

Echoes of Testimonies

A Pilot Study into the long-term impact
of bearing witness before the ICTY

Executive Summary

The Pilot Study research team

The **Victims and Witnesses Section** (VWS) is an independent and neutral body in the Registry of the International Criminal Tribunal for the former Yugoslavia (ICTY or the Tribunal) that facilitates the appearance of all witnesses before the Tribunal, whether called by the Chambers, Prosecution or Defence. The Victims and Witnesses Section works to ensure that all witnesses can testify in safety and security and that the experience of testifying does not result in further harm, suffering or trauma to the witness. The VWS activities include co-ordinating responses to the security requirements, providing psycho-social support as well as logistical assistance to witnesses, both in The Hague and in the region of former Yugoslavia.

The **Castleberry Peace Institute** at the University of North Texas (UNT) sponsors cutting-edge research and educational programs about the causes and consequences of war and violence on human security, and the necessary and sufficient conditions for establishing a sustainable peace. The Institute emphasizes comprehensive approaches for understanding conflict resolution to cultivate democracy, to advance human rights, and to promote economic development among, as well as within, countries. The *Center for Psychosocial Health Research* at UNT is a multidisciplinary group drawing on anthropology, behavioral medicine, education, psychology, public health, and sociology to pioneer research on psychosocial phenomena and to provide psychosocial and behavioral interventions for long-term well-being.

This executive summary includes the most important findings of the report “Echoes of testimonies. A Pilot study into the long-term impact of bearing witness before the ICTY”, a joint publication of the University of North Texas (UNT) and the Victims and Witnesses Section (VWS) at the International Criminal Tribunal for the former Yugoslavia (ICTY).

Full electronic version of the publication available at <http://www.icty.org>.

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June 2016.

Introduction

This Pilot Study examines the short- and long-term impact of testifying on witnesses, and provides valuable insight into the legacy of the most critical stakeholders of the International Criminal Tribunal for the former Yugoslavia (“Tribunal”)—those who bear witness. Witnesses are vital to international criminal justice, and the United Nations Security Council recognized the need to support victims and witnesses throughout the court process by establishing the Victims and Witnesses Section (“VWS”) at the same time it established the Tribunal.

The VWS has been a pioneer in conceptualizing and providing the framework and services necessary to support all witnesses called to testify in the criminal trials before the Tribunal. Through an integrated model of services, the VWS addresses multi-dimensional needs of witnesses before, during, and after testifying. Other victims and witnesses units established at the International Criminal Court, the Special Court for Sierra Leone, the Special Tribunal for Lebanon, and the national courts in the region of former Yugoslavia have subsequently followed this approach.

Over the last two decades, the VWS has assisted close to 5,000 witnesses giving testimony and observed that the process of testifying can be a challenging experience. Witnesses frequently are asked to recall traumatic events, the loss of loved ones, their country at war, and all in the context of a foreign court far from home. As the Tribunal is set to close in 2017 and heads into its legacy stage, it is critical to ask witnesses in the post-testimony phase what it meant to testify and what impact the testimony has had on their lives.

To better understand the experiences of witnesses in providing testimony, the VWS and the Castleberry Peace Institute at the University of North Texas (UNT) launched a Pilot Study in 2012 to evaluate the witness experience. Key areas included: witness’ background and reasons for testifying; socio-economic impact of testifying; security concerns; physical and psychological health and well-being; and perceptions about justice and the Tribunal.

The Pilot Study is groundbreaking in several respects. To date, no study of this scale has ever utilised a systematic and scientific sampling process of such a large population or included witnesses called by all parties to cases (Prosecution and Defence, as well as Chambers) in order to examine the impact of testifying. Over a two-year period trained and experienced VWS staff members interviewed 300 fact witnesses living in Bosnia and Herzegovina, Croatia, Kosovo and Serbia.

The involvement of VWS allowed the inclusion in the study of witnesses who would otherwise be excluded (such as witnesses with in-court protective measures), while UNT as an external research partner ensured the reliability and validity of the research process including independent data analysis.

Witness selection and background

The Pilot Study relied upon both random and quota sampling to assure the broadest set of witnesses from the widest possible array of trials excluding those in the Hadžić, Karadžić, Mladić and Šešelj trials which were still ongoing at the time of the survey.

The VWS conducted interviews with 300 fact witnesses, comprised of 47 women and 253 men across a broad geographic area in Bosnia and Herzegovina (54.3%), Croatia (20.7%), Kosovo (8.7%), and Serbia (16.3%). Interviewees could optionally provide their ethnic and religious identities, and they represent a diverse group of persons: Bosniak (26%), Croat (27%), Serb (31.7%); and Albanian (8.3%), and the remainder not identifying (7%). Likewise, interviewees indicated their religious affiliations Muslims (30.7%); Catholics (23.3%); Orthodox (27.3%) and the remainder being Atheists, Agnostic, or not identifying (18.7%).

Figure 1-Geographic diversity of interviewees

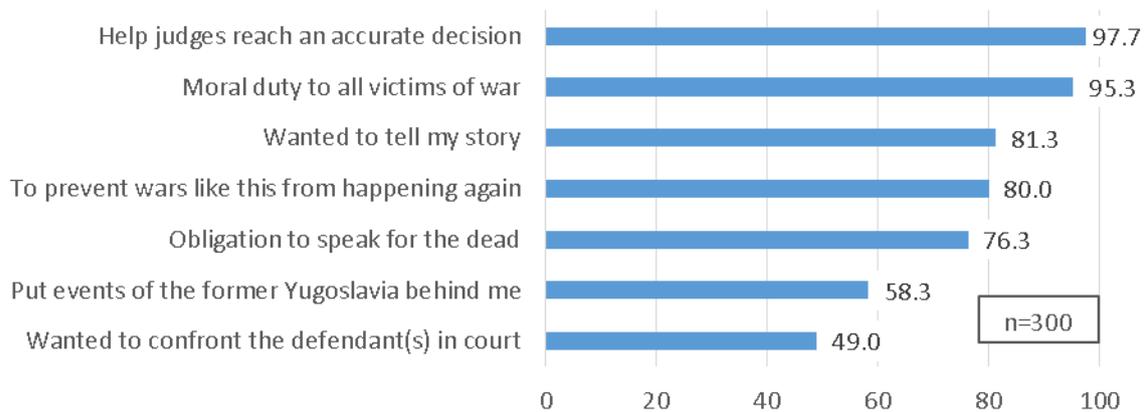


The Pilot Study sample is comprised of witnesses representing a broad range of trials with varying numbers of defendants. The appearances by witnesses in this sample are fairly representative of the Tribunal's work as a whole for the time period being examined. Approximately two-thirds were called to testify by the Prosecution and the remaining one-third were called by Defence. About two-thirds of interviewees appeared only once (n=195), and the remainder had multiple appearances, including seventeen interviewees who appeared for both the Prosecution and Defence. Four witnesses called by Chambers also appeared for the Prosecution. Interviewees appeared in substantial and diverse cases, including 41 different trials with 90 different defendants.

Motivation for testifying

Witnesses could give more than one reason for testifying, and the most frequent cited reasons were altruistic: “to help the judges reach an accurate decision” and “to fulfil moral duty to victims.” Also common were “to prevent wars like this from happening again” and “an obligation to speak for the dead.” Interviewees also expressed internal motivations such as “wanting to tell my story” and, less frequently, “to leave the events of the former Yugoslavia behind”.

Figure 2 - Reasons for testifying



Overall, 272 witnesses (90.7%) indicated they were satisfied with their testimony when thinking of the reasons why they testified. There were no significant differences in this regard between those who testified for the Prosecution or the Defence.

Witnesses indicated that overall they had sufficient time to prepare and had adequate information about the Tribunal before testifying. Compared to men women were somewhat less likely to agree that they had sufficient time to prepare, or that they had adequate information about testifying. Strong majority of witnesses agree they were satisfied with the assistance provided by VWS.

Human security

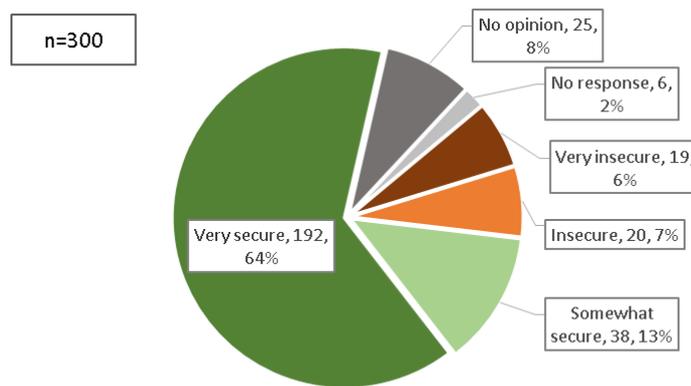
Physical security and socio-economic safety

Witnesses need to be able to testify freely without fear of significant consequences, thus the impact of their having testified on their socio-economic and physical security is critical. A small, but important group of interviewees have endured negative consequences because of testifying before the Tribunal, and subsequently faced challenges in their communities. These adverse consequences range from criticism and loss of association, to economic harm and threats to their safety and the security of their families. This ostracism and threats to human security directly endanger justice and jeopardize prospects for reconciliation.

The vast majority of interviewees indicated that testifying did not have a negative impact on their **intimate relationships** (n=260), however, the Pilot Study found that more than one in eight interviewees believed that they had endured some negative impact such as **criticism** or **loss of association** (n=39), and one in seven reported being **contacted to prevent them** from testifying or **threatened** because of their testimony (n=44). The criticism, loss of association, and threats tend to come from the defendant and those who affiliate with him, as well as from religious and community leaders. Threats come both from people of the same or different ethnic groups. Five interviewees stated that they moved home as a result of security issues. Only 22 of the 44 interviewees who received threats subsequently contacted authorities.

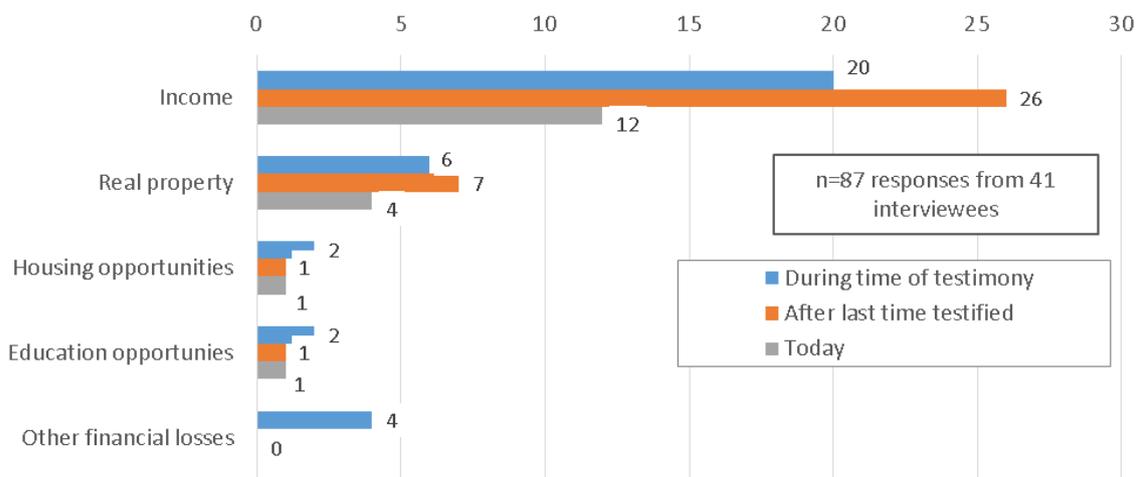
Overall, witnesses feel relatively secure today, both those who testified publicly and those who testified with in-court protective measures. Approximately 13% of interviewees, however, continue to feel some level of insecurity today. Whether this is because of having testified or because of continuing tensions in the region cannot be definitively answered with the results here.

Figure 3 - Overall feeling of security today



Threats to the economic security of witnesses impair the ability of tribunals to carry out their mandate. Approximately three out of four interviewees were satisfied with the financial entitlements provided by the Tribunal (the per diem compensation the Tribunal provides witnesses during the time of testimony). A small, but critical group, experienced other types of **economic losses**. These losses were more likely to occur after the last time a witness testified, and eighteen witnesses continued to experience losses to the present day. Not only do witnesses face economic losses from testifying, they also have obstacles for recovering damages resulting from the war. While in theory victims have the legal right to bring **civil reparations claims**, only ten interviewees indicated that they did so to receive compensation from defendants who were convicted by the ICTY.

Figure 4 - Economic losses attributed to testifying across time periods



Overall, if one measures “net socio-economic insecurity” in terms of: (1) negative impact on intimate relationships; (2) criticism; (3) ostracism; and (4) negative economic impact either during the time of testimony, following the last time one testified, or today, approximately one in four interviewees (n=80 or 26.7%) believe they have experienced one or more of such types of impact as a result of testifying.

Legal consequences

Of the 300 witnesses surveyed, less than seven percent (n=21) indicated they had been subpoenaed. More than 15% (n=46) of the interviewees have been called to **give evidence in other legal proceedings** due to having testified before the Tribunal. This highlights that witness involvement can result in further participation in legal proceedings beyond that which was originally anticipated by the witness.

Psychological and physiological well-being

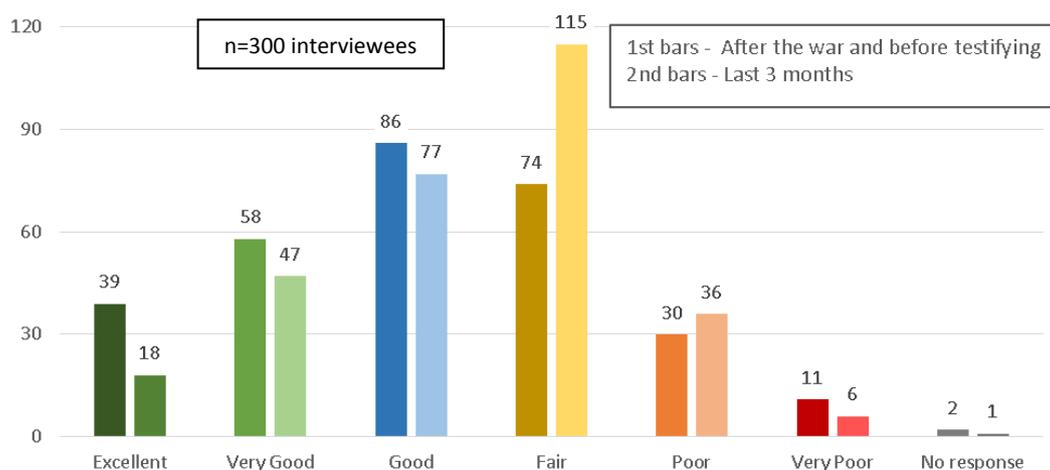
Trauma and health

Witnesses' emotional and physical health is directly related to their **wartime experiences**. Most interviewees experienced severe emotional and physical trauma during the wars in the former Yugoslavia. Certain traumas were especially prevalent, with more than two-thirds of interviewees experiencing shelling, being close to death, or feeling like their lives were in danger. More than half of the respondents indicated they experienced combat situations, as well as a lack of food and water. While large numbers of interviewees heard stories about the range of traumatic experiences occurring during the war, there were sizeable numbers who did not experience, witness, or even hear stories about common war events such as rape or sexual abuse, kidnappings, or physical assaults by familiar persons.

The consequences of trauma on the scale that witnesses encountered can evoke re-traumatization while testifying and can present substantial difficulties for obtaining closure about wartime experiences. The Pilot Study's results indicate that there are lasting **emotional effects** from these events for significant numbers of interviewees. Many indicated that they often (or fairly often) think about loved ones they lost (37%), as well as events and experiences from the conflict (25%), while a number of interviewees also continue to think about the experience of testifying (33%).

Witnesses face multiple **physiological health issues** because of wartime trauma. Large majorities of witnesses indicated that they do not think their health is worse today (77%), nor they do not think it will get worse because of having testified at the ICTY (73%). Given that the average interviewee age is 59, it is not surprising that they reported higher levels of stress-related health problems at the time of testifying, while today they report more health issues related to ageing (vision, blood pressure, mobility, etc.). Overall women indicated lower levels of health wellness than did men, supporting other research that women report higher levels of negative health consequences after violent conflict.

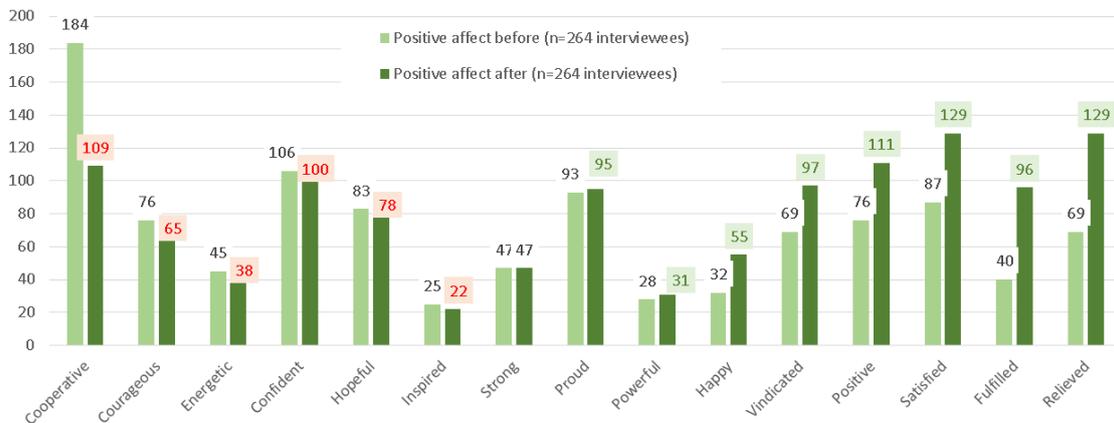
Figure 5 - Interviewees' overall health before testifying and within last three months



Before, during and after testimony

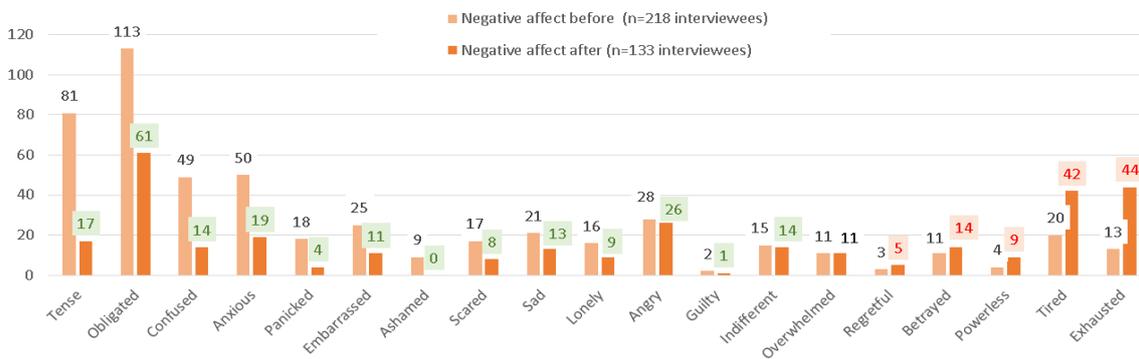
Almost all witnesses had some reaction to the process of testifying. When witnesses reflected back on the experience of testifying, a majority indicated they felt high levels of **positive affect** both before and after testifying—with higher levels of positive affect after testifying. Significant increases in affect experienced by substantial numbers of respondents after testifying include feeling “satisfied”, “relieved”, “positive”, and “fulfilled” (Figure 6, decreasing values are indicated in red and increasing values indicated in green). However, by far the most frequently occurring positive affect state reported was feeling “cooperative” *before* testifying: this reduces significantly after testifying.

Figure 6 - Positive affect: before and after testimony



When it comes to **negative affect**, witnesses indicated *significantly* lower levels of negative affect as compared to positive states both before and after testimony. Moreover, witnesses reported *significantly* lower levels of negative affect after testifying. Of the negative states interviewees selected “tense”, “obligated”, and “confused” among the top responses to describe their state of mind before testifying (Figure 7, decreasing values are indicated in green), while after they were more likely to feel “tired” and “exhausted” (Figure 7, increasing values are indicated in red).

Figure 7 - Negative affect: before and after testimony



In summary, when it comes to self-reported affect states, witnesses indicated *more positive than negative affect* both before and after testifying. These findings suggest that when witnesses recall testifying, they perceive their experience as more of a positive experience than a re-traumatization, lending support to research that bearing witness may have cathartic and satisfying elements.

Beyond the physical and emotional reactions that witnesses may experience during the process of testifying, witnesses may encounter other challenging obstacles. More than one-third of the

interviewees reported **logistical issues** and **problems associated with testifying** (delays, re-scheduling of testimony, waiting periods, and being away from home, family, and friends). Some interviewees also complained about **interpretation difficulties** in court and the accuracy of interpretation between native speakers and the interpreters. This was particularly a concern for Albanian speakers.

Coping strategies

Additionally, interviewees were asked to reflect on how they deal with difficult situations in their everyday life. They generally indicated that their **coping strategies** were more likely to be internally oriented with approximately half of them often or fairly often relying on their own mental resilience by taking it “one day at a time”, avoiding difficult situations, using humor, or focusing on their achievements (results not shown).

Overall, large majorities of witnesses (n=292) indicated relying on at least one **internal coping strategy** sometimes, fairly often, or very often. These categories include “thinking I have survived worse than this”, “no matter how hard this is, it has to be done,” or “using humor”, etc.

In contrast, interviewees indicated lower levels of **external coping strategies** (n=254) such as seeking psycho-social support from family, friends, coworkers, therapists, support groups, etc. Relatively few witnesses (21%) seek the support of psychologists or support groups sometimes, fairly often, or very often. Note that only five percent of these 21% seek professional therapy or group support fairly or very often. This is striking because more than 50% of the interviewees said VWS support and having a support person in The Hague helped to alleviate distress. Yet upon returning home, interviewees tend to not seek similar professional support.

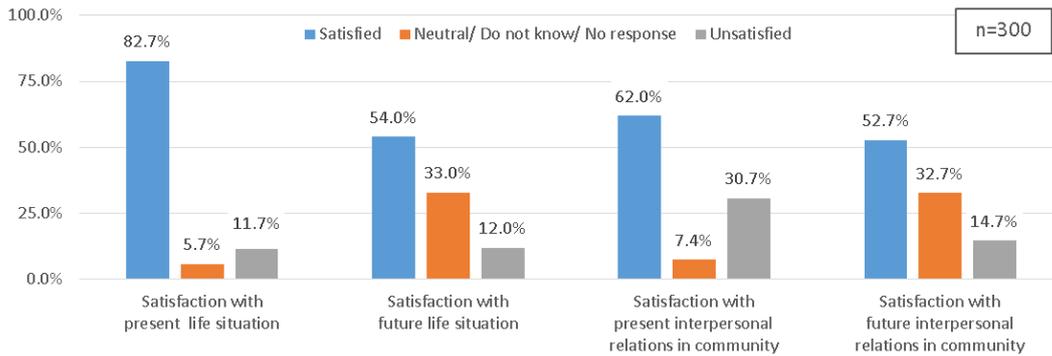
Finally, when it comes to relying on **substances as a coping strategy**, more than two thirds (n=228) indicated using a substance sometimes, fairly often, or very often. In each of the coping strategies category (internal, external, or substance), women showed a greater likelihood of using one or more of these strategies as compared to men to deal with difficult situations (results not shown).

The VWS noted that some witnesses who testified on multiple occasions experienced “**testimony fatigue**”. Given that almost one in three interviewees testified more than once there is a possibility that repeat witnesses find it physically and psychologically harder to deal with the repeated experience of testifying. Repeat witnesses may also face increased security risks. The linkages between multiple appearances, well-being, and security in particular need further analysis as other research has shown that those who perceive security threats are at greater risk for PTSD and depression.

Life satisfaction

Another critical element of overall witnesses' health is their general level of satisfaction with the world around them. In general the witnesses were optimistic about their **overall life situation**. More than 80% of the interviewees expressed that they were either satisfied or very satisfied with their present life situation, although only 54% expected to be satisfied with their situation in the next two to five years.

Figure 8 - Satisfaction with life situation and interpersonal relations

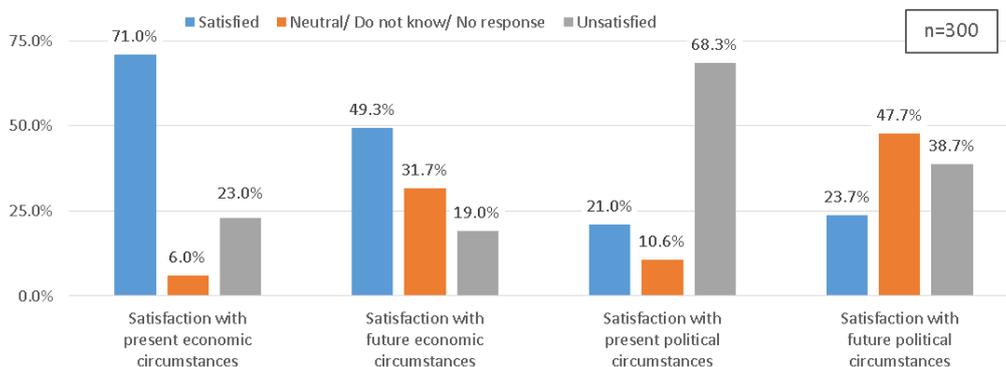


Most interviewees indicated that they are satisfied or somewhat satisfied with the present state of their interpersonal relations in their community (62%), while only 52% expect to be satisfied in the next two to five years.

Most interviewees also indicated that they were satisfied with their present **economic circumstances**, although they were again uncertain about the future or simply felt unable to predict what might happen in the next two to five years.

One issue the majority of interviewees, across all ethnic groups, has in common is dissatisfaction with the current local **political situation** where they reside. This problem directly influences local communities and eventually how witnesses cope with the aftermath of war and testifying.

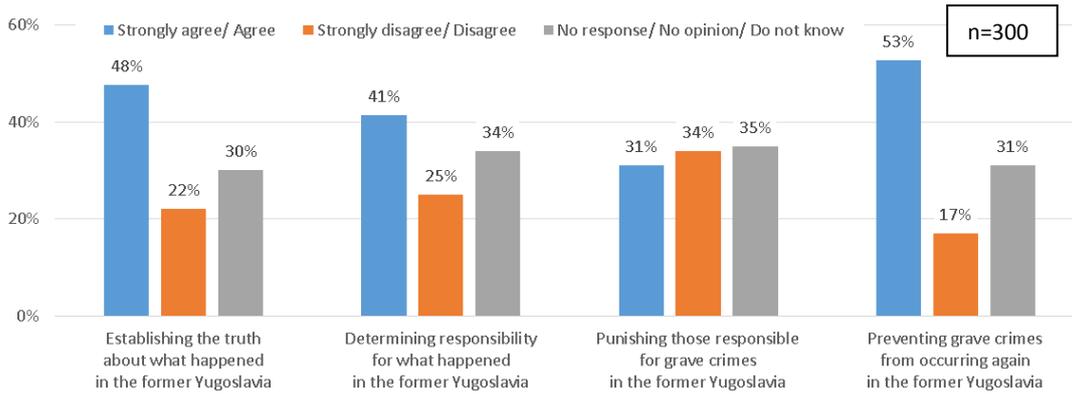
Figure 9 - Satisfaction with economic and political circumstances



Perceptions of ICTY

The majority of the interviewees believed the ICTY helped to prevent grave crimes from happening again, and a plurality thought that the ICTY established the truth about what happened, as well as determined who was responsible. Only one third believed, however, that the ICTY has done a good job in punishing those responsible.

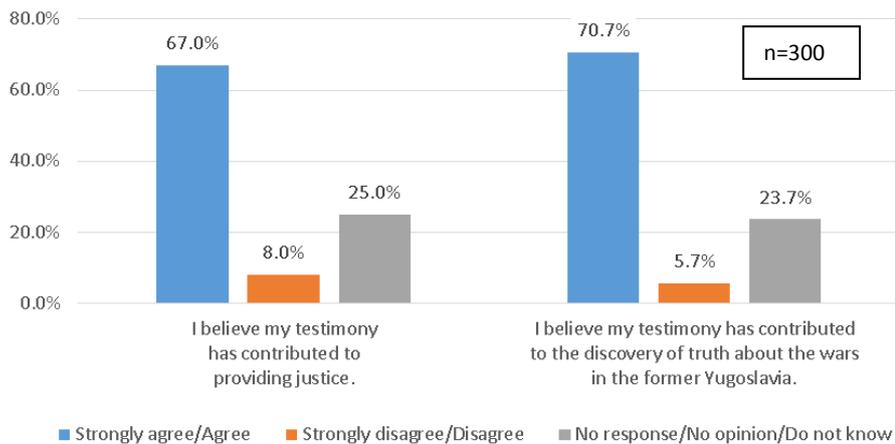
Figure 10 - Interviewees who think the ICTY has generally done a “good job”



Positive evaluations of the ICTY vary considerably across ethnic groups as other research has found. On matters pertaining to “establishing the truth” and “determining responsibility”, Bosniaks and Albanians were generally more likely to express support for the ICTY’s performance while Serbs and Croats were distinctly less likely to do so.

These findings capture interviewees’ dual perspectives on international justice. On one hand, interviewees were critical of the macro-level performance of the ICTY on matters such as the duration of the trials and the punishment imposed on those convicted. On the other hand, interviewees personally felt fairly treated by the ICTY (regardless if called to testify for the Prosecution or the Defence), and they felt they contributed personally to justice and truth telling.

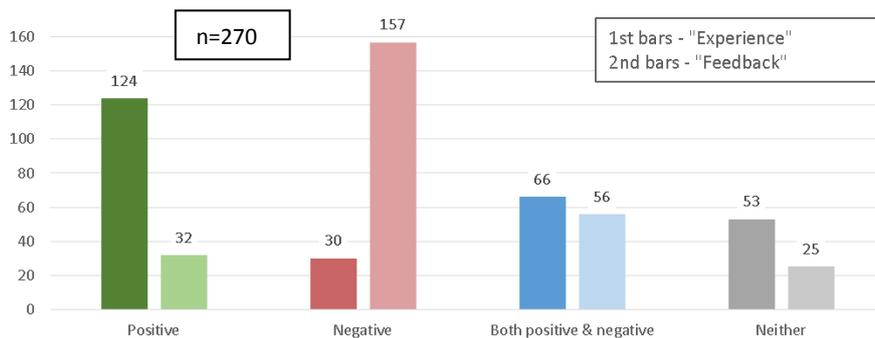
Figure 11 - Interviewees’ perceptions of the effectiveness of their testimony



Open-ended questions

In the final part of the interviews, interviewees were given the opportunity to speak freely on three important issues: (i) the meaning and impact of the experience of testifying; (ii) what they would change related to the process of testifying; and (iii) their advice to witnesses at future war crimes trials. The open-ended questions also provided greater insight into what was positive and negative for witnesses. Consistent with the multiple choice questions, interviewees are more positive about their personal experiences of testifying with the ICTY, but when thinking about the ICTY and how it might improve as an institution, interviewees are more negative.

Figure 12 - Positive and negative comments regarding experience and feedback



When asked first to describe what the experience of testifying has meant to them (Figure 12, 1st bars "Experience") almost two-thirds of interviewees indicated positive aspects of testifying such as contributing to truth, justice, and helping the tribunal with its decision making process, and contributing to history, fact-finding, and the legal importance of the process (n=124+66=190). Less than one-third of the interviewees indicated negative aspects, such as the way they were treated during testimony and dissatisfaction with Chambers, Prosecution or Defence Counsel, judgements and sentences of the Tribunal (n=30+66=96). Some of these negative aspects pertained to proofing, interpretation, questioning and interruptions during testimony.

Interviewees were also asked to address what they would change about the ICTY proceedings and the process of testifying (Figure 12, 2nd bars "Feedback"). Overall, interviewees provided more negative (n=157+56=213) than positive responses (n=32+56=88), most likely because the question prompted them to think about ways current practices could be improved, thus it pre-supposed critical feedback. Nonetheless, most common were interviewee responses about wanting to see justice done for those who escaped liability, while others wished the ICTY had conducted its trials more expeditiously. A number of interviewees also cited the need for post-testimony support for witnesses who are returning to communities that are still fractured.

Finally, when asked to provide advice to witnesses at future war crimes trials, interviewees' answers mirror much of what has been part of their own experiences. They would encourage witnesses to tell the truth (n=158); prepare well for their testimony (n=79); focus on telling their story and recording facts for future generations (n=61); be objective (n=57) and; take steps to manage and reduce the stress of testimony (results not shown).

Recommendations

As a result of the Pilot Study the authors make the following recommendations:

- Implement standard **post-testimony and follow-up programs** for witnesses within international and national judicial institutions to ascertain potential issues regarding security, emotional and physical well-being, and needs resulting from testifying.
- Develop **witness support structures** early on within the judicial institution to meet needs before, during, and after testifying to ensure adequate care and assistance for witnesses. Qualified staff members should be located at both the seat of the court and in the field.
- Establish and develop strong **relationships within the communities** where witnesses reside and where the field offices are located, and including points of contact in governmental and non-governmental institutions that help address the needs of witnesses in the period after testifying.
- Employ **gender sensitive approaches** in the work of witness support structures to reduce the adverse impact on female witnesses and bolster women's participation in legal proceedings.
- Disseminate **information to the wider witness community** to raise awareness about the testimony process and that the experience of testifying need not be viewed as necessarily difficult or negative.
- Raise awareness about available **trauma treatments and related psychological benefits**.
- Provide regular updates to witnesses on important **developments in the trials** in which they have testified (i.e. plea agreements, judgments, release of defendants, etc.).
- Determine measures to assist witnesses in **exercising their right to reparations**, namely provision of information about and assistance with the legal framework, costs, and the accessibility of legal support to pursue compensation or reparations.

Concluding thoughts

The Pilot Study results confirm that the process of testifying is varied, complex, and different for each witness.

Further studies could provide even greater insight and should include:

- a) an examination of the impact of testifying in sexual violence trials on both women and men,
- b) ICTY witnesses who testified in the Hadžić, Karadžić, Mladić and Šešelj trials,
- c) ICTY witnesses who reside outside the former Yugoslavia, and
- d) more in-depth evaluation of testimony fatigue and witness resilience.

The pivotal role that witnesses play in international justice underlines that witness support is essential, both for the sake of the witnesses themselves and the mandate of tribunals. Equally, practitioners and scholars need to better understand the impact of testifying on the lives of witnesses after their time in court has ended.



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Victims and Witnesses Section



CASTLEBERRY
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Valuable financial contribution provided by the Royal Norwegian
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NORWEGIAN MINISTRY
OF FOREIGN AFFAIRS

Details about the cover image (wordle):

visual depiction of the most frequently used words by witnesses when answering three open-ended questions at the end of the interview.