in exceptional cases, mostly due to a lack of time or a lack of available support assistance, escorts from the VWU conducted post-testimony interviews while the witness was heading home.

### Long-term post-testimony survey

VWU staff conducted the final survey six to twelve months after witnesses left the Court. At the time of this analysis, this survey had been offered to a subset of witnesses in the *Lubanga* case. However, due to security concerns and a lack of resources, not all of the witnesses who were eligible were approached to take part in the follow-up survey. Some witnesses lived in unsafe areas to which ICC staff were not allowed to travel. Staff also did not attempt to reach witnesses who lived more than 100 kilometers from

---

<sup>18</sup> See Eric Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (Philadelphia: University of Pennsylvania Press 2005).

a field office as this was believed to pose an undue hardship for witnesses, particularly where travel circumstances would require individuals to walk for miles. In other cases, VWU staff did not survey witnesses because the witnesses moved without providing new addresses, lacked phones, or lived in places inaccessible by road. In one case, a witness died before the survey could be administered.

Of those witnesses who were approached to take part in the long-term post-testimony survey, staff said that “very few” declined. In fact, witnesses were reportedly more willing to participate in this survey than in the survey administered shortly after testimony, perhaps because they were no longer as fatigued or had more time to process their experiences. Despite witnesses’ apparent willingness, the number of respondents decreased significantly for the long-term post-testimony survey. Ultimately, only a fraction of the total number of witnesses who appeared at trial completed the final survey—32 respondents in total. Only two were women.

#### LIMITATIONS

A number of factors limit the generalizability of this study’s findings. First, the data reflect the impressions of witnesses involved in only two cases, both of which address crimes in DRC.<sup>19</sup> Witnesses from other situations and countries may have different experiences with or views of court proceedings. Second, it was not always possible to identify whether a witness was called by the prosecution or defense, which might impact impressions of testifying. Third, a limited number of ICC witnesses participated in the long-term survey. While VWU staff report that most witnesses who were approached were quite willing to take part in the long-term survey, a significant number were never approached due to ongoing violence, distance, or physical inaccessibility. We also have no long-term data from sexual violence survivors who may confront specialized risks when returning home, and very little from women—phenomena we hope will be remedied in later surveys. Finally, because the surveys were administered by VWU staff and not by an uninterested third party, the data may have been positively impacted by “social desirability bias,” in which respondents’ feedback is skewed toward the positive due to a desire to please the interviewer. Despite these limitations, however, this survey provides the first and most comprehensive overview of ICC witnesses’ experiences possible, given the realities of access and security.

---

<sup>19</sup> Human Rights Center staff also designed questionnaires early in the development of the VWU before some specialized services, such as psychosocial support and counseling for vulnerable witnesses, were developed at the beginning of the *Lubanga* trial. Therefore these services were assessed for some witnesses but not for others.

## Victims and Witnesses Unit

The VWU is comprised of a chief, 25 staff at headquarters, and 25 staff in field offices. The VWU's current budget represents 5.9 percent of the ICC's total (in 2014, this amounted to 7.2 million euros out of a total of 121.6 million euros).

The Victims and Witnesses Unit has a statutory mandate to provide protection, support, and other appropriate assistance to all witnesses who appear before the Court (see Appendix B). The Court's *Rules and Procedures* also dictate that the VWU formulate long-term and short-term plans for the protection of witnesses and victim participants, as well as recommend to other Court organs the adoption of protection measures and means to assist witnesses. As a measure of last resort, protection can be provided through participation in the ICC Protection Programme.<sup>20</sup> The VWU does not identify witnesses or victim participants on its own, but acts upon referral or request from other organs of the Court. Although protection and support services are particularly pertinent during the trial stage, these measures can be requested and provided at all stages of proceedings, from pre-trial to post-trial. The VWU has developed protocols and cooperation agreements with a number of national and international partners to assist its work.

VWU protocols for witness management and protection are intended to apply to all cases. That said, VWU staff must adapt their services to meet the specific needs of each witness, which often means anticipating needs based on the country of origin and witness demographics. Also, presiding judges make case-specific decisions regarding the handling of witnesses, which means the VWU must be prepared to make adjustments on a case-by-case basis.

---

<sup>20</sup> In accordance with Rule 16 of the *Rules of Procedure and Evidence*, the Registrar may negotiate confidential agreements on relocation and provision of support services on the territory of a State on behalf of the Court (see Appendix B). The VWU actively works with States Parties and other entities to maintain an effective national and international protection regime for witnesses and victim participants who appear before the Court.

**WITNESS MANAGEMENT AND PROTECTION**

Witnesses pass through six stages during their time with the VWU. First, they meet with VWU staff, usually in their home country. Second, before they begin their journey to the Court, VWU staff familiarize witnesses with the judicial process and what to expect as witnesses. This includes what to expect during witnesses' trips to the Netherlands and during their time in The Hague, some of which is provided in the form of a brochure and DVD. In the third stage, they travel to The Hague. After arriving, in the fourth stage, they spend time waiting to appear at trial. This stage includes learning about courtroom procedures and may involve reviewing any prior statements. Vulnerable witnesses also undergo psychological assessment and continue to be followed closely by a VWU psychologist in collaboration with the support team. In the fifth stage, witnesses testify. In the final stage, they spend time "cooling down" before returning home and rejoining their communities.

**Contact**

The VWU's engagement with a witness starts after the witness has been selected by the calling party, has agreed to testify, and has been accepted by the relevant Chamber, but prior to his or her testimony. After the Chamber approves a witness list for either the prosecution or defense, the list is sent to the VWU. Witness information must arrive at the VWU a minimum of 35 days before testimony is scheduled to begin.

The party calling the witness completes a "Witness Information Form," which is submitted to the VWU. In addition to protection-related information, the form provides operational and support-related information, such as travel document-related data and personal information such as employment status, any need for dependent care, and any medical condition, disabilities, or vulnerabilities. The form also documents any issues related to support so as to assist the unit in preparing an individualized plan for each witness. The form, for example, captures information about psychological and medical needs, children, dependent care, and whether there is a need for escorts or accompanying staff. Based on this information, the support team, which consists of support officers and support assistants, tailors the witness support program to meet the needs of particular witnesses. A team of six headquarters-based support assistants is assigned to each witness—whether a victim or otherwise. Field support assistants start witness preparation in the field, and escort the witness as needed. One staff person is deemed the "case manager." He or she serves as the witness's primary contact once the witness is in The Hague and closely monitors the witness's well-being from that point forward. The others provide additional support and help with coordination and logistics.

If a witness is to come to The Hague, VWU staff plan the travel, working with other ICC units as appropriate. A variety of issues arise when arranging to bring a witness from his or her home country. For example, if the witness needs to take time off of work, VWU staff will meet to decide what to tell the witness's employer—creating a cover story and/or providing the witness with a letter from the ICC that confirms the need for a leave of absence. Frequently, a support officer will shop for clothes with a witness in his or her home country to prepare for the relatively cold weather in the Netherlands.

## Pre-Trial Familiarization

After initial contact is made, the process of explaining the Court and its actors, as well as providing information about The Hague, begins in the field. Some witnesses said they received very limited notice of their travel date, and thus felt that they lacked adequate preparation. “We were rushed and not sufficiently informed,” said one witness. “The day of departure we knew almost nothing.” Another said: “I was given short notice.... In one week I had to do everything. I needed more time to prepare myself psychologically.”

Many witnesses, especially those from rural areas, may have limited or no prior experience with formal legal systems. To help set expectations, each witness is given a brochure that explains what to anticipate at the Court and in The Hague. They are also shown a DVD, which largely reflects the information in the brochure. These materials describe everything from the city and its weather to the trial process. Since many witnesses have never flown before, the DVD and brochures also provide an overview of what to anticipate on their flight.

Before traveling, each witness undergoes a “fit-to-travel” check, or medical check up, to ensure that flying to The Hague will not pose a health risk. Potentially vulnerable witnesses also undergo a preliminary psychological assessment. If the assessment indicates witness vulnerability, a VWU psychologist schedules a full vulnerability assessment. Observations and conclusions of this secondary assessment, including recommendations for special measures, are submitted to the Chamber. Based on the report, the Chamber then decides on the capacity of the witness to testify as well as the use of any special measures.

### TRAVEL DISTANCES FROM CAR AND DRC TO THE HAGUE



## Travel

Meeting witness needs while protecting their safety—as well as that of ICC staff—is a balancing act. Ideally, ICC staff travel with a witness from his or her home community to the international departure point. However, in some cases ICC staff are not permitted to travel to the witness’s home village because of security restrictions. In other cases, it may be considered dangerous for a witness to be seen with ICC staff, or a witness may prefer to keep his or her cooperation with the Court confidential. When such situations arise, witnesses travel by themselves to the departure city or an intermediate point to meet ICC staff, who then accompany them to a secure location.

Witnesses typically leave their home country on a commercial flight. Even when multiple witnesses come from the same town at the same time, they travel independently. This procedure helps to avoid the unwanted attention a group may attract, as well as unnecessary contact between witnesses. It also helps to maintain confidentiality and protect witnesses’ identities. In addition, the VWU may follow orders from Chambers or requests of the calling parties to separate witnesses.

In general, witnesses travel to The Hague without family or friends. Only in exceptional cases have witnesses been allowed to travel with companions. For example, some witnesses have dependents who need care. In such cases, the dependents are permitted to accompany the witness.<sup>21</sup> Having children present can be challenging for both witnesses and the children. Yet, for witnesses with small children and nursing infants, the ability to stay together can be crucial to enabling the witness to testify. On occasion, a witness will request to bring a non-dependent to accompany him or her on the trip, especially if this is the person’s first time abroad. In such cases, the VWU will analyze whether the request is reasonable, and who is the best person to accompany him or her.<sup>22</sup> Staff at the Court then arrange for passports and visas for the witness and his or her companions. In the case of witnesses traveling with family members, a second escort is typically assigned to assist the additional travelers.

Travel logistics can take time. For example, the DRC now uses biometric passports, which can take more than a month to acquire and require the witness to remain in Kinshasa for several days. In addition, travel itineraries can change on short notice, creating psychological and security challenges. “I was prepared to leave psychologically,” one witness said, “and then [my itinerary] changed. It was difficult to maintain my cover story when the itinerary kept changing.”

Witnesses also face the everyday hassles of travel. Court rules indicate that travel should be provided at the lowest cost available on public transit, which means that service and comfort may be less than

---

<sup>21</sup> Care can be provided for dependents who stay home while the witness is absent or for dependents traveling with the witness. Most dependents have been children. The VWU typically assesses whether child care can be better organized in the witness’s home country or if children will be better served by accompanying the witness to the Court. See International Criminal Court Regulations of the Registry, ICC-BD/03-01-06-Rev.1, 25 September 2006, 90.

<sup>22</sup> A witness may be permitted to bring a support person. The Registry determines eligibility based on the VWU’s assessment. Criteria include (but are not limited to) severe trauma-related symptoms, suicidal tendencies, the potential for violence, age, whether the witness has been a victim of sexual or gender-based violence, and/or whether the witness is suffering severe physical or psychological symptoms. See, e.g., Rule 88 of the ICC’s Rules of Procedure and Evidence, and Regulation 91 of the Regulations of the Registry.

ideal, especially on long international flights. Luggage was sometimes lost or delayed. “The meal served on the plane was not good,” said one witness. “I did not eat at all before traveling. I managed to eat the food served on the plane because I was hungry.” While not extraordinary, these everyday aggravations can add to witnesses’ overall discomfort and anxiety.

Once a witness lands in The Hague, he or she is met at the airport by a driver from the ICC, and sometimes, a member of the VWU support staff. The witness is then taken to a secure accommodation. If he or she is not already accompanied by someone from the witness unit, a VWU escort will meet the witness at his or her lodging.

### Waiting for Trial

On their first day in The Hague, witnesses have a day of rest. A VWU support staff member greets them and provides a welcome briefing, which includes an explanation of entitlements and the schedule for their stay. VWU staff also check on their well-being, inquire if they need anything, and provide a means to call in case of an emergency.

The VWU provides welcome packages to help ease witnesses’ acclimation to the social and physical environment of The Hague. When needed, the packages include a toiletries kit analogous to those provided to travelers by airlines. Items also include a fleece jacket, closed-toe shoes, a blanket and shawls to ease the temperature shock upon arrival in The Hague. Witnesses often encounter low early morning temperatures after disembarking from chilly overnight flights. “It is difficult to adapt to this climate,” confirmed one witness. An unexpected challenge arose when some witnesses took the kits home, inadvertently identifying their participation with the Court.

After witnesses rest, they are brought to the ICC for a process called “court familiarization.” The goal of familiarization is to introduce witnesses to the courtroom and attorneys before they testify, to lessen the likelihood that they will be overwhelmed when they come to trial. The orientation follows a standard protocol, which is used for both live and video-linked testimonies. The VWU staff continually fine-tune the protocol with the various Chambers, responding to the needs of witnesses and members of the Court.

Since many witnesses have never been in a courtroom, court staff take witnesses to see the physical layout, including where they will sit during the trial and testimony. Handlers also explain the process of testifying. These visits can take anywhere from 45 minutes to an hour or longer if an interpreter is needed. Questions are encouraged. If a witness is deemed particularly vulnerable, the VWU will arrange for a second visit to demonstrate any special measures ordered by the Chamber.<sup>23</sup>

Despite such efforts, a few witnesses still felt unprepared when they took the stand. “I should have been better prepared by the party that called me,” said one witness. Others, however, expressed appreciation.

---

<sup>23</sup> By October 2012, approximately ten court familiarizations had occurred via video link. Whether a witness was familiarized in person or via video link was indicated in the data (in the latter case, as “AVL”).

“All the information, preparation, and advice I received helped me a lot,” said a witness. “This made it easier for me during my testimony period.”

In general, ICC attorneys cannot engage in witness proofing, but can take part in a courtesy meeting prior to a trial. Witnesses who submit written statements to the court in advance of trial can also review their statements before trial, a process that is facilitated by the VWU. Ideally, witnesses also see who will ask them questions during a 10–15 minute courtesy gathering before trial.

Considerable time can elapse between the witness’s arrival and his or her appearance in court. Thus, witnesses frequently have free time in The Hague. For a number of witnesses, this time can be a source of anxiety. When asked what was the worst part of the overall experience, one witness said: “The worst part was the day before, waiting to testify.” Another said: “The entire time you think about your testimony because you are so isolated as a witness. Day and night. This creates extra pressure. It would be good, if possible, if the VWU could find ways to diminish this isolation and pressure.”

To assuage witnesses’ unease and fill time before and after their testimony, the VWU organizes activities around town. Initially, witnesses did not want to engage in many of the activities; however, the VWU has since shifted the program to include more popular endeavors, such as visits to local sights and historic landmarks, like Rotterdam Hall, skyscrapers, and the seaside. Witnesses particularly welcomed such activities on weekends and other times when the court was not sitting.

Many witnesses wish to purchase electronics, including cell phones, and presents, such as Dutch toys, to take home to their families. But such purchases can be problematic, as they may inadvertently alert their neighbors to their earlier presence in The Hague and put them at risk. VWU staff advise witnesses about the potential risks of returning with Dutch items.

### Testifying

The focal point of witnesses’ journey to The Hague is the act of testifying. Testimony can range from hours to days. Motivations for testifying vary, but most witness say they want their stories to be known and help to achieve justice. “There were things that have touched me,” explained one witness. “Therefore, I wanted to testify about it.” Another witness said: “It is a universal service for the interest of my people.” Yet another witness explained: “I want to fight against impunity. I want justice to be done.”

The overwhelming majority of witnesses use some form of identity protection in the courtroom. However, some witnesses still expressed trepidation about testifying in court, often fearing retribution back home. “I was worried about my security,” explained one witness, “and that the protective measures were not enough. People can easily read transcripts of the proceedings on the internet and identify me.”

Witnesses also worried that they might not perform well in court. “I felt very intimidated,” said one witness. “I felt naked, very exposed, vulnerable. I felt a very heavy responsibility having to take part in a process of justice.” Another witness said: “I was fearful because it was my first time appearing in front of a court.”

The case manager accompanies the witness throughout his or her time in The Hague, serving as a

resource and assisting with bills, shopping, and processing allowances. On occasion, the VWU also recommends an in-court assistant, based on a vulnerability assessment or the recommendation of the psychologist. The in-court assistant must be approved by the Chamber and works under the guidance of a psychologist. This is most common with sexual violence survivors or child soldiers. The additional support staff, psychologist, or outside specialist offers support during the witness's testimony, even sitting beside him or her in court. The in-court assistant is prohibited from saying anything, but can serve as a reassuring or calming presence. The witness can use hand signals to indicate if he or she needs a break. Together the psychologist, the case manager and the in-court assistant coordinate all psychosocial support throughout the testimony, informing the Chamber when needed about the mental state of the witness to ensure that measures, such as frequent breaks or adapted questioning, can be provided when required. Finally, the VWU psychologist, accompanied by the in-court assistant, debriefs vulnerable witnesses after testimony.

During the trial, the Court provides all witnesses with access to a waiting room. Witnesses have access to these spaces during their down time. On some occasions, children or other dependents may pass time in the waiting room as well, though the VWU tries to keep them occupied in less dull places. The rooms can provide a private space for witnesses to sit in peace or vent their emotions.

Shortly after testifying, the ICC support assistant assigned to the witness and the calling attorney meets with the witness to thank him or her, and act as a sounding board for the witness to reflect on his or her experience. Unlike other international tribunals, the ICC does not provide witnesses with an official letter thanking them for participating because of the risk of witnesses being identified and targeted at home.

At night, witnesses and their companions return to their lodgings. In most cases, the same staff person who has accompanied the witness throughout the process stays at the same location and is available to talk through any concerns.

### Cooling Down

Once the testimony is complete, a witness enters a cooling-off period. VWU staff reassess a witness's security to determine whether it is safe to return home as planned. Staff create a handover report, which is given to members of the field office and, where applicable, to defense or prosecution teams, which addresses any issues that require follow up after a witness is back in his or her country of origin.

Once travel is deemed safe, the witness returns home. From that point forward, direct contact with members of the Court is minimized to avoid creating a security risk. However, the VWU assists with ongoing security measures, including a means for witnesses to contact the Court in an emergency. Staff say that witnesses have used these services, although they declined to discuss the frequency or details of specific instances out of concern for witness confidentiality.

The final contact occurs—if at all—post sentencing. After testifying, each witness is asked whether he or she would like to be notified of the final judgment and how he or she would like to be contacted. Most younger witnesses request information via email; others request phone contact. Contact information is kept on file at the ICC for use at the conclusion of the trial.

## PRE-TESTIMONY

---

**THE PRE-TESTIMONY SURVEY PROVIDES A BASELINE** of witnesses' experiences. It asks witnesses to assess the support they received in their home country, their travel to The Hague, support from ICC staff, and their overall pretrial experience. Witnesses rated their experiences on a five-point Likert scale, from 1 (very dissatisfied) to 5 (very satisfied), and also answered open-ended questions.

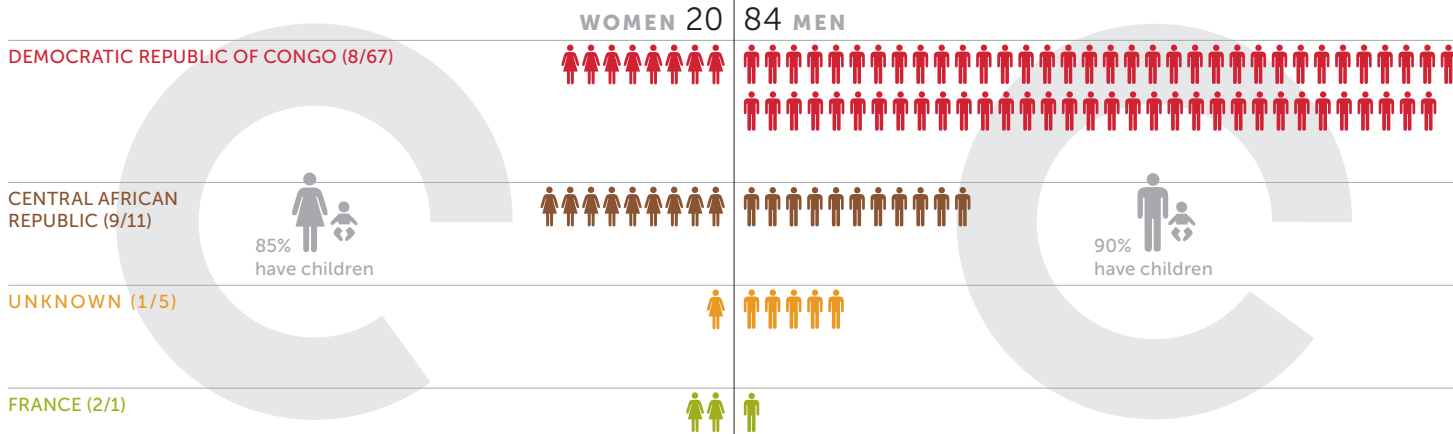
For each question, witnesses had the option to select “Not Applicable,” which enabled the survey to capture impressions about particular forms of support—for example, child-care services—without requiring an answer from those who did not utilize that type of support. Also, in cases where a witness completed the pre-testimony survey in his or her country prior to traveling to The Hague, the interviewer did not ask the witness about experiences with travel to and services in The Hague.

Most witnesses who completed the pre-testimony survey came from the Democratic Republic of Congo, where the alleged crimes occurred, with a sizeable minority from the Central African Republic. The majority of witnesses were men, though all of the witnesses who identified as sexual violence survivors were women. Ages ranged fairly evenly from 18 to more than 60 years of age. Respondents included experts, survivors, and other trial witnesses. Due to security concerns, most witnesses used protective measures to shield their identities in court.

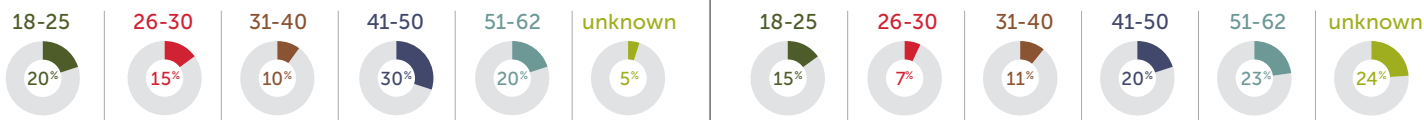
The graphic on the following page provides a descriptive overview of the surveyed population. The subsequent pages show responses to the survey questions. The numbers inside each bar graph indicate how many individuals answered that question.

# 104 TOTAL WITNESSES

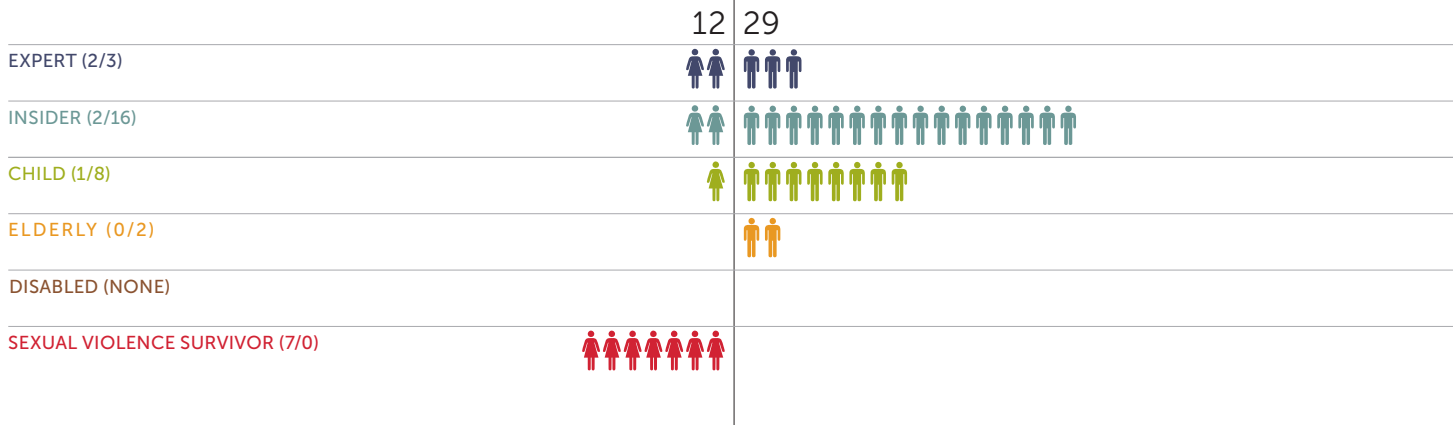
## NATIONALITY & SEX DISTRIBUTION



## AGE DISTRIBUTION (in years)



## SPECIALIZED WITNESSES



## Overall Experience with the VWU

Before their testimony, witnesses reported positive experiences working with the Court. Ratings of the VWU were high across the board. “Overall [my experience with] the ICC is 99 percent positive.... The best part is how organized and professional the ICC and VWU staff are,” explained one witness. Most witnesses reported that they were “satisfied” or “very satisfied” with the assistance they received in their home country and also in The Hague. Response patterns for men and women were positive, with women having slightly more favorable opinions across all categories.



## Witness Orientation

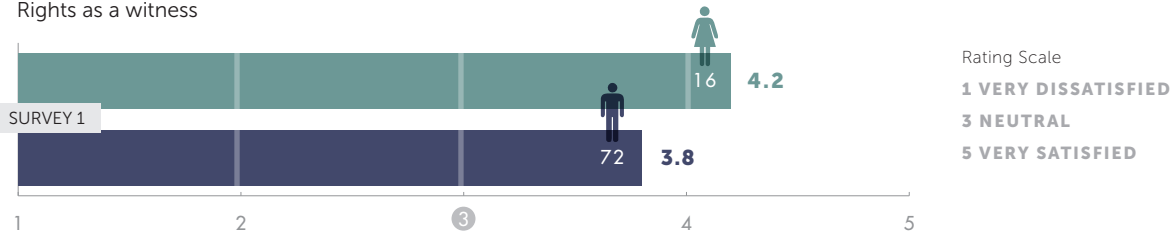
One major task for the VWU is to explain to victims what to expect as witnesses. Orientation methods vary depending on the needs of individuals, but always involve informing witnesses about their rights, providing information about travel, and explaining what to expect in the courtroom. Because many witnesses have no prior experience with courts, either at home or abroad, this orientation is essential to help mitigate anxieties and provide a clear idea of what to anticipate during the proceedings.

In the pre-testimony survey, witnesses generally reported that they understood their rights and what to expect with regard to testifying. On the whole, women reported more satisfaction than men. Yet neither group expressed displeasure with the information provided before their travel to The Hague.

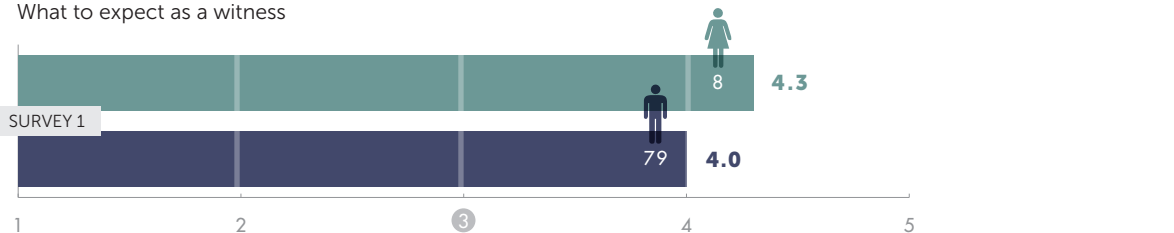
### WITNESS ORIENTATION

#### INFORMATION

Rights as a witness

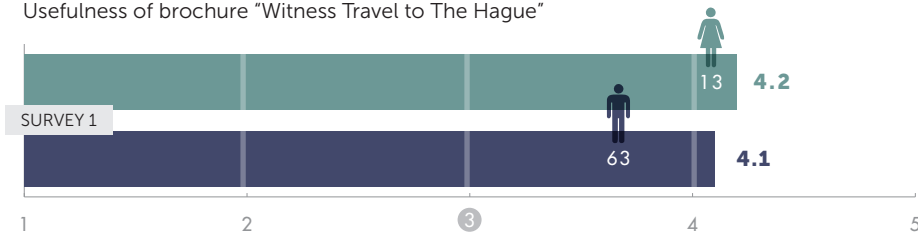


What to expect as a witness

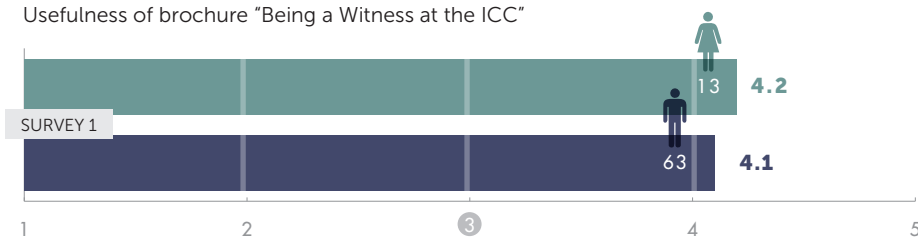


### PREPARATION MATERIALS

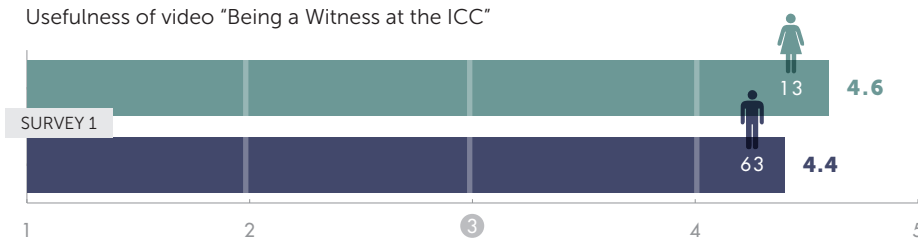
Usefulness of brochure "Witness Travel to The Hague"



Usefulness of brochure "Being a Witness at the ICC"



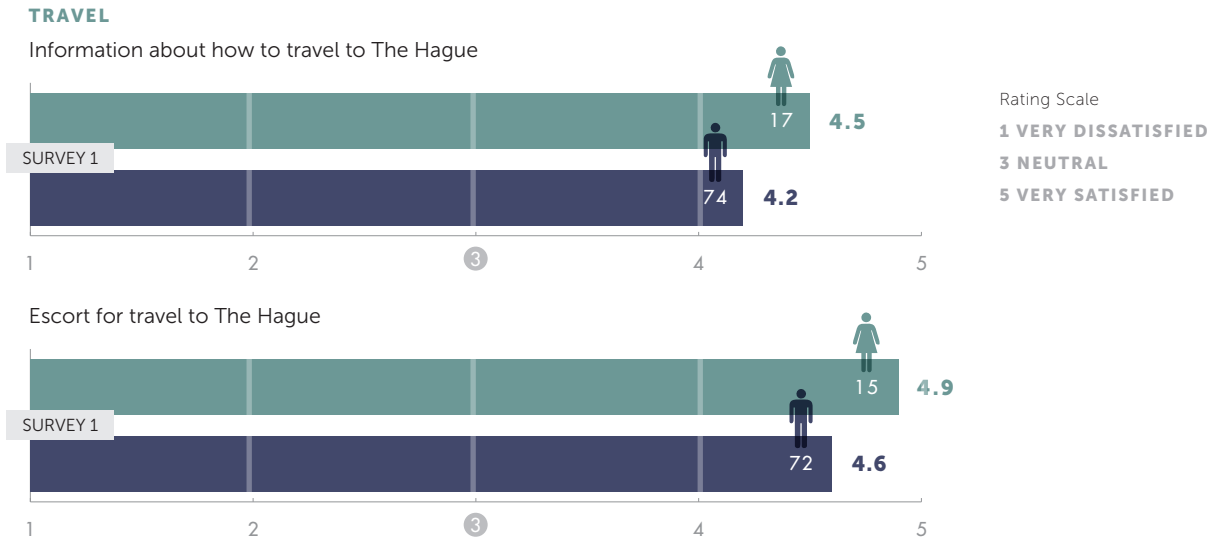
Usefulness of video "Being a Witness at the ICC"



To prepare witnesses for trial, the VWU provided witnesses with various materials at the field office, including a travel brochure, a brochure on serving as a witness, and an informational DVD. These materials familiarize witnesses with the Court and the logistics of traveling to and returning from The Hague. Witnesses gave these materials high marks.

Travel

The VWU also briefs potential witnesses on their travel to The Hague. Witnesses rated this briefing as well as their VWU travel escort. Both men and women, on average, reported satisfaction with their orientation and escorts.



Some men did complain about the last-minute nature of their preparations. “My departure was abrupt in a military way. I had only three hours to prepare for traveling,” said one witness. “In Bunia [in the Democratic Republic of Congo], all the preparations were rushed,” explained another. Women voiced fewer concerns about travel. However, it is unclear if that is due to fewer problems or a greater hesitancy on the part of women to criticize the VWU.

## Services in The Hague

The VWU serves dual functions for witnesses in The Hague. They provide specialized support services, including medical care, counseling, and round-the-clock availability for emergencies. In addition, they take care of everyday logistics, such as arranging for food, housing, child care, transport, and recreation.

Overall, witnesses expressed appreciation for the specialized support services, reporting especially high satisfaction with the 24-hour availability of VWU staff. Women, in particular, praised the medical care. Both men and women expressed satisfaction with counseling.

Witnesses were also satisfied with the generalized support services and everyday logistics handled by the VWU. “To bring me here with a hotel and driver, it makes me feel like a President,” said one witness. Witnesses were pleased, too, with their lodging, transport, and organized activities during their time away from the Court. “I have been made welcome,” said one witness. “You don’t treat me like a black woman. Everybody is talking and smiling to me. This is positive behavior.” Women again tended to be marginally more satisfied than men, with the exception of clothing, which women gave slightly lower marks.

The largest gap in reported satisfaction between men and women with regard to everyday logistics concerned child care. However, while lower, the rating for men was still positive.

While witnesses generally reported satisfaction with the support services provided by the VWU, a few witnesses did express concerns about disparate treatment. “The unit refused to give me clothes for [my] testimony,” complained one witness. “At the least I should be treated like all the other witnesses who testify at the court. It’s a matter of equality.” Another witness wanted more recreational opportunities during downtime outside of court. “[I]t would be better to have more distraction,” he said.

SERVICES IN THE HAGUE

SPECIALIZED SERVICES

Medical care



Rating Scale  
**1 VERY DISSATISFIED**  
**3 NEUTRAL**  
**5 VERY SATISFIED**

Counseling



Round-the-clock availability



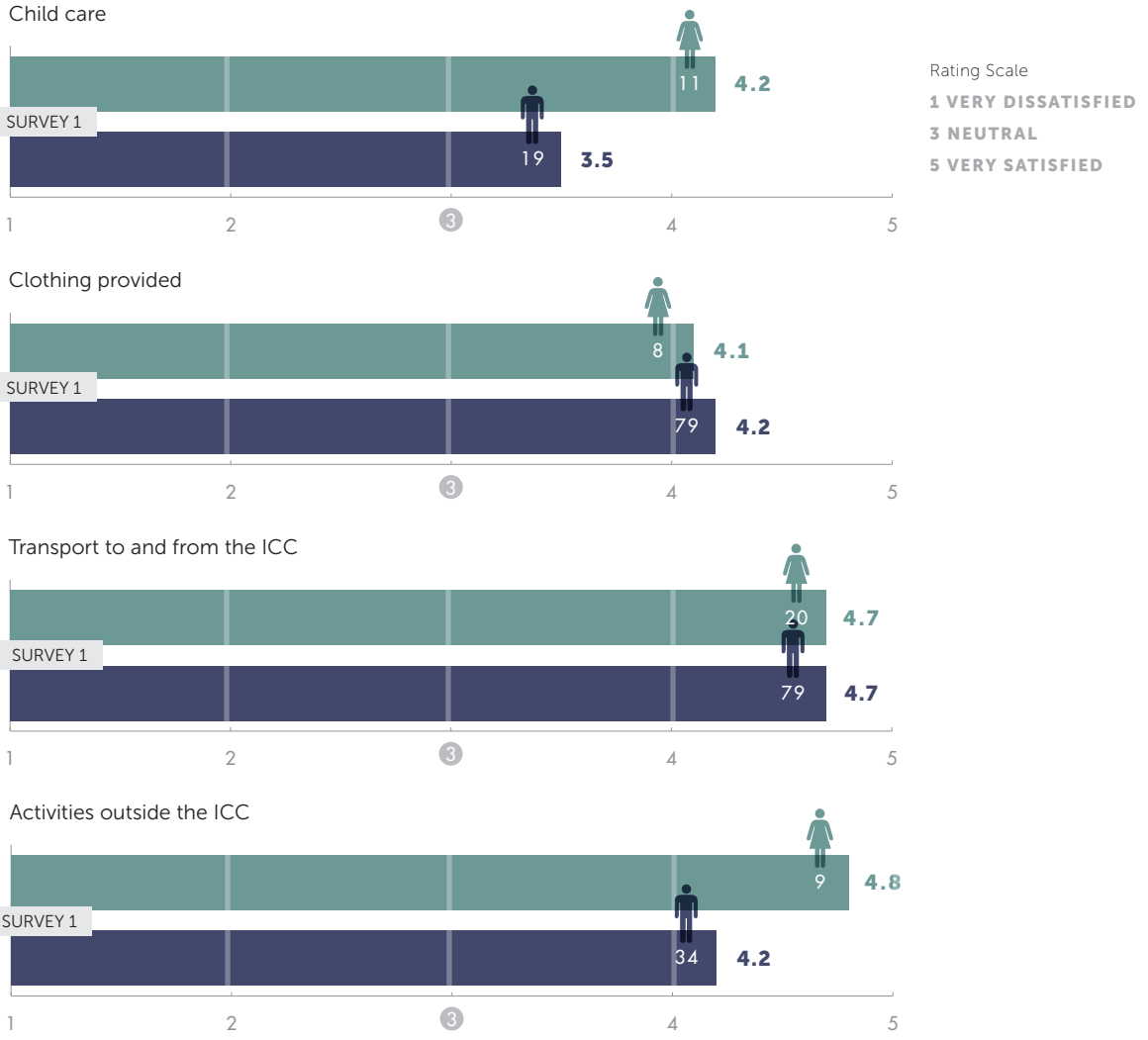
LOGISTICAL SERVICES

Food



Housing



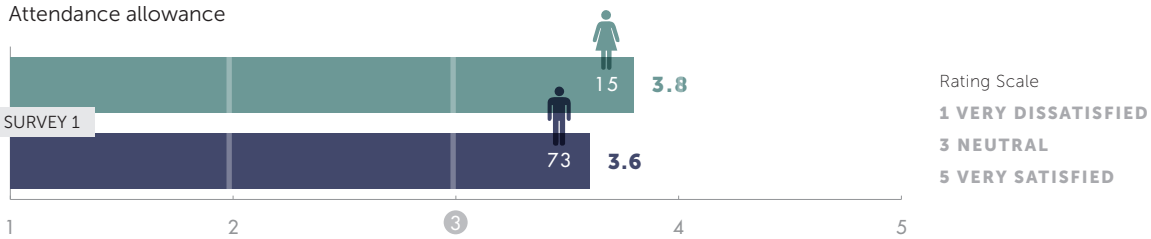


## Allowances

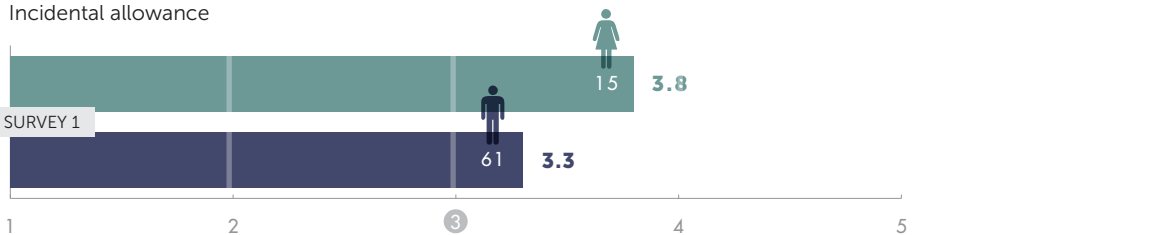
Witnesses tended to be least pleased with their financial allowances, with men expressing lower levels of satisfaction than women. Many witnesses felt that both the attendance allowance, which paid a daily rate to compensate for lost wages, and the incidental allowance, which paid expenses incurred during the participation process, were insufficient given the costs involved in being a witness. “I first thought about my job when I was informed that I would testify,” explained one witness. “I was worried that I would not be paid during my absence.” Another witness, expressing a common sentiment, simply stated: “The incidental allowance is not enough.” Yet another said: “I would like to be sure that I will receive the allowances promised for my time in court before I go home.”

### ALLOWANCES

Attendance allowance



Incidental allowance



## Security

The study probed witnesses about their satisfaction with security provided by the VWU in their home countries and also in The Hague. Responses were generally positive. However, a number of witnesses, mostly men, expressed concerns about inadequate security in their home countries. A few witnesses feared that their cooperation with the Court could be exposed if they were seen with ICC staff or by other trial participants.



Witnesses also expressed concerns about being exposed during or due to their travel. “We had to make many stopovers and this caused security problems,” explained one witness. “People knew me at the stopovers. Sometimes we had to wait two hours; other times, days; and this was a dangerous situation for me.”



## IMMEDIATE POST-TESTIMONY

---

**THE IMMEDIATE POST-TESTIMONY SURVEY FOCUSES ON THE** impact of testimony on witnesses' experiences with the Court. The questions mirror the pre-testimony survey in large measure. However, additional sections assess witnesses' experiences in the courtroom. Respondents again rated their experiences on a five-point Likert scale, from 1 (very dissatisfied) to 5 (very satisfied), and answered open-ended questions designed to elicit more detail about their responses.

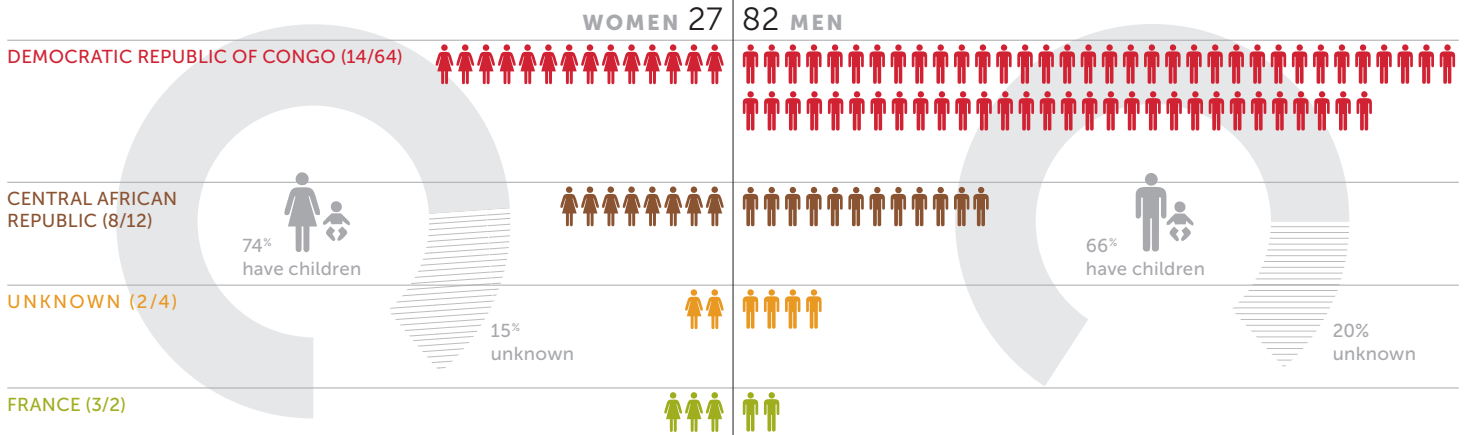
For each question, witnesses had the option to select “Not Applicable,” which enabled the survey to capture impressions about particular forms of support—for example, child-care services—without requiring an answer from those who did not utilize that type of support.

The respondent population at this time point was similar to the pre-testimony survey, as most witnesses took both surveys. The overwhelming number of immediate post-testimony survey respondents were from the Democratic Republic of Congo, with a sizeable minority from the Central African Republic. Again, most witnesses were men. However, all but one of the sexual violence survivors were women. More than 60 percent of men and 80 percent of women used protective measures to hide their identities. Ages ranged from 18 to more than 60 years of age. Respondents included experts, survivors, and other trial witnesses. The graphic on the following page provides an overview of the surveyed population.

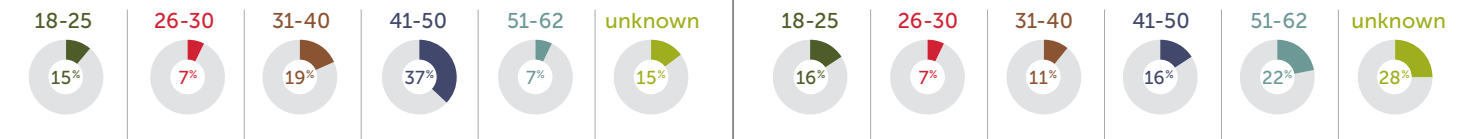
**SURVEY 2** IMMEDIATE POST-TESTIMONY

109 TOTAL WITNESSES

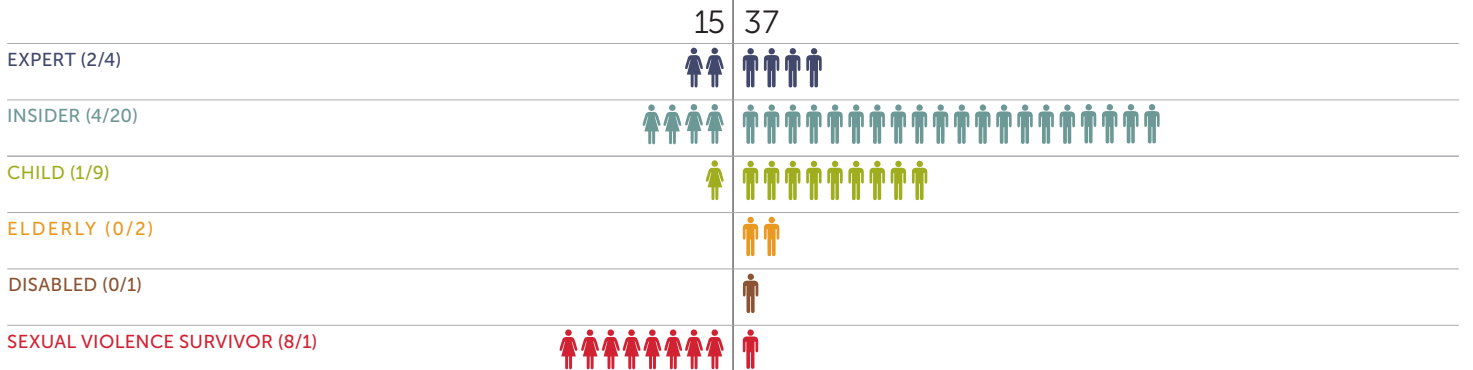
NATIONALITY & SEX DISTRIBUTION



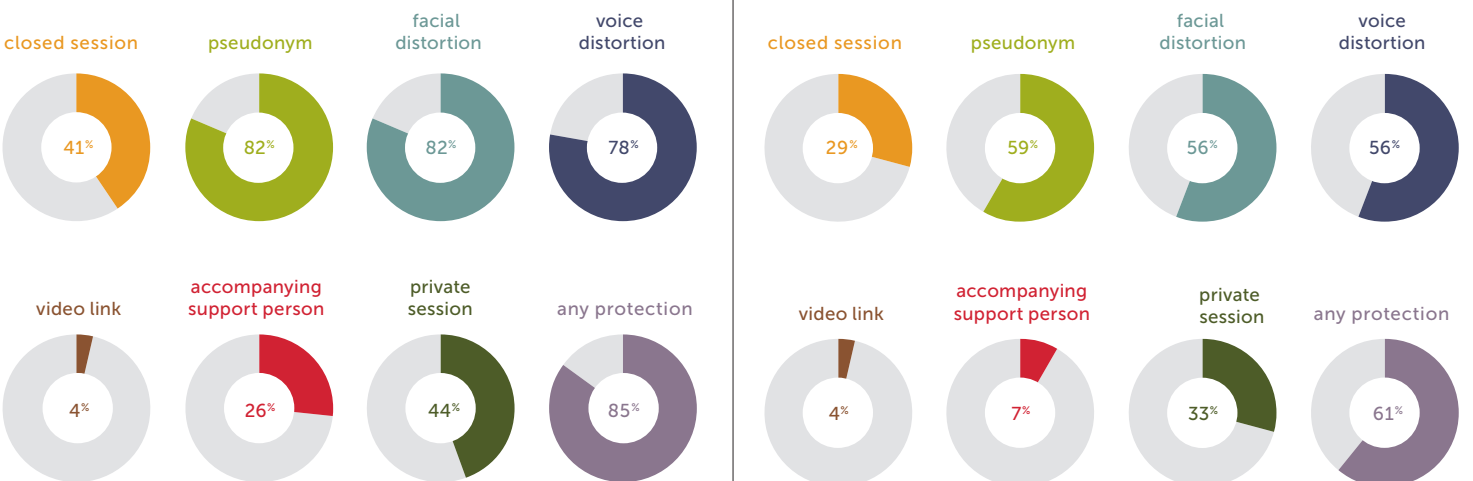
AGE DISTRIBUTION (in years)



SPECIALIZED WITNESSES

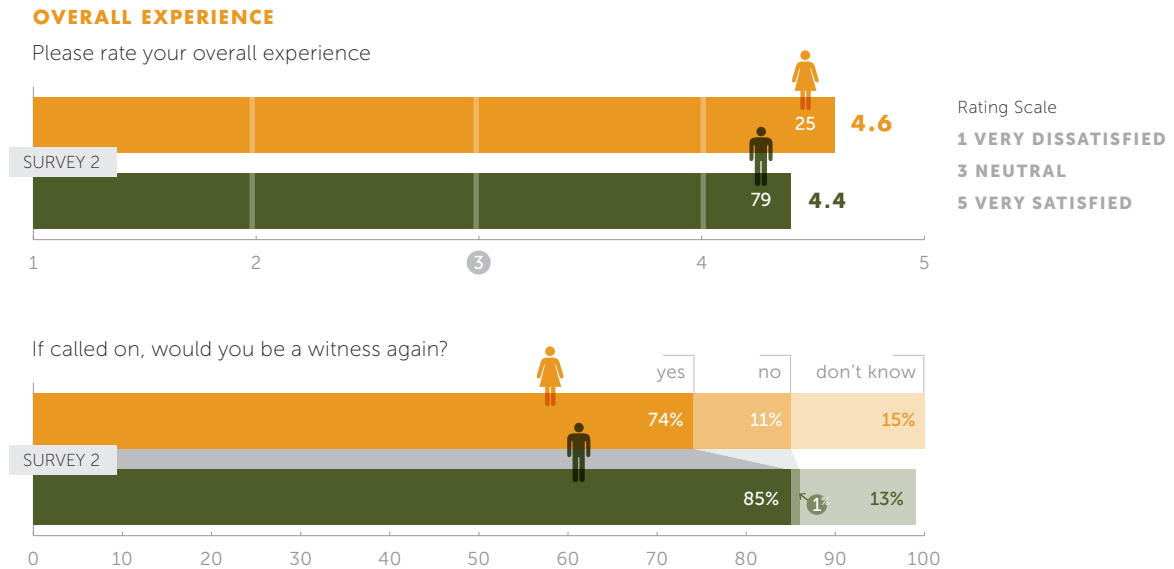


PROTECTIVE MEASURES USED



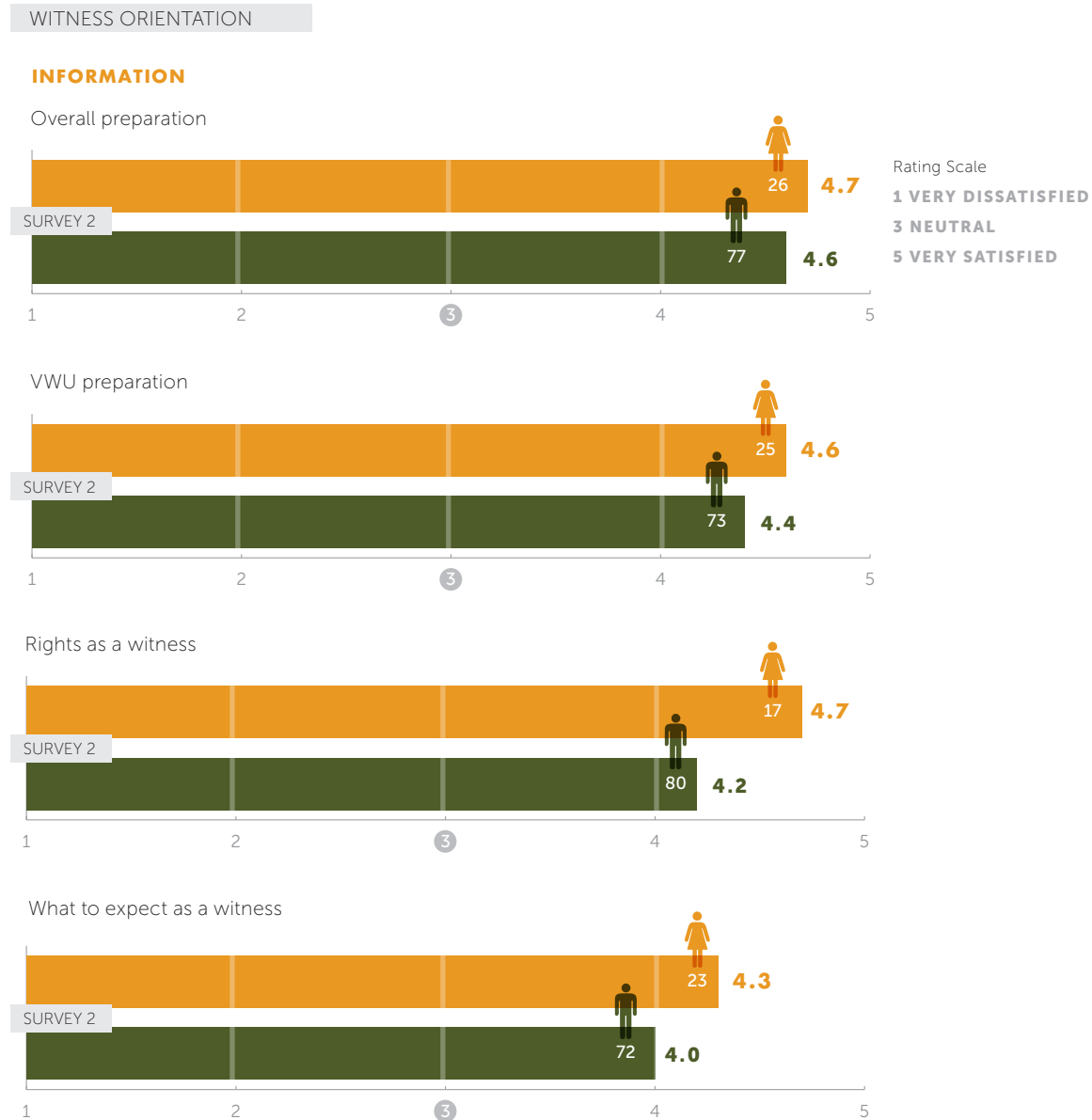
## Overall Experience

As with the earlier questionnaire, witnesses positively rated most aspects of their treatment and accommodations in The Hague, with women reporting slightly better experiences than men. The average response to all questions was greater than 4 on a scale of 1 to 5, suggesting that most witnesses felt prepared for and supported during their experience with the Court. The vast majority said that they would be willing to serve as an ICC witness again, if asked to do so.

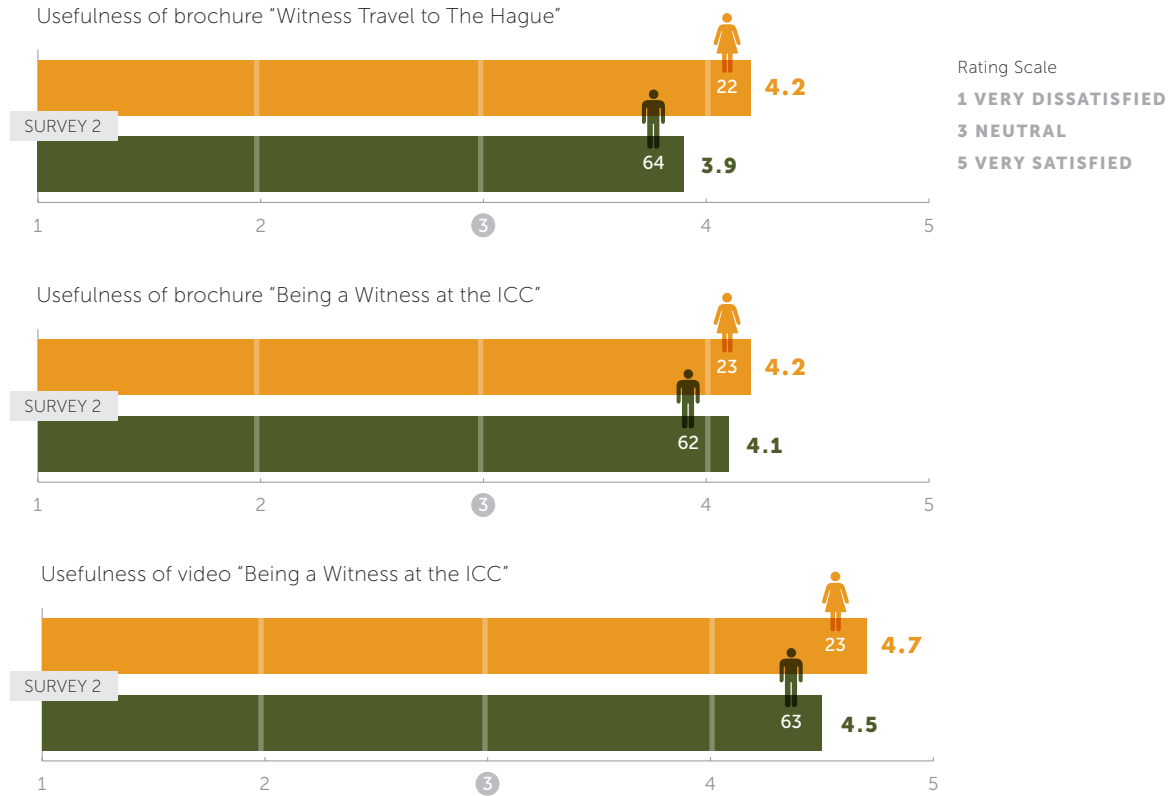


## Witness Orientation

Following their testimony, witnesses were again asked to rate their satisfaction with information provided by the VWU. Both men and women expressed even greater satisfaction with information on their rights as a witness. On average, they reported the same level of satisfaction with their preparation about what to expect.



## PREPARATION MATERIALS



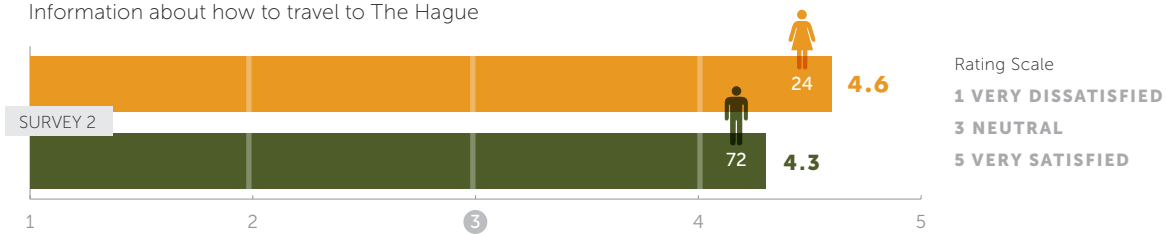
Respondents were also consistent in their evaluations of VWU preparation materials. Men and women reported slightly less satisfaction with the travel brochure after testifying, perhaps because some had not yet made the trip to The Hague when they answered the first questionnaire. More interestingly, witnesses reported slightly greater satisfaction with the video on being a witness after they appeared in court. They gave the brochure on being a witness approximately the same average scores before and after testifying. In general, women viewed the materials a bit more favorably than men.

## Travel

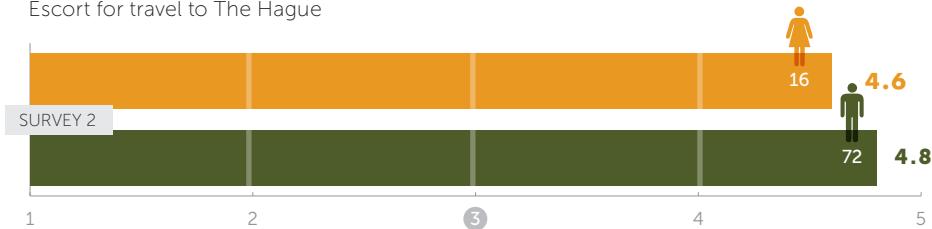
Similar to the earlier questionnaire, witnesses reported high levels of satisfaction with travel services provided by VWU staff, including their general preparation for travel to The Hague and their travel escort. Some witnesses, however, complained about logistical difficulties, including extended stays in Kinshasa, the capital of the Democratic Republic of Congo, where many witnesses experienced administrative delays, such as the processing of passports. Witnesses also complained about lost luggage and airplane food, issues largely outside the VWU's control. Women expressed less satisfaction with their travel escorts to The Hague after testifying in court. In contrast, men, on average, gave their travel escorts slightly higher marks after their testimony.

### TRAVEL

Information about how to travel to The Hague



Escort for travel to The Hague



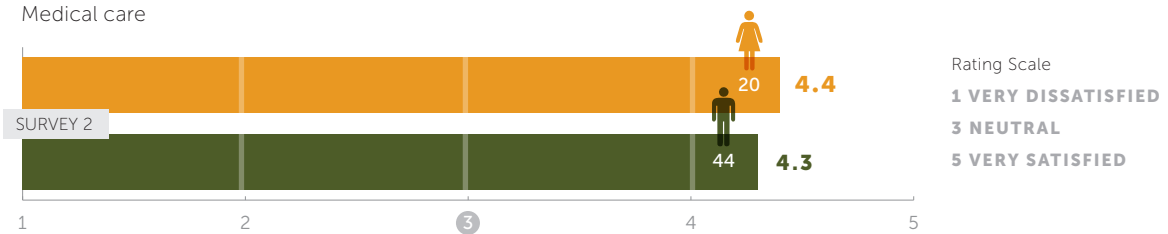
## Services in The Hague

Witness evaluations of VWU services in The Hague were also positive, indicating that most witnesses felt adequately prepared for and supported during the trial proceedings. In fact, with regard to counseling and the round-the-clock availability of VWU staff, reported satisfaction increased after witnesses' time in court. This may reflect positive feelings due to post-testimony counseling sessions or the reassurance provided by the continued availability of staff after witnesses testified.

### SERVICES IN THE HAGUE

#### SPECIALIZED SERVICES

Medical care



Counseling

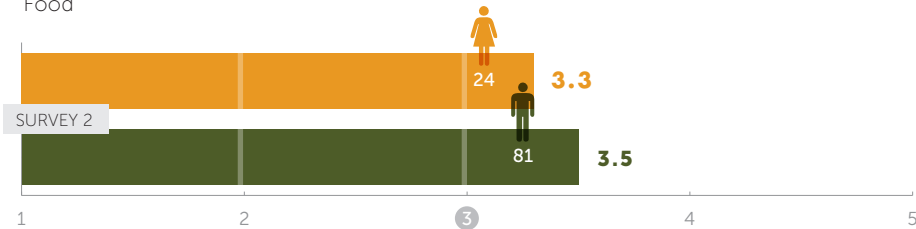


Round-the-clock availability

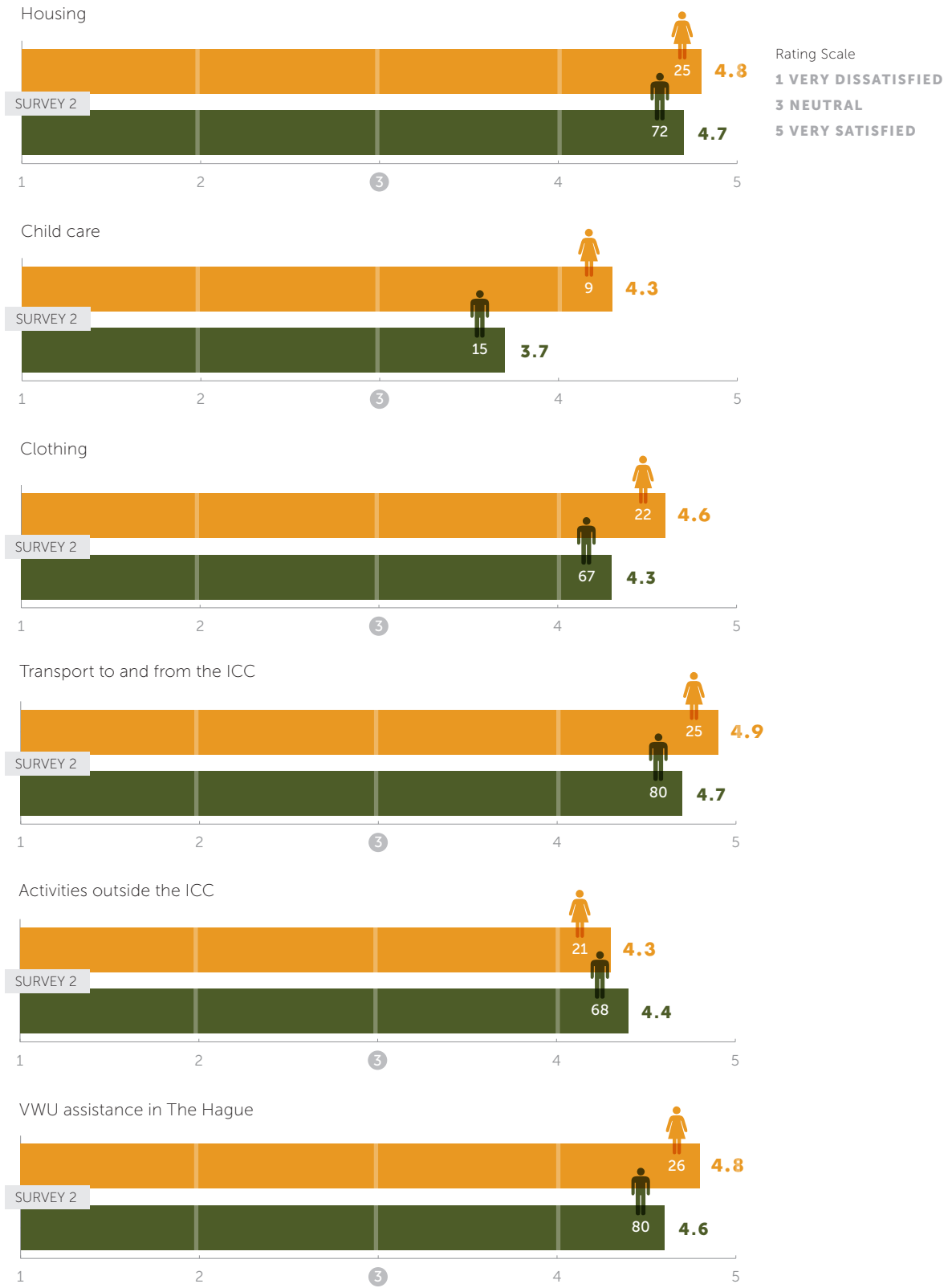


#### LOGISTICAL SERVICES

Food



**SURVEY 2**



One item of dissatisfaction was food in The Hague, although the VWU's efforts to address this issue has reportedly increased satisfaction. For example, hiring a Congolese caterer helped to assuage some witnesses' complaints. While this might seem like a relatively minor subject, for witnesses food can be a critical issue, impacting physical and psychological well-being.

A few witnesses expressed concerns about their relative lack of independence. One respondent said witnesses were treated like children, citing the fact that VWU staff accompanied witnesses even on shopping excursions, sometimes making decisions for them, such as which suitcase to purchase. However, on most measures, witnesses reported satisfaction with VWU services, including housing, clothing, transport, and recreation.

One area where overall satisfaction lagged for men was child care. However, their ratings, while lower, were still positive. In general, women reported higher satisfaction with child care provided by the VWU.

## Testimony

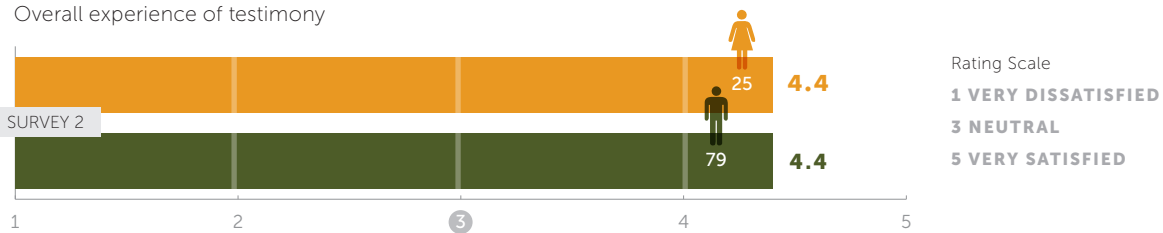
Witnesses generally reported positive experiences testifying at trial, a phenomenon frequently credited to VWU support. “I am thankful for my relationship with the support staff. Preparing me for my fears was very helpful,” a witness explained.

Most witnesses indicated an ability to understand lawyers, judges, and interpreters in the courtroom. Witnesses also reported feeling safe in the courtroom, although men reported greater feelings of insecurity than women. Female witnesses (including 8 of the 9 survivors of sexual violence) uniformly chose the highest safety rating with regard to their courtroom experience.

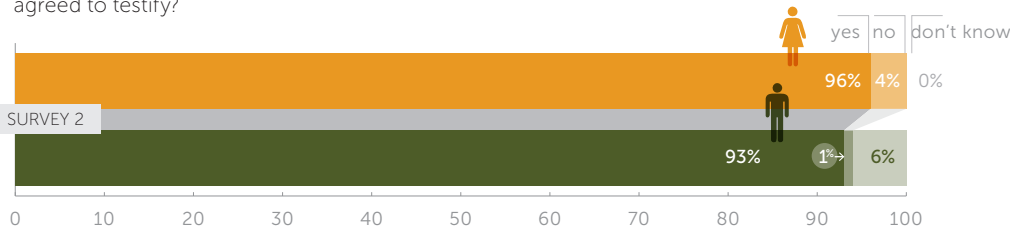
### COURTROOM EXPERIENCE

#### OVERALL

Overall experience of testimony



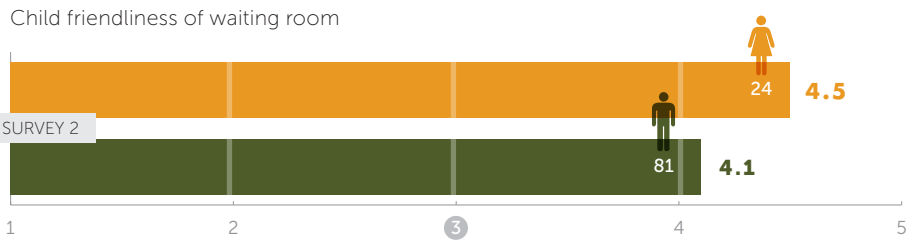
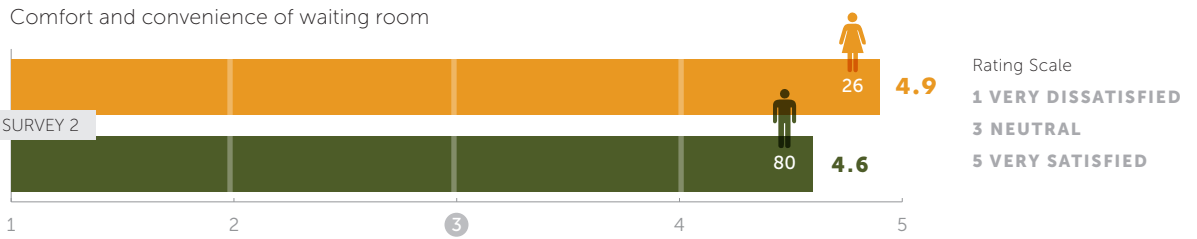
Knowing what you know, are you glad you agreed to testify?



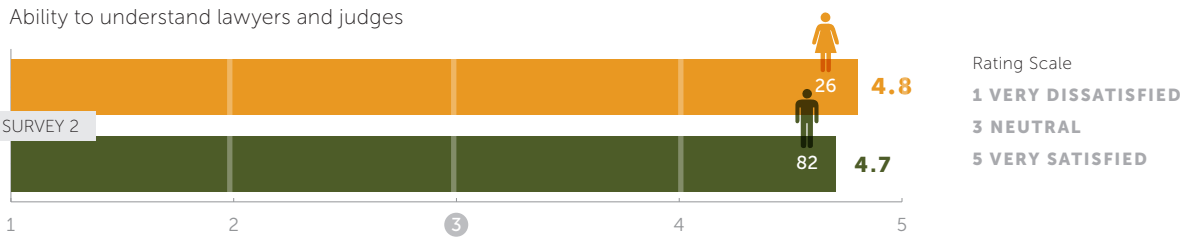
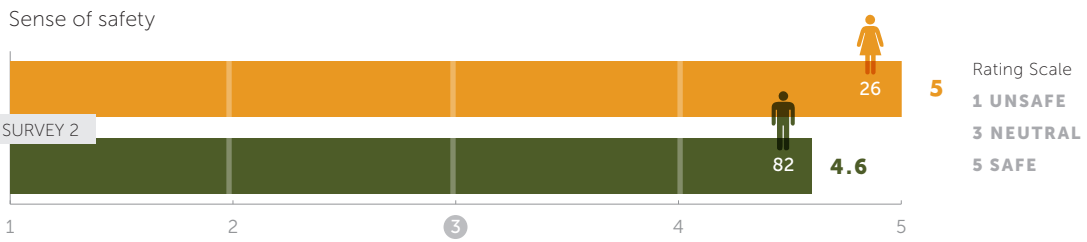
#### BEFORE

Courtroom familiarization



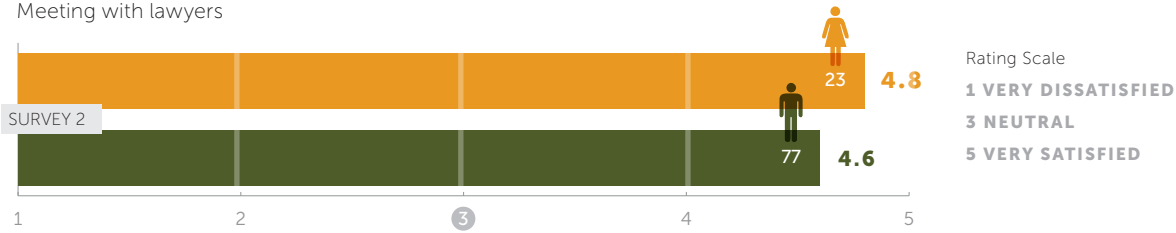


**DURING**

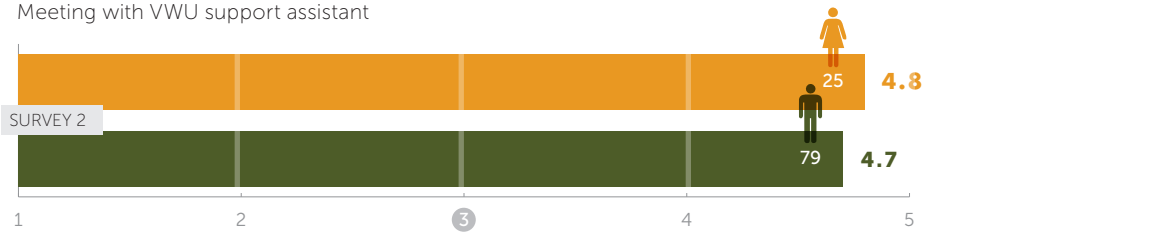


**AFTER**

Meeting with lawyers



Meeting with VWU support assistant



Many witnesses settled into their testimony after initial uneasiness. “I felt a little bit of fear at the beginning,” said one witness. “My heart was beating very fast. After a little while I calmed down and I was fine.” Similarly, another witness explained: “I was trembling. After a few moments I managed to get myself together again.” Still another witness said: “In the beginning, I felt a lot of emotions. I made an effort to overcome them in order to give my testimony.”

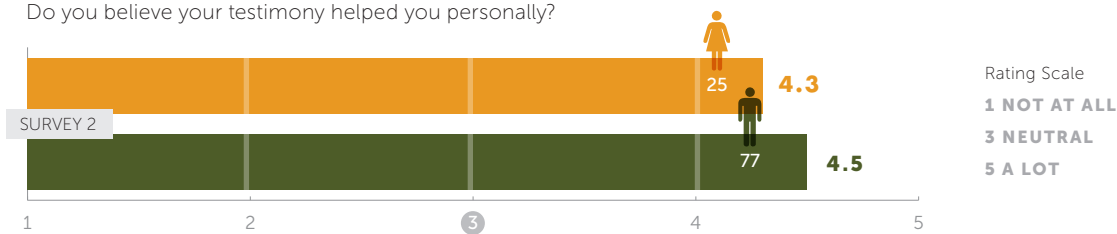
A few witnesses wished they had been able to say more during their testimony, and some did not like cross-examination. “Certain questions upset me, and I did not feel very much at ease,” explained one witness. Another noted: “I was very angry because the lawyer twists my answers around and around. That gave the impression that I am like an idiot who is not able to understand the question.”

Some witnesses reported feeling discomfort or sadness during their testimony. “Seeing the accused made me experience terrible flashbacks, and I did not feel good. It was an experience to tell the truth to him, in person,” said one witness. Another said: “I felt sadness; all the memories had come back to me.” However, for most of the witnesses, the act of testifying, while stressful, proved rewarding. One witness explained: “I was happy because I said what I wanted.”

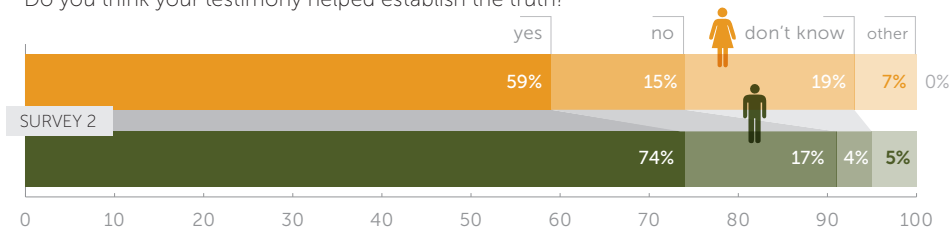
Men and women, however, viewed their testimony somewhat differently. More than 70 percent of men but only 60 percent of women believed that their testimony helped establish the truth. However, responses were similar when witnesses were asked whether they believed their testimony would help achieve justice. The responses suggest that women were more skeptical about their contributions to the case, even as they reported higher levels of satisfaction with their overall experience.

**IMPACT OF TESTIMONY:**

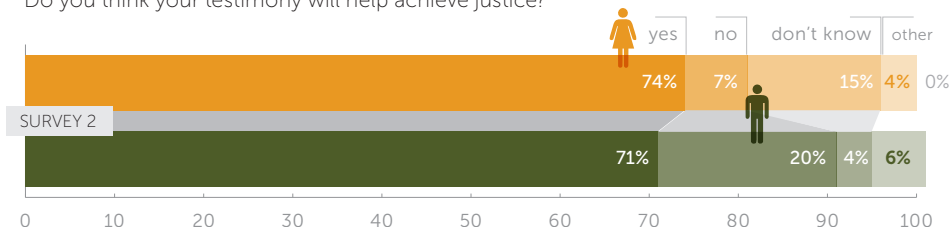
Do you believe your testimony helped you personally?



Do you think your testimony helped establish the truth?



Do you think your testimony will help achieve justice?\*



After testifying, witnesses felt conflicting emotions. Some expressed exhaustion, others relief and pride. “I felt good. The fear that I had was over,” said one witness.

For some, the fear of testifying was replaced by a fear of reprisals. “I wanted to talk with someone about my safety when I return home,” explained one witness. Others reported similar concerns: “I was worried about my security, [and] that the protective measures were not enough.” Another witness explained: “I am afraid that the accused knows me, even though he could not see me. Therefore, the security of me and my family cannot be guaranteed.”

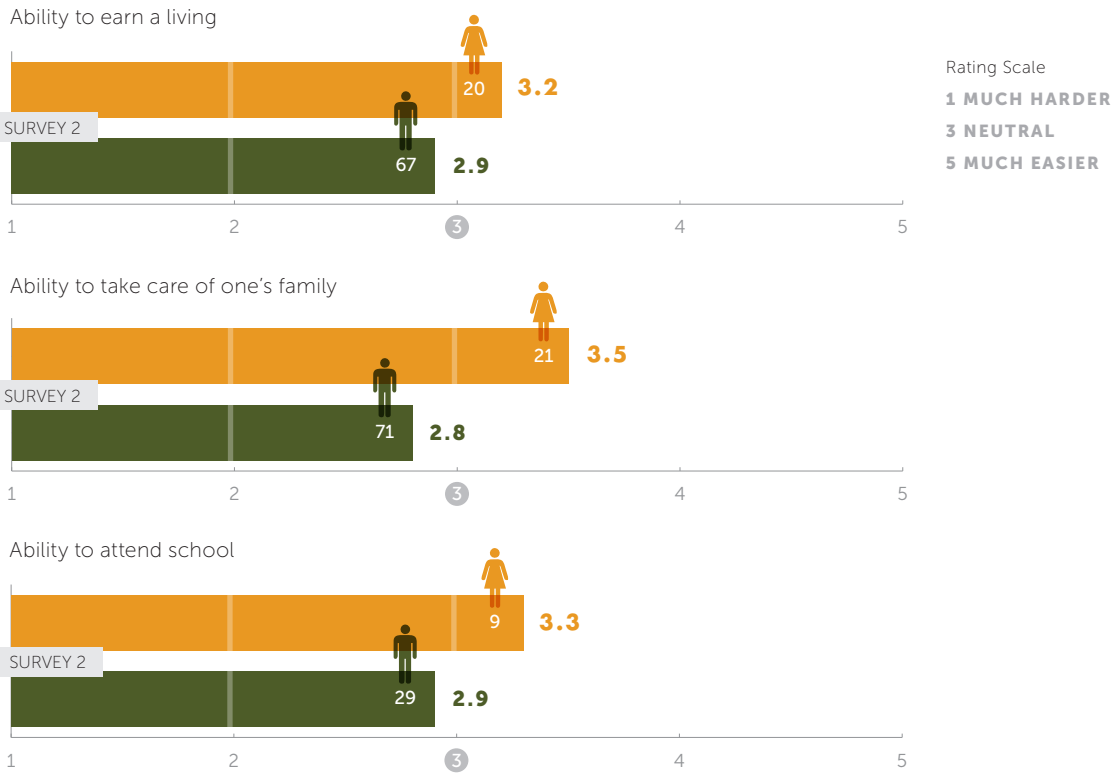
Ultimately, though, when witnesses were asked whether they believed that testifying had helped them personally, the responses were positive. “It felt like letting go of something I had been holding on to,” explained one. “I felt free and very proud that I had done my work well,” said another witness.

Still, a number of respondents voiced more sober assessments of their participation. “I am sad and bothered that after I finished my testimony, I have to return to the place where the atrocities happened,” said one witness. Another said: “Nothing has changed. My life will be the same.”

\*Some percentages add up to more than 100 percent because of rounding.

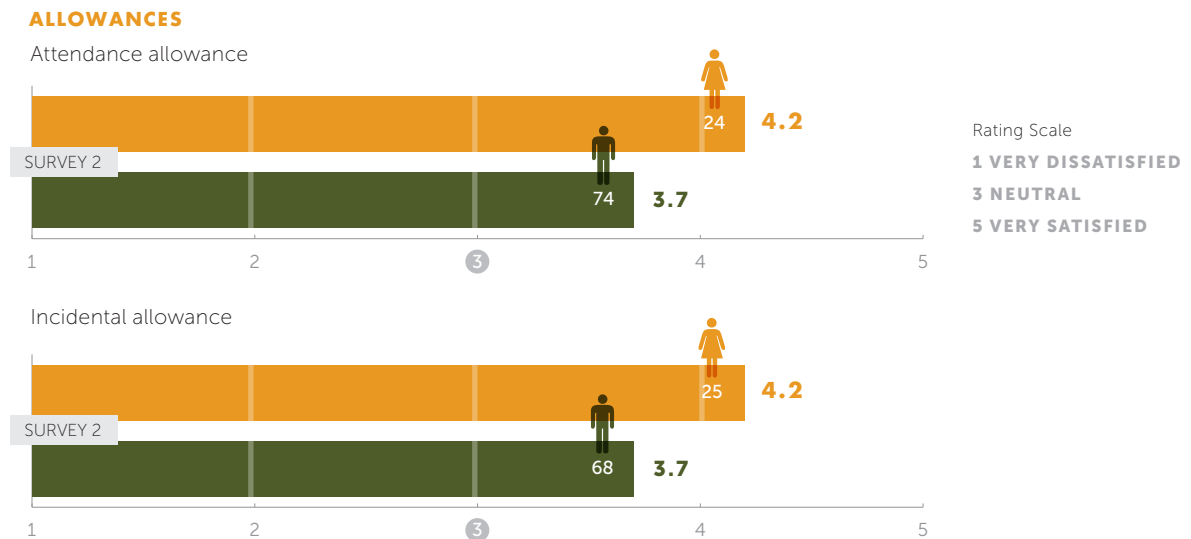
Stigma, retraumatization, or financial losses associated with testifying might negatively impact witnesses' ability to earn a living, care for family members, or attend school. Yet, on average, the survey data results show few impacts in these areas due to ICC involvement. Respondents' assessments were mostly neutral.

**IMPACT OF ICC INVOLVEMENT ON:**



## Allowances

Some witnesses again complained in the post-testimony survey about insufficient allowances. A small number reported not receiving any allowance while in The Hague. Many witnesses who did receive an allowance—especially those who were missing work to testify—felt that the amount was insufficient. Yet, despite these concerns, most witnesses reported a general degree of satisfaction with their allowances.



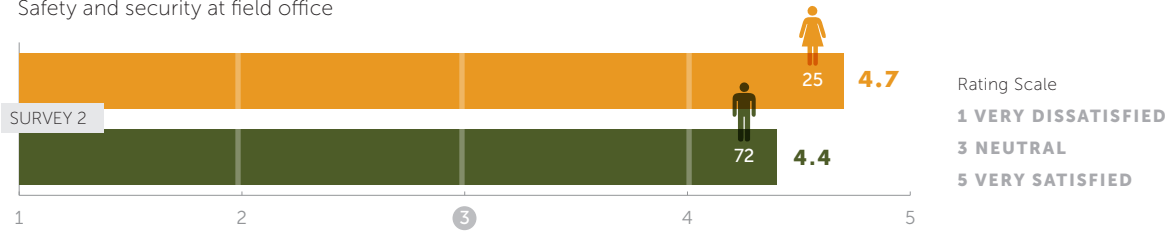
After testifying, witnesses reported slightly higher levels of satisfaction with their allowances. The average rating for women rose from 3.8 to 4.2 for attendance allowances and 3.8 to 4.2 for incidental allowances. For men, the level of satisfaction increased from 3.6 to 3.7 for attendance allowances and 3.3 to 3.7 for incidental allowances. This slightly higher level of satisfaction suggests that witnesses felt more positive about their allowances, and any financial losses due to testifying, after speaking at trial. The experience of appearing in court may have assuaged some of their financial grievances.

## Security

In the immediate post-testimony survey, witnesses again answered questions about their perceived safety in their home country prior to trial and in The Hague. Overall, they reported high levels of satisfaction, with women reporting slightly higher ratings, especially with regard to VWU services. Witnesses also reported feeling relatively safe during their preparation for and testimony in The Hague.

### SECURITY

Safety and security at field office



Overall safety



However, witnesses were more concerned with their safety once they returned home or were resettled. “Now that I have completed my testimony, I hope the ICC does not abandon us,” said one witness. Another noted: “Now, after my testimony, I will have a bigger need of protection.” Yet another witness predicted: “My life will look like the life of somebody who has enemies.” Thus, the issue of long-term witness protection loomed large for several respondents.

## LONG-TERM POST-TESTIMONY

---

**THE LONG-TERM POST-TESTIMONY SURVEY PROVIDED AN OPPORTUNITY** to solicit the views of witnesses after a longer period of reflection. While VWU staff report that most witnesses who were asked to participate in the long-term survey did so, as noted earlier, only a subset of witnesses from the *Lubanga* trial has participated in this survey at the time this analysis was conducted. Some witnesses were never approached due to unsafe conditions, distance, inaccessible roads, or concerns that contact would expose them to increased security risks. Thus, only a fraction of the total population of witnesses from the *Lubanga* trial answered the third questionnaire, reflecting a bias in favor of witnesses living in relatively stable places and in closer proximity to the VWU field office.<sup>24</sup> Because our knowledge of the long-term experiences of witnesses comes from this select group, we do not claim to understand the experiences of all witnesses in these cases, nor can we directly compare these responses to the results in previous sections.

Respondents again rated their experiences on a five-point Likert scale, from 1 (very dissatisfied) to 5 (very satisfied), and answered open-ended questions designed to elicit more detail about their responses. For each question, witnesses had the option to select “Not Applicable,” which enabled the survey to capture impressions about particular forms of support—for example, child-care services—without requiring an answer from those who did not utilize that type of support.

For those individuals who were contacted and did respond, their overall impression of the VWU, and the Court more generally, remained favorable. All but one of the respondents were from the Democratic Republic of Congo, and all but two were men. Most respondents had used protective measures to hide their identities. Ages ranged from 18 to more than 60 years of age. Respondents included no experts or known sexual violence survivors.

The graphic on the following page illustrates the population of respondents representing this third time point. The subsequent pages show responses to the survey questions. The numbers inside each bar graph indicate how many individuals answered that question.

---

<sup>24</sup> The ability to acquire data on long-term witness outcomes may be even more limited in other contexts. For example, the ICC has closed field offices in the Central African Republic due to deteriorating security, and therefore witnesses in the case of *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC, 01/05-01/08—and any other case specific to the Central African Republic—may not have an opportunity to complete the long-term post-testimony survey.

**SURVEY 3** LONG-TERM POST-TESTIMONY

**32** TOTAL WITNESSES

NATIONALITY & SEX DISTRIBUTION

WOMEN 2 30 MEN

DEMOCRATIC REPUBLIC OF CONGO (1/30)



CENTRAL AFRICAN REPUBLIC (NONE)



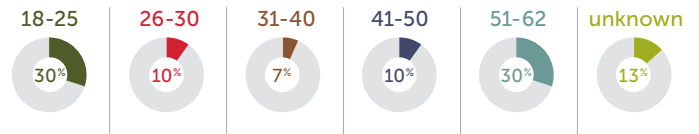
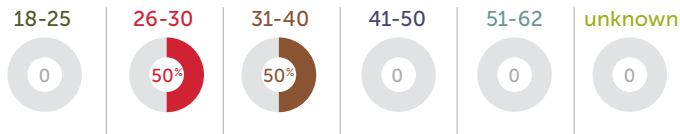
UNKNOWN (NONE)



FRANCE (1/0)



AGE DISTRIBUTION (in years)



SPECIALIZED WITNESSES

0 15

EXPERT (NONE)

INSIDER (0/11)



CHILD (0/2)



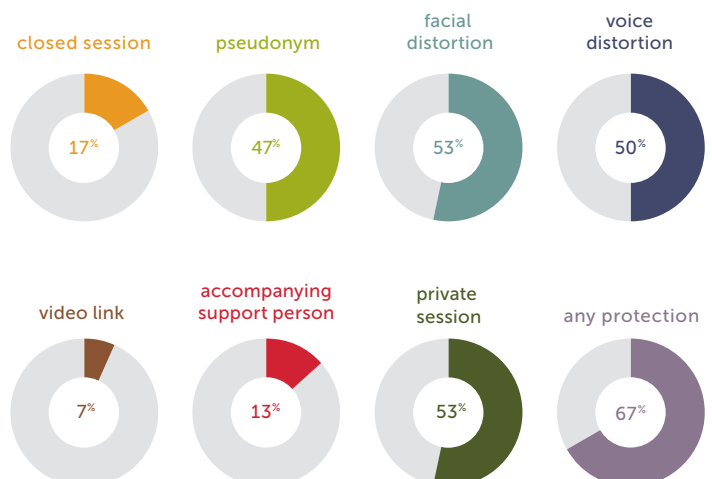
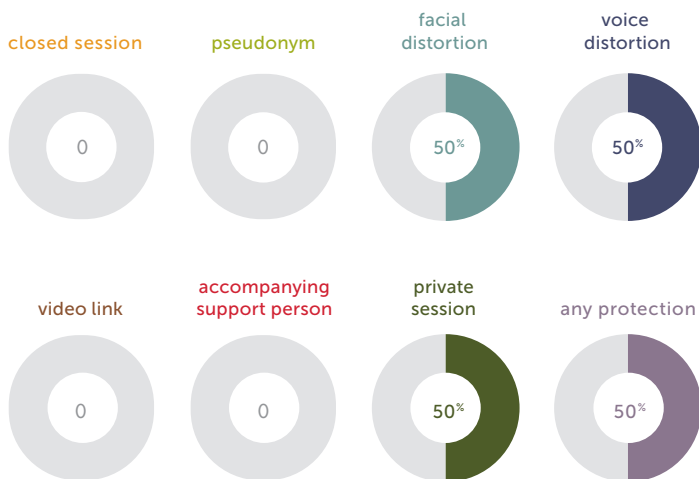
ELDERLY (0/2)



DISABLED (NONE)

SEXUAL VIOLENCE SURVIVOR (NONE)

PROTECTIVE MEASURES USED



## Overall Experience

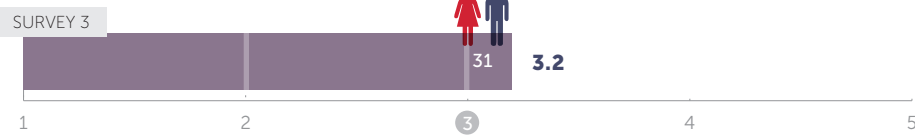
Most of the 32 witnesses who participated in the long-term survey reported satisfaction with their overall court experience. While witnesses' overall impressions about their experiences with the court were positive, their assessments of their post-testimony relationships with the Court were considerably more neutral. Due to the limited number of women respondents (N=2), we do not break down the survey results by sex in this section.

### OVERALL EXPERIENCE



### SURVEY 3

Has the ICC met your expectations since you finished testifying?



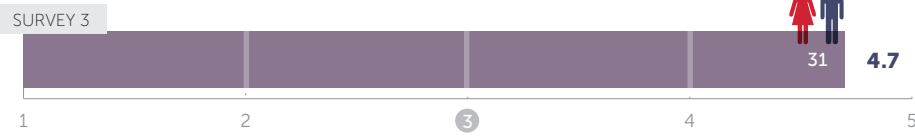
Rating Scale

**1 VERY DISSATISFIED**

**3 NEUTRAL**

**5 VERY SATISFIED**

Do you feel you accomplished what you set out to do?



Rating Scale

**1 NOT AT ALL**

**3 NEUTRAL**

**5 A LOT**

## Travel

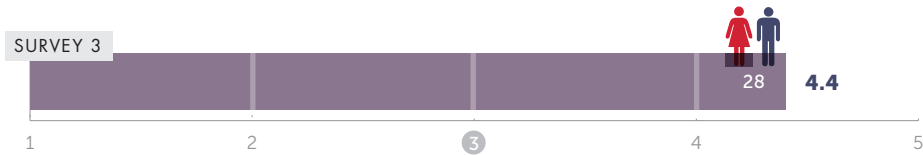
Witness assessments of travel remained positive, even after returning home. Respondents reported a general satisfaction with both the information they received about their journey home and also the convenience of the scheduled travel.

### TRAVEL

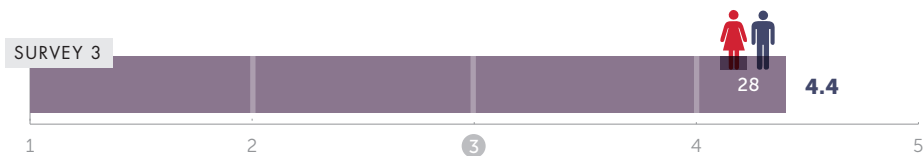
Overall experience with journey home



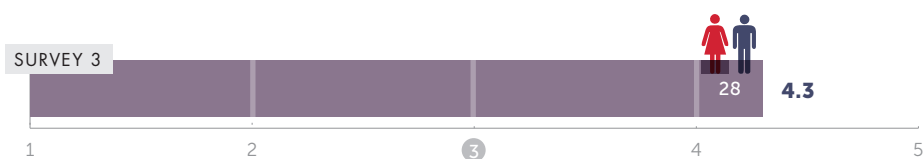
Information provided to you about your journey home



Information provided to you about safety during your journey home



Convenience of travel schedule



## Testimony

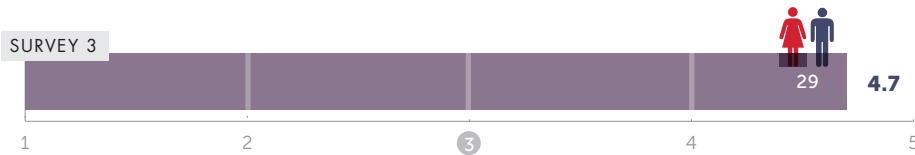
Respondents reported that their testimony served a number of purposes: establishing the truth, helping to achieve justice, and benefitting themselves. These positive ratings stand in some tension with the conflicting responses given by witnesses to open-ended questions in the second questionnaire, suggesting that witnesses may come to view their participation and impact more positively with time, or that the select witnesses able to participate in the long-term survey hold more positive views.

### ASSESSMENT OF TESTIMONY

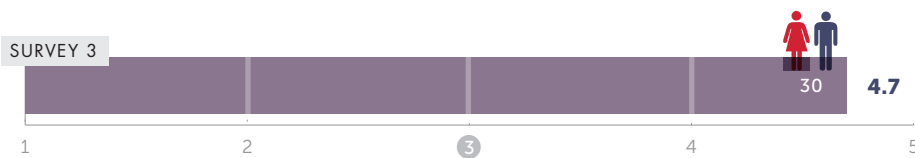
Do you think your testimony helped you personally?



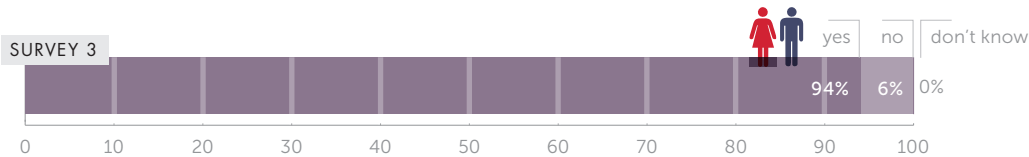
Do you think your testimony helped establish the truth?



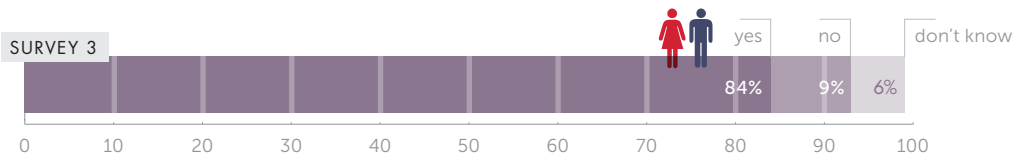
Do you think your testimony helped achieve justice?



Knowing what you know now, are you glad you agreed to testify?



If called on by the ICC, would you be a witness again?



## Consequences of Being a Witness

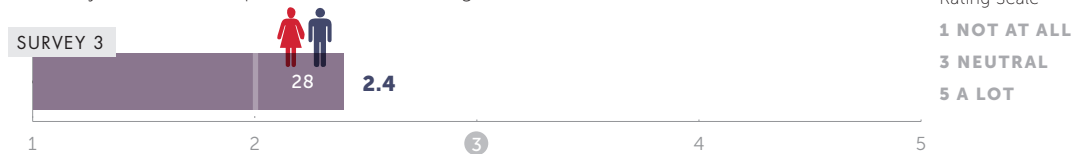
Witnesses reported little support from relatives or their community, which is notable. However, it is unclear how to interpret these findings. Witnesses may have elected to hide their participation in trials from family, friends, or other community members.

Most did not report direct negative repercussions after testifying, such as threats or changed relationships, which suggests that they may have kept their cooperation with the Court secret. Also, witnesses from more remote or dangerous regions were less likely to participate in this survey, so the lack of reported violence cannot be taken to indicate that no witnesses have suffered repercussions.

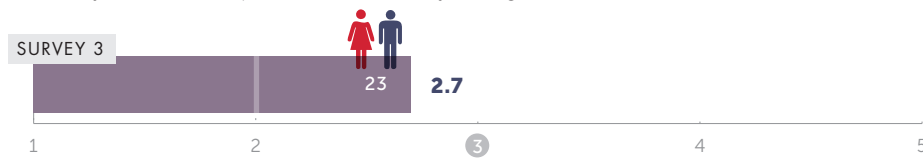
The broader impact of testimony on the lives of respondents was minimal. Few respondents reported negative health effects. Effects on witnesses' schooling and their children's schooling were on average neutral or slightly better than neutral, perhaps due to VWU assistance. A few witnesses did indicate that their financial situation had worsened after testifying.

### LONG-TERM CONSEQUENCES OF BEING A WITNESS

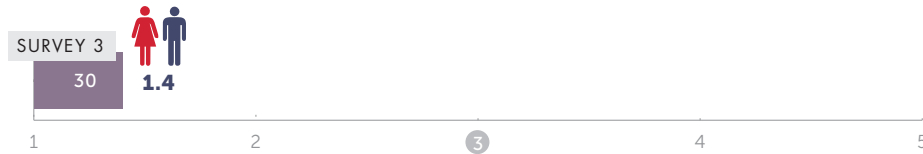
Have your relationships with relatives changed?



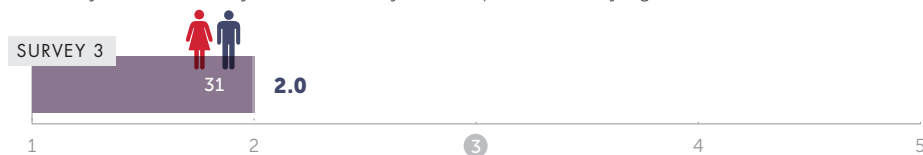
Have you relationships in the community changed?



Have you had any health problems related to your testimony?

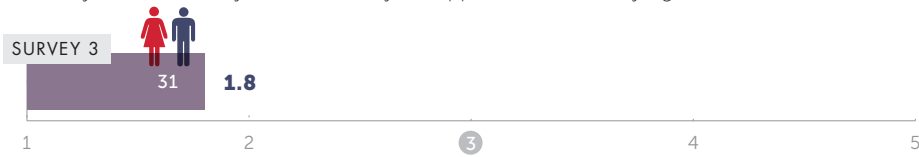


Have you noticed any difference in your sleep since testifying?



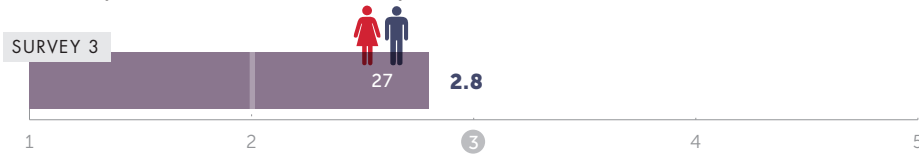
### SURVEY 3

Have you noticed any difference in your appetite since testifying?

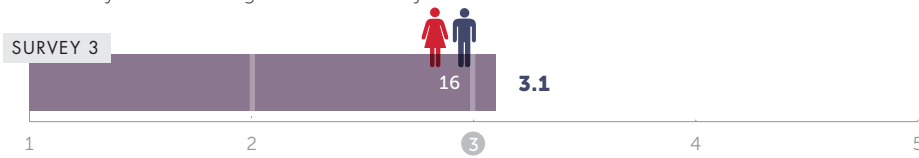


Rating Scale  
**1 MUCH WORSE**  
**3 NEUTRAL**  
**5 MUCH BETTER**

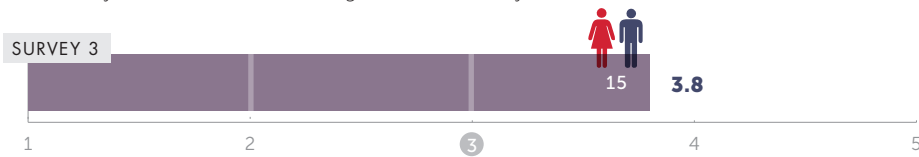
How is your financial situation since you testified?



How is your schooling situation since you became a witness?



How is your children's schooling situation since you became a witness?



## Security

When witnesses return home, services are provided as needed to ensure their security. ICC staff have confirmed that some witnesses have used these services, but due to the need to safeguard confidentiality, VWU staff did not disclose details regarding frequency of use or the demographic specifics of the population that has sought such assistance. Most respondents reported a high level of satisfaction with their security, even though the data indicate that some witnesses or their families had experienced threats post-testimony.



It is tempting to compare these results to those of the previous section and conclude that witnesses, on average, feel similarly about their experience after they have returned home. However, given the limited number of witnesses who took the long-term post-testimony survey, and the lack of representation from witnesses in some of the most vulnerable categories—including survivors of sexual violence and residents of the Central African Republic—additional research is needed to more fully evaluate long-term witness protection mechanisms in national contexts.





## CONCLUSIONS AND RECOMMENDATIONS

---

### CONCLUSIONS

This study provides the first systematic glimpse into the world of witnesses who have appeared before the International Criminal Court. But it is only a glimpse. We have much more to learn about witness experiences, and it is our hope that the ICC will use this study as a baseline for future studies with the aim of making the process of testifying in war crimes trials as safe, respectful, and dignified an experience as possible.

Main conclusions are as follows:

1. *Witness perceptions of VWU services are largely positive.* The survey data indicate that witnesses' assessments of VWU services and of witnesses' interactions with the Court were generally positive. Many of the complaints raised by witnesses concerned factors beyond the control of VWU staff, such as problems with airlines or changes to the Court schedule. Some witnesses expressed concerns about the financial burdens of testifying, and many requested more generous stipends to compensate for lost wages.
2. *Witnesses feel a duty to testify.* Witnesses said they testified for a number of reasons. Some wanted the Court to hear their accounts of the facts. Others wanted to confront the accused face-to-face. Still others wanted an opportunity to tell their story. Most had survived horrific crimes that had resulted in the deaths of others and felt it was their "moral duty" to ensure that the killing of family members, neighbors, and colleagues was recorded and acknowledged.
3. *Witness orientation is critical for witness well-being.* The survey data suggest that pre-trial witness orientation (the sharing of information about what to expect with regard to travel to The Hague, housing during the trial, support services, protection measures, the layout of the courtroom, and those who will be present during trial, etc.) is critical for the well-being of witnesses who participate in court proceedings. This finding is significant for two reasons. First, most witnesses had no prior experience with courts, either at home or abroad. Witness orientation mitigated anxieties and provided a relatively clear road map of what to expect before and after testifying. Second, as the vast majority of witnesses who testified in the *Lubanga* and *Katanga* trials used some form of protective measure (pseudonyms and facial and/or voice distortion), it is highly likely they entered the courtroom with a heightened sense of anxiety. Witnesses may feel more in control if they have a strong grasp of the layout of the courtroom, who the principal actors are, and how the proceedings will evolve.
4. *Witness expectations of what the ICC can provide during the post-trial phase must be tempered.* Most respondents indicated a high level of satisfaction with VWU-related information and

services. However, some witnesses expressed concerns about broken promises post-testimony, such as the ICC failing to pay for medical procedures or school fees. Since such services are beyond the ICC's remit, it is important that witnesses are informed of exactly what the Court can and cannot provide in the post-trial phase.

5. *Witnesses are relatively satisfied with safety and security procedures, but such measures need to be routinely monitored and, when necessary, strengthened to respond to changing conditions on the ground.* Respondents reported high levels of satisfaction with security, with women reporting slightly higher ratings than men. Of particular note: Witnesses reported feeling safe both prior to and during their testimony, suggesting that most felt the security protections put in place by the VWU were effective. That said, the VWU will need to be adequately funded and staffed to monitor the safety of witnesses in the months and years following trials. This need will continue to grow as the ICC's caseload expands and increasing numbers of witnesses testify in ICC trials.
6. *Female witnesses gave slightly more positive ratings to their overall experience interacting with the Court than men.* This could be due to several factors. Women who testified may have had a somewhat different experience than men, either because their expectations were different or because VWU staff treated them differently. Women may have also been less comfortable expressing negative reactions than men. However, it's also possible that only women from relatively stable situations were able to travel to The Hague to testify, which could correlate with more positive feelings. In particular, women reported receiving more support from their family and friends than did men. These differences suggest that women may only have been able to testify if they had a relatively high degree of external support.
7. *Female witnesses were less likely than male witnesses to report that their testimony helped establish the truth.* Only 60 percent of women answered "yes" when asked whether they thought their testimony helped establish the truth or would help achieve justice, as compared with fewer than 80 percent of men. Further research into this disparity—as well as why both percentages aren't higher and how both percentages could be improved—would be helpful to find ways to improve witnesses' sense of their own efficacy.
8. *Most witnesses said they personally benefited from the experience of testifying and, if asked, would testify again.* Despite witnesses' relative doubt as to whether their testimony helped establish the truth or achieve justice, when asked soon after testifying whether their testimony helped them personally, both men and women indicated that it had. While encouraging, such positive assertions must be viewed with caution. It is extremely difficult to make general statements about how testifying will affect witnesses, especially survivors of mass atrocity, months or even years after the event. Long-term psychological responses to trauma, reactions to future stressors, and means of coping with old and new pressures can vary from individual to individual and change within an individual over time. Some witnesses who expressed feeling positive after testifying may come to have a different opinion if an accused is found not guilty or is given a short sentence. Moreover, the survey data from the third time point (six to twelve months post-testimony) is too limited to draw firm conclusions about how respondents viewed the impact of their testimony once they returned home or were resettled.

**RECOMMENDATIONS**

Based on our findings, we offer the following recommendations:

**To the Victims and Witnesses Unit:**

1. *Increase communication with witnesses about travel.* Some of the most negative comments from witnesses related to their experiences with travel. Many issues, such as lost luggage and a general dislike of airline food, are clearly beyond the control of VWU staff. Others, such as repeated last-minute changes to schedules may be related to ICC decisions, but still beyond the control of the VWU. VWU staff should work to ensure that travel plans are made and communicated with witnesses as far in advance as feasible. More broadly, VWU staff should communicate with witnesses in advance about possible issues that may arise, such as changes to plans, potential delays in transit (for example, delays in urban centers before leaving for The Hague), as well as standard logistical issues that can arise with air travel, such as limited food choices and flight delays.
2. *Ensure promised allowances are paid.* Several witnesses indicated not receiving promised allowances, particularly when stuck in Kinshasa, the capital of the Democratic Republic of Congo. This indicates possible failures of communication about allowances or delays in payment, both of which should be investigated and rectified as appropriate.
3. *Investigate promised services.* Some witnesses indicated that promised medical services or school fee payments had not been provided, either for the witness or the witness's children. We recommend that the VWU investigate cases where witnesses state promised services have not been provided to ensure that no inappropriate assurances are being made.
4. *Revisit the survey questionnaires and revise to both clarify questions and collect additional data, such as feelings about future safety.* VWU staff explained that some questions have been difficult for witnesses to answer. Such questions should be clarified or eliminated, as appropriate. Most survey questions probe witnesses about their experience with testimony and at the courthouse, including their feelings of safety in the courtroom. These received generally positive ratings. However, in response to the open-ended questions, some witnesses described fearing for their safety upon their return home. This issue should be explicitly addressed. In particular, we suggest asking witnesses about their feelings about future security in the quantitative section of the long-term post-testimony questionnaire. Revised questions might also gather information on a wider array of services, including specialized psychosocial support.
5. *Identify individuals' experiences over time.* If possible, the VWU should track individuals across all three time points and note what factors, if any, are associated with changes in witnesses' perceptions of their experiences. Currently, due to concerns about witness confidentiality, we could not track changes in individual witness experiences and impressions across the three time points.

6. *Create a separate evaluation for witnesses in the ICC protection program.* We endorse the existing plan to have the protection subunit develop a separate evaluation for witnesses in the ICC protection program, since such witnesses' experiences differ from those of witnesses who are not in the program. This will help to ensure that each witness is questioned about issues that most pertain to his or her specific interactions with the court. It will also enable a more fine-tuned understanding of perceptions of the court and its various subunits.
7. *Continue to survey witnesses as verdicts are reached.* Each country, each atrocity, and each victim is unique. So far, long-term data is only available on a subset of witnesses from the *Lubanga* trial, which ended in a guilty verdict. To assess whether long-term feelings about participation are affected by case outcomes, it is important to assess witness experiences in cases with different verdicts. Additionally, witnesses in other ICC trials will come to the Court from different backgrounds, having experienced different crimes, and with different expectations than the witnesses surveyed so far. It is important for the ICC to continue its assessment of service provision as witnesses from different backgrounds travel to The Hague to participate in trials—both for an understanding of the VWU's efficacy and for a better understanding of the experiences of witnesses in international criminal proceedings more generally.
8. *Further assess the experiences of female victims.* Additional research is needed into the experiences of female victims of mass atrocity who testify before the ICC and other international tribunals. The survey data indicate that women are participating in the trials at rates far lower than men. It is important to assess why this is, specifically identifying what factors contribute to a woman's ability to testify in international criminal proceedings and what can be done to improve access. Are investigators seeking out female witnesses at lower rates, or are women unable or unwilling to testify for other reasons? What is needed to enable more women to participate in international criminal proceedings?
9. *Further assess witnesses' long-term needs.* Further research is needed into the long-term needs of witnesses. Many victims return from their testimony to extraordinarily challenging circumstances. Unfortunately, we have the least long-term information about those witnesses who return to the most remote and/or insecure regions. Additional investigation into the needs of these particularly vulnerable populations is recommended.

**To the Assembly of States Parties and Other Funders:**

1. *Adequately fund witness services.* Our study found that the VWU is fulfilling its mission to facilitate the court appearance of witnesses in a highly effective and professional manner. That said, the VWU will undoubtedly face greater challenges as more cases land on the Court's docket and the volume of witnesses increases proportionately. In particular, the VWU must be adequately funded to respond to breaches in witness protection and to develop sufficient operating procedures and training to mitigate the likelihood of witness abuse. Allegations of prosecution witness intimidation in the *Kenyatta* and *Ruto* cases in late 2013 underscore this need, as do allegations of the sexual assault of four victims under ICC protection in DRC in 2013 (see Appendix A for an independent public report summarizing findings regarding the functioning and complicity of the VWU with regards to the sexual assault allegations). Moreover, the widespread use of protective measures in those cases that have already gone to trial highlight the perceived risks involved in testifying. Fully 80 percent of the female respondents in our study testified using pseudonyms and facial and voice distortions, as did more than 60 percent of men. This also raises issues integral to the accused's right to a fair trial. Importantly, however, increased funding should not just go to protection services; our study underscores the critical need to also adequately fund support services, so that witnesses' generally positive experiences with that subunit can be maintained.
2. *Increase resources for long-term witness follow-up.* The ICC and its supporters should increase resources to follow up with witnesses once they have returned to their home country. While surveying individuals who live a great distance from urban centers may be expensive and time-consuming, many of the potential life changes that can result from testifying are most likely to occur after a witness returns home. This may include threats, assaults, or changes in relationship or job status. Further, ICC staff report that witnesses who are contacted often readily agree to answer their post-testimony questions, indicating a desire on the part of witnesses to share their experiences. Ultimately, long-term follow-up is essential to thoroughly assess witnesses' experiences with the Court, and such follow up is strongly recommended when unlikely to put witnesses at increased risk.



### **INDEPENDENT REVIEW TEAM PUBLIC REPORT POST**

*Incident Review of Allegations of Sexual Assault of Four Victims  
Under the Protection of the International Criminal Court  
in the Democratic Republic of Congo by a Staff Member of the Court*

#### **Review Team:**

Brenda J. Hollis, Chair

Berit Bachen Dahle, member

Nigel Verrill, member

Judith Brand, member

#### Independent Review Team Public Report

The Registrar of the International Criminal Court established an independent and external post-incident review of the allegations of sexual assault of four victims who were witnesses under the protection of the International Criminal Court by a staff member of the Court. The purpose of the Review was fourfold: to establish all facts and circumstances surrounding the allegations of sexual crimes against witnesses; to identify all responsible individuals, including those responsible for exercising managerial oversight to the suspected person(s) and the relevant units/offices/sections responsible for the Court's victim and witness protection systems; to establish all facts and provide a documented analysis of the nature and sufficiency of the Court's Response to the allegations; and to provide an analysis of any institutional short-comings in the Court's existing victim and witness protection systems. The Registrar established a four member Review team which has now concluded its work and submitted a written and oral report to the Registrar. The Review team hereby submits a public version of its Report to the President, Assembly of States Parties. The Review team carried out its duties consistent with above-stated purpose. The Report is based on the Review team's assessment of what the Review team determined to be relevant and credible information gleaned from interviews with various individuals inside and outside the International Criminal Court and from its analysis of the documents the team determined to be relevant and credible. The Review team's analysis, findings and recommendations in respect of purpose 1 through 4 are summarized below. In relation to the facts and circumstances surrounding the alleged sexual crimes against four victim witnesses by a staff member of the Court, with one exception, relating to the potential criminal liability of IRS police officers, the Review team agrees with the findings and conclusions of the Preliminary Investigation Officer. The Review team commends the Investigating Officer for his excellent report.

In relation to individual responsibility for the alleged crimes, we note there can be no doubt that one person, and one person alone, would bear criminal responsibility for the alleged crimes if proven—the alleged perpetrator. Other VWU staff have likely engaged in inappropriate conduct that could provide a basis for disciplinary action if they remained members of the ICC VWU. Still others have, in the view of the Review team, failed the VWU and the Registry in the manner in which they have carried out, or failed to carry out, their supervisory, oversight and senior management duties. It must be clearly understood that neither VWU staff nor senior managers within the Registry caused the alleged perpetrator to engage in the alleged criminal conduct. That was his choice alone. However, relevant and credible information suggests that the chronic and pervasive structural and functional shortcomings of the VWU contributed significantly to the alleged perpetrator's ability to carry out the alleged criminal conduct over a prolonged period of time. These shortcomings contributed to the ease with which the perpetrator was able to engage in the alleged crimes. The shortcomings were evidenced at the level of the Field Witness Officer of the DRC VWU Field Office and at supervisory levels within HQ VWU. In addition, senior Registry management failed in their responsibility to ensure the effective and efficient functioning of the VWU, including providing sufficient resources and budget and ensuring high level VWU managers had the appropriate experience, skill sets and senior management support. The Review team has concluded that, with one exception—the Field Witness Officer, DRC VWU Field Office—there is no information to indicate the failures on the part of supervisors and managers were ill motivated or ill intended. The Review team also wishes to note that the Review has made clear there are a significant number of dedicated VWU staff and supervisors who have worked valiantly to advance the mandate of the VWU despite the pervasive structural and functional short-comings evident in the Unit. The Review team commends them for jobs well done.

The adequacy of the VWU response to the allegations of sexual assault was mixed. The DRC field staff took timely and appropriate action once they became aware of the first and subsequent allegations, including immediately notifying HQ. The HQ response, however, did not seem to comport with the seriousness of these allegations of sexual assault committed by a VWU staff member—the most serious type of allegation such an organization could face. There seemed to be confusion at the HQ level as to who was responsible for dealing with the matter and a reluctance to take ownership of it. As a result an informed, considered, coordinated and timely HQ response was lacking. Other unfortunate results were, first, the field staff dealing with the matter received little or no guidance, their requests for guidance went unanswered or the answers were delayed, and they did not know to whom to turn for answers, and, second, no preliminary investigation into these potentially criminal allegations was conducted until April 2013. The HQ response was also ad hoc and delayed in relation to the needs of the alleged victims. Responses to their needs were not coordinated within the VWU.

The allegations triggered one important procedural change in the field, however. The directive was given/reinforced that at least two VWU staff members must be present at all visits with victims, witnesses, protected persons. And, if the visit was with a female victim, witness or protected person, at least one female staff member was to be present. However, this safeguard which protects both the persons visited and the VWU staff members, was implemented only sporadically because of staff shortages.

In relation to institutional short-comings of the existing VWU systems, they encompass the whole of the structure and functioning of the VWU, and require prompt attention to ensure the well being of both the persons whom the VWU is mandated to protect, support and assist, and also of the VWU staff, who feel alienated, isolated and unappreciated in the current dysfunctional VWU environment.

**The short-comings include, but are not limited to:**

- a dysfunctional, “stovepipe” structure that does not conform to the intertwined nature of the mandate of the Unit to protect, support and assist;
- a recruitment process which many believe is based on friendship, not on the requisite experience and skill sets, and which does not appear to give adequate consideration to
- the dynamics of the situations in the countries from which the applicants come who will have direct contact with VWU “clients”; or in the countries to which they will be assigned, or
  - the significance of applicants and VWU “clients” coming from the same locale, or
  - the negative reputation of certain groups such as police among civilian populations, or
  - the added significance of proper vetting given these dynamics;
- training which is ad hoc and which does not emphasize the consequences of victimization and trauma for the structure and functioning of the VWU;
- the absence of clear, concise, comprehensive SOPs or other guidance for the day to day functioning of the Unit, in a form that is easily understood, accompanied by training focused on the implementation of the guidance;
- the lack of an effective supervisory and monitoring regimen based on “intrusive supervision”<sup>1</sup> as opposed to passive supervision which allows personnel to build up their own ‘fiefdoms” and exercise unwarranted and sometimes unprincipled control over their staff;
- the lack of clear reporting lines and mandatory reporting which is subject to monitoring and audit;
- the cultivation of an environment where there is little or no information sharing, and what is shared is based on the personalities involved, not the system, resulting in an ability to hide or “hoard” information;
- the lack of a safe and effective complaints system which is understood and accessible by staff and “clients” alike;
- a protection program which is not well planned, implemented or organized, and which lacks consistency.

The short-comings are institutional and chronic and require considered and timely corrective action.

---

<sup>1</sup> By this term the Review team means supervision whereby the supervisor gets close to the work of the subordinates, interrogates systems, meets with witnesses and challenges subordinates. Intrusive supervision is contrasted to superficial supervision, i.e., making phone calls to subordinates to check on situations or wellbeing, completing appraisals, being reactive to issues.



**ARTICLES AND RULES RELEVANT TO WITNESSES AND THE INTERNATIONAL CRIMINAL COURT**Rome Statute**Article 43 The Registry**

6. The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the Office of the Prosecutor, protective measures and security arrangements, counseling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence.

**Article 68 Protection of the victims and witnesses and their participation in the Proceedings**

4. The Victims and Witnesses Unit may advise the Prosecutor and the Court on appropriate protective measures, security arrangements, counselling and assistance as referred to in article 43, paragraph 6.

**Article 48 Privileges and immunities**

4. Counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court. [...]

**Article 54 Duties and powers of the Prosecutor with respect to investigations**

1. The Prosecutor shall: [...]
  - (a) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; [...]
2. The Prosecutor may: [...]
  - (b) Request the presence of and question persons being investigated, victims and witnesses; [...]

#### **Article 64 Functions and powers of the Trial Chamber**

2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses. [...]
6. In performing its functions prior to trial or during the course of a trial, the Trial Chamber may, as necessary: [...]
  - (b) Require the attendance and testimony of witnesses and production of documents and other evidence by obtaining, if necessary, the assistance of States as provided in this Statute; [...]
  - (e) Provide for the protection of the accused, witnesses and victims; [...]

#### **Article 68 Protection of the victims and witnesses and their participation in the proceedings**

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender as defined in article 7, paragraph 3, and health, and the nature of the crime, in particular, but not limited to, where the crime involves sexual or gender violence or violence against children. The Prosecutor shall take such measures particularly during the investigation and prosecution of such crimes. These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.
2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness, unless otherwise ordered by the Court, having regard to all the circumstances, particularly the views of the victim or witness. [...]
5. Where the disclosure of evidence or information pursuant to this Statute may lead to the grave endangerment of the security of a witness or his or her family, the Prosecutor may, for the purposes of any proceedings conducted prior to the commencement of the trial, withhold such evidence or information and instead submit a summary thereof. Such measures shall be exercised in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. [...]

#### **Article 69 Evidence**

1. Before testifying, each witness shall, in accordance with the Rules of Procedure and Evidence, give an undertaking as to the truthfulness of the evidence to be given by that witness.
2. The testimony of a witness at trial shall be given in person, except to the extent provided by the measures set forth in article 68 or in the Rules of Procedure and Evidence. The Court may also permit the giving of viva voce (oral) or recorded testimony of a witness by means of video or

audio technology, as well as the introduction of documents or written transcripts, subject to this Statute and in accordance with the Rules of Procedure and Evidence. These measures shall not be prejudicial to or inconsistent with the rights of the accused. [...]

4. The Court may rule on the relevance or admissibility of any evidence, taking into account, *inter alia*, the probative value of the evidence and any prejudice that such evidence may cause to a fair trial or to a fair evaluation of the testimony of a witness, in accordance with the Rules of Procedure and Evidence. [...]

#### **Article 70 Offences against the administration of justice**

1. The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally: [...] (c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence; [...]

#### **Article 87 Requests for cooperation: general provisions**

4. In relation to any request for assistance presented under this Part, the Court may take such measures, including measures related to the protection of information, as may be necessary to ensure the safety or physical or psychological well-being of any victims, potential witnesses and their families. The Court may request that any information that is made available under this Part shall be provided and handled in a manner that protects the safety and physical or psychological well-being of any victims, potential witnesses and their families. [...]

#### **Article 93 Other forms of cooperation**

1. States Parties shall, in accordance with the provisions of this Part and under procedures of national law, comply with requests by the Court to provide the following assistance in relation to investigations or prosecutions: [...] (e) Facilitating the voluntary appearance of persons as witnesses or experts before the Court; [...] (j) The protection of victims and witnesses and the preservation of evidence; [...]
2. The Court shall have the authority to provide an assurance to a witness or an expert appearing before the Court that he or she will not be prosecuted, detained or subjected to any restriction of personal freedom by the Court in respect of any act or omission that preceded the departure of that person from the requested State. [...]

#### **Article 100 Costs**

1. The ordinary costs for execution of requests in the territory of the requested State shall be borne by that State, except for the following, which shall be borne by the Court:
  - (a) Costs associated with the travel and security of witnesses and experts or the transfer under article 93 of persons in custody; [...]

**Rule 16 Responsibilities of the Registrar relating to victims and witnesses**

2. In relation to victims, witnesses and others who are at risk on account of testimony given by such witnesses, the Registrar shall be responsible for the performance of the following functions in accordance with the Statute and these Rules: (a) Informing them of their rights under the Statute and the Rules, and of the existence, functions and availability of the Victims and Witnesses Unit; [...]
4. Agreements on relocation and provision of support services on the territory of a State of traumatized or threatened victims, witnesses and others who are at risk on account of testimony given by such witnesses may be negotiated with the States by the Registrar on behalf of the Court. Such agreements may remain confidential.

**Rule 17 Functions of the Unit**

1. The Victims and Witnesses Unit shall exercise its functions in accordance with article 43, paragraph 6.
2. The Victims and Witnesses Unit shall, *inter alia*, perform the following functions, in accordance with the Statute and the Rules, and in consultation with the Chamber, the Prosecutor and the defence, as appropriate:
  - (a) With respect to all witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, in accordance with their particular needs and circumstances:
    - (i) Providing them with adequate protective and security measures and formulating long- and short-term plans for their protection;
    - (ii) Recommending to the organs of the Court the adoption of protection measures and also advising relevant States of such measures;
    - (iii) Assisting them in obtaining medical, psychological and other appropriate assistance;
    - (iv) Making available to the Court and the parties training in issues of trauma, sexual violence, security and confidentiality;
    - (v) Recommending, in consultation with the Office of the Prosecutor, the elaboration of a code of conduct, emphasizing the vital nature of security and confidentiality for investigators of the Court and of the defence and all intergovernmental and non-governmental organizations acting at the request of the Court, as appropriate;
    - (vi) Cooperating with States, where necessary, in providing any of the measures stipulated in this rule;

- (b) With respect to witnesses:
  - (i) Advising them where to obtain legal advice for the purpose of protecting their rights, in particular in relation to their testimony;
  - (ii) Assisting them when they are called to testify before the Court;
  - (iii) Taking gender-sensitive measures to facilitate the testimony of victims of sexual violence at all stages of the proceedings.
- 3. In performing its functions, the Unit shall give due regard to the particular needs of children, elderly persons and persons with disabilities. In order to facilitate the participation and protection of children as witnesses, the Unit may assign, as appropriate, and with the agreement of the parents or the legal guardian, a child-support person to assist a child through all stages of the proceedings.

#### **Rule 18 Responsibilities of the Unit**

For the efficient and effective performance of its work, the Victims and Witnesses Unit shall:

- (a) Ensure that the staff in the Unit maintain confidentiality at all times;
- (b) While recognizing the specific interests of the Office of the Prosecutor, the defence and the witnesses, respect the interests of the witness, including, where necessary, by maintaining an appropriate separation of the services provided to the prosecution and defence witnesses, and act impartially when cooperating with all parties and in accordance with the rulings and decisions of the Chambers;
- (c) Have administrative and technical assistance available for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses, during all stages of the proceedings and thereafter, as reasonably appropriate;
- (d) Ensure training of its staff with respect to victims' and witnesses' security, integrity and dignity, including matters related to gender and cultural sensitivity;
- (e) Where appropriate, cooperate with intergovernmental and non-governmental organizations.

#### **Rule 19 Expertise in the Unit**

In addition to the staff mentioned in article 43, paragraph 6, and subject to article 44, the Victims and Witnesses Unit may include, as appropriate, persons with expertise, *inter alia*, in the following areas:

- (a) Witness protection and security;
- (b) Legal and administrative matters, including areas of humanitarian and criminal law;
- (c) Logistics administration;

- (d) Psychology in criminal proceedings;
- (e) Gender and cultural diversity;
- (f) Children, in particular traumatized children;
- (g) Elderly persons, in particular in connection with armed conflict and exile trauma;
- (h) Persons with disabilities;
- (i) Social work and counselling;
- (j) Health care;
- (k) Interpretation and translation.

#### **Rule 43 Procedure applicable to the publication of documents of the Court**

The Court shall ensure that all documents subject to publication in accordance with the Statute and the Rules respect the duty to protect the confidentiality of the proceedings and the security of victims and witnesses.

### **Chapter 3. Jurisdiction and admissibility**

#### **Section II. Initiation of investigations under article 15**

##### **Rule 50 Procedure for authorization by the Pre-Trial Chamber of the commencement of the investigation**

1. When the Prosecutor intends to seek authorization from the Pre-Trial Chamber to initiate an investigation pursuant to article 15, paragraph 3, the Prosecutor shall inform victims, known to him or her or to the Victims and Witnesses Unit, or their legal representatives, unless the Prosecutor decides that doing so would pose a danger to the integrity of the investigation or the life or well-being of victims and witnesses. The Prosecutor may also give notice by general means in order to reach groups of victims if he or she determines in the particular circumstances of the case that such notice could not pose a danger to the integrity and effective conduct of the investigation or to the security and well-being of victims and witnesses. In performing these functions, the Prosecutor may seek the assistance of the Victims and Witnesses Unit as appropriate. [...]

##### **Rule 65 Compellability of witnesses**

1. A witness who appears before the Court is compellable by the Court to provide testimony, unless otherwise provided for in the Statute and the Rules, in particular rules 73, 74 and 75.
2. Rule 171 applies to a witness appearing before the Court who is compellable to provide testimony under sub-rule 1.

**Rule 66 Solemn undertaking**

1. Except as described in sub-rule 2, every witness shall, in accordance with article 69, paragraph 1, make the following solemn undertaking before testifying: “I solemnly declare that I will speak the truth, the whole truth and nothing but the truth.”
2. A person under the age of 18 or a person whose judgement has been impaired and who, in the opinion of the Chamber, does not understand the nature of a solemn undertaking may be allowed to testify without this solemn undertaking if the Chamber considers that the person is able to describe matters of which he or she has knowledge and that the person understands the meaning of the duty to speak the truth.
3. Before testifying, the witness shall be informed of the offence defined in article 70, paragraph 1 (a).

**Rule 67 Live testimony by means of audio or video-link technology**

1. In accordance with article 69, paragraph 2, a Chamber may allow a witness to give *viva voce* (oral) testimony before the Chamber by means of audio or video technology, provided that such technology permits the witness to be examined by the Prosecutor, the defence, and by the Chamber itself, at the time that the witness so testifies.
2. The examination of a witness under this rule shall be conducted in accordance with the relevant rules of this chapter.
3. The Chamber, with the assistance of the Registry, shall ensure that the venue chosen for the conduct of the audio or video-link testimony is conducive to the giving of truthful and open testimony and to the safety, physical and psychological well-being, dignity and privacy of the witness.

**Rule 68 Prior recorded testimony [adopted at the 12<sup>th</sup> plenary meeting, on 27 November 2013]**

1. When the Pre-Trial Chamber has not taken measures under article 56, the Trial Chamber may, in accordance with article 69, paragraphs 2 and 4, and after hearing the parties, allow the introduction of previously recorded audio or video testimony of a witness, or the transcript or other documented evidence of such testimony, provided that this would not be prejudicial to or inconsistent with the rights of the accused and that the requirements of one or more of the following sub-rules are met.
2. If the witness who gave the previously recorded testimony is not present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony in any one of the following instances:
  - (a) Both the Prosecutor and the defence had the opportunity to examine the witness during the recording.

- (b) The prior recorded testimony goes to proof of a matter other than the acts and conduct of the accused. In such a case:
- (i) In determining whether introduction of prior recorded testimony falling under sub-rule (b) may be allowed, the Chamber shall consider, *inter alia*, whether the prior recorded testimony in question:
    - relates to issues that are not materially in dispute;
    - is of a cumulative or corroborative nature, in that other witnesses will give or have given oral testimony of similar facts;
    - relates to background information;
    - is such that the interests of justice are best served by its introduction; and has sufficient indicia of reliability.
  - (ii) Prior recorded testimony falling under sub-rule (b) may only be introduced if it is accompanied by a declaration by the testifying person that the contents of the prior recorded testimony are true and correct to the best of that person's knowledge and belief. Accompanying declarations may not contain any new information and must be made reasonably close in time to when the prior recorded testimony is being submitted.
  - (iii) Accompanying declarations must be witnessed by a person authorised to witness such a declaration by the relevant Chamber or in accordance with the law and procedure of a State. The person witnessing the declaration must verify in writing the date and place of the declaration, and that the person making the declaration:
    - is the person identified in the prior recorded testimony;
    - assures that he or she is making the declaration voluntarily and without undue influence;
    - states that the contents of the prior recorded testimony are, to the best of that person's knowledge and belief, true and correct; and
    - was informed that if the contents of the prior recorded testimony are not true then he or she may be subject to proceedings for having given false testimony.
- (c) The prior recorded testimony comes from a person who has subsequently died, must be presumed dead, or is, due to obstacles that cannot be overcome with reasonable diligence, unavailable to testify orally. In such a case:
- (i) Prior recorded testimony falling under sub-rule (c) may only be introduced if the Chamber is satisfied that the person is unavailable as set out above, that the necessity of measures under article 56 could not be anticipated, and that the prior recorded testimony has sufficient indicia of reliability.
  - (ii) The fact that the prior recorded testimony goes to proof of acts and conduct of an accused may be a factor against its introduction, or part of it.

- (d) The prior recorded testimony comes from a person who has been subjected to interference. In such a case:
- (i) Prior recorded testimony falling under sub-rule (d) may only be introduced if the Chamber is satisfied that:
    - the person has failed to attend as a witness or, having attended, has failed to give evidence with respect to a material aspect included in his or her prior recorded testimony;
    - the failure of the person to attend or to give evidence has been materially influenced by improper interference, including threats, intimidation, or coercion;
    - reasonable efforts have been made to secure the attendance of the person as a witness or, if in attendance, to secure from the witness all material facts known to the witness;
    - the interests of justice are best served by the prior recorded testimony being introduced; and
    - the prior recorded testimony has sufficient indicia of reliability.
  - (ii) For the purposes of sub-rule (d)(i), an improper interference may relate, *inter alia*, to the physical, psychological, economic or other interests of the person.
  - (iii) When prior recorded testimony submitted under sub-rule (d)(i) relates to completed proceedings for offences defined in article 70, the Chamber may consider adjudicated facts from these proceedings in its assessment.
  - (iv) The fact that the prior recorded testimony goes to proof of acts and conduct of an accused may be a factor against its introduction, or part of it.
3. If the witness who gave the previously recorded testimony is present before the Trial Chamber, the Chamber may allow the introduction of that previously recorded testimony if he or she does not object to the submission of the previously recorded testimony and the Prosecutor, the defence and the Chamber have the opportunity to examine the witness during the proceedings.”

#### **Rule 70 Principles of evidence in cases of sexual violence**

- (d) Credibility, character or predisposition to sexual availability of a victim or witness cannot be inferred by reason of the sexual nature of the prior or subsequent conduct of a victim or witness.

#### **Rule 71 Evidence of other sexual conduct**

In the light of the definition and nature of the crimes within the jurisdiction of the Court, and subject to article 69, paragraph 4, a Chamber shall not admit evidence of the prior or subsequent sexual conduct of a victim or witness.

#### **Rule 74 Self-incrimination by a witness**

1. Unless a witness has been notified pursuant to rule 190, the Chamber shall notify a witness of the provisions of this rule before his or her testimony.
2. Where the Court determines that an assurance with respect to self-incrimination should be provided to a particular witness, it shall provide the assurances under sub-rule 3, paragraph (c), before the witness attends, directly or pursuant to a request under article 93, paragraph (1) (e).
3. (a) A witness may object to making any statement that might tend to incriminate him or her.  
(b) Where the witness has attended after receiving an assurance under sub-rule 2, the Court may require the witness to answer the question or questions.  
(c) In the case of other witnesses, the Chamber may require the witness to answer the question or questions, after assuring the witness that the evidence provided in response to the questions:
  - (i) Will be kept confidential and will not be disclosed to the public or any State; and
  - (ii) Will not be used either directly or indirectly against that person in any subsequent prosecution by the Court, except under articles 70 and 71.
4. Before giving such an assurance, the Chamber shall seek the views of the Prosecutor, *ex parte*, to determine if the assurance should be given to this particular witness.
5. In determining whether to require the witness to answer, the Chamber shall consider:
  - (a) The importance of the anticipated evidence;
  - (b) Whether the witness would be providing unique evidence;
  - (c) The nature of the possible incrimination, if known; and
  - (d) The sufficiency of the protections for the witness, in the particular circumstances.
6. If the Chamber determines that it would not be appropriate to provide an assurance to this witness, it shall not require the witness to answer the question. If the Chamber determines not to require the witness to answer, it may still continue the questioning of the witness on other matters.
7. In order to give effect to the assurance, the Chamber shall:
  - (a) Order that the evidence of the witness be given *in camera*;
  - (b) Order that the identity of the witness and the content of the evidence given shall not be disclosed, in any manner, and provide that the breach of any such order will be subject to sanction under article 71;
  - (c) Use protective measures with respect to any decision of the Court to ensure that the identity of the witness and the content of the evidence given are not disclosed.
8. Where the Prosecutor is aware that the testimony of any witness may raise issues with respect

to self-incrimination, he or she shall request an *in camera* hearing and advise the Chamber of this, in advance of the testimony of the witness. The Chamber may impose the measures outlined in sub-rule 7 for all or a part of the testimony of that witness.

9. The accused, the defence counsel or the witness may advise the Prosecutor or the Chamber that the testimony of a witness will raise issues of self-incrimination before the witness testifies and the Chamber may take the measures outlined in sub-rule 7 .
10. If an issue of self-incrimination arises in the course of the proceedings, the Chamber shall suspend the taking of the testimony and provide the witness with an opportunity to obtain legal advice if he or she so requests for the purpose of the application of the rule.

#### **Rule 75 Incrimination by family members**

1. A witness appearing before the Court, who is a spouse, child or parent of an accused person, shall not be required by a Chamber to make any statement that might tend to incriminate that accused person. However, the witness may choose to make such a statement.
2. In evaluating the testimony of a witness, a Chamber may take into account that the witness, referred to in sub-rule 1, objected to reply to a question which was intended to contradict a previous statement made by the witness, or the witness was selective in choosing which questions to answer.

#### **Rule 81 Restrictions on disclosure**

3. Where steps have been taken to ensure the confidentiality of information, in accordance with articles 54, 57, 64, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, such information shall not be disclosed, except in accordance with those articles. When the disclosure of such information may create a risk to the safety of the witness, the Court shall take measures to inform the witness in advance.
4. The Chamber dealing with the matter shall, on its own motion or at the request of the Prosecutor, the accused or any State, take the necessary steps to ensure the confidentiality of information, in accordance with articles 54, 72 and 93, and, in accordance with article 68, to protect the safety of witnesses and victims and members of their families, including by authorizing the non-disclosure of their identity prior to the commencement of the trial.

#### **Rule 82 Restrictions on disclosure of material and information protected under article 54, paragraph 3 (e)**

3. If the Prosecutor calls a witness to introduce in evidence any material or information which has been protected under article 54, paragraph 3 (e), a Chamber may not compel that witness to answer any question relating to the material or information or its origin, if the witness declines to answer on grounds of confidentiality. [...]

### **Rule 86 General principle**

A Chamber in making any direction or order, and other organs of the Court in performing their functions under the Statute or the Rules, shall take into account the needs of all victims and witnesses in accordance with article 68, in particular, children, elderly persons, persons with disabilities and victims of sexual or gender violence.

### **Rule 87 Protective measures**

1. Upon the motion of the Prosecutor or the defence or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may order measures to protect a victim, a witness or another person at risk on account of testimony given by a witness pursuant to article 68, paragraphs 1 and 2. The Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the protective measure is sought prior to ordering the protective measure.
2. A motion or request under sub-rule 1 shall be governed by rule 134, provided that:
  - (a) Such a motion or request shall not be submitted *ex parte*;
  - (b) A request by a witness or by a victim or his or her legal representative, if any, shall be served on both the Prosecutor and the defence, each of whom shall have the opportunity to respond;
  - (c) A motion or request affecting a particular witness or a particular victim shall be served on that witness or victim or his or her legal representative, if any, in addition to the other party, each of whom shall have the opportunity to respond;
  - (d) When the Chamber proceeds on its own motion, notice and opportunity to respond shall be given to the Prosecutor and the defence, and to any witness or any victim or his or her legal representative, if any, who would be affected by such protective measure; and
  - (e) A motion or request may be filed under seal, and, if so filed, shall remain sealed until otherwise ordered by a Chamber. Responses to motions or requests filed under seal shall also be filed under seal.
3. A Chamber may, on a motion or request under sub-rule 1, hold a hearing, which shall be conducted *in camera*, to determine whether to order measures to prevent the release to the public or press and information agencies, of the identity or the location of a victim, a witness or other person at risk on account of testimony given by a witness by ordering, *inter alia*:
  - (a) That the name of the victim, witness or other person at risk on account of testimony given by a witness or any information which could lead to his or her identification, be expunged from the public records of the Chamber;
  - (b) That the Prosecutor, the defence or any other participant in the proceedings be prohibited from disclosing such information to a third party;

- (c) That testimony be presented by electronic or other special means, including the use of technical means enabling the alteration of pictures or voice, the use of audio-visual technology, in particular videoconferencing and closed-circuit television, and the exclusive use of the sound media;
- (d) That a pseudonym be used for a victim, a witness or other person at risk on account of testimony given by a witness; or
- (e) That a Chamber conducts part of its proceedings *in camera*.

### **Rule 88 Special measures**

1. Upon the motion of the Prosecutor or the defence, or upon the request of a witness or a victim or his or her legal representative, if any, or on its own motion, and after having consulted with the Victims and Witnesses Unit, as appropriate, a Chamber may, taking into account the views of the victim or witness, order special measures such as, but not limited to, measures to facilitate the testimony of a traumatized victim or witness, a child, an elderly person or a victim of sexual violence, pursuant to article 68, paragraphs 1 and 2. The Chamber shall seek to obtain, whenever possible, the consent of the person in respect of whom the special measure is sought prior to ordering that measure.
2. A Chamber may hold a hearing on a motion or a request under sub-rule 1, if necessary *in camera* or *ex parte*, to determine whether to order any such special measure, including but not limited to an order that a counsel, a legal representative, a psychologist or a family member be permitted to attend during the testimony of the victim or the witness.
3. For *inter partes* motions or requests filed under this rule, the provisions of rule 87, sub-rules 2 (b) to (d), shall apply *mutatis mutandis*.
4. A motion or request filed under this rule may be filed under seal, and if so filed shall remain sealed until otherwise ordered by a Chamber. Any responses to *inter partes* motions or requests filed under seal shall also be filed under seal.
5. Taking into consideration that violations of the privacy of a witness or victim may create risk to his or her security, a Chamber shall be vigilant in controlling the manner of questioning a witness or victim so as to avoid any harassment or intimidation, paying particular attention to attacks on victims of crimes of sexual violence.

### **Rule 140 Directions for the conduct of the proceedings and testimony**

3. Unless otherwise ordered by the Trial Chamber, a witness other than an expert, or an investigator if he or she has not yet testified, shall not be present when the testimony of another witness is given. However, a witness who has heard the testimony of another witness shall not for that reason alone be disqualified from testifying. When a witness testifies after hearing the testimony of others, this fact shall be noted in the record and considered by the Trial Chamber when evaluating the evidence.

### **Rule 190 Instruction on self-incrimination accompanying request for witness**

When making a request under article 93, paragraph 1 (e), with respect to a witness, the Court shall annex an instruction, concerning rule 74 relating to self-incrimination, to be provided to the witness in question, in a language that the person fully understands and speaks.

### **Rule 191 Assurance provided by the Court under article 93, paragraph 2**

The Chamber dealing with the case, on its own motion or at the request of the Prosecutor, defence or witness or expert concerned, may decide, after taking into account the views of the Prosecutor and the witness or expert concerned, to provide the assurance described in article 93, paragraph 2.

## Regulations of the Court

### **Regulation 41 Victims and Witnesses Unit**

The Victims and Witnesses Unit may, pursuant to article 68, paragraph 4, draw any matter to the attention of a Chamber where protective measures under rule 87 or special measures under rule 88 require its consideration.

### **Regulation 21 Broadcasting, release of transcripts and recordings**

3. Witnesses and participants shall be informed that the public hearings of the Chamber are broadcast in accordance with this regulation. Any objection raised shall be ruled on by the Chamber in accordance with sub-regulations 4 and 5.
4. Any objection to the release of transcripts or recordings, or requests that certain testimony be excluded from broadcast, shall be made as soon as possible and, in any event, no later than at the commencement of the session at which the witness or participant is to appear. [...]
8. At the request of a participant or the Registry, or *proprio motu*, and when possible within the time set out in sub-regulation 2, the Chamber may, in the interests of justice, order that any information likely to present a risk to the security or safety of victims, witnesses or other persons, or likely to be prejudicial to national security interests, shall not be published in any broadcast, audio- or video-recording or transcript of a public hearing.

### **Regulation 42 Application and variation of protective measures**

1. Protective measures once ordered in any proceedings in respect of a victim or witness shall continue to have full force and effect in relation to any other proceedings before the Court and shall continue after proceedings have been concluded, subject to revision by a Chamber. [...]

**Regulation 43 Testimony of witnesses**

Subject to the Statute and the Rules, the Presiding Judge, in consultation with the other members of the Chamber, shall determine the mode and order of questioning witnesses and presenting evidence so as to:

- (a) Make the questioning of witnesses and the presentation of evidence fair and effective for the determination of the truth;
- (b) Avoid delays and ensure the effective use of time.

Regulations of the Registry**Regulation 79 General provisions**

1. Pursuant to article 43, paragraph 6, and rules 16, 17 and 18, the Registrar shall develop and, to the extent possible, implement policies and procedures to enable witnesses to testify in safety, so that the experience of testifying does not result in further harm, suffering or trauma for the witnesses.
2. The Registrar shall exercise his or her functions regarding witnesses, victims who appear before the Court and persons at risk with no distinction of any kind, whether of gender, age, race, colour, language, religion or belief, political or other opinion, national, ethnic or social origin, wealth, birth or other status.

**Regulation 80 Services to victims and witnesses**

1. In order to receive services provided by the Registry, the Prosecutor and counsel shall complete a form requesting the provision of services. Such services may also be requested *proprio motu* by a Chamber. The Registry may request from the Prosecutor and counsel any additional information necessary for the provision of services.
2. Services such as relocation, assisted move, accompanying support persons, dependent care, extraordinary allowances for lost earnings and clothing allowances shall be provided on a case-by-case basis, in accordance with an assessment made by the Registry.

**Regulation 81 Travel**

1. The Registry shall arrange transportation for witnesses, victims who appear before the Court and persons at risk, and where applicable dependants of all such persons in accordance with regulation 90, and accompanying support persons who, pursuant to an order of a chamber, need to travel in order to appear before the Court. The Registry may also arrange such transportation for support or protection-related purposes.

2. The mode of transport shall be determined on a case-by-case basis, having regard to protection, safety and health considerations.
3. Unless otherwise justified for support or protection reasons, travel shall be based on:
  - (a) An economy class return trip by the shortest route, subject to prior authorisation by the Registry; or
  - (b) The practice of the Court for staff members for all other means of transport.

#### **Regulation 82 Accommodation**

1. Where required for the purposes of the Court and for such time as is necessary, the Court shall provide appropriate full board and accommodation in locations selected by the Registry for witnesses, victims who appear before the Court, persons at risk, and where applicable dependants of all such persons in accordance with regulation 90, and accompanying support persons.
2. Witnesses and victims who appear before the Court who have chosen not to accept full board and accommodation provided by the Court shall only receive an incidental allowance in accordance with regulation 84 and an attendance allowance in accordance with regulation 85.

#### **Regulation 83 Support programme**

1. The Registry shall develop a support programme, which shall also apply in the field, in order to provide psychological and social assistance and advice to witnesses, victims who appear before the Court, the dependants of all such persons, accompanying support persons and persons at risk at the earliest stage possible.
2. In addition, the support programme shall provide, where appropriate, and for the duration of their stay at the seat of the Court or at the site of its judicial proceedings, appropriate assistance to witnesses, victims who appear before the Court and, where applicable the dependants of all such persons in accordance with regulation 90, and accompanying support persons.

#### **Regulation 84 Incidental allowance**

1. An incidental allowance for personal expenses may be provided to witnesses, victims who appear before the Court, persons at risk, and where applicable dependants of all such persons in accordance with regulation 90, and accompanying support persons who need to spend at least one night outside of their place of residence at any stage of their journey.
2. The amount of the incidental allowance shall be determined by the Registrar and shall be reviewed annually. The Registrar shall publish the table of the rate of incidental allowance yearly on the website of the Court.
3. This provision shall not apply to persons appearing before the Court who receive an allowance from the Court other than by virtue of regulations 85 and 86.

**Regulation 85 Attendance allowance**

1. Witnesses, victims who appear before the Court and accompanying support persons may be provided with an attendance allowance as compensation for wages, earnings and time lost as a result of their absence from their place of residence in connection with appearance before the Court. Witnesses, victims who appear before the Court and accompanying support persons shall not be required to submit a request or any supporting documentation in order to receive the attendance allowance.
2. The daily minimum wage rate shall be determined by dividing:
  - (a) The annual salary of the staff of the Court at the General Services, step 1 level 1 in the country in which the person is residing at the time he or she appears before the Court; by
  - (b) The number of days per year.
3. The attendance allowance shall be calculated by multiplying:
  - (a) A percentage rate of the daily minimum wage rate applicable for the staff of the Court in the country in which the person is residing at the time he or she appears before the Court. The percentage shall be determined by the Registrar and shall be reviewed annually. The Registrar shall publish yearly on the website of the Court the table of the rate of attendance allowance; by
  - (b) The number of days the person is required at the seat of the Court or where proceedings are held, including travel days. For the purpose of calculating the attendance allowance, a part of a day used in connection with the court appearance shall be considered a full day.

**Regulation 86 Extraordinary allowance for lost earnings**

1. The Registrar may provide an extraordinary allowance for lost earnings for witnesses, victims who appear before the Court and accompanying support persons who suffer undue financial hardship as a result of being absent from legal income earning activities for the purposes of the Court.
2. Witnesses, victims who appear before the Court and accompanying support persons shall submit their request accompanied by any supporting documentation. The Registrar shall inform the participants of any payment of such allowance.

**Regulation 87 Expert witnesses**

Transportation for expert witnesses who travel for testimony or for support or protection-related purposes shall be arranged by the Registry, in accordance with regulation 81. A daily subsistence allowance shall also be provided.

### **Regulation 89 Healthcare and well-being**

1. The Registry shall assist witnesses and victims who appear before the Court, and where applicable the dependants of all such persons, and accompanying support persons by:
  - (a) Organizing medical care and assistance, as appropriate, during their travel, their absence from their place of residence and for the duration of their stay at the seat of the Court or where proceedings are held; and
  - (b) Providing psychological assistance, as appropriate, particularly for children, the disabled, the elderly and victims of sexual violence.
2. The Registry shall, in consultation with local partners, endeavour to develop local networks, particularly in the field, to address the healthcare and well-being of witnesses, victims who appear before the Court and persons at risk, and the dependants of all such persons.

### **Regulation 90**

1. The Registry may provide dependent care to witnesses and victims who appear before the Court.
2. Dependent care is the provision of appropriate assistance to those who have the primary responsibility in caring for another person, the non-provision of which would prevent their attendance at the Court.
3. The type of assistance shall be based on a case-by-case needs assessment.

### **Regulation 91 Accompanying support persons**

1. Witnesses, victims who appear before the Court and persons at risk may be permitted to bring an accompanying support person with them to the Court or during travel outside their place of residence for the purposes of the Court. The Registry shall cover the costs of the accompanying support person, in accordance with regulations 81, 82, 83, 84, 85, 86 and 89, sub-regulation 1(a).
2. In order to determine the eligibility of a witness, a victim who appears before the Court or a person at risk to bring an accompanying support person with him or her to the Court, the following criteria, shall be, *inter alia*, taken into account:
  - (a) The fact that the person has no surviving close family members;
  - (b) The presence of severe trauma-related symptoms;
  - (c) The existence of possible suicidal tendencies;
  - (d) The potential for violence;
  - (e) The fear or anxiety of the person to the extent that it would prevent him or her from attending the Court;

- (f) The age;
  - (g) The fact that the person is a victim of sexual or gender violence;
  - (h) The fact that the person suffers from a pre-existing disease of a physical and/or psychological nature; and
  - (i) The severity of physical or psychological symptoms.
3. The Registry shall assess the suitability of the accompanying person to provide support.

### **Regulation 92 Security arrangements**

1. The Registry shall implement and coordinate appropriate procedures and measures for the protection and security to ensure the safety of witnesses, victims who appear before the Court and persons at risk, including accompanying support persons.
2. Procedures and measures referred to in sub-regulation 1 shall be confidential.

### **Regulation 93 Local protection measures**

1. The Registry shall implement measures for the protection of witnesses, victims who appear before the Court and persons at risk on the territory of the State of their residence.
2. The Registry shall, where appropriate, be responsible for establishing and maintaining an immediate response system as a local security measure for witnesses, victims who appear before the Court and persons at risk. The system shall operate round-the-clock for the purposes of extricating and bringing to safety those witnesses, victims who appear before the Court and persons at risk who fall within its purview.
3. Procedures and measures referred to in sub-regulations 1 and 2 shall be confidential.

### **Regulation 94 Protection measures in Court**

Measures taken pursuant to an order of a Chamber under rule 87 to protect the identity of witnesses, victims who appear before the Court and persons at risk may include, *inter alia*:

- (a) Pseudonyms, where the person is assigned a pseudonym that is used during the proceeding instead of his or her real name;
- (b) Facial distortion, where the image of the person is rendered unrecognizable by an electronic mosaic in the audiovisual feed;
- (c) Voice distortion, where the voice of the person is rendered unrecognizable by electronic means in the audiovisual feed;
- (d) Private sessions, where the hearing is not open to the public and there is no audiovisual stream broadcast outside the Court;
- (e) Closed sessions, where the hearing is held in camera;

- (f) Videoconferences, where the person takes part in the proceeding via a direct video link;
- (g) Expunctions from the public record of the proceeding of any information which might lead to the identification of the victim, witness or person at risk; or
- (h) Any combination of the protective measures listed above or any modification of a measure ordered by the Chamber which is technically feasible.

**Regulation 94 *bis* Special measures for vulnerable witnesses and victims appearing before the Court**

1. In pursuance of rule 88, the Chamber may order special measures to protect witnesses and victims who appear before the Court against psychological harm by reason of the process of appearing before the Court and to facilitate such persons' appearance in Court.
2. Vulnerable persons are those persons at an increased risk of psychological harm by reason of the process of appearing before the Court and/or who experience psychosocial or physical difficulties which affect their ability to so appear. The vulnerability of a person may be determined by different factors, *inter alia*:
  - (a) Factors related to the person: age (for example, children or elderly persons), personality, disability (including cognitive impairments), mental illness or psychosocial problems (such as trauma-related problems and/or lack of social support);
  - (b) Factors related to the nature of the crime, in particular sexual or gender-based violence, violence against children, torture or other crimes involving grave violence;
  - (c) Factors related to particular circumstances, such as significantly increased stress or anxiety due to relocation or resettlement, fear of retaliation or adaptation difficulties related to cultural differences or other factors.
3. Psychological assessment of vulnerable persons shall be conducted by the psychologist within the Registry who works with victims and witnesses. Such assessment shall be conducted prior to the court appearance in order to establish a person's capacity to appear before the Court and current mental health and to identify special needs. The Registry psychologist may recommend special measures to the Chamber, *inter alia*:
  - (a) Measures to adapt the courtroom to the needs of vulnerable persons, such as prevention of eye contact between the witness or victim who appears before the Court and the suspect or accused, use of video-link or restriction of the number of people in the courtroom or other measures;
  - (b) In-court assistance as foreseen by rule 88, sub-rule 2, such as the presence of an accompanying support person or assistance to or monitoring of vulnerable persons by the Registry;
  - (c) Measures pursuant to rule 88, sub-rule 5 to adapt the manner of questioning to the needs of the person and his or her capacity to appear before the Court.

**Regulation 95 Assisted move**

1. Where risk to a witness, a victim who appears before the Court or a person at risk cannot be managed in the geographical area where the person is staying and said person has initiated a move to another area, the Registry may assist therewith, where such move is considered necessary to the person's security.
2. Such assistance may consist of limited financial or logistical support for the move of the person and his or her dependants to a safe location. The move shall remain the decision and responsibility of the person.
3. The Prosecutor or counsel shall not assist a witness, a victim who appears before the Court or a person at risk to move without the prior consultation and agreement of the Registry. In case of disagreement, a chamber may authorise assistance proposed by the Prosecutor or counsel. Assisted move may also be effected at the request of a chamber.
4. Procedures and measures referred to in the present regulation shall be confidential.

**Regulation 96 Protection programme**

1. The Registry shall take all necessary measures to maintain a protection programme for witnesses, victims who appear before the Court and persons at risk.
2. An application for inclusion in the protection programme may be filed by the Prosecutor or by counsel. A Chamber may also request the inclusion of a person in the protection programme.
3. In assessing admission to the protection programme, in addition to the factors set out in article 6 the Registry shall consider, *inter alia*, the following:
  - (a) The involvement of the person before the Court;
  - (b) Whether the person himself or herself, or his or her close relatives are endangered because of their involvement with the Court; and Whether the person agrees to enter the protection programme.
4. Inclusion in the protection programme shall be subject to the decision of the Registrar after the assessment made under sub-regulation
5. Before being included in the protection programme, the person or - where the person is under the age of 18 or otherwise lacks the legal capacity to do so - his or her representative, shall sign an confidential agreement with the Registry.
6. The need for continued participation in the protection programme shall be reassessed every 12 months.
7. Procedures and measures referred to in the present regulation shall be confidential.



### AUTHORS AND ACKNOWLEDGEMENTS

This report was authored (in alphabetical order) by Stephen Cody, Alexa Koenig, Robin Mejia, and Eric Stover.

**Stephen Cody** is Director of the Atrocity Response Program, Human Rights Center, University of California, Berkeley, School of Law.

**Alexa Koenig** is Executive Director of the Human Rights Center, University of California, Berkeley, School of Law.

**Robin Mejia** is a doctoral student in biostatistics and a Graduate Student Researcher, Human Rights Center, University of California, Berkeley, School of Law.

**Eric Stover** is Faculty Director of the Human Rights Center and Adjunct Professor of Law, University of California, Berkeley, School of Law.

The interview instruments for the study were designed by **Eric Stover, Patrick Vinck, Phuong Pham,** and **Michaela Bauer** in consultation with the VWU staff.

We wish to thank **Michaela Bauer, Ticiana Palumbo, Patrick Chatelet, Fiona Hopkirk,** and the support assistants at the **Victims and Witnesses Unit (VWU)** for generously sharing information about the VWU's functioning, conducting interviews with witnesses, translating interviews into English (from French and Swahili), and maintaining the database. They were ably assisted by **Kyra Sanin (2006), Neil Hendrick (2007–2008), and Devin Gabriel (2008)** who helped develop the questionnaire and set up the database. We also thank Berkeley Law student **Nina Jehle** with drafting assistance, and **Alexey Berliand, Sayles Day, Melina Dunham,** and **Andrea Lampros** of the Human Rights Center for their editorial assistance. **Daniel McLaughlin** worked with the authors to develop the infographics for the report. **Paula Airth** designed the infographics and the report.

This study was made possible through grants from the **John D. and Catherine T. MacArthur Foundation, Open Society Foundations,** and individual donors. We greatly appreciate their support.









