

Echoes of Testimonies

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

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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)

Team of Authors (in alphabetical order)

University of North Texas and Castleberry Peace Institute

Kimi King, J.D./Ph.D., Department of Political Science

James Meernik, Ph.D., Department of Political Science

Victims and Witnesses Section

Sara Rubert, MSc Psychology, MSc Democracy and Human Rights in South East Europe, Associate Support Officer, Victims and Witnesses Section, ICTY

Tiago de Smit, BC Social Work, Senior Support Assistant, Victims and Witnesses Section, ICTY

Helena Vranov Schoorl, BC Social work, BSc Psychology, Head of Victims and Witnesses Support and Operations Unit, ICTY

Editorial assistance provided by

Conference and Language Services Section, ICTY
University of North Texas

Translation

Conference and Language Services Section, ICTY

Graphic design

Kimi King, University of North Texas (data graphs)

Leslie Hondebrink-Hermer, Graphics and Reproduction Unit, ICTY (cover & lay-out)

Circulation: 275 copies

Revised October 2016

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

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.

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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.

Acknowledgements

A project of this magnitude would not have been possible without the generous support and hard work of many individuals, both inside and outside of the Tribunal, the Victims and Witnesses Section (VWS) and at the University of North Texas (UNT).

The VWS and UNT wish to express their deep appreciation to all involved who helped throughout the entire process and made this project a reality.

The Pilot Study personnel appreciate the on-going support and encouragement of the ICTY President, the ICTY Registrar, the ICTY Deputy Registrar, the Chief of the Court Support Services Section and the former Chief of VWS.

Without the expertise of the Conference and Language Section Service, the Communications Service and the Graphics and Reproduction Unit, the completion of this project would not have been possible.

Often unseen, and yet crucial to the ICTY, are the VWS staff and interns, both in The Hague and in the Field Offices, who provided a diverse range of administrative and research related tasks, including the initial participant recruitment calls and transcriptions.

All were essential for the implementation of this project: Aida Hasanbegović, Astrit Lleshi, Bojan Andrić, Dita Agoli, Driton Gashi, Dušan Ilić, Elvedin Begović, Erol Gavaz, Jasmina Ravnjak, Kornelija Kirnbauer, Manon Wessel, Renee Schooneman, Svetlana Jovanović, Tamara Slijepčević, Teuta Sejdiu, Sean Swindles and all other VWS staff who ensured the on-going function of the essential work of the Section. Adisa Agić and Marija Marković should be especially commended for their tireless efforts and ethic of care for witness well-being during interviews in the field. Invaluable assistance has been provided by the VWS interns in the Sarajevo Field Office Amela Jakubović, Jasenko Jašarević and Rafaela Tripalo.

These efforts were complemented by the work of UNT support staff and students. Their invaluable assistance ensured the reliability and validity of the research process. We appreciate greatly the coding and data entry work of Melissa McKay, Sabra Messer, Kirk Allen, Taylor Ledford, Savannah Leigh Shuffield, Kara Hoffpauir, Ayal Feinberg, Roman Krastev, Rachel Ferris, and Eliza Kelly. Brenda Ritz, Videoconference Manager, managed the yearlong series of meetings between The Hague, Sarajevo, and Denton, Texas. Sharon McKinnis and Cece Hannah in the Department of Political Science provided needed travel and administrative support. Finally, Dr. Mark Vosvick and Eliot Lopez in the Department of Psychology and the Center for Psychosocial Health Research provided invaluable insight and assisted with advice related to psychological, physiological, and trauma related survey items.

A number of external agencies provided resources and assisted with survey implementation. UNICEF Croatia, the UN House in Kosovo, and the OSCE Mission in Bosnia and Herzegovina generously offered use of their facilities to ensure that interviews were conducted in a secure and high quality environment for witnesses.

Finally, the Norwegian Ministry of Foreign Affairs' financial support, which covered a substantial part of the costs associated with conducting interviews, was vital as without funding for travel costs it would not have been possible to complete the report on schedule.

Finally and most importantly, international tribunals depend critically on *all* witnesses (Prosecution, Defence, and Chambers) to carry out mandates, and the ICTY is no exception.

The brave men and women who have come forward over the last twenty years have given much of themselves in this quest for truth and justice.

The Pilot Study could never have been accomplished without the willingness of the interviewees who gave so generously of their time and voices to share their experiences yet one more time. Their contributions are more than anyone could have ever asked for and exceeded all of our expectations.

It is to *all* the witnesses and their families that that this Pilot Study is dedicated.

**Victims and Witnesses Section,
ICTY**

Helena Vranov Schoorl, BSc
Tiago de Smit, BC
Sara Rubert, MSc

**Castleberry Peace Institute,
UNT**

Kimi King, J.D./Ph.D.
Jim Meernik, Ph.D

Foreword

As the International Criminal Tribunal for the former Yugoslavia (ICTY) completes its work, thoughts inevitably turn to the people whose testimonies made justice possible. What happened to the more than 5,000 witnesses who recounted what they saw, did or endured during the wars that engulfed the Balkans in the 1990s? Did their lives change after testifying? Did they find justice in the ICTY's judgments?

The ground-breaking “Echoes of Testimonies” – the result of the partnership between the ICTY's Registry Victims and Witnesses Section (VWS) and the University of North Texas (UNT) – seeks to answer these questions by systematically collecting and scientifically analysing information from witnesses themselves.

These witnesses would not have been able to tell their truths without the pioneering work of the VWS over the past two decades. For the very first time, modern international criminal justice had to grapple with the daunting endeavour of witness management. Since 1995, when war was still raging, the newly created VWS had to reach out to people in sieged villages; build an enabling environment for them to share their stories, often on their scarring physical and psychological wounds; and ensure that their security or well-being would not be placed at risk as a result.

VWS developed an integrated system of logistical assistance, psycho-social support and protection tailored to the specific needs of witnesses before, during and immediately after testimony. The VWS system has been used as a model in the establishment of similar witness units in other courts, including the International Criminal Tribunal for Rwanda (ICTR), the International Criminal Court, the Special Court for Sierra Leone, the Special Tribunal for Lebanon and national courts in the former Yugoslavia.

From the first contact, through their days in The Hague, to their return home, VWS has accompanied the witnesses throughout the often emotional process of giving evidence. During this journey, some witnesses revealed to VWS that they still had to cope with moving on with their lives, many expressed a cathartic sense of relief, but until now, there was no scientific quantification of the experiences of testifying before the ICTY.

Today, this pilot study starts to fill the gap. A representative sample of 300 witnesses, from Prosecution, Defence and Chambers, located throughout Bosnia-Herzegovina, Croatia, Kosovo and Serbia accepted to participate in this project. A carefully crafted survey explored witnesses' security, socio-economic condition, health, psychological well-being and their perceptions about the work of the ICTY. The data collected by VWS, confidentially and without exposing participants to harm, was then analysed by scholars at UNT's Castleberry Peace Institute and compiled in this publication.

The results are fascinating and encouraging. Overall, witnesses found the experience of testifying positive, and considered that sharing their stories made a direct contribution to the delivery of justice. A large majority felt they were treated fairly by the ICTY. Following these initial results, and subject to funding, I hope that the study can be extended to more ICTY witnesses and look forward to a similar survey and analysis of ICTR witnesses.

This illuminative contribution on the experience of giving evidence is a significant piece of the ICTY legacy. It will serve as indispensable guidance to witness support and protection professionals in national and international courts, and will offer a rich repository of lessons applicable in the context of human rights violations. But perhaps most importantly, this study has provided many of the witnesses an opportunity for closure of their experience of testifying before the ICTY.



John Hocking
United Nations Assistant Secretary-General
Registrar, International Criminal Tribunal for the former Yugoslavia

List of abbreviations

| | |
|--------|---|
| BCS | Bosnian/Croatian/Serbian |
| BFO | Belgrade Field Office |
| BiH | Bosnia and Herzegovina |
| CIA | Central Intelligence Agency |
| CLSS | Conference and Language Section Service |
| CSSS | Court Support Services Section |
| ECCC | Extraordinary Chambers in the Courts of Cambodia |
| ICC | International Criminal Court |
| ICMP | International Commission for Missing Persons |
| ICRC | International Committee of the Red Cross |
| ICJ | International Court of Justice |
| ICTR | International Criminal Tribunal for Rwanda |
| ICTY | International Criminal Tribunal for the former Yugoslavia |
| IRB | Institutional Review Board |
| MICT | Mechanism for International Criminal Tribunals |
| NATO | North Atlantic Treaty Organization |
| NGO | Non-Governmental Organization |
| OSCE | Organization for Security and Co-operation in Europe |
| OU | Operations Unit |
| OTP | Office of the Prosecutor |
| PMs | Protective measures |
| PTSD | Posttraumatic Stress Disorder |
| PU | Protection Unit |
| RPE | Rules of Procedures and Evidence |
| SCSL | Special Court of Sierra Leone |
| SFO | Sarajevo Field Office |
| SU | Support Unit |
| UN | United Nations |
| UNDP | United Nations Development Program |
| UNICRI | United Nations Interregional Crime and Justice Research |
| UNSC | United Nations Security Council |
| UNT | University of North-Texas |
| VWS | Victims and Witnesses Section |
| VWSO | Victims and Witnesses Support and Operations |
| VWU | Victims and Witnesses Unit |
| WA | Witness Assistant |
| WISP | Witness Support and Protection Unit |

Abstract

Witnesses who appear before international war crimes tribunals are the most critical stakeholders needed in the search for truth and justice. Yet relatively little is known about the short- and long-term impact on the victims and witnesses who share their stories. To better understand the witness experience, the Victims and Witnesses Section (VWS) of the International Criminal Tribunal for the former Yugoslavia (ICTY) and faculty from the Castleberry Peace Institute at the University of North Texas launched a Pilot Study to find out how ICTY witnesses are doing today.

The Pilot Study consists of a five part survey instrument and 15-20 minute interview evaluating 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 ICTY. Surveys were administered by VWS staff over a two-year period (2013-2015) to 300 fact witnesses living in Bosnia and Herzegovina, Croatia, Kosovo and Serbia, who were selected using quota and random sampling of the VWS witness population from trials beginning after 1998 and excluding the four trials that were on-going at the time of the Pilot Study .

To better understand what it means to "bear witness", the Pilot Study was designed to assess witnesses' concerns and to make recommendations regarding witness support services at the ICTY, as well as in the larger international justice enterprise. The Pilot Study findings indicate that witness-interviewees are doing reasonably well, especially given the impact of the events through which they lived and the high levels of trauma they have experienced. Most had a positive experience in testifying and believe they were making a valuable contribution to truth and justice. The process of testifying appears to be perceived as more positive than negative. Notably, there are a number of witnesses who have faced social, economic and other repercussions as a result of their testimony, and there was a small, but critical group of witnesses who faced security threats before and after they testified. The witnesses were supportive of the ICTY's efforts to determine truth and establish responsibility, but were less favorably disposed toward the punishments meted out by the Tribunal, as well as critical that the trials have taken so long. Sizeable majorities believe they were treated fairly by the Chambers, Prosecution, Defence and the VWS.

The Pilot Study results confirm that the process of testifying is varied and complex therefore requiring additional research to gain further insight into the witnesses' experiences.

Chapter 1 - Testifying before the ICTY and the role of the VWS

The International Criminal Tribunal for former Yugoslavia (ICTY or Tribunal) mandated the Victims and Witnesses Section (VWS) to facilitate the appearance of witnesses. After a general introduction to the Tribunal, this chapter describes how VWS was established and eventually evolved into three professional units, each providing specific services tailored to witnesses' needs. It provides insight into the development of the support mechanisms and the extension of the support services to the region of former Yugoslavia. Finally it presents the challenges faced over the last two decades and discusses the way they were addressed.

1.1 Introduction to the International Criminal Tribunal for the former Yugoslavia

In the early 1990s a series of violent armed conflicts occurred in the former Yugoslavia. As reports of mass atrocities intensified, the United Nations Security Council (UNSC) adopted Resolution 827 that established the International Criminal Tribunal for the former Yugoslavia in The Hague, The Netherlands.¹ This ad hoc tribunal was the first international war crimes court since the military international tribunals of Nuremberg and Tokyo after World War II.

UN Resolution 827 contains the Statute of the ICTY, which establishes the Tribunal's jurisdiction and organisational structure. The mandate of the ad-hoc Tribunal is fourfold:

- a) to bring to justice those responsible for violations of international humanitarian law,
- b) to render justice to the victims,²
- c) to put an end to the crimes being committed in the former Yugoslavia, and
- d) to contribute to the restoration of peace.

The Tribunal is an independent and impartial body that consists of three separate organs: the Chambers, the Office of the Prosecutor and the Registry. See Figure 1 below.

Figure 1



The Chambers is composed of judges, nominated by UN Member States and selected by the UN General Assembly based on recommendations by the UN Security Council.³ Having diverse nationalities, (although none from the former Yugoslavia), the judges who represent the main legal systems in the world, hear testimonies, deliberate on legal arguments, and issue judgements based on evidence

¹ Security Council resolution 827, Establishing an International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia, U.N. Doc. S/RES/827 (25 May 1993), available at <http://www.icty.org/en/about/tribunal/establishment>

² Note on terminology: use of the term *victim* versus *survivor*. Many people who have suffered in the war do not see themselves as *victims* and are offended if called so. This offense is caused by the fact that the term *victim* often implies a passivity that people did not feel characterised their behavior in 'fighting' the war. These *survivors* of war feel resentful when they are described as or treated as 'victims'. For others, the term *victim* is a welcome term because it can mean that they are not responsible for what happened to them. Moreover, this term has the potential to lay the blame upon the accused for the violence that was perpetrated against them. The ICTY Statute clearly mandates the VWS to provide services to 'victims and witnesses' making particular provision for 'victims of sexual assault'. Bearing in mind the level of sensitivity about such terminology, VWS staff are sensitive to the way they use these terms with witnesses attending the ICTY.

³ See <http://www.icty.org/sid/143>.

presented. **The Office of the Prosecutor** conducts the investigations and prosecutes persons falling within the ICTY's jurisdiction and acts independently as a separate organ of the ICTY.⁴ Finally, **the Registry** is responsible for the administration and management of the Tribunal, which includes a range of services such as the provision of assistance and protection to victims and witnesses, public information, legal support to the judges, information technology, courtroom administration, security, translation and interpretation, legal aid for the accused, and detention, among others⁵. It should be noted that **the Defence** of the accused (who have the right to be represented by independent and qualified legal counsel) is not provided by an official organ of the Tribunal's structure.

The Tribunal indicted 161 persons,⁶ and since the arrest of Goran Hadžić on 20 July 2011, no ICTY fugitives remain at large. Two cases (Mladić and Hadžić) are in trial and in December 2015 the Appeals Chamber ordered a retrial of Jovica Stanišić and Franko Simatović under all counts of the indictment. The most recent trial judgements were delivered in the Radovan Karadžić case and Vojislav Šešelj case in March 2016. Two cases (Prlić et al. and Stanišić & Župljanin) are on appeal, awaiting final judgment. The Tribunal is expected to complete its mandate by the end of 2017.

Since 1995, approximately 4,650 witnesses have appeared before the Tribunal to assist in establishing the facts surrounding events that took place in the wars of the former Yugoslavia. The Tribunal has focused mostly on senior leaders such as high-ranking government officials, military officers, and leaders of militia groups from various parties to the Yugoslav conflicts. The national courts focus on prosecuting a large number of lower ranking suspects. In the last two decades, the Tribunal has handed down a wealth of jurisprudence on war crimes, crimes against humanity and genocide. The ICTY has shared its wealth of knowledge and experience with communities in the former Yugoslavia through judicial capacity building, outreach in the local communities, development of curricula and materials on international criminal and humanitarian law, legal and witness support, peer-to-peer training, and access to ICTY materials translated into local languages.

As part of the ICTY's Completion Strategy,⁷ the Mechanism for the International Criminal Tribunals (the MICT, Mechanism) was established by the United Nations Security Council in 2010. The MICT is charged with carrying out a number of essential functions of the International Criminal Tribunal for Rwanda (ICTR) and the ICTY after completion of their respective mandates. In July 2013, the Hague branch of the MICT commenced its work dealing with all remaining issues of the Tribunal's mandate, including the completion of cases on appeal,⁸ and preservation, security, and accessibility of thousands of linear meters of physical records and petabytes of digital records generated as a result of the Tribunals work.⁹

⁴ See <http://www.icty.org/en/about/office-of-the-prosecutor>

⁵ See <http://www.icty.org/en/about/registry>

⁶ See <http://www.icty.org/en/cases/key-figures-cases>

⁷ Since 2003, pursuant to UNSC resolutions, the ICTY embarked on the completion strategy of its mandate, taking all necessary measures to complete all trial activities. In preparation for the completion of the trial and appellate phases of the Tribunal, the ICTY has identified several functions that a Residual Mechanism of the Tribunal should assume. The Completion Strategy ensures that the Tribunal concludes its mission successfully, in a timely way, and in coordination with domestic legal systems in the former Yugoslavia. For details on the ICTY Completion Strategy see <http://www.icty.org/sid/10016>.

⁸ MICT will handle all appeals of ICTY cases for which notice is filed after 1 July 2013.

⁹ See <http://www.unmict.org/en/about/archives-international-criminal-tribunals>

1.2 The role and importance of the Victims and Witnesses Section

The VWS Mission Statement

The VWS contributes to the effective functioning of the ICTY by facilitating the appearance of witnesses before the Tribunal, whether called by the Chambers, Prosecution or Defence.

The VWS develops its principles, policies and procedures to ensure that all witnesses can testify in safety and security, and the experience of testifying does not result in further harm, suffering or traumatising to the witness. The VWS fosters an environment in which testifying can be experienced as a positive, strengthening and enriching event.

The VWS operates with the highest levels of integrity, impartiality and confidentiality, and ensures that all witnesses are informed about the rights and entitlements and have equitable access to the services of the section.

The Protection Unit co-ordinates responses to the security requirements, the Support Unit provides social and psychological counselling and assistance to witnesses, and the Operations Unit is responsible for logistical operations and witness administration.

To ensure the smooth and efficient running of trials, it is essential that victims and witnesses arrive in a timely fashion to The Hague, ready and able to give evidence. The VWS, as a neutral body under the umbrella of the Registry, facilitates the appearance of all witnesses, most of whom reside in the former Yugoslavia.

The UNSC recognized that some witnesses testifying before the ICTY will have suffered through traumatic events during the wars in the former Yugoslavia which they will have to relive in a country far away from their own and without support from relatives and friends, and that they may have security concerns related to testifying. To alleviate these concerns, the Tribunal has set up an environment that allows witnesses to testify safely and with dignity while being provided with adequate assistance and support.¹⁰ The UNSC also recognized that the victims of sexual assault and rape may require specific support, and therefore due consideration was to be given to the employment of qualified women. This led to the establishment of a specific Registry unit as outlined by the ICTY Statute, and more specifically Rule 34 of the ICTY Rules of Procedures and Evidence, with two primary functions: *recommending protective measures for victims and witnesses*¹¹ and *providing counselling and support for them, in particular in cases of rape and sexual assault.*¹²

The VWS, the first of its kind in any modern international context, became operational in April 1995. It immediately faced two major challenges: defining counselling and support within an international legal framework and developing practices and mechanisms to support the abovementioned Rule 34 functions.

Unlike domestic criminal proceedings where governments can provide a range of social security, medical, housing, and other services, the international character and mandate of the ICTY meant it could not automatically rely on such state services. Therefore, VWS needed to determine how to assist victims and witnesses to overcome the obstacles and distress connected to their appearances before the Tribunal. VWS was tasked with providing essential services for witnesses and faced challenging

¹⁰ See http://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_1995_en.pdf.

¹¹ The ICTY does not differentiate in its Statute and its Rules of Procedure and Evidence between a witness and a victim. However, the VWS can only provide its services to victims who have been listed as witnesses in a case.

¹² See http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev49_en.pdf Rule 34 Victims and Witnesses Section.

issues. How would VWS provide practical assistance to people travelling from more than twenty different countries? How would VWS develop adaptable services for different profiles of witnesses and their diverse needs? What are the staffing requirements necessary to provide such a variety of sensitive practical services and guidance, often in combination with psychological support to victims and witnesses? How should all of the VWS activities be funded and by whom?

With the start of the first trial in 1996 and the preparation for the arrival of victims and witnesses, it soon became clear that only an integrated approach of three different aspects would match the witnesses' different needs. Due consideration was to be given to individual logistical, protection and support needs of the witnesses simultaneously. This paved the way for the eventual structure of the Victims and Witnesses Section, consisting of three separate units: *the Operations Unit, the Protection Unit and the Support Unit*.

1.2.1 Operations Unit: administration and logistics

What does it require to ensure the safe and secure travel of a witness to The Hague or to a designated video-conference link location? In October 1995, fifteen witnesses were called to testify in the Dragan Nikolic case (the first ICTY Rule 61 hearing¹³). This was a huge logistical undertaking as the movement and security of persons in and out of a war-shattered region proved difficult. There was a need to obtain necessary identity or travel documents and establish good working relationships with the local authorities. VWS needed to put in place arrangements with the Dutch authorities for secure and safe accommodations, meals, medical assistance, among a wide variety of services in The Hague. In the end, the arrival of the first witnesses involved transport by helicopters from Bosnia and Herzegovina to Croatia and then by airplane from Croatia to the Netherlands, where they were met by the first four VWS staff members and the Dutch police. To address these initial logistical challenges, an operational unit within the VWS was established to develop the expertise needed to handle the operational aspects of witness appearances. Thereafter, the Operations Unit managed the provision of logistical assistance to witnesses at the ICTY and in the region of the former Yugoslavia. This included travel and transport to and from the region, local transport in the region and The Hague, accommodations, management of visas and flights, as well as provision of allowances for witnesses.

1.2.2 Protection Unit: security and safety concerns

In the countries of the former Yugoslavia, which had experienced substantial violence and destruction and where lingering tensions over these wars often still exist, providing for witness safety and security is a critical function. Not only is there a risk posed by those implicated in atrocities who may seek to prevent a witness from testifying, but sympathisers of those implicated can also pose significant threats. While security was always part of VWS's mission, over time and especially after an independent review, the roles and functions of the Protection Unit solidified. Following a review in 2003, the Protection Unit worked more independently from the remainder of VWS to ensure the strictest confidentiality and to maintain the safety and absolute integrity of protected witnesses

The establishment of the Protection Unit and its associated functions were closely aligned to the working practices of national witness protection programs. Witnesses considered at risk were referred for assessment to the Protection Unit which, independently from the ICTY parties, assessed the security situation of witnesses. The outcome thereof eventually dictated the type of action or measures to be taken. While a number of mitigating measures such as providing security advice to the witness or referring the matter to local authorities for further investigation were available, the ability to temporarily and permanently relocate witnesses to third States provided a strong foundation for the Protection Unit's capacity to protect the most vulnerable.

Additionally, post-conflict situations presented further challenges to the protection of witnesses because agencies usually charged with protecting citizens, such as national police, were decimated by

¹³ See http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev49_en.pdf
Rule 61 Procedure in case of failure to execute a warrant

the conflict or not functioning at levels required to ensure the adequate protection of witnesses. The Protection Unit had to look elsewhere for support.

The witnesses' perception of and trust in national agencies in the former Yugoslavia also represented a challenge for the Protection Unit. Vulnerable witnesses viewed the ability of the states to provide adequate protection with great scepticism. As the number of witnesses testifying increased due to trial activities, the Protection Unit was obliged to rely heavily on the cooperation of states with which the ICTY had established formal agreements for the protection of witnesses.

1.2.3 Support Unit: practical and psychosocial support

While preparing for the arrival of the first witnesses in 1995, the VWS employed two Witness Assistants¹⁴ to provide assistance to witnesses in their mother tongue (Bosnian/Croatian/Serbian or BCS).¹⁵ During this initial period it was evident that the Witness Assistants' work was critical to the well-being of witnesses and that the witnesses appreciated being able to communicate directly in their own language and getting immediate responses to their questions. As concluded by an external consultant,¹⁶ the work of Witness Assistants ensured that the witnesses were at ease before their important task of testifying.

This experience led the VWS to conclude that support cannot be simply attached, like a one-hour therapy session, to the witness experience. A supportive, round-the-clock network needed to be created to provide necessary assistance to witnesses who were travelling to The Hague, staying in an unfamiliar environment for a number of days or sometimes weeks, and residing away from their family and normal life. To respond to concerns and questions of witnesses immediately, in their mother tongue, and communicating in a reassuring and sensitive manner, staff had to be available throughout the witnesses' stay. Expertise was secured through VWS Support Officers, who were psychologists and social workers, who guided the Witness Assistants on a daily basis in their frequently intense work with war-affected individuals.

Slowly but surely, over the years, the psycho-social concept and services were integrated into the entire functioning of the VWS. This eventually resulted in the setup of a distinct Support Unit with a comprehensive Support Program aimed at preventing, minimising, or removing difficulties and obstacles during the three distinct stages of witness involvement, namely: the pre-testimony period, the period of testifying itself, and the post-testimony period.

1.2.4 Supporting the support staff and the cost of compassion

As the number of trials increased and more witnesses travelled to The Hague to testify, the staff had greater exposure to the wartime experiences and the related pain and suffering of many victims and witnesses. In the Support Unit, awareness grew that staff were continuously and intensively exposed to war-affected individuals and their stories, and the staff grew to require regular support and debriefing. *Occupational stress* in the hectic environment with multiple war crimes trials running daily resulted in *compassion stress* as a result of often intense and prolonged exposure to secondary trauma, which made staff susceptible to the development of compassion fatigue.¹⁷

¹⁴ In the early days, Witness Assistants directly working with witnesses were selected for their ability to speak Bosnian, Croatian, Serbian and Dutch, experience in dealing with refugees or other non-Dutch nationals, good organisational skills and ability to undertake practical and supportive tasks while working "unusual" hours. In the period immediately after the war and until 2001, nationals of the war-affected countries of the former Yugoslavia were not employed within VWS to avoid possible triggers that could negatively impact interactions between witnesses and VWS staff.

¹⁵ From the very beginning, the Conference and Language Services Section (CLSS) has consistently applied the language policy as defined in the Tadić and Krsmanović cases where (based on expert opinions) it was confirmed that the language variants spoken throughout the former Yugoslavia, formerly known as Serbo-Croatian (a polycentric language with standard variants), were commonly understood by people from the region. In order to deal with all three variants, CLSS coined a new term "BCS", in alphabetic order for Bosnian-Croatian-Serbian.

¹⁶ An external psychiatrist was contracted for approximately two weeks to provide professional assistance to witnesses and staff working with witnesses called to testify in 1995.

¹⁷ Charles R. Figley coined the term 'compassion fatigue' and began to plead for recognition of this occupational risk and to raise awareness of the importance of institutional prevention programs (Figley 1995).

The phenomenon of secondary traumatic stress disorder (or compassion fatigue) in organisational settings started to receive more attention in the late 1990s. Exposure to the narrative of traumatic events and the suffering can gradually and unintentionally affect the coping skills of the staff involved. Supporting the staff who provide vital support to the war-affected individuals is a critical prerequisite for ensuring quality services to witnesses as well as staff well-being and the prevention of compassion fatigue, burn-out and other conditions.

The VWS introduced a prevention program through psychological education and social support mechanisms including staff meetings about the emotional impact of working with traumatised witnesses, and presentations on empathic abilities and responses, with a focus on the risks associated with over- and under-engagement. Opportunities for debriefing were created and team-building activities encouraged.

1.3 The Support Unit: integration of the concept of “counselling and support”

The concepts of counselling and support were integrated in the VWS policies, procedures, and practices to ensure that the victims and witnesses are cared for with sensitivity and dignity, and are provided with individual therapeutic counselling, crisis intervention, and psycho-social support. The VWS has defined “counselling and support” as an integrated model of services related to logistical, psycho-social, and protection related matters in connection to witness’ appearances before Tribunal. The “counselling and support” concept represents three types of support: (1) *individual counselling* to victims and witnesses by Support Officers;¹⁸ (2) *professional advice to and consultation* with other units in and outside of the VWS to ensure that the services provided are sensitive to the needs of vulnerable and traumatised victims and witnesses; (3) the delivery of a range of specific practical and *psycho-social support services* in all areas of VWS work.

The Support Unit provides practical and supportive assistance, tailored to an individual’s specific circumstances, with the primary focus on the witness’ psycho-social well-being. The Support Unit, however, does not have resources to provide long-term therapy, and that is not part of its mandate. Witnesses may or may not experience re-traumatisation while giving testimony—their individual needs determine which services are provided. The main tools for the provision of psycho-social support are empowerment of the witness’ coping strategies, as well as empathy and compassion with the witness (discussed in detail in chapter 5).

Recognising that there is no “one-size-fits-all” response, a client-centred and gender sensitive approach became an important element in VWS interactions with witnesses, especially when dealing with vulnerable witnesses. Some support services are self-explanatory while other may be easily overlooked. Testifying before an international tribunal can be a daunting experience, especially considering that it may be the first time a witness is away from home, separated from family, and perhaps leaving the country or flying for the first time. Witnesses may not know any other languages or may be unfamiliar with the customs of another country, to say nothing of the problems that might arise with awakening memories of war and traumatic events. Witnesses’ needs range from long and intense interaction with staff to a short phone call from staff to check on someone’s well-being.

As many witnesses report, the fact that most have never testified before in their own home country, not even for traffic violations, puts additional burdens on them to perform well while having no comparable experience on which to draw. All these factors can increase stress levels, insecurities, dependency, and the need for support and assistance for the witness and for others on whom there may be an impact because of the witnesses’ absence (child, parent or a dependent, employer, etc.).

¹⁸ The VWS Support Officer is a graduate in the field of social work, psychology or other relevant studies and responsible for psychological and physical well-being of victims and witnesses as well as the management of the Support Unit. For more details on VWS staff composition see Annex I.

The VWS's mission is to provide the highest possible standard of care. The Support Unit developed a wide range of support mechanisms to ensure and maintain the well-being of witnesses while under VWS care. The VWS is a neutral and impartial section of the Registry allowing it to advocate on behalf of witnesses and to provide witnesses with opportunities for private and confidential reflection about concerns and other matters related to their court appearances.

1.3.1 The VWS support mechanisms

In the *pre-testimony period* the VWS informs witnesses about and arranges their logistical details (visas, accommodations, transportation, financial entitlements, information about legal proceedings, and the provision of individual counselling, emergency, and crisis care services). VWS contacts witnesses before testifying to identify and remove, where possible, any obstacles to testifying and to reduce the impact of testifying on witnesses. Witness' needs in this context are diverse, ranging from child care, help in caring for a sick relative, counselling about anxiety related to being in an unfamiliar environment at the Tribunal and assistance in taking care of livestock. VWS works to overcome the obstacles that may hinder an individual witness from coming to The Hague to freely testify.

The *testimony period* spans the actual travel and stay in The Hague including the day(s) of giving testimony. Essential practical and support services of both a professional and personal nature are offered on a round-the-clock basis through VWS staff assigned shifts to ensure that the well-being of the witnesses is the priority at all times. These services conform to the highest standards possible include: attending to the practical needs of the witnesses by providing information, assisting with logistical details, organising and ensuring secure and suitable accommodations and meals, providing daily allowances, staying in contact with the witnesses' families and friends, accompanying witnesses to the court premises as needed, providing recreational activities, and interpreting for any authorities such as medical doctors, psychologists, psychiatrists, etc. VWS staff are trained to be a supportive presence, to use sensitive and appropriate communication skills, to assist in caring for witnesses before, during and after court appearances, and to monitor the witnesses' level of distress or need, and to alert Support Officers for intervention.

The *post-testimony period* starts when the witness returns home. The VWS provides additional support through follow-up calls four to six weeks after testimony, to assess how the witnesses are coping, and whether there are any outstanding matters related to their testimony or needs that require additional assistance and referrals. In general, the VWS functions as an important point of contact for the witnesses throughout all the phases of their process of testifying in The Hague and in the region of former Yugoslavia.

1.3.2 Extending the support program to the region of former Yugoslavia

Through incidental contacts with witnesses in the region and through feedback from witnesses while in The Hague, VWS began to realise that more and earlier contact with vulnerable witnesses, particularly in remote areas, was important. Providing such support enhanced witnesses' feelings of safety and control over their situation and improved the preparation of witnesses for the difficult task of testifying before the ICTY. The great majority (about 70%) of witnesses reside in the former Yugoslavia, which presented challenges to VWS staff who had to travel back and forth to deal with witnesses' pre- and post-testimony period issues. For efficient provision of services, VWS established the Sarajevo Field Office (SFO) in 2002 and held a number of network conferences that contributed to closer cooperation among health and welfare professionals in the region of former Yugoslavia with the goal of improving victim and witness services.

The Sarajevo Field Office

The increased number of simultaneously running ICTY trials (as many as six) necessitated increased operational capacity because of the number of witnesses from the region in need of protection, logistical assistance, and psycho-social support. The SFO¹⁹ plays a primary role in responding to these

¹⁹ VWS staff in SFO consist of one Associate Support Officer, one Associate Protection Officer and one Support Assistant. For more details on VWS staff composition see Annex I.

needs, thus expanding and enhancing the services to witnesses in the region, particularly to those who are vulnerable or sensitive, in order to improve the quality and the availability of VWS services for victims and witnesses in the region. The structure of the SFO mirrored the VWS structure in The Hague in order to have a section-wide consistent approach when addressing both the support and the protection issues of witnesses. The SFO strengthens more direct contact in the region, works more directly and continuously with local psycho-social and support networks, and facilitates cooperation between the ICTY and local authorities.

As of 2016, VWS SFO key support activities include:

1. Provision of counselling and support services to victims and witnesses testifying via video-conference link from different locations in the region of former Yugoslavia. For witnesses who are unable to travel to The Hague due to health, security or other reasons, the ICTY may authorise the hearing of their evidence via video-conference link.
2. Personal meetings with witnesses before and after their testimony to assess their needs and respond to requests.
3. Identifying and liaising with international and national organisations, non-governmental organisations (NGOs), institutions and local authorities in order to refer witnesses to relevant agencies that can help them when assistance cannot be provided by the ICTY.
4. Advocacy for witness support, including participation in conferences and round tables and the exchange of experiences with local partners.

While the need to expand VWS activities in the region was obvious, it did not happen as quickly as desired. Even so, the SFO did eventually promote the presence of support services in the region for easier access to witnesses. Importantly, the experience of not having a field office initially resulted in some challenges because of the logistical difficulties associated with travel to and from the region.

The Network Conferences

Witnesses need follow-up in the provision of actual services for their on-going psycho-social needs. Because the VWS does not possess the necessary resources to meet the myriad of needs of witnesses in the post testimony period, it relies on its relationships with a wide array of organisations in the region to make referrals to service providers. Funded by the European Commission in 2004, the VWS organised multiple conferences in The Hague²⁰ to build stronger relationships and referral networks with health and welfare professionals from Bosnia and Herzegovina, Serbia and Montenegro, Croatia, Kosovo,²¹ and Macedonia. The conferences were designed to better inform health and welfare professionals about the role and function of the ICTY VWS, and to include psychiatrists, medical doctors, psychologists and social workers from public and private sectors. These initiatives assisted the VWS in creating a network of health and welfare professionals familiar with the work of the ICTY and its witnesses. SFO has referred a number of witnesses for further assistance through these channels and has continued its efforts to maintain and expand this referral network in the region.

1.3.3 Follow-up

Article 34 of Rules of Procedure and Evidence has led the VWS to expand its services to the post-testimony period. Initially follow-up services were provided to witnesses on an incidental basis, but in 2009 the VWS intensified its efforts to apply a more comprehensive approach when assessing the witnesses' well-being after testimony. This resulted in the creation of an internal Follow-Up Policy that provides the following services:

1. **Regular follow-up calls.** Since 2009, VWS has contacted each witness who testified before the ICTY four to six weeks after their return home. This call is intended to provide a sense of closure for witnesses, assess the witnesses' well-being, and express appreciation for the witnesses' contribution to justice. Several times in the past (in 2000, 2002, 2004 and 2006) initiatives were

²⁰ See www.icty.org/x/file/Outreach/view_from_hague/balkan_040616_en.pdf

²¹ Throughout this report, this designation is used without prejudice to the status of Kosovo, in line with UNSC Resolution 1244 and ICJ Opinion on the Kosovo Declaration of Independence. ICJ Reports, 2010, Advisory Opinion of 22 July 2010.

launched to try to integrate regular testimony follow-up services into the VWS Support Program.

2. **Direct visits/contacts.** The purpose of a direct visit to a witness by VWS is to assess the current situation and needs of a witness upon his/her return from The Hague or video-conference link location, by meeting the witness at his/her home or at any other agreed meeting point.
3. **Referrals to Non-Governmental Organizations, institutions and advocacy.** The purpose of referrals of a witness by VWS to NGOs and/or other institutions is to provide assistance that is required by a witness and cannot be provided by the ICTY. Witnesses living in a post-conflict society may be experiencing a myriad of needs that can only be met with the rebuilding of a safe and economically secure state structure. These needs can never be met with ICTY resources alone. In the absence of any restitution or compensation program, or a specific budget for the provision of essentials, (e.g. housing, food supplies, education, medical and social security, etc.), the VWS is necessarily limited to negotiating and encouraging other, outside sources to support the provision of such services to vulnerable witnesses.
4. **Emergency Aid.** Emergency Aid is primarily allocated for a clothing allowance for witnesses before they appear in court, assistance in the post-testimony period, medical aid (treatment) and/or emergency aid to address immediate needs resulting from their testimony.
5. **Extraordinary losses allowance.** In addition to the standard allowances all witnesses receive, in specific cases, supported by additional documentation, witnesses may obtain an exceptional loss reimbursement which is designed to cover extraordinary monetary losses due to testifying. These might be losses a witness has suffered or will suffer, creating undue hardship, as a result of testifying before the ICTY.

One of the frequently asked questions the VWS receives concerns how witnesses cope with testimony and how well they function after testifying. Do witnesses require VWS assistance and support immediately upon completion? Or is it rather six or more months later? The only way to understand these issues is through regular and follow-up contact with witnesses.

1.4 VWS Challenges

1.4.1 Resources

Regardless of whether witnesses are called by the Prosecution, the Defence or a Chamber, VWS “counselling and support” is designed to enable witnesses to testify as free as possible from psychological, emotional and physical distress. To safeguard its impartiality and to ensure quality and transparent work, the VWS has developed a range of policies based on the assessment and re-assessment of witness needs. The VWS has always endeavoured to develop policies on an as-needed basis. For example, early on, female witnesses were reluctant to testify because they were the caregivers of dependent children. The VWS therefore developed a policy to address such witness concerns and sought resources to meet this need.

Following the conceptualisation of VWS services, one of the next greatest challenges for the Support Unit has been to ensure sufficient staffing resources in The Hague and later on in the SFO. Initially some positions within VWS were funded by external donors and only after some years of debate and lobbying were these included in the ICTY regular budget.²² On-going uncertainties of funding and adequate staffing levels jeopardised the continuous provision of services and negatively impacted staff morale.

1.4.2 Managing expectations

Since the establishment of the Tribunal there has been on-going debate about the responsibilities of the ICTY including type and level of services provided to the victims and witnesses. All services provided by

²² From October 1995 till January 1999 five Witness Assistants in The Hague tasked with round-the-clock provision of services to witnesses were funded through the European Union with a grant from the Rehabilitation and Research Centre for Torture Victims, Denmark. In January 1999 Witness Assistants were included in the regular UN budget. From 2002 till 2004 the VWS component in SFO was funded by the Canadian and British Governments. Since January 2005 the SFO has been included in the regular UN budget. For more details on VWS staff composition see Annex I.

the VWS are directly connected to the process of testifying and witnesses appearing before the ICTY can have different expectations regarding what the Tribunal can do for them. In some cases, these expectations go beyond the VWS mandate. The VWS cannot create a dependency of witnesses on the ICTY and has endeavoured to fully reintegrate witnesses into their communities as soon as feasible.

VWS' role is limited to facilitating the appearance of all witnesses and, unlike the International Criminal Court (ICC), no ICTY trust fund for victims exists.²³ As stipulated in Rule 106 of the Tribunal's Rules of Procedure and Evidence,²⁴ victims can claim compensation before domestic courts in the former Yugoslavia against those who have been convicted before the Tribunal. Victims do not have standing before the Tribunal to bring claims for restitution or compensation.

In post-conflict countries where social, medical and other services are not generally available or accessible, or where witnesses may not trust the local authorities, relying on the local institutions to assist them is problematic. It is therefore not surprising that witnesses sometimes wrongly believe that the ICTY as an international institution can support their requests with local institutions, recommend or even force the local authorities to facilitate a positive outcome of their claim and reduce the time needed to solve the problem.

Many pre- and post-testimony contacts by VWS with witnesses have indicated that there is an on-going misperception of the ICTY and its role in the decision-making processes of local authorities. These types of misperceptions are difficult to alter and have resulted in deep disappointment for many ICTY witnesses. Therefore, witnesses need to receive timely and accurate information on the VWS and ICTY's mandate and role, including rules and procedures on compensation, to adequately manage the witnesses' expectations and prevent disillusionment.

Summary

Witness support plays an essential role in facilitating the ICTY's proceedings. Through the pioneering work of the VWS, critical insights into witness support have emerged and practical procedures put in place. The lessons learned from the development of the ICTY include the following.

First, the provision of timely and consistent information on the witness' role, the responsibilities of the VWS, and the work of the ICTY is required to successfully equip the witness for the whole experience of testifying and manage the expectations of witnesses about the process. Secondly, short-term and long-term follow-up activities need to be standardised and embedded in the post-testimony period to develop better understanding of witnesses' concerns and needs. Third, to provide adequate care and assistance to victims and witnesses, sufficient and consistent internal funding needs to be secured early on to assure adequate numbers of qualified personnel who can provide high levels of support to victims and witnesses both at the seat of the court, and most importantly in the field, where most of the witnesses reside. Limited staffing resources create uncertainties about program services, jeopardise addressing witness needs, interfere with efficient and effective provision of services, and have a negative impact on securing and retaining highly qualified staff. Fourth, the provision of necessary support to the staff working with war-affected individuals is needed to ensure the quality of services provided. Organisational policy should include programs aimed for professional development that also include self-care of the staff.

²³ In 2002, the International Criminal Court created the Trust Fund for Victims as provided for in Rome Statute, Article 79. See also <http://www.trustfundforvictims.org/>

²⁴ See http://www.icty.org/x/file/Legal%20Library/Rules_procedure_evidence/IT032Rev49_en.pdf, *Rule 106 Compensation to Victims*.

Chapter 2 - Pilot Study: survey background and methodology

The Pilot Study was designed to gain a better understanding of the impact of testimony on witnesses. This chapter describes the main goals of the Pilot Study and provides more insight into the research design. It discusses the sampling selection method, the recruitment of the participants, and the data collection process.

2.1 Goals

VWS and UNT designed this Pilot Study to provide greater insight into how witnesses perceive both the long- and short-term impact of their testimony before the ICTY with three main goals defined as follows:

1. *Provide a comprehensive analysis of the effects on witnesses that result from having participated in criminal proceedings before the ICTY.*

The project contributes to a body of research that examines the impact of testifying on witnesses who appear before international or domestic war crimes tribunals. Interviews with victims and witnesses reveal that participating in a judicial process can contribute to and/or aggravate the psychological recovery process of survivors of violence. Several existing studies recommend further research into the long-term impact of giving testimony, with an emphasis on victims' and witnesses' well-being, to provide adequate assistance during the post-trial period (Stover 2005, 2014; Horn et al. 2009, 2011; Henry 2009; O'Connell 2005; Mendeloff 2009; Stepakoff 2014, 2015).

2. *Assess witnesses' needs.*

Information from the Pilot Study will enable VWS to assess witnesses' needs in the post-trial period and to assist in identifying the appropriate course of action, including making referrals to state services or to non-governmental organisations operating in the region.

3. *Contribute to the legacy of the ICTY by providing useful information and guidelines for future witness support structures.*

The conclusions and recommendations drawn from the Pilot Study will be the first comprehensive analysis of the effects and consequences of witnesses' involvement in international criminal proceedings, thus contributing to the legacy of the ICTY and assisting in the development of best practices at other international and domestic war crimes tribunals.

This study's goals are 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 to examine the impact that the war crimes process of testifying has on witnesses over the long term. The surveys and interviews, conducted by trained and experienced VWS staff members, allow for the inclusion of witnesses who would otherwise be excluded, such as victims of sexual violence who may require special attention during the survey process (Sharratt 2011) and those who had in-court protective measures in place during one or more of their court appearances and whose identity cannot otherwise be publicly known (Kravetz 2013). Finally, this study is more comprehensive than previous research on testifying before the ICTY because it includes witnesses called by all the parties, namely the Prosecution, Defence, and Chambers (Stover 2005).

2.2 Survey development process

2.2.1 Previous data and research

In 2009 the VWS initiated, as a regular follow-up service, a completely anonymous survey that is administered to all witnesses after they have testified and before they leave The Hague. This survey, while limited in its scope and intended for VWS internal use, used multiple measures to ask witnesses about their experiences with the overall logistical and psychosocial support provided by the VWS. The data from these questionnaires relates to witness satisfaction with the different VWS services namely logistics, psychosocial support and protection. Due to the fact that this survey is done anonymously (to ensure witness confidentiality), it is not possible to examine how long the respondent witnesses testified, whether they had testified in one or more trials or even in which trial they had testified. These factors limited the utility of these anonymous surveys.

There are other relevant previous studies on the Tribunal's witnesses. First, Stover (2005) interviewed ICTY 87 Prosecution witnesses, as well as ICTY personnel and affiliates through a structured interview process. While witnesses were mostly positive about their experience, the study highlighted criticisms towards the testimony process. Second, Stover (2014) examined victim-witnesses appearing before the International Criminal Court through an interview survey instrument before testifying (n=104); soon after testifying (n=109); and six to twelve months after testifying (n=32). He found the witness testimony process to be positive overall, with women being slightly more positive than were men. However, women felt less secure than men did in the post-trial period and were less likely to think that their testimony contributed to truth or justice.

Perhaps the most important research has come from the wealth of information provided by in-depth interviews conducted at the Special Court for Sierra Leone. Witnesses are more likely to have a positive experience if they (1) felt respected by court personnel, and (2) found cross-examination to be a positive experience (Horn et al. 2009, 2011). Witnesses have both public and personal reasons for why they testified (Stepakoff et al. 2014, 2015). Public reasons include contributing "to public knowledge about the war"; desiring "retributive justice"; and as part of a "moral duty to other victims" most commonly. Other personal reasons for testifying included "being given the chance to tell my story"; "being able to talk about difficult/painful experiences, breaking the silence"; and "being listened to, feeling believed/understood." Finally, the same study found that on average four out of five witnesses described the consequences of testifying as primarily positive (compared to negative or neutral) and indicated more than three times as many positive as negative consequences.

The findings of Stover (2005) and Horn, et al. (2009, 2011) provided background information for relevant issues explored during the focus groups and development of the Pilot Study survey.

2.2.2 Focus groups and questionnaire

Before drafting of the survey instrument, all VWS personnel employed at that time participated in multiple focus groups to provide insight into working with ICTY witnesses and relevant concerns for witnesses over time. Sixteen video-conference calls and focus group meetings (lasting between 1.5 and 3 hours) took place between the VWS in The Hague, the VWS in the Sarajevo Field Office, and UNT in Denton, Texas, to develop the survey over the course of 2012. The team included nineteen VWS staff members in The Hague, three members from the SFO, and seven faculty members and graduate students in the UNT Departments of Political Science and Psychology, mainly trauma specialists. VWS and UNT developed protocols for survey administration, witness contact, outreach, and security based on field research best practices, and ICTY (historical) experience.

The year of survey development helped facilitate regular interactions between the relevant offices. After completion of the focus groups, VWS and UNT began weekly meetings in the latter part of 2012 to review approximately 75 pages of proposed questions for the survey. The target time allotted for interviews was approximately 75-120 minutes total to minimise the witness fatigue. All contact between the relevant offices occurred via secure video-conference link, Skype and email.

The 32-page survey instrument includes 149 multiple choice questions as well as 37 follow-up questions and 31 opportunities for witnesses to write their own short answers to questions. All questions seek to elicit a better understanding of the short- and long-term impact on witnesses' well-being. In five sections, the survey evaluates: (1) the witness' background and reasons for testifying (28 questions with two follow-ups); (2) socio-economic impact on witnesses (eight questions with seven follow-ups); (3) security concerns for witnesses (ten questions with 21 follow-ups); (4) physical and psychological health and well-being of witnesses (82 questions with three follow-ups); and (5) the witness' perceptions about justice and the ICTY's legacy (21 questions with four follow-ups). A sixth section asks three open-ended questions which interviewers audio record at the conclusion of the written survey. This section provides witnesses with an opportunity to elaborate more freely on concerns or issues about the process of testifying, give advice for witnesses in future war crimes trials, and provide their feedback to the ICTY about what they would change about the proceedings or the process of testifying.

2.2.3 Institutional Review Board approval and translation

From the inception of the project, UNT consulted with and eventually received approval through its Institutional Review Board (IRB) to ensure the survey is in compliance with national and international standards.²⁵ The survey and all documents needed for implementation VWS submitted through the ICTY Conference Language Services Section (CLSS) for official translation into BCS in the first half of 2013, and CLSS translated the Albanian version in November 2014. VWS in The Hague and Sarajevo, CLSS and UNT independently reviewed all items on the survey instrument to ensure that the instrument's language, terminology, and measurement structure were all aligned to reflect the witnesses' experiences that were represented in the focus groups. VWS and UNT designed all language and terms of the survey instrument, the protocols, and the consent form to be read and understood by witnesses with at least an eighth grade education.

2.3 Participants and selection process

2.3.1 VWS witness data

The VWS maintains a database for daily operations which tracks information on all individuals to whom VWS provides services and records VWS-witness contacts. The VWS database is linked to other ICTY witness records management systems which populate important witness information driven by judicial decisions (e.g. protective measures, subpoenas, safe conduct orders, etc.). Thus, the VWS database provides a rich depository of information about the witnesses. For the purpose of the Pilot Study, the VWS used its database to produce an anonymised witnesses' variables list which allowed UNT to create a filter process to identify an eligible pool of potential respondents by number and not by their identity. From this, sample lists of persons eligible for the survey were drawn from Bosnia and Herzegovina, Croatia, Serbia, and Kosovo. Support or dependent persons (family, friends), who accompany witnesses and did not testify, were excluded, although VWS records their interactions with them in the database. Expert witnesses (e.g. those with knowledge of military operations, forensic science, population demographics, and other topics) were not included because the focus was on fact witnesses. Those living outside of the former Yugoslavia were not included due to logistical limitations. Witnesses testifying or listed in the four on-going trials at the time of the Pilot Study were not included because of concerns about interference with the trial processes. These were the trials of Ratko Mladić, Radovan Karadžić, Vojislav Šešelj and Goran Hadžić. Finally, those who testified from 1995 to 1998 were excluded as their contact details are unknown to the VWS since during that time contacts were through local authorities and not kept by the ICTY.

²⁵ IRB 13200-R15 approved March 2013 and annually renewed. Currently in effect from April 2015 until May 2016-on file with the University of North Texas along with National Institute for Humanities Human Subject Training certificates for all VWS and UNT personnel.

2.3.2 Sampling and selection of eligible participants

VWS and UNT selected eligible survey respondents from the VWS database via a stratified and quota-selection process to provide a representative sample of key constituents. Sample selection was based on persons who: (1) testified in person (*viva voce*) in at least one trial as a “fact witness” for the Prosecution, the Defence, and/or Chambers; (2) currently reside in either Bosnia and Herzegovina, Croatia, Serbia or Kosovo and were eligible for recruitment (further explained below).²⁶ The sample selection includes witnesses from all cases that have completed the trial phase, including witnesses from cases on appeal.

UNT researchers worked with the VWS to ensure that given the types of witness sought to be surveyed (fact witnesses living in the region who had not testified in on-going trials at the time of sampling), UNT would provide VWS with random samples of data, but that would yield a survey population that closely resembled the overall characteristics of the entire target population of witnesses from the former Yugoslavia. UNT generated random witness identification numbers to ensure a random sample, but supplemented that process to ensure that adequate numbers of individuals from each of the principal ethnic groups, Defence, Prosecution and Chambers’ witnesses, and women were surveyed to ensure sufficient size in the sample for more in-depth analysis. UNT sent lists of witness identification numbers on a regular basis to the ICTY VWS for its efforts to make initial contact with witnesses. This process continued throughout the entire survey administration to ensure Pilot Study sample characteristics matched the overall characteristics of all witnesses in the ICTY databases.

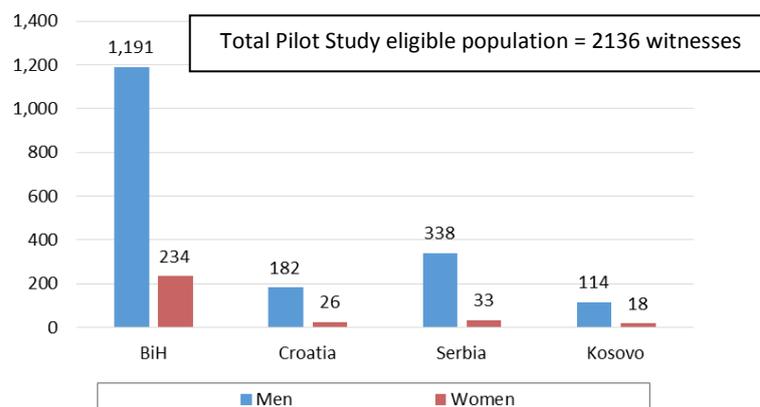
This study focused on the general witness population, and not on elites, high-ranking officials or ICTY staff who testified. The Pilot Study also sought to protect vulnerable or at-risk witnesses from potential risks arising from their participation. Thus, in terms of eligibility for inclusion, VWS and UNT also considered the following factors. Witnesses were eligible for inclusion if they testified from 1999²⁷ or later and if they physically appeared before the ICTY or testified via video-conference link from a remote location in at least one trial. Witnesses were *not* eligible if they: (1) had been accused or convicted of crimes (defendants); (2) were high-level politicians or other high-ranking officials; (3) were current or former ICTY staff; (4) had security issues, a legal matter pending, or if witness well-being was a concern (on-going physical or psychological health issues). Exclusion was the result of a holistic review of the individual witness case by VWS staff. The VWS also consulted with the Protection Unit to obtain its approval for the VWS to contact witnesses considered. In total, 61 witnesses were excluded because of the above reasons.

As of 2014, the final number of eligible witnesses in the region was 2,136 (see Figure 2.1). Ensuring adequate gender representation was critical to have sufficient numbers of female witnesses in the data. Female witnesses eligible from the region range from less than 9 % in Serbia to more than 16% in Bosnia and Herzegovina. Based on target goals of 80% male and 20% female, UNT gave sampling lists to the VWS. Women were oversampled because their eligible numbers are lower in the total population (approximately 13% of *all* ICTY witnesses) and because of concerns raised during focus group meetings that women might be less likely to agree to participate in the Pilot Study. As the number of female witnesses from Croatia, Kosovo and Serbia is small, UNT sampled every eligible female witness from these areas. This was not the case for Bosnia and Herzegovina as illustrated in Figure 2.1.

²⁶ VWS’ decision to select Bosnia and Herzegovina, Croatia, Serbia and Kosovo was based on the need to: (a) directly assess the impact of testifying on those still living in the regions affected by the Balkan wars; (b) limit cost of the project; and most importantly; (c) ensure that trained VWS personnel could be with witnesses during the survey process in the event there were concerns about witness fragility, anger, post-traumatic stress triggers, etc. The presence of qualified personnel is needed to assist with any issues and provide support and referral for witnesses as needed.

²⁷ Before 1999 all information about witnesses was kept by state and local authorities in the former Yugoslavia. Thus, any data about addresses, or contact information was unavailable to the Tribunal unless witnesses also testified in later trials.

Figure 2.1 - Gender by geographic area



2.3.3 Participant recruitment

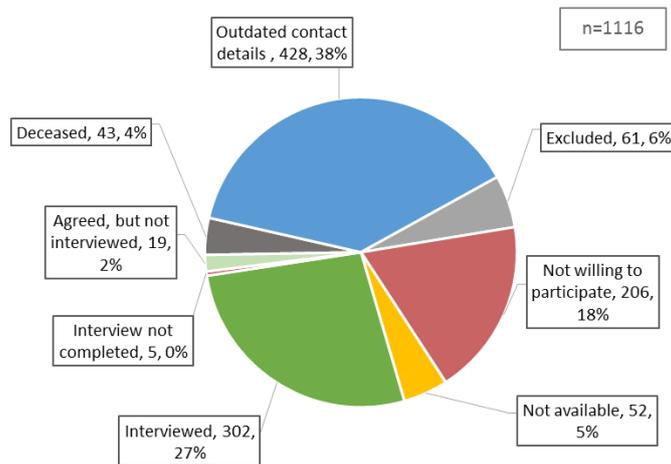
As the custodian of the ICTY witness related information, VWS staff contacted witnesses, interviewed witnesses and collected the necessary data for this project. VWS staff received training on presenting information about the Pilot Study in a secure and sensitive way to victim witnesses who may have been out of contact with the ICTY for years. VWS prepared operational guidelines and organised video conferences with the Project Coordinator in the SFO resulting in a 'Recruitment script', 'Operational instructions' for tracking data, and protocols for making referrals, answering questions, and sharing information.

After an initial phone call from VWS to a witness explaining the survey goals (following a protocol to protect witness security and confidentiality), occasionally VWS made a second phone call if a witness needed time to think about participation or consult with other persons. When a witness confirmed her or his participation, the VWS arranged for a meeting at a location where the witness felt comfortable and secure. Witnesses could refuse to do the survey at any point in the process including after arrival at the location for the interview and even after the start of the survey.²⁸

²⁸ Five witnesses declined interviews after arrival at the rendezvous point and before the survey began. One witness interview was concluded after twenty minutes because of concerns by VWS staff regarding witness fragility, and referral materials were provided along with follow-up. Two witnesses refused to complete the interview due to their disappointment with the Tribunal. Two witnesses did not want to sign the Informed Consent form before starting and therefore could not be interviewed under IRB regulations. Additionally, VWS and UNT did not include data from two interviews in the final analysis as both witnesses were unexpectedly requested to appear in one of the trials on-going at the time of this study. See Annex II for an overall picture of the participant recruitment process.

The VWS conducted the first recruitment calls in July 2013 with staff members in The Hague and Sarajevo. From March to December 2014, fourteen Hague staff members conducted recruitment calls on a daily basis. To reach the goal of having a pool of 300 eligible witnesses, VWS staff contacted approximately 1,100 to 1,200 eligible witnesses seeking their participation. Figure 2.2 examines the outcomes of the recruitment calls.

Figure 2.2 - Recruitment process outcome²⁹



Because phone calls themselves from the ICTY may produce some apprehension among witnesses who may not have been in contact with the ICTY for years, it was necessary to provide appropriate reassurances. Using established ICTY protocols for contacting witnesses, the VWS staff promptly reassured witnesses that the reason for VWS contact was not related to court appearances, but optional participation in the survey. From almost the first recruitment calls, it became clear that witnesses had a variety of questions, outstanding needs, suggestions, and comments (both positive and negative) related to the ICTY. When contacting witnesses, staff were confronted with diverse sets of issues that needed resolution. UNT and VWS held regular meetings to address these questions and how to best handle, save, and share data. This was important for the VWS interviewers who would be the next ones to contact the witnesses to schedule interviews.

The main challenges with the recruitment calls related to the accessibility of witnesses. Approximately 38.4% of witnesses could not be reached due to outdated contact details and another 4.7% of calls resulted in no one ever answering after multiple attempts. Such a high fail rate is not that surprising given that the last contact information could have been from up to 15 years prior. Witnesses may have moved or their telephone numbers may have changed in the intervening years. Sadly, approximately 4% the witnesses called had passed away in the intervening years, numbering 43 witnesses.

To reach as many witnesses as possible, VWS used multiple efforts to obtain up-to-date contact information. VWS checked all available open sources for witnesses without in-court protective measures. For witnesses with in-court protective measures, checking other sources than internal ones was not permitted to safeguard security. Unavailable³⁰ witnesses were again called at a later stage, which yielded a few more participants. Additionally, for Prosecution witnesses, the VWS requested the Office of the Prosecutor to check its files for updated contact details. This was not possible for defence witnesses because defence teams cease to exist after the case ends.³¹

²⁹ See Annex II for an overall picture of the participant recruitment process.

³⁰ Category of unavailable witnesses includes witnesses whose phone numbers were working but who did not answer the phone or if witnesses themselves did not answer the phone but somebody else instead did. In both cases, VWS tried to contact witnesses for at least five days and then again for five days after a few months.

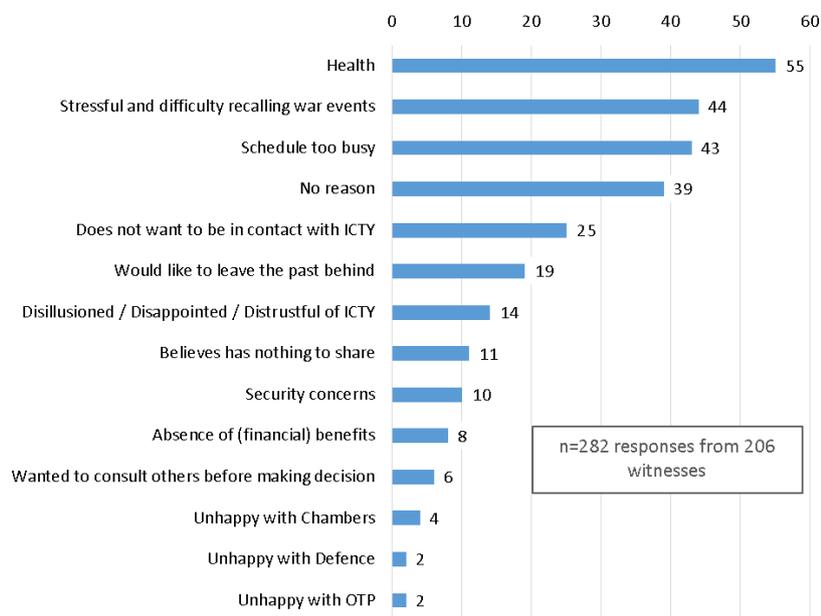
³¹ Unlike the Office of the Prosecutor, Chambers and Registry, the Defence is not an organ of the Tribunal.

As mentioned above, some witnesses needed several calls to have time to think, or to consult with family, lawyers or others before deciding on whether they wanted to participate in the Pilot Study. Other witnesses found it difficult to refuse participation out of sense of long-standing tradition of loyal cooperation with the Tribunal, and kept postponing their final answer. VWS staff consistently reiterated during the recruitment process that this was voluntary, without legal obligation or consequences of refusal. In some cases the VWS empowered witnesses to take a decision while in other cases it needed to decide in the best interest of the witness, especially for fragile witnesses. These multiple calls slowed down the pace of the recruitment, but highlight the importance of adopting an approach based on witnesses' best interests.

UNT supplied VWS with a random sample of 1116 witnesses' anonymous witness codes bearing in mind the need to ensure adequate gender and regional diversity. Of those 1116 witnesses, 584 could not be reached because of outdated contact details, death, and other reasons. VWS was able to speak to 532 witnesses (47.7%) and ask these individuals if they would be willing to take part in the survey. Of those 532 witnesses contacted, VWS interviewed 302, while the rest declined over the phone, accepted but never responded further or were unable to complete the survey. Two witnesses interviewed were later excluded because they were subsequently called to testify in an on-going trial. The Pilot Study survey participation rate is 56.8%. This rate is calculated by the number of witnesses who were contacted, agreed to participate and completed the survey (n=302) divided by the number of witnesses who were contacted (n=532).

Conversations during the recruitment calls lasted from a few minutes to half an hour, depending on the witnesses' needs. The reactions from witnesses ranged from gratitude for the renewed contact and for the opportunity to participate in the research, to others that were less positive about the survey. Many witnesses refused for psychological or physical health reasons, while others expressed dissatisfaction with the ICTY. Reasons for refusal were recorded, and 206 witnesses refused to participate, and they gave a total of 282 reasons (Figure 2.3).

Figure 2.3 - Reasons for refusal



Health, stress, and a busy schedule were among the top reasons for refusal. Approximately 18.9% gave no reason for declining, and there were five calls which the witnesses ended abruptly. The same number of interviewees also expressed dissatisfaction with some aspect of the Tribunal—39 persons (18.9%) did not wish to be contacted again; did not want to associate with or trust the ICTY; were disillusioned with the ICTY; or were unhappy with OTP, Defence, or Chambers. Five percent of witnesses raised security concerns.

Some witnesses had practical questions related to the interview, for example: did they have the right to terminate or reconsider their participation? Could they receive a copy of the questionnaire or the audio record (allowed only after the interview was completed)? A few asked if they could receive the questionnaire prior to the meeting to study it, or even to fill it out, or if possible to provide them with more detailed information on the questions. VWS declined these requests to ensure the validity of the interview and the well-being of the witness.

Many witnesses requested more general information in writing and were provided with the Pilot Study information leaflet *“The echoes of witnesses and testimonies”* (a majority of recruits agreed to participate after reading it). A large number of witnesses are elderly, and indicated their willingness to participate, but for mobility reasons asked if they could be visited at home.

While there was a script for recruitment calls, for a number of witnesses, this sudden, renewed contact was a welcome opportunity to share other concerns and questions or seek additional assistance. For some witnesses the ICTY had a reputation of being a powerful international institution, and therefore some believed they could be assisted in one way or the other in their current situation. These requests were related mostly to their economic situation like unsolved property matters, housing, unemployment or various benefits which do not fall under the mandate of the Tribunal. Where possible, the VWS referred witnesses to the relevant group or organisation that could help deal with the request.

2.4 Interview process and collection of data

2.4.1 Privacy and confidentiality

Under the VWS Policy on Privacy and Confidentiality, only qualified VWS staff could conduct interviews. The VWS has access to a range of personal information about victims and witnesses much of which is not available to others within the Tribunal or even others in the witness' life. This information includes details on psychological or physical health or other personal matters affecting families and friends. Witnesses disclose this information in confidence, knowing it will be respected by VWS staff. Because of this privileged position in the lives of witnesses, it is incumbent upon the VWS to demonstrate the highest possible standards of confidentiality and privacy in the handling of information. VWS paid particular attention to witnesses who were granted in-court protective measures during trial.

Failure to adhere to such standards may compromise the witnesses' privacy and security and may also impact on the operations of other functions of the ICTY (witnesses may refuse to cooperate with ICTY/MICT in the future if they do not feel their privacy is respected). Thus, only VWS personnel have direct access to witnesses' personal data, such as their address, phone numbers and history. Throughout the Pilot Study, VWS ensured that UNT was not privy to any confidential or identifying witness information.

Because recalling traumatic events can trigger emotional and physical reactions, only VWS staff with relevant professional background conducted the personal interviews so that prompt intervention could occur if a witness became emotionally and/or physically distressed.³² To safeguard witness security and well-being, it was agreed that interviews could be terminated at any moment.

2.4.2 Locations and venues

Locations of interviews ranged from urban centres to remote rural areas. In order to include witnesses of all profiles, the VWS staff travelled throughout Bosnia and Herzegovina, Croatia, Serbia, and Kosovo.

VWS conducted each interview at the witness' place of residence or any other place participants deemed appropriate to meet. Sometimes witnesses did not wish to be seen with ICTY staff publicly or they did not wish their family to know that they had testified. The VWS tried to accommodate

³² All four interviewers have professional backgrounds in psychology or social work.

witnesses' requests by ensuring appropriate locations and safe environments for each interview. Consequently, interviews took place in public venues (restaurant, hotels, café bar), but also in private spaces (the witness' workplace or home) or at UN field offices. Some witnesses could only meet at their home due to the distance, age, health issues, or psychological fragility. The practice also showed that a proper environment where witnesses feel free to express themselves facilitates the smooth completion of interviews.

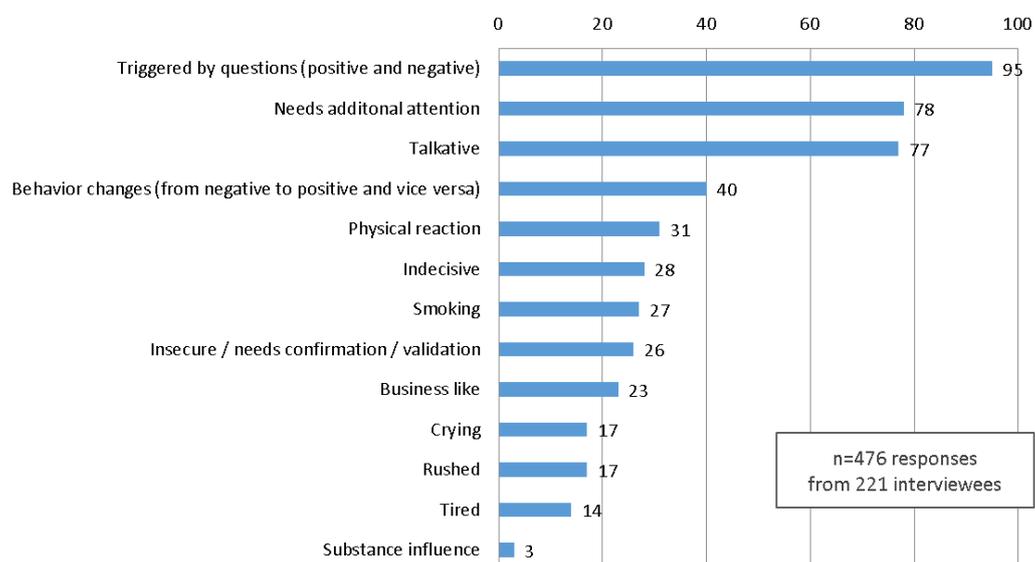
2.4.3 The interview

During each personal meeting, interviewers compiled an interview diary, noting down technical problems (questionnaire wording, recording problems, etc.) as well as any behavioural or emotional reactions that the interview might have triggered. A statistical analysis of all interview diaries shows that participants were mostly positive and willing to contribute to this study.

One of the goals of the Pilot Study was to provide witnesses with an opportunity for an appropriate closure in their relationship with the ICTY. In addition to collecting qualitative data on the impact of testifying, VWS interviewers also facilitated reflection on the this experience and provided an opportunity for witnesses to express their views and feelings. Adapting the process to address witnesses' needs, health and security was paramount. Each interview occurred in a context unique to that witness as determined by their personal histories, local and cultural traditions, gender sensitivity, as well as the current economic and political situation. VWS considered case files before meeting witnesses so as to approach them respectfully and with understanding.

Interviewers had specific guidelines on how to help the interviewee with filling in the questionnaire (so as not to influence the witness' answers) and how to proceed during the recording of open-ended questions. When witnesses expressed specific reactions to the interview, the interviewer allowed for a more free dialogue. Therefore, the total time needed to complete an interview varied from 40 minutes up to 4.5 hours. There were some difficulties involved in completing the interview because of witness literacy, health, and reactions to the survey. To protect the witnesses' privacy and security, VWS assigned each participant an anonymous interview code, which only VWS personnel can link to a witness' identity. All 300 interviewees received information about the Pilot Study's content, purpose and procedures, and each witness who participated was required to sign the informed consent form (only two witnesses refused to sign the form and therefore were not interviewed). To better assess a witness' well-being during the interview process, interviewers monitored his/her behaviour during the interview process and coded their reactions and temperament. Figure 2.4 reveals the diverse array of witness behaviours during the interview process. A number changed their behaviour during the interview (n=40) and some witnesses experienced physical reactions (n=31).

Figure 2.4 - Interviewee behaviour during interview process



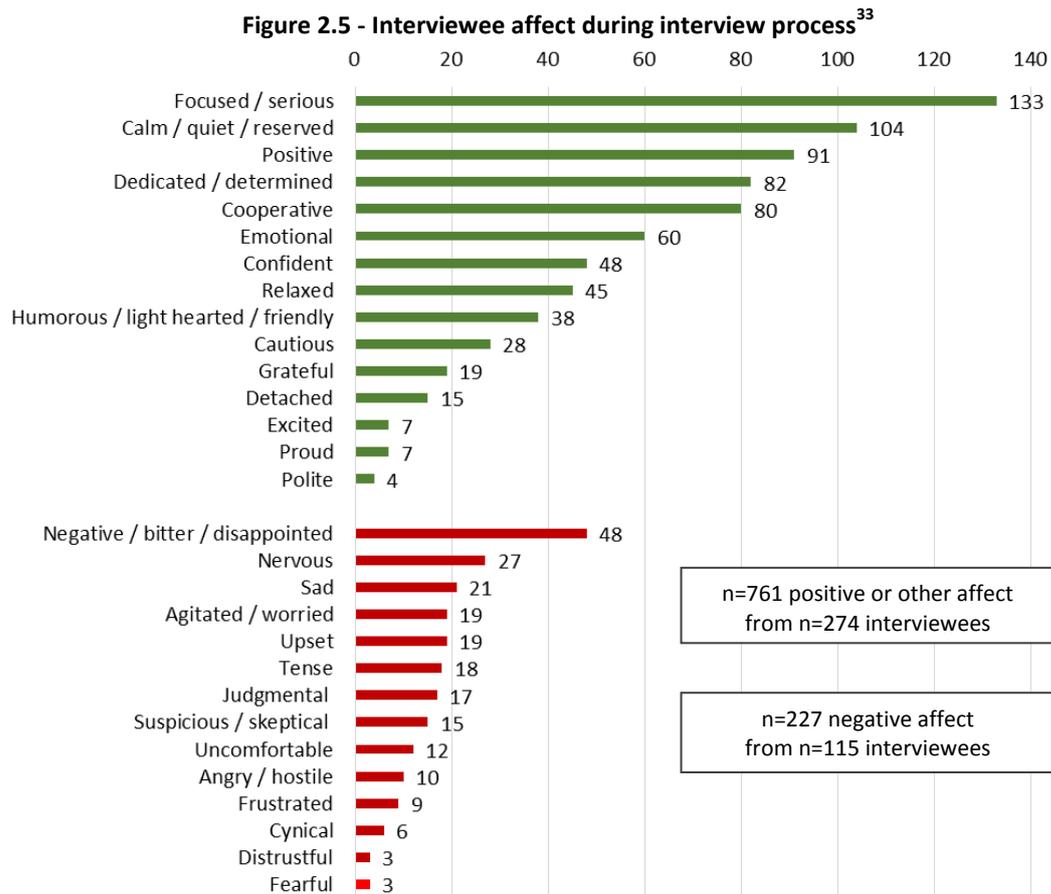


Figure 2.5 illustrates that interviewees were overwhelmingly focused and serious (n=133) and calm or reserved (n=104), with large numbers also being dedicated and determined (n=82) and cooperative (n=80). While a number of witnesses were positive (n=91), confident (n=48) and relaxed (n=45), this was not a universal experience. The survey triggered also negative affect states including disappointment, anger, agitation, frustration, and nervousness.

2.4.5 After the interview

Generally, VWS dealt with all emotional reactions that emerged during the interviews on the spot. As per VWS policies and rules, witnesses who made requests that did not fall under the VWS mandate were referred to local institutions and organisations. Reasons for referral were not rooted in the interview itself, but generally came from unresolved war related issues that witnesses are dealing with for years. After the interview, VWS referred seventeen witnesses to local organizations for further assistance. Main types of requests included: psychological assistance about war trauma effects or legal assistance for different reasons (to obtain the status of civil victim of war, to initiate a legal lawsuit for compensation or to sort property issues). Four witnesses requested to be contacted by the VWS Protection Unit. In twenty cases, witnesses requested different types of material, either related to their testimony or their interview for this Pilot Study. These included: video recordings of their testimony, BCS or Albanian transcripts of their testimony, specific documents related to their court appearance, ICTY publications, scanned copy of their filled Pilot Study questionnaire, file of their audio recording of the questionnaire open ended questions. In three cases there were later additional contacts with witnesses, either to double check on witness well-being when the VWS first call seemed to have upset them or because witnesses had additional questions about the research. Thus, there are a small, but critical number of witnesses interviewed who are still facing issues in the post-conflict and post-testimony period for whom VWS was able to respond to their needs.

³³ Affect is here used as a comprehensive term for emotions, moods, and attitudes.

After each interview, VWS interviewers were responsible for double-checking any disclosure of identity in the questionnaire or during the audio recording, and any identifying information was redacted. Each audio track was transcribed and reviewed by two different persons, and revised transcriptions were sent to the ICTY CLSS for official English translation. Only anonymous data were used by UNT for statistical analysis. Thirty-four witnesses did not want to be recorded during the final three open-ended questions either because they felt uncomfortable being recorded or because they reported being exhausted after the questionnaire.³⁴ In some cases witnesses requested and were given the possibility to answer the open ended questions in writing (n=7).

Summary

VWS and UNT designed the Pilot Study to critically analyse the impact of testifying on the most vital stakeholders of a tribunal, its witnesses. VWS staff conducted the interviews, both because of their psychology and social work backgrounds and because of their more than 55 years of combined experience at the ICTY. VWS provided highest standard of care to the witnesses while protecting their identity and security. VWS also protected the anonymity of interviewees' responses to reassure witnesses that their feedback was confidential. The reliance on UNT as outside analysts allowed for random and quota sampling selection of interviewees.

The survey design, structure, and analysis allowed for a broad range of witnesses to be recruited and to participate in the project and to ensure witnesses' identity, candour, and well-being were protected to the greatest degree possible. The range of witnesses including those who had in-court protective measures for security reasons and witnesses from all sides enhances the validity and reliability of the results. This is the first time in the history of international justice that a war crimes tribunal has undertaken systematic and scientific research into the short- and long-term impact of testimony across multiple dimensions of witnesses' lives, while providing witnesses with an opportunity for closure and feedback.

This project enables the ICTY and other international criminal tribunals to assess more fully the post-testimony needs of witnesses and to develop best practices in witness management, care, and well-being. Finally, this project contributes toward a better and more informed understanding of the legacy of the ICTY among some of its most important constituents, its witnesses.

³⁴ 15 in Bosnia and Herzegovina, 4 in Croatia, 10 in Serbia, 5 in Kosovo.

Chapter 3 - The witnesses and the process of testifying

Throughout the Pilot Study, witnesses' identities remain anonymous, but it is important to understand the diverse range of witnesses and trials that are represented in the research. This chapter provides more information on witnesses' geographic and demographic backgrounds, the trials they testified in, and their motivations for and satisfaction with testifying. It also addresses results regarding legal concerns witnesses might have and provides insight into needs they had when preparing for testifying.

Topics addressed in this chapter relate to questions in section A of the questionnaire (Annex III).

3.1 The Pilot Study population

Who are the witnesses who have agreed to participate and have been surveyed? They are a diverse group of individuals from all parts of the former Yugoslavia who have given their time³⁵ and energy to provide invaluable feedback about their experiences, concerns, and insight into what it has meant to testify before an International war crimes tribunal and the impact it has had in their lives.

3.1.1 Interviews and geographic distribution

VWS and the UNT, relying on VWS compiled statistics, evaluated and set target numbers for the sampling process to ensure that adequate numbers of men and women from different parts of the former Yugoslavia would be included in the Pilot Study. The target goals appear in Figure 3.1, with the percentage of witnesses eligible from each geographic area in the top row and the percent target goal in the second row. The last row summarises the actual number of witnesses surveyed for the Pilot Study. The majority of surveys (54.3% or 163) took place in Bosnia and Herzegovina, followed by Croatia (20.7% or 62 interviews), Serbia (16.3% or 49 interviews), and Kosovo (8.7% or 26 interviews).

Figure 3.1 - Witness sampling goals and interviewees surveyed

| | BiH | Croatia | Kosovo | Serbia |
|------------------------------|------------------|-----------------|----------------|-----------------|
| ICTY witnesses | 62.00% | 15.60% | 8.30% | 14.20% |
| Pilot study interviewee goal | 50.00% | 20.00% | 10.00% | 20.00% |
| Interviewees (total number) | 54.3% (n=163) | 20.7% (n=62) | 8.7% (n=26) | 16.3% (n=49) |

³⁵ The time required to conduct all interviews totalled 532.3 hours: 300.5 hours, with witnesses in Bosnia; 81.1 hours in Croatia; 101.7 hours in Serbia; and 49 hours in Kosovo. The average duration of an interview was 1.8 hours; the shortest being 45 minutes and the longest being 4.5 hours.

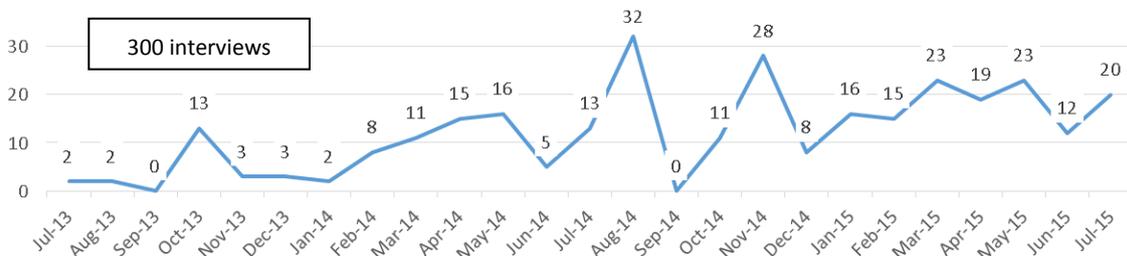
One of the more important goals of the sampling process was to ensure a broad geographic representation of witnesses across the region. As the results from Figure 3.2 illustrate, there is also a diverse array of witnesses across the geographic target areas, including interviewees from urban and rural areas.³⁶

Figure 3.2 - Geographic diversity



The survey implementation process proceeded smoothly, with an average of approximately twelve surveys per month. The VWS, however, could only allocate time to the project on an “as available” basis, which accounts for the uneven distribution in the timeline (Figure 3.3). When the ICTY provided additional resources for the completion of the surveys, the number of surveys completed per month jumped (beginning August of 2014) to an average of 17.25 surveys per month. All interviews were completed by August 2015.

Figure 3.3 - Survey implementation dates

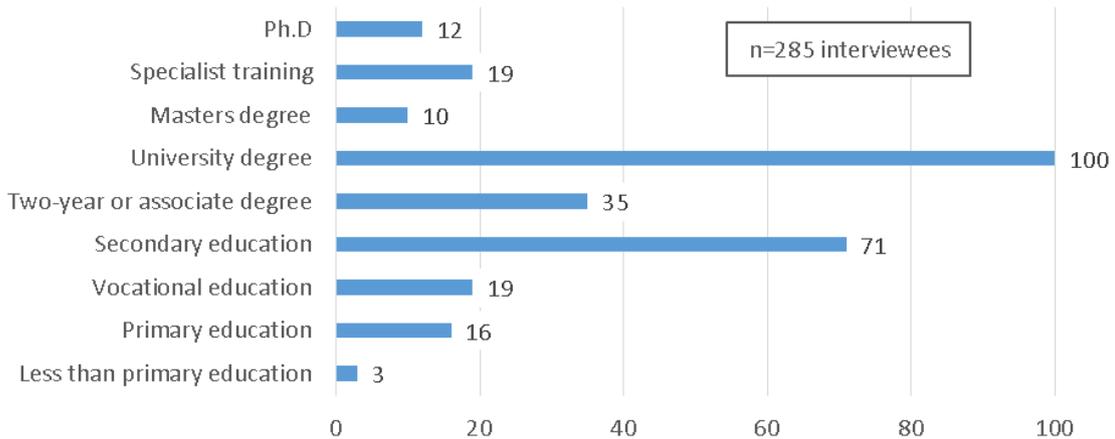


³⁶ Using the international standard of cities as those areas with 100,000 and more residents, 154 interviewees live in urban areas and 146 interviewees live in rural areas, smaller cities and settlements. Looking at the 146 interviewees in the rural area, the breakdown of these is as follows: 24 interviewees in cities and settlements < 100,000 residents, 54 interviewees in cities and settlements < 50,000 residents and 78 interviewees in cities and settlements < 25,000 residents.

3.1.2 Interviewees’ demographic characteristics

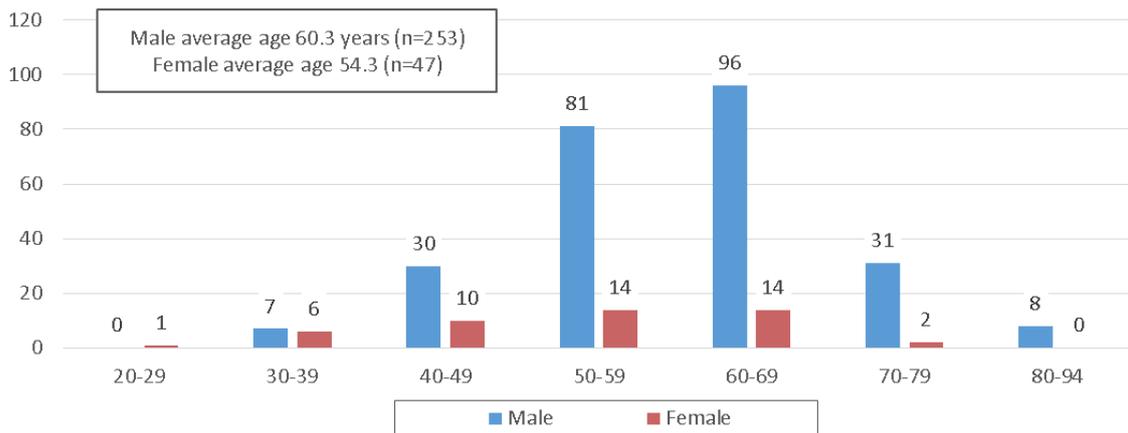
For purposes of providing comparisons to the overall witness population, the Pilot Study also examined witness educational attainment levels. More than 24% of the interviewees have a high school diploma (71), and 176 individuals (61.7%) have some form of post-secondary degree (Figure 3.4). Given that this is the first time that any research has ever looked at witness background as extensively as has this survey; this represents another key area in which this survey breaks new ground about the experience of being a witness.

Figure 3.4 - Education level



One of the most critical reasons for this survey is the passage of time. Capturing what it means to “bear witness” is vital for this aging population³⁷, especially for males. The average age of the interviewees is 59.3 years old, with ages ranging from 28 to 94 years. There are significant differences between gender as women are, on average, seven years younger than men who testify. There are also noticeably fewer women in the 60 years and above categories (Figure 3.5).

Figure 3.5 - Interviewees by gender and age

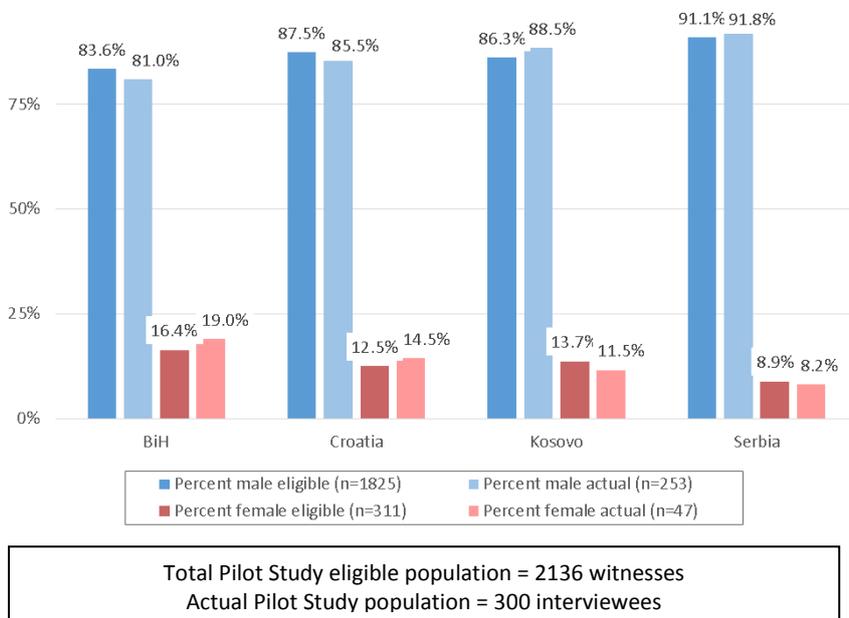


Women comprise approximately 13% of all the witnesses who have appeared at the Tribunal. As indicated in Chapter 2 on sampling selection processes, women were sampled at higher rates (80% male and 20% female) than the overall witness population (87% male and 13% female) to ensure sufficient gender representation. As Figure 3.6 illustrates, the sampling process produced a representative pool of

³⁷ Indeed, four percent of the witnesses sought to be interviewed had passed away, while one witness passed after the recruitment call and before the scheduled interview.

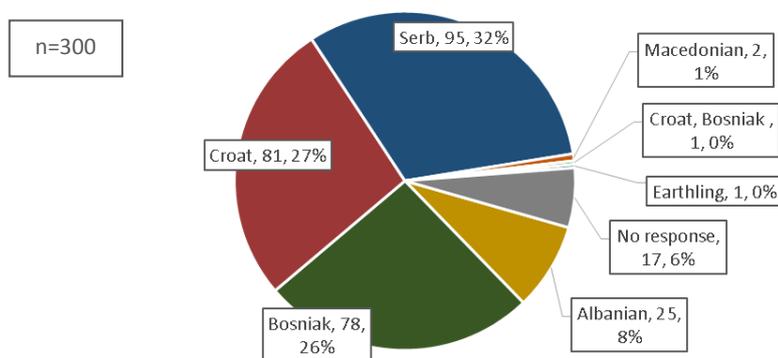
survey respondents. For example, while women constitute 16.4% of the eligible pool of witnesses in Bosnia and Herzegovina, because women were oversampled, there is a slightly higher percentage of women in Pilot Study sample population.³⁸ A difference of means test, however, reveals no significant differences between any of the gender eligible and the actual gender pools from any geographic area.

Figure 3.6 - Gender ratio – eligible and actual Pilot Study population



In recognition that witnesses might not want to identify their ethnic and religious affiliations when surveyed, respondents were provided with the opportunity to write down their ethnic and religious identities or choose not to provide any information (Figure 3.7). These self-identified questions reveal an ethnically diverse sample of persons with 81 persons (27%) describing themselves as Croat; 78 persons indicating they were Bosniak (26%); 95 persons (31.7%) identifying as Serb, 25 persons (8.3%) identifying as Albanian³⁹, and a handful of others including Macedonian (n=2), Croat, Bosniak (n=1), and “Earthling” (n=1) were also recorded. Figure 3.7 provides the breakdown, showing that more than 6% of the interviewees chose not to respond while one interviewee identified him/herself as having dual ethnicity.

Figure 3.7 - Ethnic self-identification



³⁸ See 2.3.2 for sampling and selection of eligible participants.

³⁹ Throughout this report the term "Albanian" is used to denote ethnicity (and not citizenship).

As with ethnicity, the sample includes a diverse array of religious affiliations among the witnesses (Figure 3.8). There are 70 Catholics (23%); 92 Muslims (31%); 82 Orthodox (27%) while the remainder are Atheists (9 or 3%) and Agnostics (4 or 1%) while 15% of interviewees did not respond to this question. As census studies of the former Yugoslavia confirm, however, ethnic and religious identity are shifting inside the region with persons being increasingly less likely to see rigid categories of identity that have been traditionally used by the state and other political actors (Bieber 2015).

Figure 3.8 - Religious self-identification

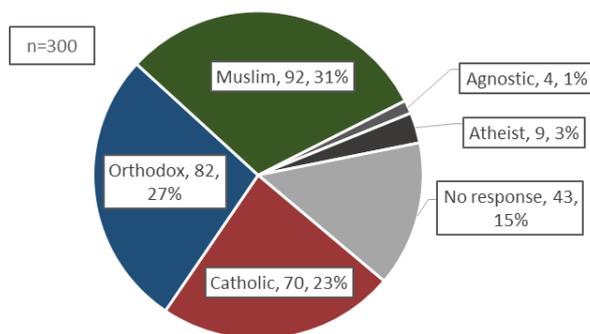
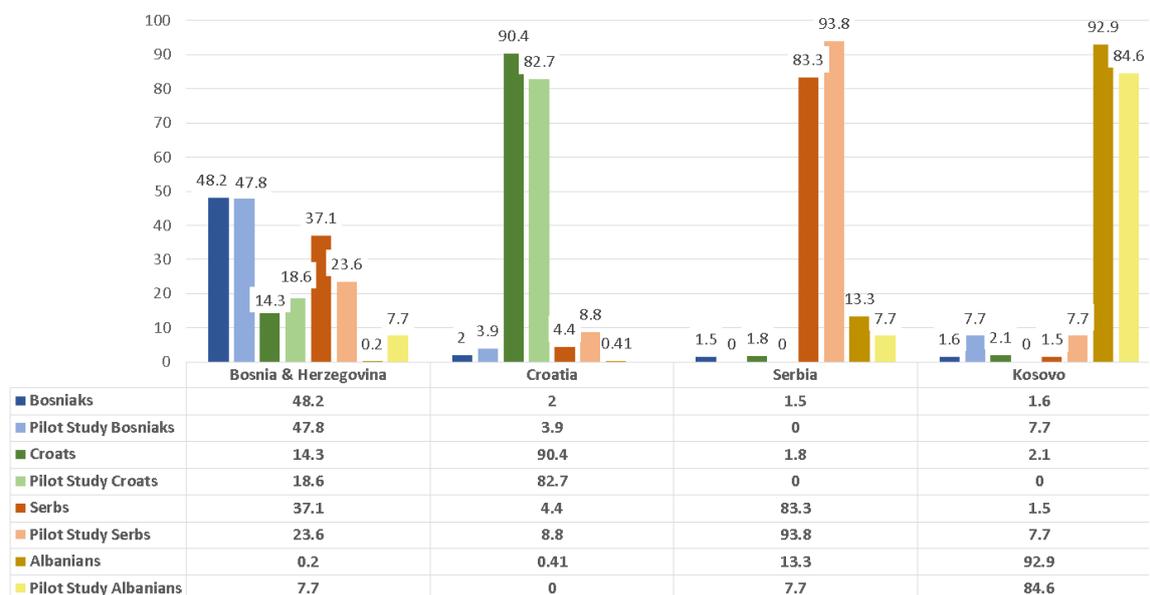


Figure 3.9 shows that the Pilot Study population, based on witnesses' ethnic self-identification, closely resembles the larger regional ethnic breakdown.⁴⁰

Figure 3.9 - Ethnic self-identification of Pilot Study sample compared to overall population (percentages)

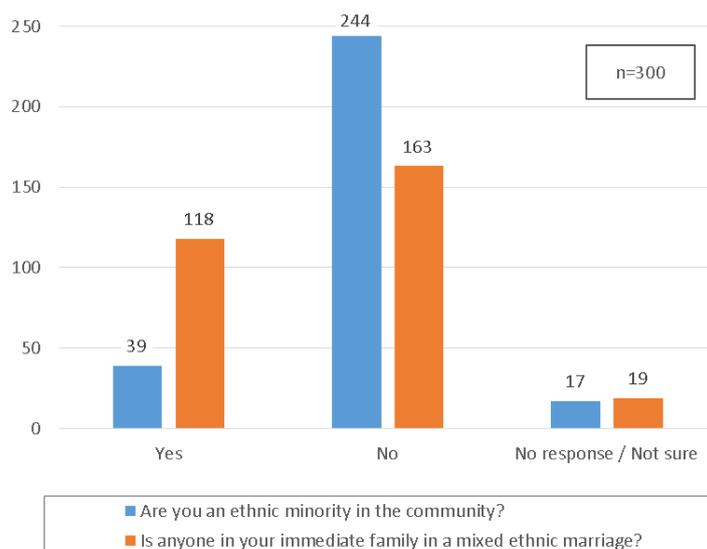


Perhaps one of the Pilot Study's most interesting findings relate to the large numbers of ethnically mixed marriages present in the respondent sample, as well as the number of witnesses who are ethnic minorities where they live. The communities in the Socialist Federal Republic of Yugoslavia had varying rates of intermarriage among different ethnicities and these rates differ depending on the ethnic group being examined (Smits 2010). Conventional wisdom is that ethnically mixed marriages were rather common, but statistical analyses of data before the wars do not bear this out (Botev 1994). Perhaps this perception persists because of ethnic polarisation (Buric 2012). Thus, interviewees were asked two questions regarding ethnic identity that may have some bearing on their perspective as witnesses. The

⁴⁰ Ethnic and religious identity information obtained from the CIA Factbook (2011, 2013 statistics).

questions asked: (1) whether the witness was an ethnic or religious minority in the community where s/he lived; and (2) whether the witness had an immediate family member (parent, intimate partner, sibling, or child) who was in an ethnically mixed marriage. Approximately 13% (n=39) of the interviewees are ethnic minorities where they are living, and notably 39.3% (n=118) of interviewees have an immediate family member or are themselves in ethnically mixed marriages (Figure 3.10).⁴¹ There is overlap between the two groups, seventeen persons are *both* an ethnic minority in their community and have an ethnically mixed marriage in their immediate family. Thus, 46.7% of the surveyed interviewees are an ethnic minority in their community and/or have ethnically mixed marriages in their own or immediate family.

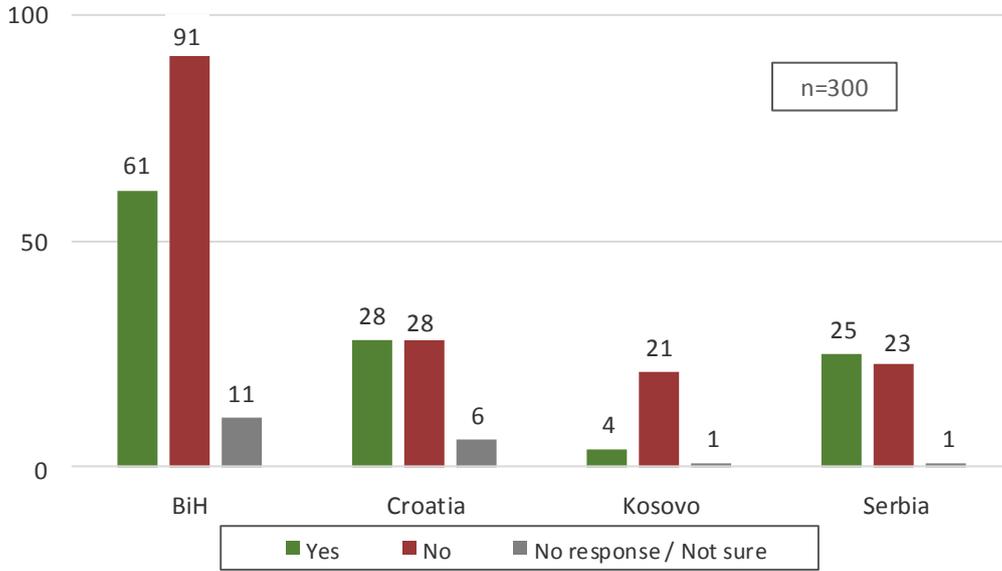
Figure 3.10 - Ethnic and religious minorities and ethnically mixed marriage in the immediate family



Most striking about the interviewees is the high number of ethnically mixed marriages across the region (Figure 3.11). Notably, in both Croatia and Serbia, there are roughly equal numbers of surveyed interviewees who have ethnically mixed marriages in their immediate family. In Bosnia and Herzegovina the numbers are quite high as well (61 persons). Other research has found that exogamous marriage (outside one's ethnic group) declined between 1990 and 2005 particularly in Croatia (Mrdjen 2010). The difference between Pilot Study rates of ethnically mixed marriages may be owing in part to generational differences (given the average age of the interviewees here). Indeed Pilot Study results show significant correlations between older witnesses and ethnically mixed marriages (meaning that the older an interviewee is, then the more likely they are to have someone from their immediate family in an ethnically mixed marriage). It should be noted that Pilot Study results are consistent with Mrdjen (2010) as it pertains to gender, female interviewees are less likely to have ethnically mixed marriage in their immediate family.

⁴¹ The issue of minority status and "constituent peoples" is complex in the former Yugoslavia, particularly in Bosnia and Herzegovina where the Constitution established following the Dayton Peace Accords provides structural representation based on ethnic identification. For this reason, some participants might refuse to identify as part of a minority if they were a member of one of the constituent peoples because such identification might "diminish" their importance. For more critical commentary regarding the impact this has had, see the Minority Rights Group International (2003) and O'Brien (2010). Increasingly, persons in the region are resistant to traditional labels of identity based on national comparisons (see Grim et al. 2015 and Bieber 2015).

Figure 3.11 - Ethnically mixed marriage in the immediate family by geographic area



3.1.3 Interviewees and ICTY trials

The survey respondents have appeared as witnesses throughout the Tribunal’s existence. Even though the VWS did not have contact information for persons who testified from 1995 to 1998 some of these witnesses were surveyed because they also testified in later trials. The interviewees come from across the life cycle of the Tribunal from 1997 until 2012, although a majority testified between 2000 and 2009 (Figure 3.12).

Figure 3.12 - Interviewee appearances by year

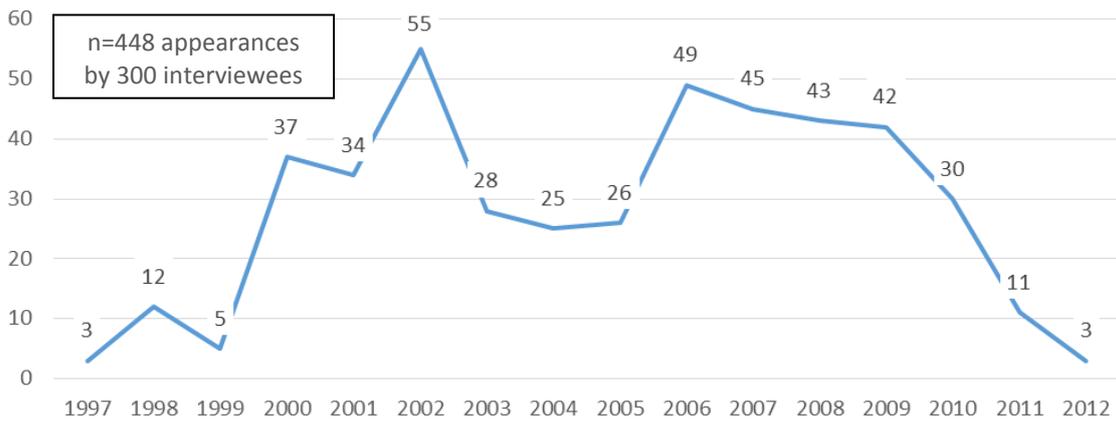
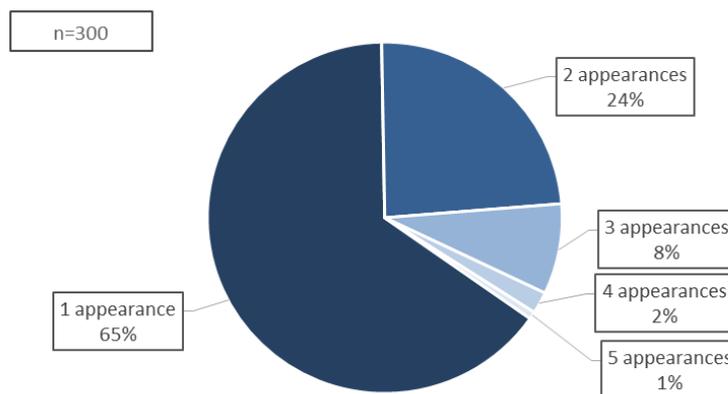


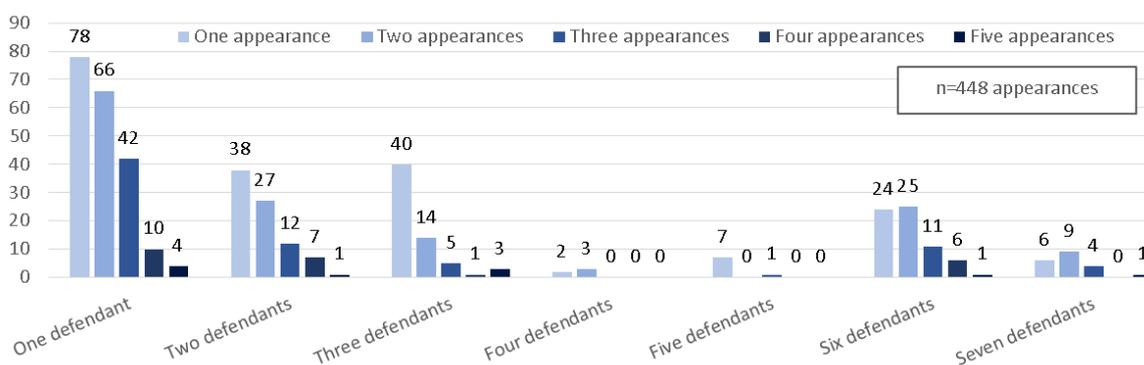
Figure 3.13 - Interviewee trial appearances



There are multiple ways to analyse witness participation in the trials (Figures 3.13 and 3.14). Witnesses may testify more than once in any given trial, or testify multiple times in multiple trials, and indeed may appear for one or more of the calling parties (OTP, Defence, or Chambers) in the same or different trials. Regardless of how it is measured, the Pilot Study sample represents a vast range of experiences through time, across all trials, trial types, and defendants. The 300 interviewees have appeared in court 448 times (20 of those appeared twice in the same trial).⁴²

Interviewees testified in a broad range of trials of single and multiple defendants (ranging from one to seven defendants).⁴³ The typical experience for witnesses is to appear only once in a trial with one or two defendants (Figure 3.14), but a distinct group of witnesses have appeared multiple times and in trials with three or more defendants. Two-thirds of the interviewees appeared only once, and a majority of interviewees have appeared in trials with only one defendant, with almost one-fourth appearing twice. Notably, there are a number of persons (35%) who have had multiple appearances.⁴⁴ Of note is the range of trials involving multiple defendants, especially those considered to be complex cases because of the scope of the indictment, and factual and legal issues (Ford 2014).

Figure 3.14 - Interviewee appearances by number of defendants in trials



⁴² Note that “Witness Appearances”, “OTP Appearances”, and “Defence Appearances” do not add up to the total number of interviewees because witnesses can testify multiple times for different sides (OTP, Defence, Chambers), or testify on the same side in the same case more than one time. The 20 witnesses who appeared twice in a trial appeared across a number of trials.

⁴³ The breakdown of defendants per trials at the ICTY are: one defendant (21 trials); two defendants (seven trials); three defendants (seven trials); four defendants (one trial); five defendants (one trial); six defendants (three trials); and seven defendants (one trial).

⁴⁴ One defendant, Momir Talić, died before the completion of the trial, but witnesses who had been called in that case were relied upon in the Radoslav Brđanin trial which continued after Talić’s death. Several of those witnesses were interviewees. A second defendant, Slobodan Milošević, died during trial proceedings after a substantial number of witnesses had testified. Thus, witnesses in these proceedings are also included for sampling and selection to take the survey.

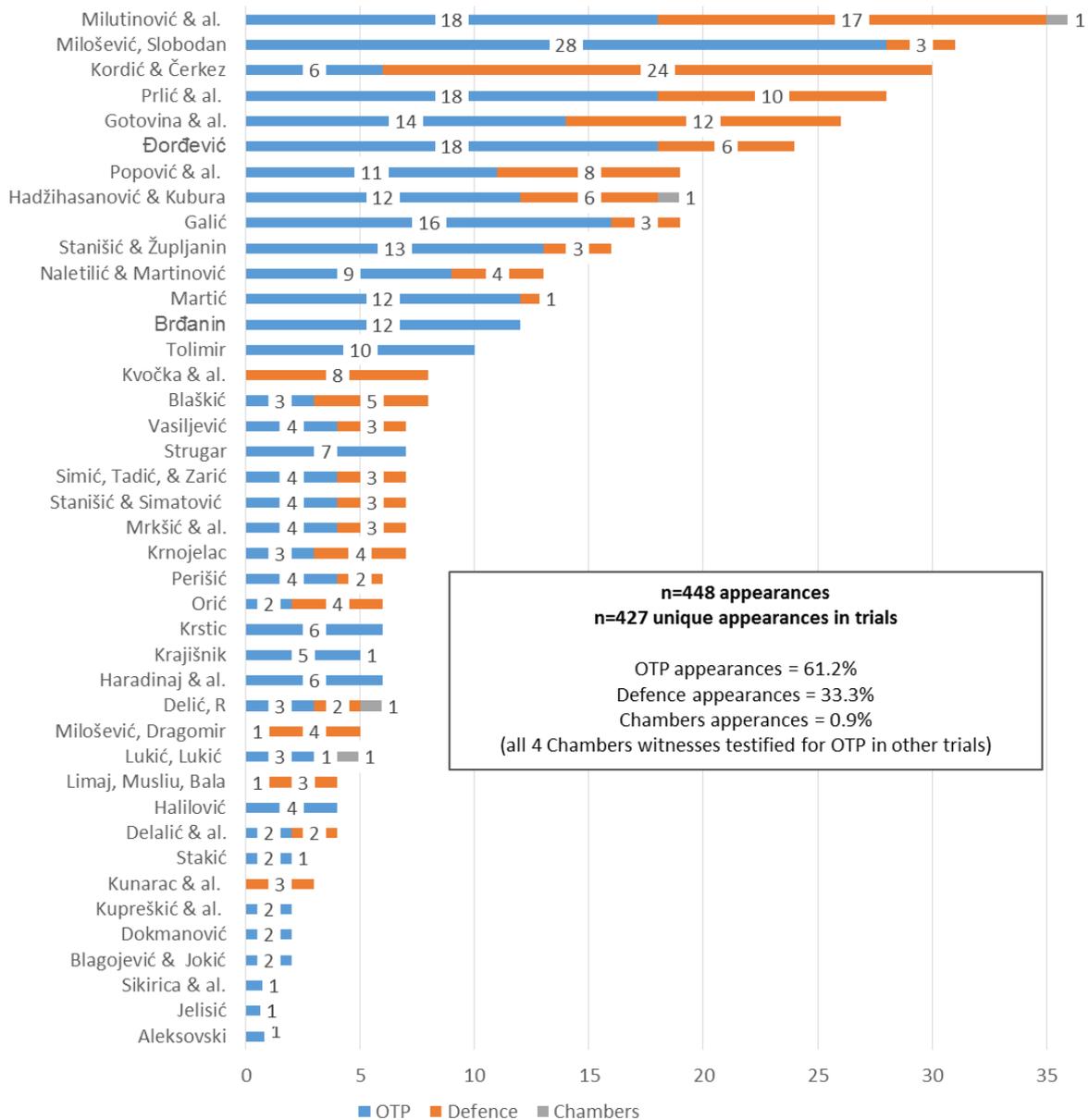
The overall picture emerging from the interviewee profiles is that the appearances by witnesses are representative of the Tribunal's work as whole for the time period being examined (Figure 3.15). Approximately two-thirds have appeared on behalf of OTP with the remaining one-third appearing for Defence. Interestingly, there have been 45 appearances by seventeen witnesses who have appeared for both the OTP and Defence. Four Chambers witnesses also appeared for OTP.

Figure 3.15 - Survey respondents – By the numbers

| | |
|---|------------|
| Total interviewees as both fact and expert witness | 3 |
| Total interviewees with written testimony (not viva voce testimony) | 7 |
| Interviewees appearing in two roles (OTP, Defence and Chambers) | 45 |
| Number of different trials | 41 |
| Number of total defendants | 90 |
| Total Chambers appearances (all also appeared for OTP) | 4 |
| Total Defence appearances | 151 |
| Total OTP appearances | 293 |
| Interviewees appearing only once | 195 |
| Interviewees appearing 1+ times | 105 |
| Number of interviewees | 300 |
| Total interviewee appearances in unique trials | 427 |
| Total interviewee appearances (includes same trial more than once) | 448 |

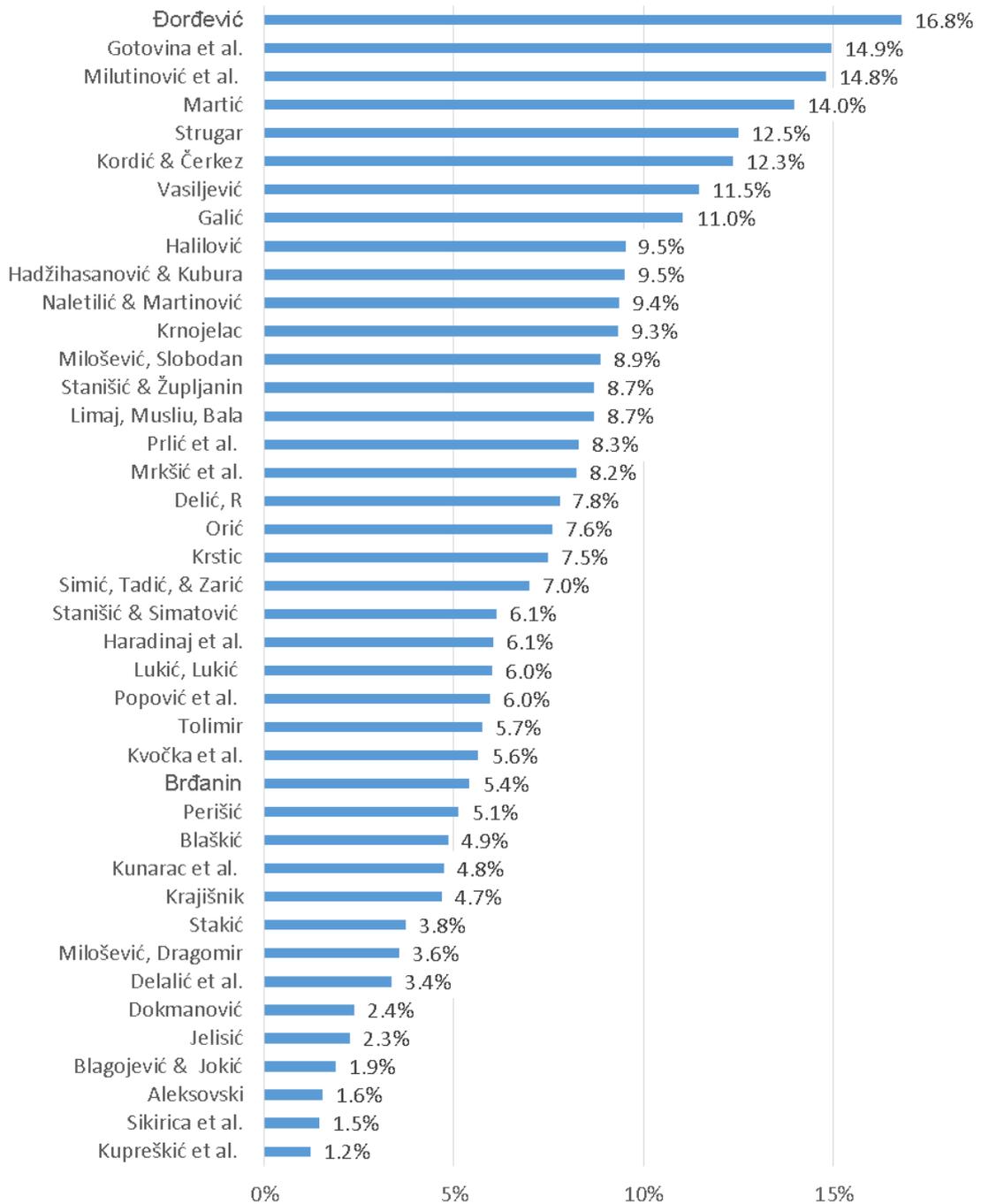
Finally, witnesses from a wide range of trials were surveyed (Figure 3.16). There were some limitations because of the necessity to exclude⁴⁵ witnesses from trials that were still in progress at the time of the Pilot Study. Figure 3.16 breaks down interviewees by trial and the calling party, OTP, Defence or Chambers. As is to be expected, larger, more complex trials with a larger number of witnesses have greater representation. The Kordić and Čerkez, Milutinović et al., Popović et al., Prlić et al., and Slobodan Milošević trials had between 240 to 350 witnesses testify in each of those trials, while earlier trials like Dokmanović, Aleksovski, Jelisić, Sikirica et al., and Kunarac et al. had a lower numbers of witnesses testify (approximately 40 to 70 witnesses total in each of these trials). To compare witness representation by percentages, data is provided about the total number of interviewees that participated in each trial (Figure 3.17).

Figure 3.16 - Interviewees by trial and by calling party



⁴⁵ See §2.3 Participants and selection process.

Figure 3.17 - Interviewee appearances as a proportion of total number of all witnesses per trial



3.2 The impact of testifying

This section explores the preparation process of witnesses pertaining to legal concerns witnesses may face during their appearances, the logistical and informational needs of witnesses who testify, and concludes with a discussion about the witnesses' motivations for testifying.

3.2.1 Legal concerns

There are legal consequences to testifying (and to not testifying) at the ICTY, including being subpoenaed to appear, being concerned about facing potential legal action, bringing a civil lawsuit for reparations. The Registry's Legal Officer for witness matters can assist during the process of testifying in issues related to in-court protective measures, subpoenas, contempt of the Tribunal, false testimony and solemn declaration, safe conduct, and risk of self-incrimination.⁴⁶

A large majority of witnesses appear voluntarily before the ICTY, but like national criminal courts, the ICTY has authority to compel witness attendance by issuing a subpoena.⁴⁷ Fear of retaliation, concerns about self-incrimination, or distress at recalling war experiences are important issues that concern some witnesses, but they are generally considered insufficient justifications to prevent witnesses from appearing. Failure to comply with a subpoena can result in arrest and contempt of court charges.⁴⁸ Some witnesses welcome a subpoena or even request it themselves to alleviate the pressure of having to explain their appearance to their communities or employers. For other subpoenaed witnesses, however, their reluctance to appear has an impact on their interactions with both the calling party and the VWS. Witnesses may have concerns regarding their travel as there may be movement restrictions or other travel issues affecting them. Where appropriate, the ICTY (via a judge or Chamber) may also issue a safe conduct order for witnesses travelling to or from the Netherlands solely for the purpose of testifying before the ICTY. Such orders seek to prevent witnesses from being detained, arrested, interrogated, or otherwise penalised by national authorities when transiting national jurisdictions.

Of the 300 witnesses surveyed, less than seven percent (n=21) indicated they had been subpoenaed, and of those, only two persons agreed that they had felt pressured to testify because of concerns that legal action might be taken against them. The majority of subpoenaed witnesses indicated that they disagreed (n=10) or strongly disagreed (n=9) that they felt pressured to testify because of potential legal consequences. In fact, witnesses were more likely to be concerned about legal consequences if they were *not* subpoenaed. Of the remaining witnesses who were *not* subpoenaed, four strongly agreed and nine agreed that that they had felt pressure to testify because of concerns about legal consequences, while another twelve persons were not sure. Thus, more than 9% of the witnesses had concerns or were unsure about whether there would be legal complications resulting from their testifying or refusing to testify.⁴⁹

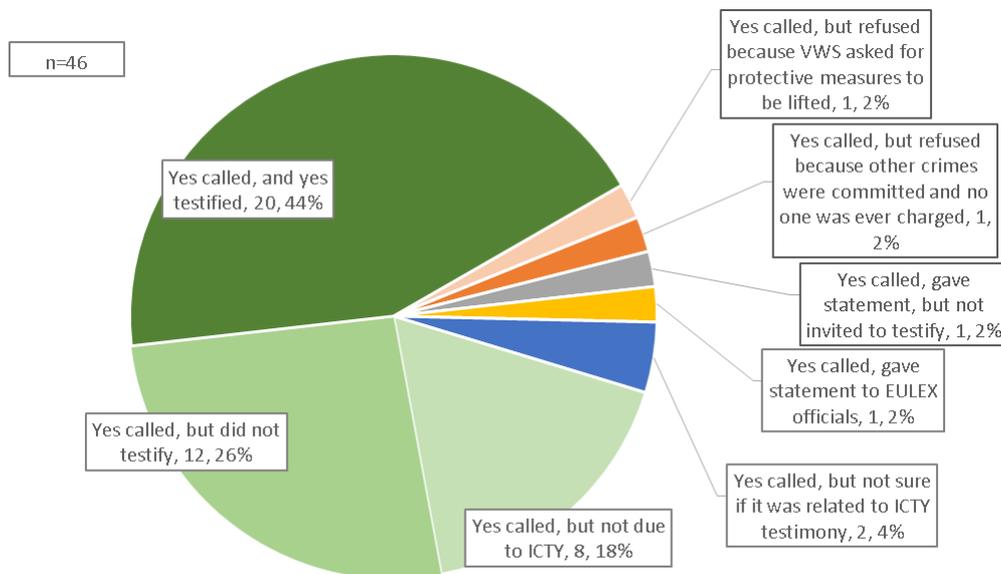
⁴⁶ Rule 90(E) of the Tribunal's Rules of Procedure and Evidence specifies circumstances when a witness may object to making statements that might be self-incriminating.

⁴⁷ A subpoena can be issued at the request of either party or *proprio motu*, by a judge or a trial chamber, pursuant to Article 29 of the ICTY Statute and Rule 54 of the Tribunal's Rules of Procedures ad Evidence, for the purpose of an investigation or for the preparation or conduct of the trial.

⁴⁸ Rule 77 of the Tribunal's Rules of Procedure and Evidence provides] that the Tribunal has the power to hold in contempt those "who knowingly and willfully interfere with its administration of justice" including witnesses refusing or failing to answer a question, a person violating a Trial Chamber's order, a person who, without just excuse, fails to appear before the Tribunal and anybody who threatens or intimidates a witness or any other person complying with the Tribunal's orders.

⁴⁹ While 21 interviewees stated they had been subpoenaed, official ICTY data indicates that only two were *actually* subpoenaed. There is a distinct possibility that an interviewee's interpretation of the question accounts for this difference because the word "subpoena" does not directly translate. The statement in English is "were you subpoenaed to appear at the ICTY?" In BCS, however, it reads "Da li Vam je izdat obavezujući nalog (subpoena) za svjedočenje pred Haškim tribunalom" ("Were you issued with a *binding* order to appear at the ICTY?"). Also, witnesses' memories could be affected by the passage of time, multiple court appearances and their understanding of the term 'order'. Regardless, the findings support the notion that witnesses need full information about the subpoena process and the impact that can have on their willingness to testify.

Figure 3.18 - Were you called to testify for the national courts because you testified at the ICTY?



Appearing before the national courts can be yet another legal result that some witnesses face because they have given relevant testimony before the ICTY (Clark 2014). Interviewees were asked whether they were called to give statements before national authorities as a result of testifying at the ICTY (Figure 3.18). More than 15% (n=46) of the interviewees were called to give evidence in other legal proceedings, but only 6.7% (n=20) of the interviewees actually testified in these other local proceedings. Witnesses called to testify before other courts noted that while they were called, it was not due to their testimony at the ICTY (n=8), while two of the witnesses were not sure whether being called had anything to do with the ICTY.

Finally, a possibility exists for witnesses to make civil claims seeking compensation from defendants who are convicted but as a practical matter such claims are rarely successful (Council of Europe 2012, 26-28). Obstacles to the process include a complex legal framework, costs associated with pursuing such claims, the unavailability or inaccessibility of legal assistance to successfully obtain compensation, and the negative impact on their overall well-being (Hanušić 2015, Bužinkić et al. 2014).⁵⁰ Consistent with other findings regarding civil reparations, only ten interviewees (3.3%) indicated that they had brought such claims (Pajić 2014).

3.2.2 Preparation and information about testifying

The magnitude of the crimes alleged and the complexity of holding trials in a multi-lingual environment in a court outside the region of the former Yugoslavia where a majority of the witnesses reside necessarily means that there are scheduling challenges which have resulted in delays. Multiple reasons account for why testimony might have to be re-scheduled. Administrative procedures inside the courtroom can impact the length of testimony of preceding witnesses or lead to changes in the order of the witnesses. The calling party can also deviate from the original schedule and decide to postpone a witness' appearance. Sometimes there might be changes in a witness' circumstances preventing travel, such as medical issues or urgent family matters. Weather and unexpected events may also alter travel arrangements.⁵¹ All of these can have an adverse impact on witnesses who may otherwise be ready to testify (Wald 2002; Stover 2014). Here, 14.7% of interviewees said that they experienced travel delays

⁵⁰ The VWS observed that some witnesses are "fatigued" by continuously having to explain and recall their war time experiences either for war crimes trials or civil cases for compensation. In addition, some feel burdened to prove their own suffering in order to be validated or recognised as victims or survivors to be eligible for assistance.

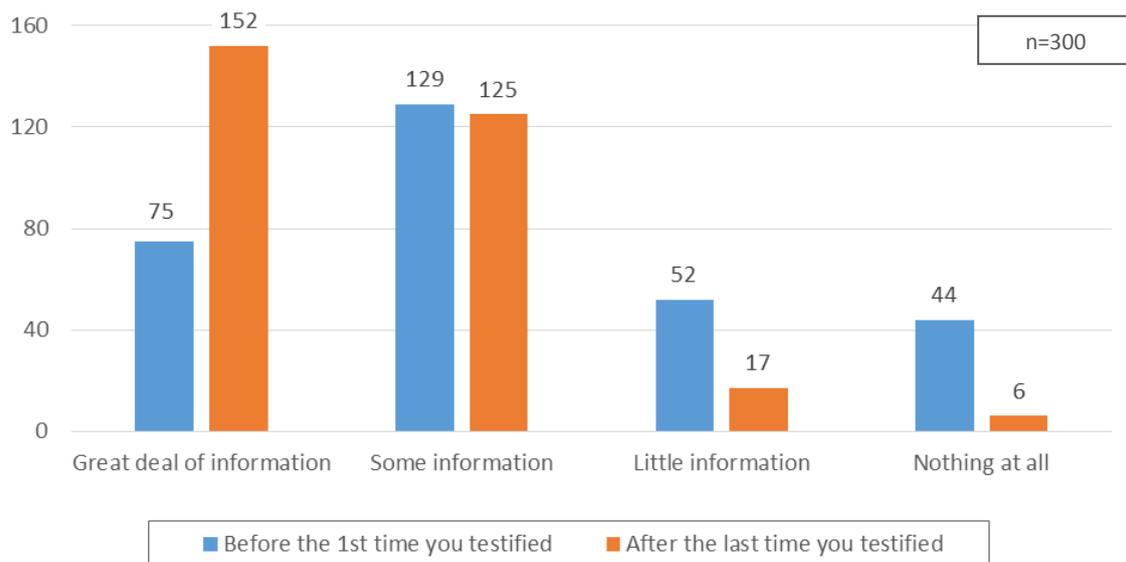
⁵¹ Such travel disruptions have included everything from heavy snowfalls and flooding in the Balkans to a volcanic eruption in Iceland.

when testifying before the ICTY. Consistent with Stover's (2014) research on ICC witnesses, interviewees expressed concerns about re-scheduling, with some expressing concerns about having to travel on a short notice, while others had concerns about delays.

Witnesses also need sufficient information and adequate time to prepare for testifying, for the sake of their own well-being and to ensure the integrity of the trial process (Stover 2014; Wald 2002). The preparation process for the witness starts as soon as the ICTY contacts the witness for the first time. There are a myriad of considerations involved in bringing witnesses, many of whom may have never been in any court before, let alone a tribunal in a foreign country to testify about traumatic wartime experiences (UNICRI 2009). The VWS has a mandate to provide all witnesses with information about their rights and obligations, as well as practical, logistical, and legal information that will be needed during the course of their testifying.

For some witnesses, testifying before a war crimes tribunal is a daunting, alien prospect because the ICTY structure is new to the international system, being a hybrid legal system drawing from both common and civil law traditions.⁵² The amount of information that witnesses have can vary substantially depending on their background and experiences with courts before they testify. Interviewees were asked how much they knew about the ICTY before the first time they testified and after the last time they testified (Figure 3.19). A substantial number of interviewees (68%; n=204) knew a great deal or had some information even before they testified, while a substantial proportion (75%; n=277) knew a great deal or had some information after the last time they testified.

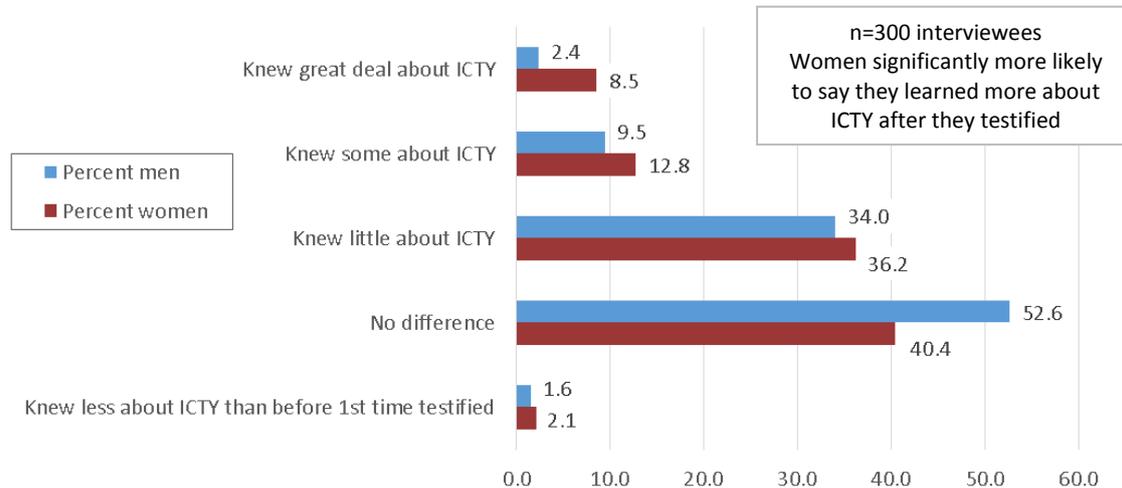
Figure 3.19 - Knowledge about the work of the ICTY



⁵² A key difference between common law and civil law is the role of the judge. In common law systems, judges are neutral arbiters and leave advocacy to the parties. In contrast, judges in civil law systems have broader authority to take a more active role as a questioner or an investigator in the proceedings (Crawford et al. 2013).

Differences exist between the levels of information that women report having learned after having testified as compared to men. Figure 3.20 compares interviewee knowledge before the first time and after the last time they testified.

Figure 3.20 - Percentage of persons with greater knowledge about ICTY after testifying

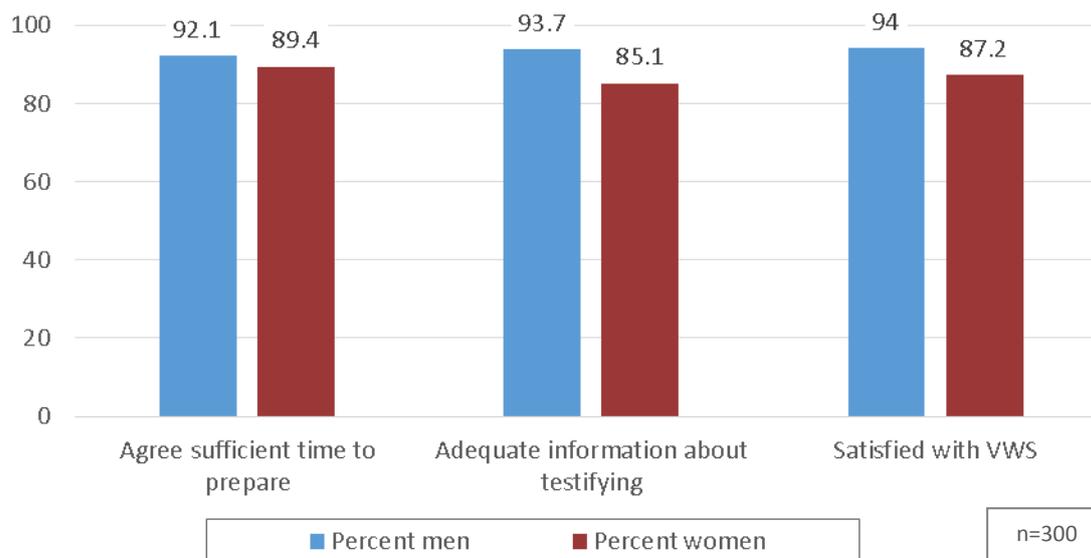


For more than 40% of women and 52.6% of men, there was no increase in what they knew about the ICTY before the first time they testified and after the last time they testified. Notably, five individuals (one woman and four men) thought they knew *even less* about the ICTY after they testified for the last time. Finally, women were significantly more likely than men to indicate that they knew a great deal about the ICTY after the last time they testified (Figure 3.20). Perhaps women are more inclined to acknowledge the net increase in information they learned. Alternatively women may have had less access to information about the ICTY before having testified for the first time as a result of their views about criminal and international justice issues (Barbarett 2014) or because of cognitive processing differences between men and women more generally (Halpern 2013). Therefore the net increase in their information is reflected in their survey responses.

Witnesses need adequate time to prepare for testifying. The VWS provides witnesses with information through briefings about testifying before the ICTY that begin from the first telephone call. The first in-person meeting typically occurs at the witness' hotel in The Hague unless the VWS has assessed that witnesses need to be briefed in their home country before their departure. Witnesses are provided assistance, where appropriate, in the BCS or Albanian languages, and the briefings tend to focus on the logistics and practical information needed during their stay in The Hague (e.g. accommodation facilities, the role of VWS, medical assistance, and other matters). The VWS briefings cover logistical issues, such as scheduling matters, the technical procedures in the courtrooms, explanations about simultaneous interpretation, the roles of the parties, and in-court protective measures to ensure the witnesses have the information they need. The information about the legal process, especially in-court protective measures, is complex and can easily be misunderstood. Witnesses may not realise the Prosecution, Defence teams and the accused will know their identity even if they are given in-court protective measures, or that the accused will be present in the courtroom, or that the public can follow the proceedings from the gallery (Elias-Bursać 2015; Stepakoff et al. 2014; Stover 2014, 2005; Wald 2002) and via online streaming.

Interviewees were asked whether they had had: (1) sufficient time for preparation; (2) adequate information needed to testify; and (3) whether they were satisfied with the assistance provided by the VWS. As Figure 3.21 illustrates, women are somewhat less likely to agree that they had sufficient time to prepare, 89.4% of women and 92.1% of men agreed (or strongly agreed) that they had sufficient time to prepare. The differences between the results based on gender continue as 85.1% of women and 93.7% of men agree they had adequate information about testifying, and 87.2% of women and 94% of men agree they were satisfied with the VWS' assistance. This is in contrast to Stover (2014) who found women were more satisfied with victims' and witnesses assistance at the ICC.

Figure 3.21 - Preparation, information, and satisfaction before trial



Beyond the legal and logistical concerns that witnesses face, there are more personal factors involved in both the reasons for and the impact of having participated in the process of testifying.

3.2.3 Witnesses' motivations for testifying

Only within the last decade has a systematic inquiry begun into the reasons why witnesses decide to testify (Stover 2005). The importance of the role of witnesses in war crimes tribunals dates back to the Nuremberg trials where there was criticism that victim witnesses were not used as widely as perhaps they should have been to directly testify about events that were in the indictments of Nazi leaders (Arendt 1963). Given that witnesses are the "soul" of the ICTY's work, examining in detail what motivates and influences them to testify is vital for the practical consequences of the Tribunal's mandate (Wald 2001).

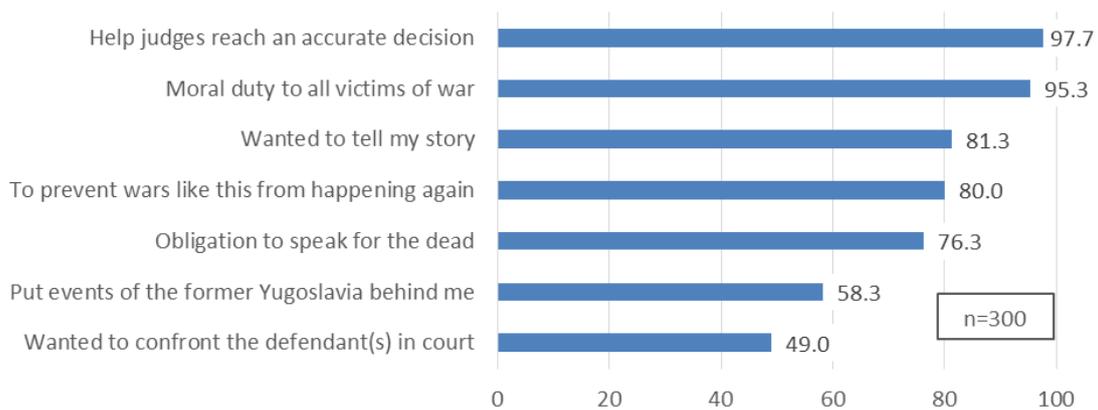
Perhaps the most comprehensive research to date on witnesses' motivations comes from the interviews from 109 men and 38 women who testified before the Special Court for Sierra Leone (SCSL) (Stepakoff et al. 2014). Researchers identified two broad aspects of motivations to testify (1) helping oneself; (2) helping others. The top reasons included: denouncing "wrongs committed against me during the war"; contributing "to public knowledge about the war"; desiring "retributive justice"; and providing a "moral duty to other victims".

The results highlight common themes that have emerged from earlier research, the need for witnesses to tell their story; the need to find out more about what happened to themselves and loved ones; the pursuit of justice; and the desire to contribute to the historical narrative about war crimes (Stover 2005; Stover et al 2011).

A study of Rwandan prosecution and defence witnesses (n=60) who testified before national courts, the gacaca courts⁵³, and the ICTR echoed similar reasons. Like in other studies, witnesses indicated multiple reasons including: (1) an obligation to bear witness to the genocide; (2) a moral obligation to tell the truth and to know more about what happened (e.g. finding family and friends, identifying perpetrators, etc.); (3) public acknowledgement of suffering and wrong doing; and (4) a commitment to rebuilding the post-conflict society (Clark and Palmer 2012). Finally, victims of sexual violence may have distinctive motivations. Such women testifying before the SCSL stated it was important for them to testify in order to provide evidence about what atrocities had been committed and to give a narrative of their experiences (Staggs-Kelsall and Stepakoff 2007). Sexual violence victims testifying before the ICTY and the War Crimes Chamber of the Court of Bosnia and Herzegovina noted a need to hold perpetrators responsible, to prevent future crimes, and to tell the truth about what happened (Mischkowski and Mlinarevic 2009).

All of these reasons are evident in the experience of ICTY witnesses. Because of the breadth and range of motivations and the intensely personal nature of testifying, the survey contained specific and open-ended questions about these matters (Doak 2011; Bonomy 2007; Wald 2002). Interviewees could choose more than one explanation for testifying, and many did (Figure 3.22).

Figure 3.22 - Reasons for testifying



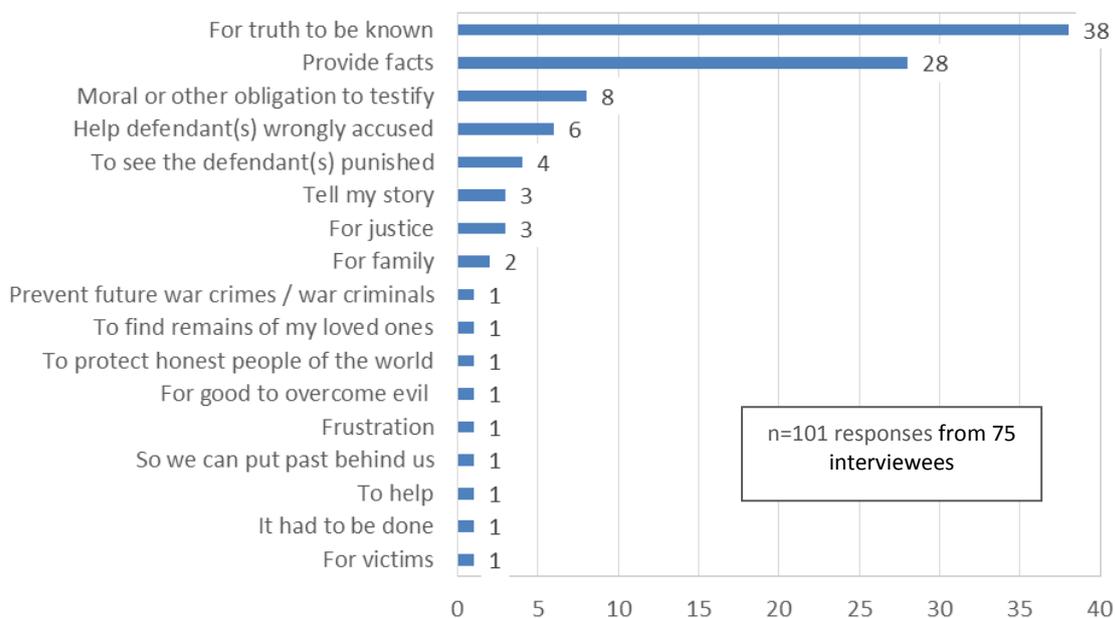
When examining the categories of “Strongly agree” or “Agree” for the witnesses’ motivations to testify, the most prevalent reasons were “to help the judges reach an accurate decision” (97.7%) and as a “moral duty toward all victims of war” (95.3%). Both of these mirror the conclusions of Stepakoff et al. (2014) who found significant external motivators for testifying. It is interesting to note that the responses that elicited the least support were those rationales that pertained more to the individual’s personal stake in testifying. While 81.3% of the witnesses agreed or strongly agreed it was important to testify because, “I wanted to tell my story”, only 58.3% indicated they did so to “put the events from the wars in the former Yugoslavia behind” them. A smaller percentage, mostly OTP interviewees (49%, or 147 persons), agreed or strongly agreed that it was important for them to testify to confront the defendant in court, while 28%, or 54 persons disagreed or strongly disagreed that confronting the defendant was an important reason for testifying.

⁵³ The Rwandan government established the Gacaca courts after the 1994 Rwandan genocide to help resolve the backlog of pending criminal cases. These courts are holistically focused, including components of Western law practices and traditional African dispute resolution, to facilitate victim participation in the justice process. Commentators both lauded the Gacaca courts as efficient (more than one million cases were resolved by the time all trials ended in 2012) and condemned them for lacking due process and assigning “collective responsibility” which may have contributed to continuing rifts within Rwanda society (Bornkamm 2012).

The Pilot Study also endeavoured to allow witnesses to give their own motivations for testifying through an open-ended short-answer question (Figure 3.23). A number of interviewees gave answers similar to the close-ended questions. Again, witnesses mostly gave open-ended answers that mirror what other research had found about witness motivation. Witnesses tend to cite external, altruistic motivations rather than more internal, self-focused reasons (Stepakoff 2014). Witnesses tend to cite a general concern for society as a whole and a need to tell the truth about what happened. The next most common answers relate to a higher duty, namely ensuring the accused receives a just punishment or exoneration, as well as a moral obligation, to testify.

Certainly, witnesses understand their role in the larger context of advancing truth and justice and deterring war crimes. Their multi-dimensional perspective encompasses their sense of duty towards others (Clark 2014; Doak 2011), as well as more personal reasons for testifying. Interestingly, the findings here mirror in some respects those of studies of witness motivations at the SCSL (Stepakoff et al. 2014) and the ICC (Stover 2014). The overall picture emerging is that witnesses have broader and more complex motives for testifying, which are driven by both internal, but more dominantly, external factors.

Figure 3.23 - Additional reasons for testifying⁵⁴



3.2.4 Personal satisfaction with testifying

While witnesses' motivations pertain more to their personal values and experiences, witnesses' satisfaction with their testimony seems to be related more to multiple factors that may not be within the witnesses' control. Witnesses' satisfaction with their testimony more likely depends on whether they thought the experience was: positive or negative (Clark 2014, Horn et al 2009; Stepakoff 2014, Stover 2005), cathartic or traumatizing (Brounéus 2010; Mendeloff 2009; Dembour and Haslam 2007; Stover 2005), important in truth-telling (Findlay and Ngane 2012; Doak 2011), important for telling a personal narrative ("tell my story") (Hodžić 2010; Horn, et al. 2009). While research on witnesses' satisfaction has increased, there has been less theoretical development regarding what contributes or undermines witnesses' satisfaction. First, testifying is more likely to be satisfying if there is: (1) an ability to provide a verbal or written account of what happened; (2) the opportunity for finding the truth; (3) a

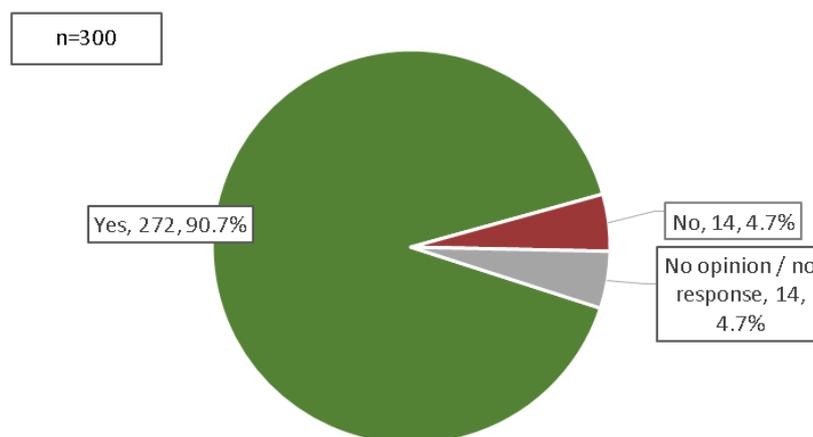
⁵⁴ Question A19 (see the questionnaire in Annex III) allows interviewees to elucidate why they testified in an open-ended format. Thus, the short-answer responses from interviewees regarding motivations for testifying (questions A10-A18) have some overlap with A19 because witnesses were not confined to the wording of the previous questions. While some answers were duplicative of the multiple choice questions (e.g. "tell my story"), it is important not to "eliminate" the witnesses' voices about the first thoughts that come to their minds when they freely associate about motivations for testifying (Stepakoff 2015; Stover 2014).

component of the process that contributes to justice; and (4) a deliberative encounter for the witness (Doak 2011). Second, testifying seems to be more positive if a witness: (1) was less concerned about testifying beforehand; (2) felt respected by court personnel; and (3) felt cross-examination was a positive experience (Horn et al. 2009).

Witness satisfaction of those surveyed varied widely. Witness satisfaction with their own performance was distinct from satisfaction with the trial itself. Whether a witness left the courtroom satisfied tended to depend on what he/she was expecting to gain from the experience. Some witnesses went in confident and came out agitated, particularly if they felt they were unable to tell their story and were repeatedly interrupted, or if they were challenged aggressively and/or accused of lying in cross examination. Infrequently, the judges allowed witnesses to say something at the end of the testimony, which may or may not be important for the latter's satisfaction (Moffett 2014). When releasing a witness, the Trial Chamber often thanks the witness for coming to testify, and in some cases, acknowledges the suffering witness endured. In rare instances, the Trial Chamber may invite a witness to give a victim impact statement as part of the sentencing process.⁵⁵ VWS personnel noted that such gestures by the Trial Chamber and the consequent briefing by the calling party enabled witnesses to address concerns about their in-court testimony.

To gauge witnesses' satisfaction as it related to their motivations for testifying, interviewees were asked to reflect on their reasons for testifying and whether they were satisfied with their testimony.⁵⁶ Interviewees overwhelmingly indicated that they were satisfied (Figure 3.24). Almost 91% indicated they were satisfied, with 4.7% indicating dissatisfaction, while the remaining 4.7% had either no opinion or no response. Such findings are consistent with those of recent systematic research on witness testimony (Stover et al. 2014). There were no significant differences between those who testified for the Prosecution or the Defence in terms of satisfaction. Both OTP and defence witnesses are about equally likely to be satisfied with their testimony (93% and 90%, respectively), although OTP witnesses were a little more likely to indicate they were dissatisfied with their testimony (7% versus 1% for the defence witnesses).

Figure 3.24 - Is the interviewee satisfied with her/his testimony when thinking of why s/he testified



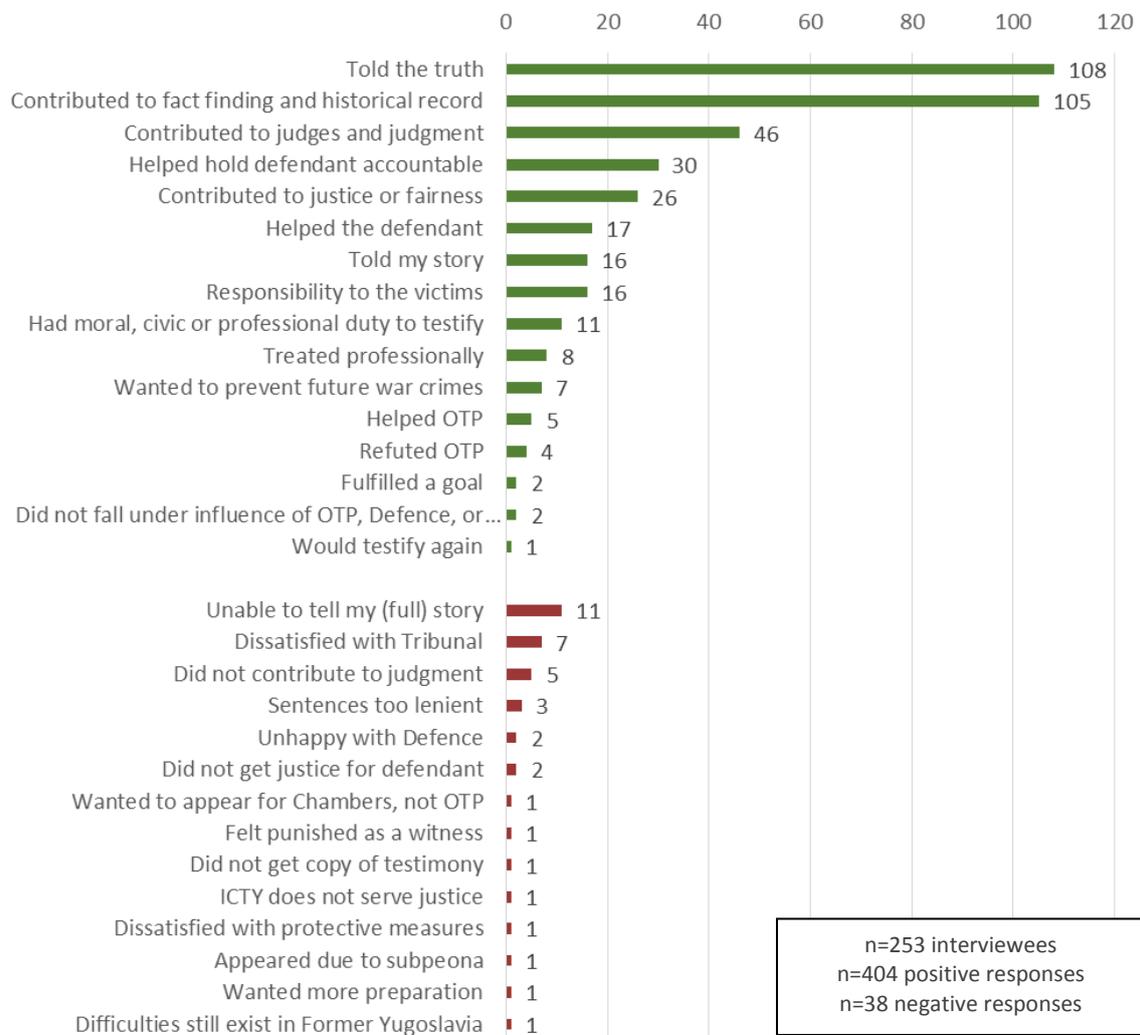
⁵⁵ Victim impact statements are written or oral statements that are part of the process of allowing crime victims an opportunity to tell the court what the crime has meant personally to them and to what extent they were affected (Rule 92 *bis* ICTY Rules of Procedure and Evidence, IT/32/Rev.50, 8 July 2015). They have been limited in usage at the ICTY (Moffett 2014), and the usefulness of such statements has been both touted (Ciorciari and Heindel 2016) and questioned (for an extended discussion see Ochoa 2013, chp. 4).

⁵⁶ See question A20a in the questionnaire (Annex III).

As with the questions on witnesses' motivations, interviewees could summarise why they were satisfied or dissatisfied with their testimony.⁵⁷ Interviewees could provide multiple reasons. This question prompted the highest response rate of any other short-answer question in the survey (n=253). The responses varied widely, but reflect other themes emphasised in previous research on witnesses, as well as the experiences of the VWS staff who support witnesses immediately after their testimony (Stover 2005, 2014; Stepakoff et al. 2014).

As Figure 3.25 illustrates, overwhelmingly, interviewees' satisfaction stems primarily from feelings related to telling the truth (n=108) and contributing to fact-finding and the historical record (n=105). Beyond these two reasons, there are a variety of reasons that relate most closely to contributing to or participating in the administration of a just outcome. These reasons relate to feeling like they had contributed to the judge's decisions or the judgement; that they had held the defendant accountable or exonerated the defendant; or had facilitated the advancement of justice. Not all witnesses were satisfied with their testimony as some felt they had been unable to tell their story or were unhappy with the Prosecution or the Tribunal more generally, or felt as though they did not contribute to the judgement.

Figure 3.25 - Interviewees' reflections on satisfaction



⁵⁷ See question A20b in the questionnaire (Annex III).

Summary

The Pilot Study endeavours to provide a representative sample of witnesses who have testified in ICTY trials after 1998. The purpose of quota and random sampling by UNT was to ensure the highest degree of possible generalisability to include a broad range of witnesses from various geographic and demographic backgrounds, while ensuring the greatest degree of protection for witness security and well-being. The findings represent unique insight into the witness experience.

First, the vast majority of witnesses indicated they had sufficient time to prepare for testimony and had adequate information about testifying. Second, very few witnesses initiated claims for reparations in domestic courts based on the ICTY sentence of the cases in which they testified. Third, the data show that interviewees testify for a number of reasons, but most of them pertain to the need to contribute to a greater good for the societal whole, be it contributing to truth and justice or helping to reduce the chance of future violence. Fourth, and most importantly, witnesses indicate they are highly satisfied with their reasons and motivations for having testified. Witness satisfaction with their testimony is also a positive sign for the ICTY and larger international justice arena.

Chapter 4 - Human security and impact of testifying

The Pilot Study relies upon the United Nations' contours of the notion of "human security" as having two components: freedom from fear" (absence of violent conflict) and "freedom from want" (socio-economic security). Both are vital in post-conflict societies with socio-economic freedoms being part of a much broader dimension of rights (Kaldor 2007; Lautensach and Lautensach 2013; UNDP 1994). Human security exists when individuals live without threats of violence to their personal and bodily integrity, and in conditions that are conducive to basic human needs, such as work, health, security and prosperity. Human security is especially critical in the context of witnesses testifying before international courts. Nearly all of these individuals are victims of war who have experienced losses are now called upon to recount their stories far away from home. Thus, they are also courageous individuals who are stepping forward to contribute to national and international justice.

This chapter discusses witnesses' socio-economic safety and the impact of testimony on intimate and community relationships. The second part of the chapter deals with the impact of testimony on witnesses' security. It discusses witnesses' overall sense of security and provide more insight in to how witnesses perceived threats, how they dealt with them and till what extent in-court protective measures made a difference.

Topics addressed in this chapter relate to questions in sections B and C of the questionnaire (Annex III).

4.1 Personal and community relationship security

4.1.1 Intimate relationships

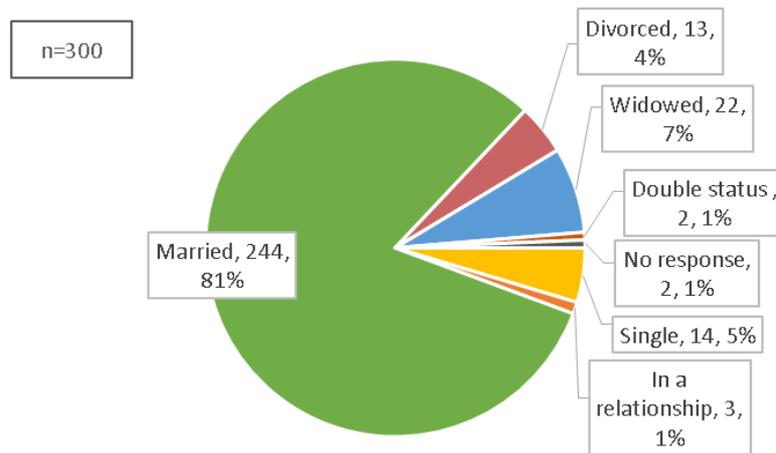
Particularly important for the individual and society is the rebuild of the community relationships and trust damaged during the conflict. This rebuilding is a move forward toward reconciliation (Clark 2014). These relationships with the community are important for witnesses who return to the community where they face the consequences of testifying (Hodžić 2010; Bloomfield et al. 2003, chp. 4). The impact of testifying may also be felt by friends, family, intimate partners, and even by the next generation that bears the burden of dysfunctional relationships and societal distrust (Björkdahl and Selimovic 2014). Yet, unless the consequences of war and international justice on personal and societal relationships are forthrightly addressed, there may be detrimental effects on the short- and long-term mental health of witnesses (Stepakoff et al. 2015).

In the experience of VWS it is not uncommon for family members and friends to oppose a witness' decision to testify. Such opposition may result from fear of negative consequences of testifying, a desire to forget the past, or because of distrust of the ICTY. In some cases, VWS observed witnesses choosing not to inform family members of their testimony either because they did not want to reveal some war trauma or because of their opposition to participation in the judicial process. Problems also arose in the local community, especially in small towns or close communities. Some witnesses have indicated that their testimony might be perceived as helpful or harmful to an entire ethnic group. Regardless of the reasons why individuals testify, some may be concerned about the perceptions of others and fearful of being perceived as a traitor or an apologist for a particular group.

Testifying has the greater negative impact on witnesses and their relationships where they face criticism or disassociation from those with whom they are closest (e.g. spouse, family, and friends). The acceptance or ostracism of others around witnesses (community leaders, religious leaders and other persons in the community) can enhance or undermine justice, reconciliation, and the process of rebuilding the community after a mass conflict (Spini et al. 2013).

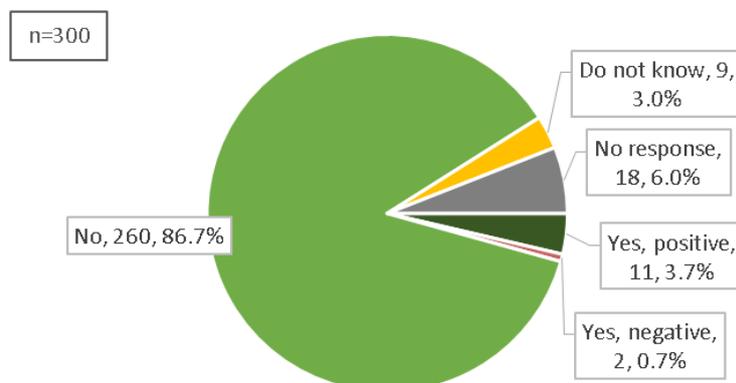
To gauge the consequences of testifying on community relationships and human security, witnesses were asked about the impact on their marriage and their perception of how they were treated after their testimony by family members, friends and other important people in their communities after they testified. As to the interviewees relationship status, the vast majority were either married (n=244), involved in a relationship (n=3) or widowed (n=22), with a small number single (n=14) or divorced (n=13) (Figure 4.1).⁵⁸

Figure 4.1 - Relationship status



The vast majority of interviewees indicated that that testifying had no negative impact on their intimate relationships (n=260), while eleven persons (3.7%) reported that testifying had a positive impact on their relations with a spouse (Figure 4.2). As one interviewee noted poignantly, “when you tell the truth, no matter how difficult it is, it always leaves a favorable impression on your partner to expect the same in mutual relations.” Two interviewees reported negative impacts on their relationships, with one noting his/her spouse had been opposed to testifying out of concern that the Tribunal would not be impartial and fair. After the judgment came down in the case where the interviewee testified, there was an adverse impact on their marriage. Approximately 9% of interviewees did not respond or were not sure about the impact of testifying on their relationships.

Figure 4.2 - Impact on intimate relationships



⁵⁸ War crimes trials take time, and two witnesses had their relationship status change over the course of testifying. One witness was married, and subsequently lost a spouse (passed away). The second witness classified his/her status as both “divorced” and “in a relationship.” Neither witness noted that there had been a negative impact on their relationship.

4.1.2 Community relationships

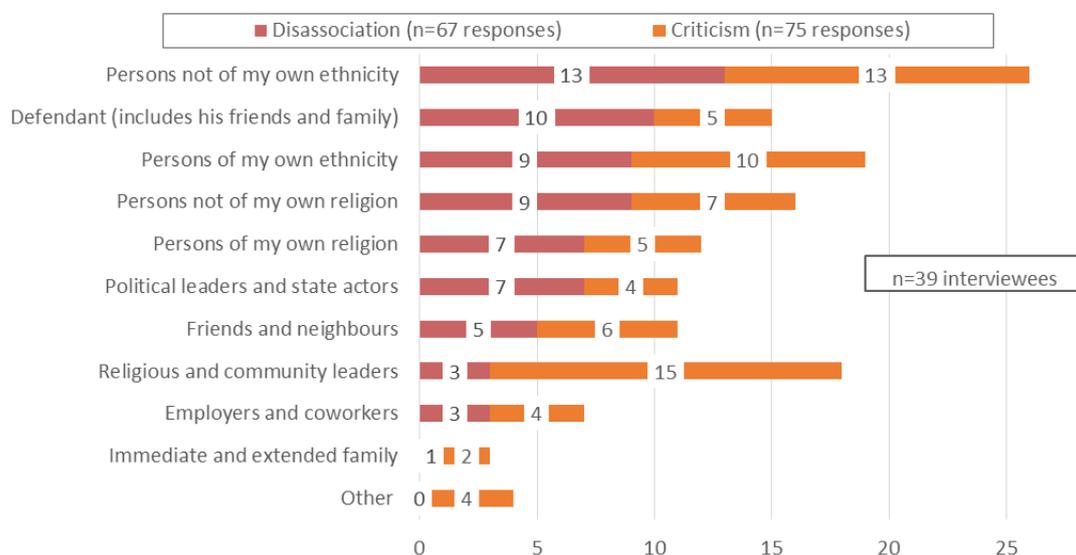
Reconciliation and the ability to move beyond the divisions of war depend on individuals' ability and willingness to repair and sustain relations in their communities. Particularly where there are lingering ethnic tensions (Halpern and Weinstein 2004; Clark 2014) and when there are concerns about the next generation's perceptions of the conflict (Spini et al. 2013; Hjort and Friséen 2006), addressing such relations in the face of traumatic experiences can contribute to a sense of community, which can facilitate long-term reconciliation (Hutchison and Bleiker 2008). Therefore, it is critical to assess how witnesses perceived their treatment by their community after testimony. The Pilot Study set out to make such an assessment.

Interviewees were asked whether they experienced criticism or disassociation as a result of testifying. There was a diverse array of answers including overlap among the witnesses, those who were criticised, lost association, or both (Figure 4.3). Of the 39 interviewees (13%) who indicated some type of consequence, twelve persons (4%) experienced both a loss of association and ostracism as a result of testifying, while another sixteen persons (5.3%) noted they had been criticised (n=28 or 9.3% total criticized). Thus, for a small, but critical number of witnesses, the post-testimony period was one in which they felt disparaged and excluded from the community. It is important to note that a number of interviewees (n=54 or 18%) either did not respond, were not sure, or had no opinion about their post-testimony treatment, raising the specter of uncertainty regarding the scope of criticism or ostracism witnesses face as the result of their testimony (results not shown).

Figure 4.3 - Criticism and loss of association (n=39)

| | Yes, loss of association | No loss of association |
|-----------------|--------------------------|------------------------|
| Yes, criticised | 12 | 16 |
| Not criticised | 11 | 207 |

Figure 4.4 - Persons who disassociated from and criticised interviewees⁵⁹



Interviewers asked witnesses to identify multiple categories of persons who they believed acted negatively toward them as a result of their testimony. This was done to better understand how these threats were delivered and their impact as it is the exclusion of witnesses from the community that creates the greatest threat to their security (Stover 2005; Clark 2014). Figure 4.4 provides a breakdown of factors, sorted from highest to lowest in terms of disassociation. Interviewees report the greatest levels of ostracism and criticism by persons of a different ethnicity, with ostracism from the defendant

⁵⁹ The 'other' open-ended answers included one each for "envious people," "victims", "Tribunal critics," and "war deserters."

(including his friends and family) being the second largest group of persons. Yet, when it came to criticism, interviewees felt the greatest level of insecurity in relation to religious and community leaders (n=15).

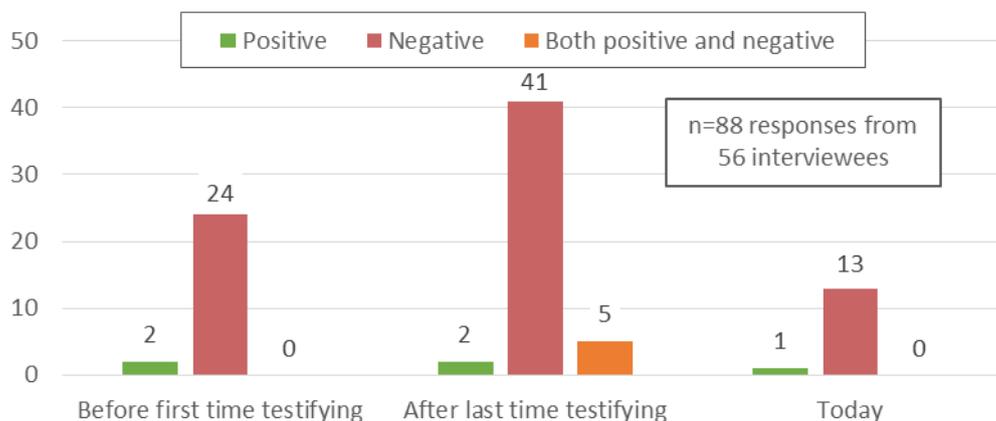
This finding is especially significant as it has been noted elsewhere that conditions in the local community can be the most problematic for witnesses (Clark 2014). Finally, witnesses do not generally just face ostracism or exclusion from others outside their ethnic and religious group, but confront such problems from persons who are of their *own* ethnicity and who are from their *own* religion.

4.2 Economic impact of testifying

Witnesses also experienced adverse economic consequences because they testified at the ICTY (Clark 2014; Stover 2005). Armed conflicts can destroy economies and economic recovery in the aftermath may be slow, which can further limit economic opportunities (Blattman and Miguel 2010; Kondylis 2010). Thus, it was important for this Pilot Study to gauge the interviewees' perceptions about their economic losses in relation to their testimony, which may include loss of income and other business opportunities, government limitations on income and the destruction of assets.

Witnesses can experience the economic effects of testifying over a long period of time. When and what type of economic change, if any, do witnesses associate with testifying before the Tribunal? Witnesses were asked whether they (or their families) experienced positive or negative economic changes: (1) before they testified; (2) immediately after they testified for the last time; and (3) today (Figure 4.5).

Figure 4.5 - Positive and negative economic changes across time periods



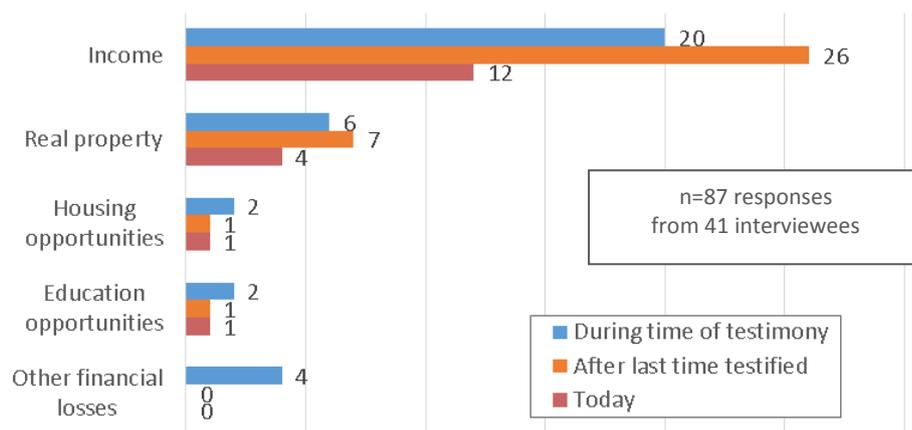
Fifty-six witnesses (18.7%) reported some type of positive or negative economic consequences before the first time they testified, following the last time they testified, or today. There is overlap for witnesses who experienced economic change because witnesses may or may not experience change in all time periods.⁶⁰ For most of the 56 interviewees who indicated some type of change, the vast majority experienced exclusively negative consequences (n=47). Of greatest concern is the negative change to livelihood after the last time the witness testified (n=41) and today (n=13). There is a small, but critical group of witnesses who experienced negative consequences during all three time periods (n=7) which they attribute to their ICTY testimony. That number increases substantially to 24 out of 300 interviewees (8%) if examining just those who reported economic losses at the time of testimony until today (results not shown). Consequently, VWS and UNT have concerns about the negative short-term and long-term economic impacts of testifying before war crimes tribunals (Stover 2005; Clark 2014). The scope of this impact cannot be always accurately measured because this survey is based on self-reported witness perception. The results highlight, however, the importance of examining more accurately the economic

⁶⁰ Please see questions B3a, B4a, and B5a in the questionnaire (Annex III). For example, a witness might experience negative change before testifying the first time, positive and negative change after the last time they testified, but today is experiencing no change. That would be counted as two responses from one interviewee according to the chart.

changes that witnesses experience due to their testifying. The results are also in contrast to ICC witnesses who seem mostly neutral on whether they experienced financial losses as a result of testifying (Stover 2014).

What types of losses do witnesses experience? Economic insecurity for interviewees ranged from lost income and deprivation of government benefits, to lost opportunities for additional income and losses of property and agrarian assets. As with ostracism and criticism in the community, there is a small, but important number of witnesses who suffer losses (Figure 4.6). Not all interviewees reporting negative losses reported what those losses were. Of those reporting, loss of income is the greatest problem after the last time testifying, while a number of witnesses indicated they experienced such losses through to the present because of their testimony. Interviewees noting positive changes mentioned additional income and housing allowances, as well as praise from associates and coworkers for testifying. Finally, of the witnesses who testified in more than one trial, eight indicated that they noticed differences in their economic status between trials. One noticed more problems in their workplace, while another noted that they did not receive salary increases after they testified the second time. For these witnesses, the long-term impact of testifying has had marked consequences. To the extent there is continuing economic losses to witnesses, this may affect their level of satisfaction with the ICTY and its mission (Miller 2008).

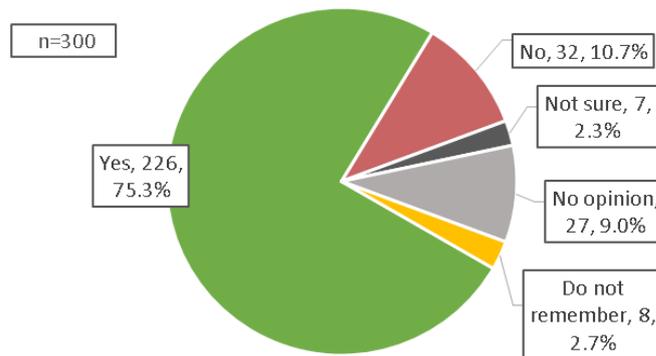
Figure 4.6 - Economic losses attributed to testifying across time periods⁶¹



⁶¹ *Income* includes both threats to additional income (wages, salaries, business opportunities, seasonal work) as well threats of dismissal including government interference at one's job, demotion, or firing. *Real property* includes livestock, agrarian assets, and other tangible property. *Other financial losses* includes out-of-pocket expenses to cover costs and travel plans being re-scheduled because of ICTY.

On the basis of a written policy, the Directive on Allowances for Witnesses, the ICTY regulated for the payment of allowances to witnesses to minimize the adverse economic effects they endure while being away from home and work for the purpose of testifying.⁶² Meals, daily allowances, and compensation for witnesses for the time away are set at United Nations' rates for the country where a witness resides (attendance allowance). In some cases (upon a proper showing) and assessment, the ICTY provides additional compensation to witnesses for extraordinary losses they have experienced due to testifying. About three out of four interviewees were satisfied with ICTY financial entitlements (the per diem compensation they are given during the time of their testimony). Approximately one out of ten were dissatisfied (Figure 4.7).⁶³ The findings here also mirror the ICC witness survey where witnesses overall were satisfied, but a small number were dissatisfied with the compensation provided to them (Stover 2014).

Figure 4.7 - Satisfaction with ICTY financial entitlements during testimony process



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 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 treatment as a result of testifying.⁶⁴

Witnesses need to be secure in their socio-economic affairs, but also essential to testifying before the ICTY is the concern about physical security and whether witnesses are adversely affected in terms of their personal security as a result of testifying.

4.3 Security impact of testifying

The security of victims and witnesses is one of the key challenges faced by transitional justice mechanisms. Due to the tremendous stakes for the political and military leaders who stand trial, their governments and other regional states, as well as the international community, it is not surprising that some defendants, and particularly their supporters back home, seek to threaten witnesses to discourage them from testifying. Therefore, it is critical to examine how witnesses perceive their security situation.

⁶² Directive on Allowances for Witnesses and Expert Witnesses

http://www.icty.org/x/file/Legal_Library/Miscellaneous/it200_rev1_corr2_en.pdf

⁶³ Before 2001, some witnesses criticised the ICTY for providing insufficient compensation to cover all of their expenses associated with traveling to testify (Stover 2005). Early on, witnesses who wanted compensation for lost wages due to absences had to: (a) provide a copy of earnings statements if self-employed; or (b) obtain a written statement from their employer that they were not being paid during absence due to testimony. Compensation was based on the minimum wage of the relevant countries. In 2002, concerns about disparate economic losses, fraud, as well as security for witnesses whose employers might not know they were testifying, led to the establishment of an attendance allowance based on a flat rate per country of residence regardless of occupation.

⁶⁴ To examine whether there were significantly higher levels of insecurity among different ethnic groups within different countries, key comparisons were analyzed between women, persons who are ethnic minorities in their community, and those in ethnically mixed marriages. After controlling for ethnicity and gender, persons living in mixed ethnic communities and those in ethnically mixed marriages are significantly more likely to have experienced adverse socio-economic impact.

The existence of threat, intimidation and fear weakens any judicial process. While one cannot ignore the fears perceived, the actions taken by the VWS need to be commensurate to the level of threat. More specifically, too little or timid an action to an identified and assessed threat may have dire consequences, while too severe or drastic a response may have equally damaging long term consequences.

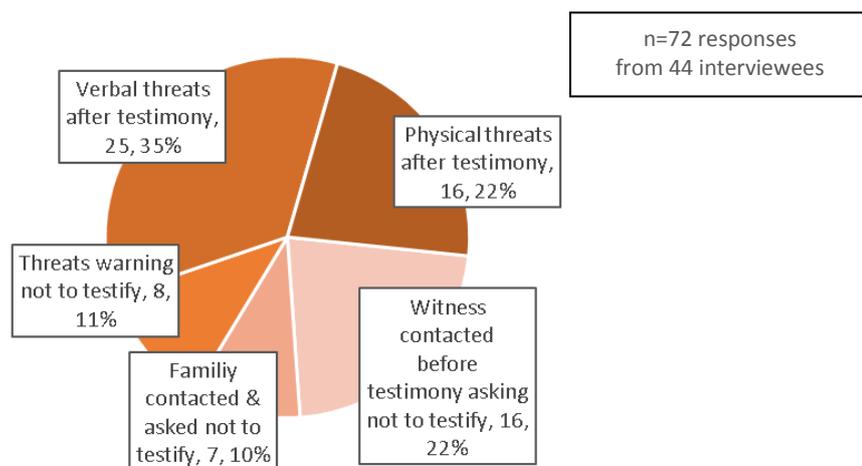
In responding to threat assessments, the VWS generally adopts an escalating scale of response to mitigate the risk. This three stage escalating scale consists of: (1) local measures; (2) temporary relocation; and (3) permanent relocation. In recent times, developments in the capacity of local law enforcements agencies in the former Yugoslavia have improved. In the immediate aftermath of the conflict, law enforcement capacities in the region had been decimated and a great deal of mistrust existed between agencies and the communities. Fortunately, this situation has changed and now, reports of threats can often be referred to the State's police force for further investigation and action. This is always done in consultation with the witness reporting the matter, and has proven to be an effective way of dealing with minor threats or reports of intimidation. Additionally, local agencies are best placed to undertake investigations and are more likely to identify the source of a threat. Despite this, in the experience of the VWS, some witnesses remain reluctant to involve local authorities. This occurs mostly in the cases of witnesses from smaller rural areas who are afraid of maltreatment or simply do not wish to draw attention to themselves.

4.3.1 Testifying and threats

Human security threats, especially those to the physical security of witnesses, are the most severe of all, and one of the greatest obstacles any transitional justice mechanism has to overcome (Cryer 2013; Stover 2005). Such threats range from verbal and physical threats before testimony to committing acts of violence after the witness has testified.

If witnesses feel insecure, the ability of the ICTY to provide a safe environment for witnesses before and after trial is hindered (Wald 2002). The first threats to security for a witness can begin as soon as others think that he/she may be appearing before the Tribunal (Trotter 2013), and continue through travel to and from testifying, as well as upon the return home (Stover 2005, 2014; Stepakoff et al. 2014). Threats are not only directed at witnesses personally, but may extend to family, friends, as well as property. This is a critical topic as previous research has shown that individuals who perceive security threats are more at risk for Post-Traumatic Stress Disorder and depression (Basoglu et al 2005), and that insecurity may impede efforts at reconciliation (Clark 2014).

Figure 4.8 - Threats to security by type⁶⁵



⁶⁵ Note that there are overlapping categories because interviewees could receive multiple threats in different ways. Additionally, there were three other types of harm resulting from testifying reported by three different witnesses: (1) late night phone calls; (2) criminal investigation of the interviewee; and (3) isolation from others about certain topics (results not shown in graphic).

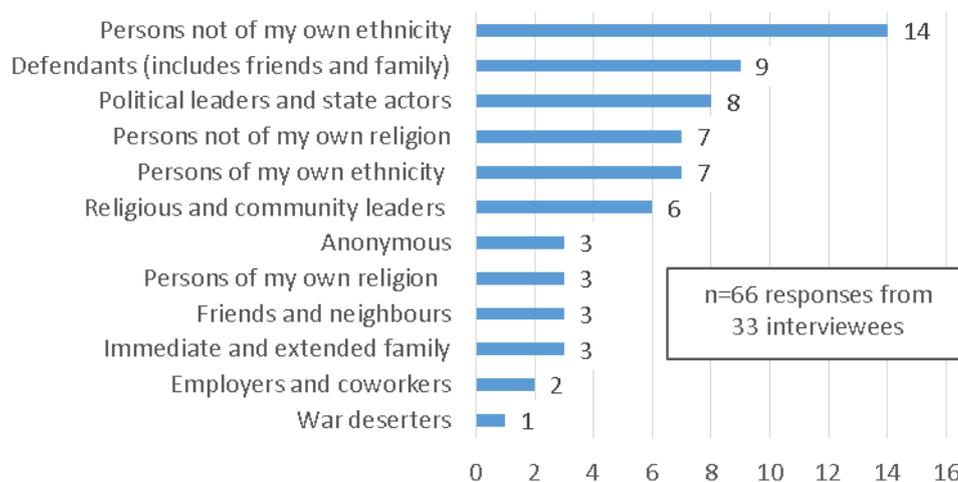
Interviewees answered questions about their overall security, and about the nature of any threats they might have faced because of their testimony (Figure 4.8). Approximately 14.7% (n=44) of the 300 interviewees report some sort of contact or threat regarding their testimony. Self-reported threats were mostly received by interviewees who appeared between 2001 and 2006 (results not shown). The greatest number of threats were verbal threats following testifying (n=25). Twenty-three of the 44 interviewees reporting security concerns indicated that they (or their family) were approached before testifying and about whether they should, or should not testify.

When examining physical and verbal threats made to witnesses, of the 25 interviewees who received verbal threats after testifying, thirteen also noted that the verbal threats included physical threats (data not shown). Thus while verbal threats were more common, they were accompanied about half the time by more serious threats of physical harm. Of concern to witness advocates, thirteen witnesses received physical and verbal threats, and four of those indicated harm or injury occurred to either themselves or their family as a direct result of testifying. All four witnesses were male, and three had been witnesses for the Prosecution, one for Defence.

The “who” and “how” of witness intimidation is little studied except through high profile occurrences in war crimes trials (Cryer 2014). Balancing witness protection with defendants’ right to a fair trial means providing international courts with the power to provide measures that will help protect witness identities and lessen the potential for threat from those opposed to the witnesses’ testimony (Brady 2014). This has been an issue with which the ICTY and other tribunals have grappled as there have been incidents of witness intimidation, the unauthorized disclosure of secret witness identity information, and the more general right of the public to access public war crimes trials (Trotter 2013; Haider and Welch 2008; Elias-Bursać 2015).

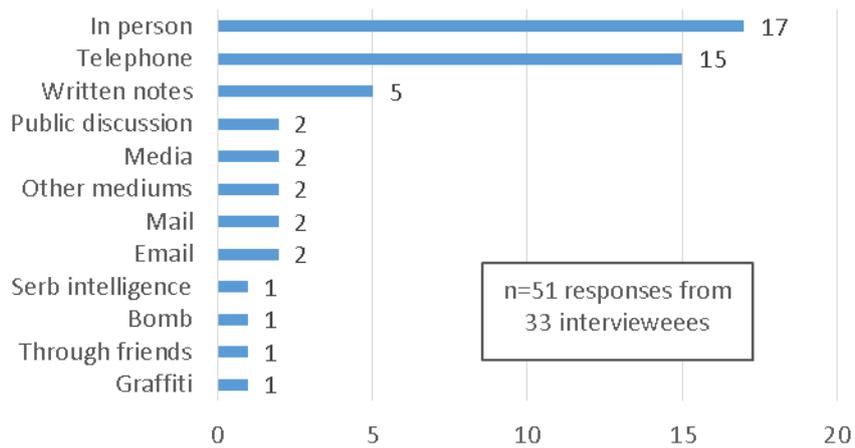
To better understand “threats” and their occurrences, interviewees who reported they had received threats before or after testifying (n=33) answered questions to further identify which persons issued threats, in what manner and how they were delivered (Figure 4.9). Of the interviewees who responded that they had experienced some sort of threat (threats before, and physical or verbal threats after), 30 indicated the person or groups they felt responsible. Only three interviewees indicated the threats were “anonymous”. Interviewees noted that the defendant (including his/her friends or family) were often associated with the threats, but that “persons *not* of my own ethnicity” were also frequently purported to be at fault. These two categories were also among the two highest for criticism and ostracism (see Figure 4.4 above).

Figure 4.9 - “Who” interviewees believe were responsible for threats



Threats to physical safety delivered in person can be the most directly confrontational and intimidating to a witness (Stover 2005; Clark 2014). Interviewees answered questions on how the threats issued against them were delivered (Figure 4.10). More than one-third of the threats came either in person, over the phone, or through friends and acquaintances. Five witnesses noted that they received both in-person threats and threats *via phone* while another eight witnesses noted that they received threats via two or more means of communication (e.g. via email and phone).

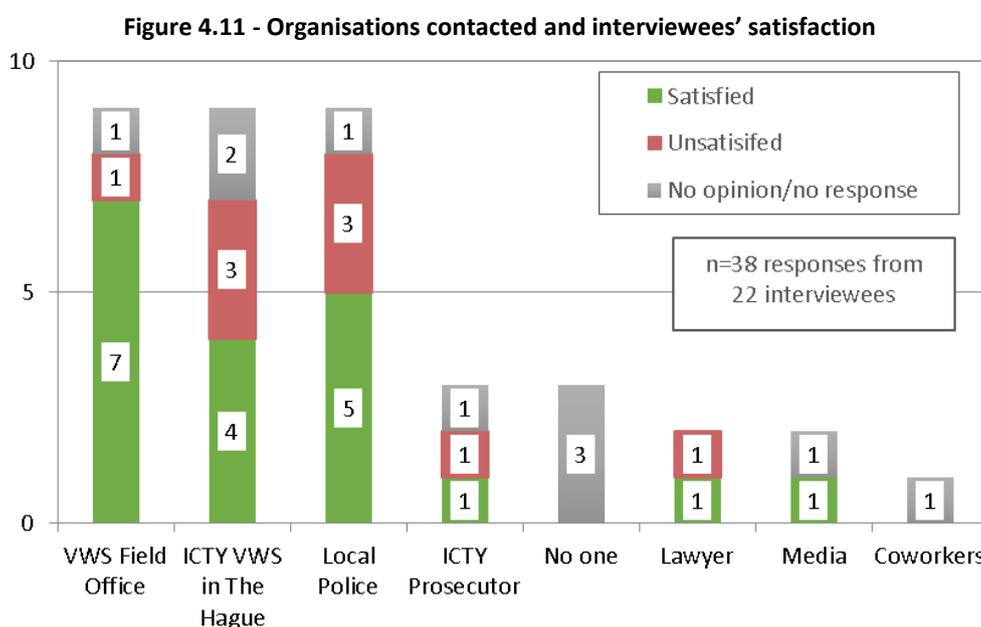
Figure 4.10 - Form of threat delivery



4.3.2 Dealing with threats

Threatened witnesses may find it difficult to reach out for assistance, particularly if authority figures are making the threats. If interviewees did not contact any person or authority after receiving a threat (n=22), they were asked why not. One indicated that the anonymity of the threats made contacting authorities pointless, while another did not contact authorities because he did not trust them. Still another expressed resilience stating, “Because I am not one of those people who are easily frightened.” One interviewee noted philosophically that he did not contact anyone “Because nobody can be technically protected. The point is whether you are afraid or not.”

Of those interviewees who had been threatened and who *did* contact authorities (n=22), the majority indicated satisfaction with the action taken by the authorities contacted (Figure 4.11). Interviewees, when faced with threats, are most likely contact the VWS either directly in The Hague or through the Field Offices. Contacting the VWS and local officials are both more satisfactory than not, while inquiries to the ICTY Prosecutor resulted in mixed satisfaction.



Overall, looking at net security issues facing witnesses, there are again a critical group of interviewees (ranging from 10-15% depending on the associated threat) who are affected in both the short- and long-term after having testified.⁶⁶ Only half of the witnesses who reported threats contacted authorities, and of those, the results are decidedly mixed with half the responses being satisfactory, but half the responses being unsatisfactory or no opinion or no response. That there is a small but sizable number of witnesses who still feel insecure today because of their having testified is an important consideration for international tribunals as to the post-testimony impact on witnesses.

4.3.3 In-court protective measures

One critical way the ICTY has sought to enhance the safety and security of witnesses testifying is by providing in-court protective measures (PMs) through Rule 75 of Tribunal's Rules of Procedure and Evidence. Only a judge or a Chamber may order appropriate measures for the privacy and protection of victims and witnesses. There are different types of in-court protective measures possible: use of a pseudonym, redaction of the witness' name and identifying information, voice distortion, facial

⁶⁶ These threats should not be minimised, but the findings contrast with concerns associated with war crimes prosecutions in the local courts where security threats are “widespread” and attempts to deal with such threats are considered inadequate (OSCE 2010, 13; Orentlicher 2008; Zoglin 2005).

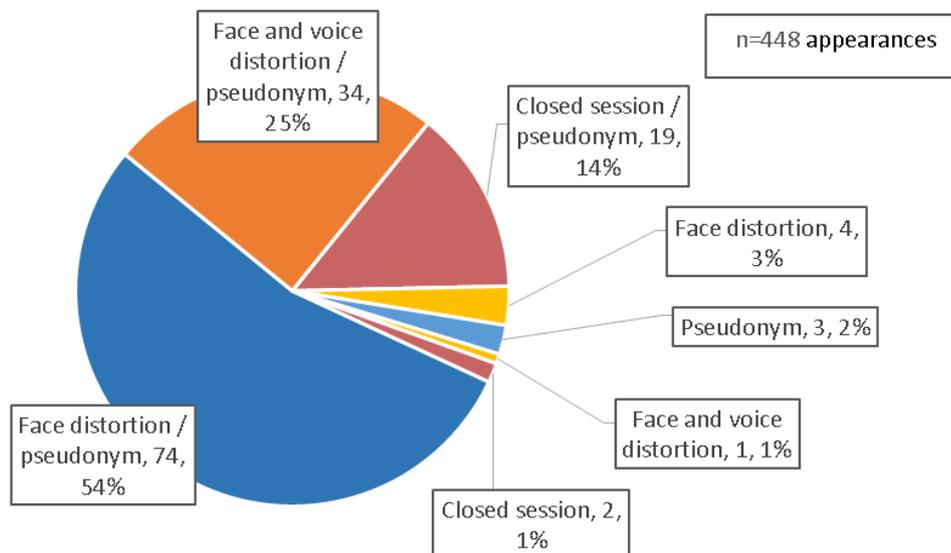
distortion, closed session testimony and testimony through one-way closed-circuit TV.⁶⁷ Requests for in-court protective measures may not be granted by the Trial Chamber, and as a result the witness may decline to testify. Depending on individual circumstances, the witness may be withdrawn from the witness list or compelled to testify (subpoenaed), without in-court protective measures.

The VWS can also enhance the safety and security of witnesses through a protection program for witnesses who face heightened security risks.⁶⁸ In situations where a threat is assessed as imminent, serious and requiring immediate action, an option exists to temporarily remove a witness from the area. This represents a significant escalation and VWS only does this in the most serious of circumstances. Relocating a witness away from their home and employment is a drastic move that causes major disruption. VWS makes all efforts to keep the time spent in temporary relocation to an absolute minimum.

In situations where the threat persists and VWS considers it unsafe for a witness to return to their community, VWS may seek permanent relocation. This represents a measure of last resort and is only implemented when no other option exists that adequately addresses the level of threat. In these situations, the ICTY relies on the good will of States to accept and resettle a relocated witness (and immediate family), a process established through formal agreements.

The issue of in-court protective measures is one which pits the defendant's right to a fair trial including whether defendants should have the right to confront publicly witnesses or whether that right must be intruded upon to protect a witness' need for security and privacy. Thus concerns have been raised about whether liberal or conservative usage of the in-court protective measures undermines justice (Trotter 2013; Brady 2014). Despite the debate surrounding the provision of in-court protective measures, more than two-thirds (69.4%) of appearances by witnesses before the ICTY are *without* any in-court protective measures (Figure 4.12).

Figure 4.12 - In-court protective measures of interviewees

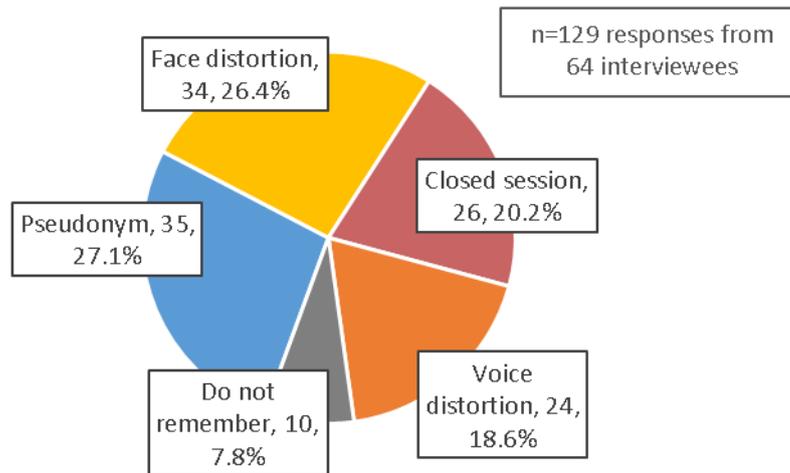


⁶⁷ **Pseudonym:** code used instead of the witness' real name and redaction of the witness' name and identifying information from all public court documents - all identifying information may be sealed or excluded ; **voice distortion:** altering the sound of witness' voice; **facial distortion:** altering or pixelating the image of the witness' appearance; **closed session:** the witness gives evidence in a court session closed to the public (*in camera*) with only the judges, lawyers, the accused, and court officials present in the courtroom and transcripts remain under seal; **giving evidence by one-way closed-circuit TV:** In this case the witness does not see the accused as the evidence is given in a separate room. The witness is able to hear what is going on in the courtroom and the judges are able to see the witness on the monitors on their desks.

⁶⁸ Relocated witnesses and those who experienced heightened security risks were *not* included in the Pilot Study. Less than one percent of witnesses are re-located by the VWS through its relocation program. Witnesses may migrate on their own initiative to another region or country.

The ICTY granted in-court protective measures of some form to 86 interviewees (28.7%) in one or more of their appearances. Of these, 64 recalled requesting in-court protective measures.⁶⁹ Eight interviewees reported having their request for in-court protective measures denied (overall success rate of attaining a PM of some form was 87.5%).⁷⁰ Witnesses most often asked for facial distortion and a pseudonym, followed by closed session and voice distortion (Figure 4.13). Interviewees indicated Chambers were most likely to actually grant them a pseudonym and face distortion (pseudonym-94.1% and face-91.2%), while Chambers granted voice distortion only 45.8% of the time and closed session was granted most infrequently (only 12.5% of such requests were granted) (results not shown).⁷¹

Figure 4.13 - Requested in-court protective measures by type

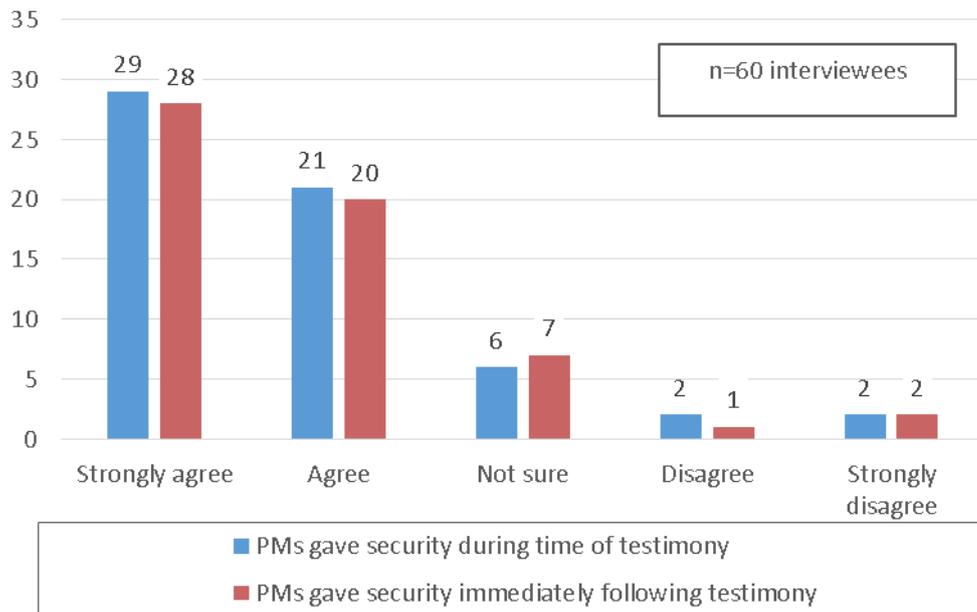


There has been criticism of the Tribunal for failing to provide in-court protective measures leaving witnesses feeling vulnerable both during testimony, and after they returned home (Stover 2005; Clark 2014). Hence, it was important for the Pilot Study to determine whether the in-court protective measures granted to witnesses during their testimony and after they returned home made them feel secure. Interviewees indicated high levels of feeling secure both at the time they testified and on their return home (Figure 4.14) when Chambers granted in-court protective measures. When comparing how secure witnesses feel today, fifteen of the 56 interviewees with in-court protective measures indicated that in the last six months they felt very insecure (n=9) or somewhat insecure (n=6) (results not shown).

⁶⁹ The differences between interviewee perception and ICTY data may be accounted for by the language of the question which reads "did you ever request protective measures for your testimony?" Interviewees may have perceived that because they *personally* did not request in-court protective measures, they should answer no, which is why there are fewer responses than the official ICTY record. Regardless, the findings support the critical importance of providing witnesses with full information about the in-court protective measures, the possibility that they can request measures, and the reality that the ICTY may grant those in-court protective measures even if witnesses do not specifically request them.

⁷⁰ Recall that witnesses appear in multiple trials and that their in-court protective measures can (although not typically) change between trials and even during trials.

⁷¹ Overall twenty interviewees had in-court protective measures change either during a trial or for another trial in which they testified (including variation, rescission and augmentation, with eleven witnesses having measures decreased and nine interviewees having measures increased in subsequent appearances).

Figure 4.14 - In-court protective measures and feeling of overall security

Looking at whether there were any statistically significant relationships between overall net physical human security and ethnicity (i.e. did interviewees experience *any* adverse security impact including threats, vandalism, etc.), Bosniaks and members of ethnic minorities in their communities were more likely to experience security threats. Additionally, as the number of a witness' trial appearances increased, so too did the likelihood of experiencing some type of threat (see also Horn, Charters, and Vahidy 2009; Charters et al. 2008).

Substantial majorities of interviewees indicated they do feel more secure today (note that six more witnesses do not feel as secure today as they did following their testimony). The Pilot Study results also support the proposition, found in other research, that Chambers do not grant in-court protective measures too frequently (Cryer 2014), and that these can change during the course of witnesses' testimony process. Finally, other research has not examined differences between those individual trial witnesses, and those witnesses who testify in multiple trials. In the future these differences are important to examine because increased trial testimony may increase the likelihood of security risks and threats.

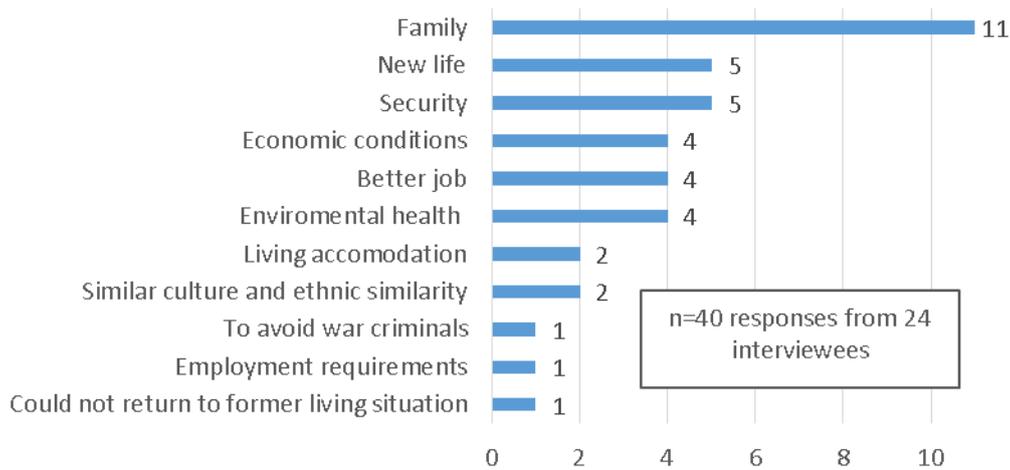
4.3.4 Voluntary migration

One final measure of security is whether witnesses have moved as a result of testifying. The Pilot Study results are based on voluntary moves of a household to a different location. While the ICTY has the authority and resources to re-locate witnesses, it is exceedingly rare. Moreover, relocated witnesses have not been included in the Pilot Study out of concerns for their safety. There were 24 interviewees who indicated that they have moved either within their own country (n=17), to another country (n=4), or had moved *both* within their own country and to another country (n=3). Five interviewees indicated that the fact that they had testified before the ICTY was an important factor they considered when they were making their decision to move or migrate, while nineteen said it was "not important".⁷² As noted below, clearly for a small group of witnesses, the security threat is very real and significant enough to move (Clark 2014).

⁷² Of the interviewees who had moved, the majority had only moved once, but there were five witnesses who indicated they had moved two or more times, with one witness having moved five times since testifying. None of the witnesses who had moved more than once indicated that their testimony was important in their decision to move.

To delve deeper into these decisions, interviewees were asked why they moved. As Figure 4.15 indicates, reasons for witnesses' migration in a post-conflict environment are complex. While the majority of witnesses indicated that having testified was not "important" to their migration, witnesses do indicate that their living circumstances needed to change mostly because of the nature of the post-conflict environment. While the reason "wanting to be with family" is the dominant category, starting a new life, security, economic conditions, better job opportunities and environmental health were also important. There are also reasons for migrating that pertain to the underlying issues related to the wars in the former Yugoslavia including seeking similar culture, to avoid war perpetrators and not being able to return to a living situation.

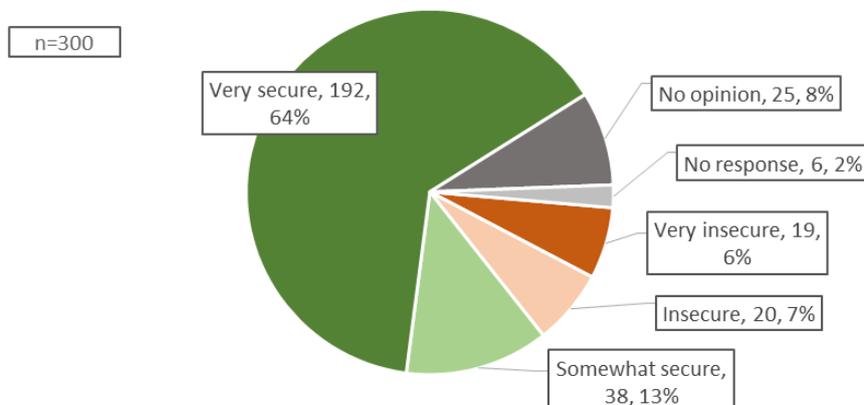
Figure 4.15 - Reasons behind interviewees' migration



4.3.5 Security today

Perhaps one of the most important questions regarding witness security is whether interviewees *generally* feel secure today. Strikingly, a substantial majority of respondents report they feel very secure (64%) or somewhat (13%) secure today. Nonetheless, 13% of respondents feel insecure or very insecure still today (Figure 4.16).⁷³ Even though there is a substantial number of witnesses who feel secure, it is still important to recognise that no matter the number of witnesses, security threats to witnesses directly endanger justice and the prospects for reconciliation (Bartlett 2016; Spini et al. 2013; Hutchison and Bleiker 2006).

Figure 4.16 - Overall feeling of security today



⁷³ In a preliminary model examining whether any one group felt less secure—gender, self-identified ethnicity, ethnically mixed marriages in immediate family, and ethnic or religious minority in a community, only women and those who are an ethnic or religious minority in their community were significantly more likely to indicate they felt insecure today.

Summary

The human security of witnesses at the ICTY has critical moral and political dimensions for the ICTY, the VWS, and most especially for those who experience threats to their socio-economic and physical safety. While a substantial majority of interviewees did not experience personal, economic and security harm as a result of having testified, there is a significant number of witnesses who have been adversely affected as a result of having testified before the ICTY.

These negative effects range from criticism and loss of association, to economic consequences, to threats to their physical safety and the security of their families. Witnesses indicated threats come from a variety of different sources that may or may not be of the witness' ethnicity, and which also include the defendant (and his/her friends or family) as the two main groups of persons being responsible. A substantial majority of the witnesses reported feeling secure today (regardless of if in-court protective measures were given), but it is not clear whether the sense of security is owing to the passage of time since the last trial in which the witness appeared.

Chapter 5 - Psychological and physical health and impact of testifying

Beyond threats to economic and human security, testifying before a war crimes tribunal can also have long-term physical and psychological consequences (Hamber 2009). This chapter describes the witnesses' psychological and physical health and how witnesses believe testifying has affected their well-being. First, the witnesses' trauma, its impact, and overall witnesses' health is examined. To contribute to the on-going debate about whether the testimony is considered a cathartic moment or an occasion for re-traumatization (Mendeloff 2009; Hamber 2009; Doak 2011; Brounéus 2010; Stover 2005), this chapter discusses the reactions witnesses had before, during, and after testifying, together with the external factors that affected them during this critical period. The fairly new concept of "testimony fatigue" is discussed to address the issues associated with testifying on more than one occasion. Lastly, this chapter focuses on the coping strategies that witnesses rely on when dealing with difficult situations as well as their overall satisfaction with their life today and their aspirations for the future.

Topics addressed in this chapter relate to questions in section D of the questionnaire (Annex III).

5.1 Psychological and physical well-being

Before reviewing witness physiological and psychological well-being, it is important to understand the wartime experiences of the interviewees. As some witnesses have shared with the VWS, with the passage of time and the inclination of people around them to put the wartime events behind them, sharing wartime experiences is not always welcomed back home. Some have difficulties in articulating all they have seen, felt and been through or simply choose not to share their experiences as they do not want their loved ones to know what happened.

Once in The Hague, witnesses often used the opportunity to share their experiences and feelings with the VWS staff members or other witnesses as they felt it was a safe and appropriate place and time. As many VWS staff members recalled, witnesses' stories were diverse, ranging from memories of happier times to recollection of horrific events. While diving into painful memories, some witnesses indicated they felt as if they were reliving the events, experiencing intense physical and emotional pain directly linked to injuries and experiences, and having difficulty sleeping and eating. Some described how, even after the passage of many years, the memories and images became so clear that they felt as though they were real and happening in the present. Others reported different types of stress, and yet others indicated they were not experiencing such problems.

5.1.1 Trauma and its impact

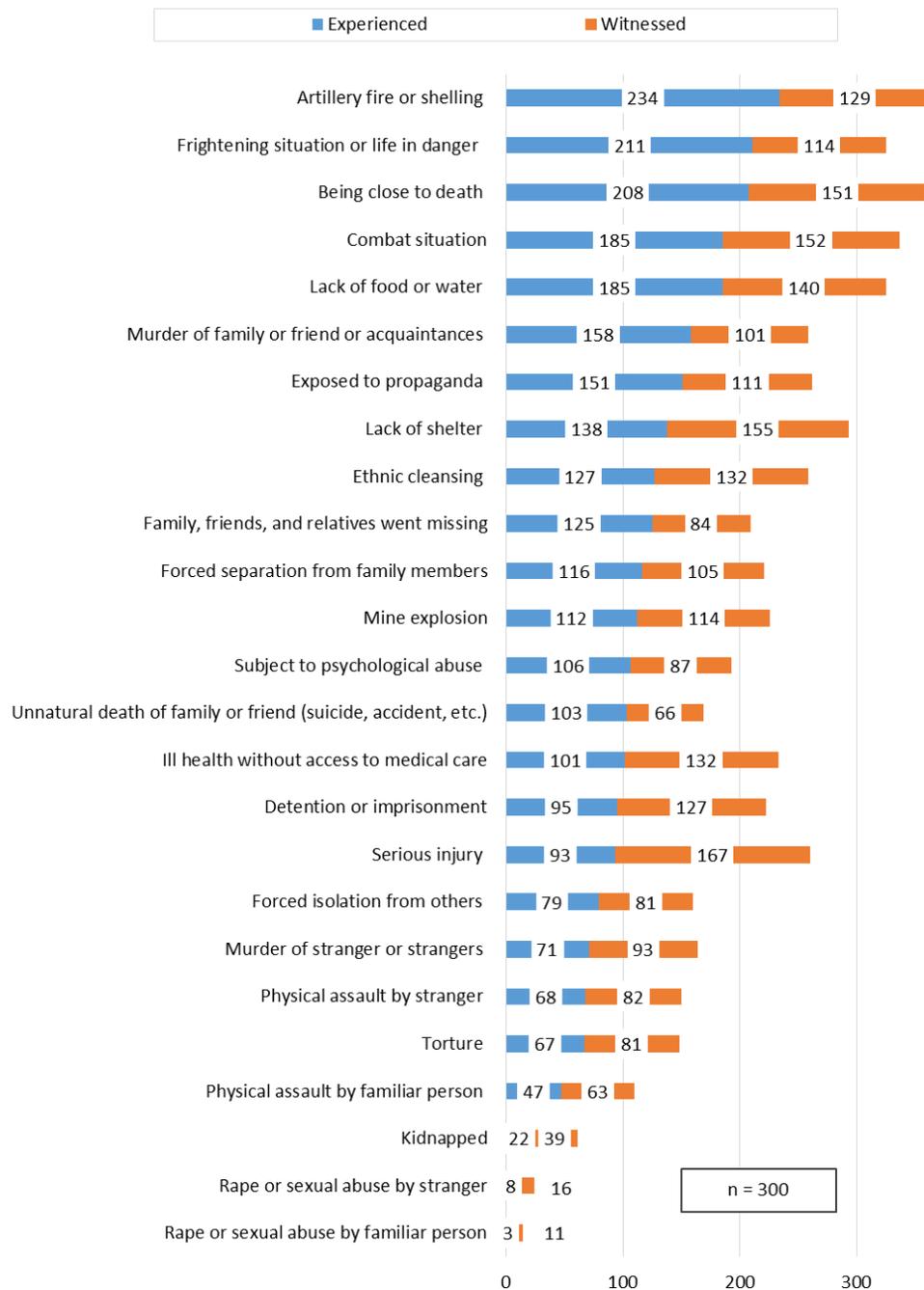
The Prosecution, Defence and Trial Chambers typically call their witnesses to testify about their wartime experiences. The experiences, or witnessing of events, could include extreme deprivation of food or healthcare, destruction of home and community, detention, separation and disappearance of family members, severe beatings, sexual violence and rape, witnessing abuse, torture and killing of others, perilous flight or escape and forced exile. These events represent the very reason for the establishment of the ICTY and the need for the witness testimony.

The levels of war trauma endured by these witnesses are significant and substantial, as the data illustrates. Consistent with one of the largest studies to date in the region that examined wartime experiences⁷⁴, the witnesses in this Pilot Study have experienced extreme forms of physical and mental

⁷⁴ The South-East European Social Survey Project provides social survey data to study the sociology and social history of the Western Balkans. The survey, conducted by the Norwegian University of Science and Technology from 2003-2004, allows for basic analyses of overall cross-national and cross-ethnic group differences within the region, and contains information about 23,000

trauma. Interviewees were asked to indicate whether they: “Experienced”; “Witnessed”; “Heard stories” or “None” of multiple different types of trauma.⁷⁵ The results are divided into two figures: Figure 5.1 contains the number of responses of those who selected “Experienced” and/or “Witnessed”, while Figure 5.2 contains the number of responses of those who chose either “Heard stories” or “None”.⁷⁶ The results are ranked from highest to lowest for the “Experienced” and “Heard stories” categories, respectively.

Figure 5.1 - Wartime trauma experienced and witnessed by interviewees

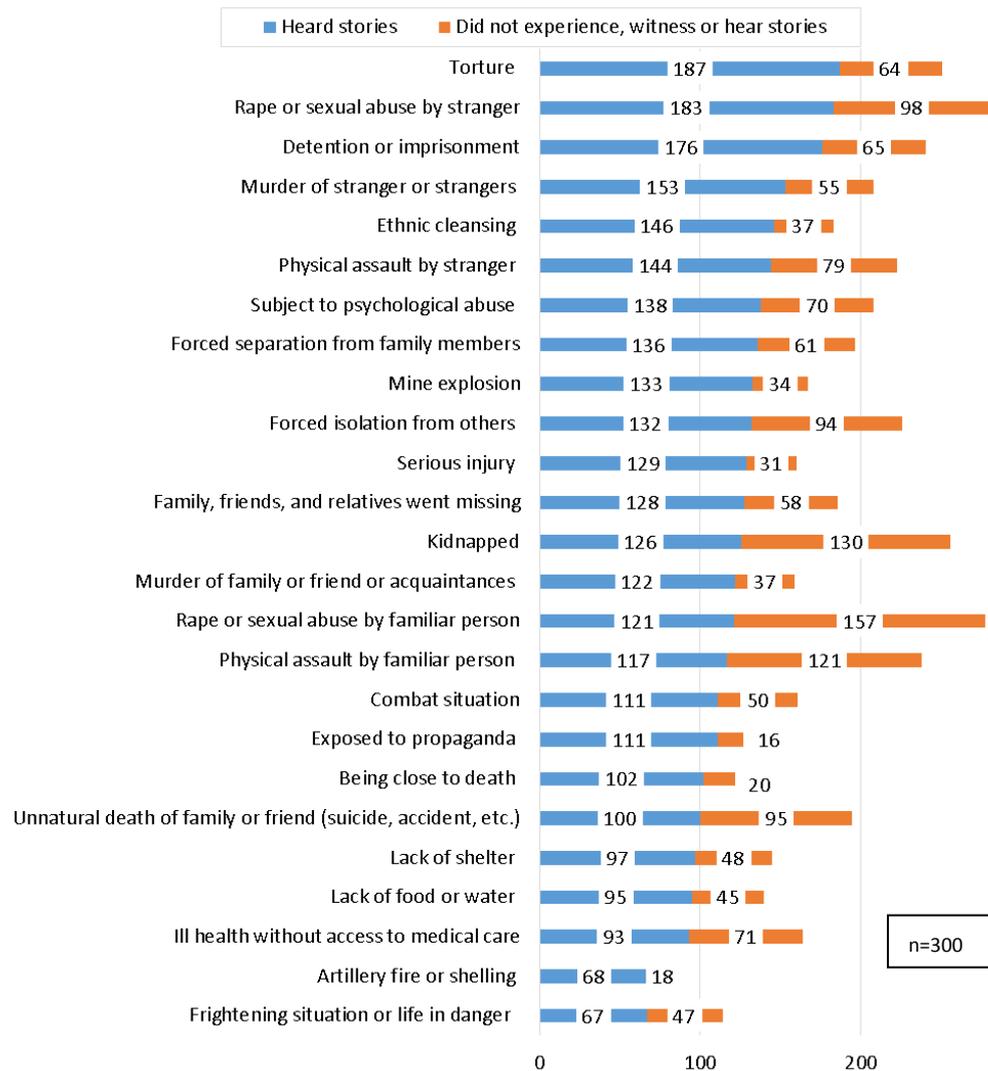


respondents with 1,000 variables and 32 different samples. Information was collected through a 75-minute survey instrument and interviews. <http://www.svt.ntnu.no/iss/ringdalweb/SEESSP%20Surveys.html>

⁷⁵ The Pilot Study relied on a modified version of the Harvard Trauma Questionnaire which lists events or activities common in times of conflict (Palić et al. 2105).

For more information see <http://hprt-cambridge.org/screening/harvard-trauma-questionnaire/>.

⁷⁶ See question D24 in questionnaire (Annex III) for definitions of *Experienced*, *Witnessed*, *Heard stories* and *None*.

Figure 5.2 - Knowledge of wartime experiences by interviewees

Notably, certain wartime experiences were more prevalent among the Pilot Study population, with more than 200 interviewees selecting shelling, being close to death, and feeling as if their lives were in danger. Additionally, 185 interviewees indicated they experienced combat situations, as well as a lack of food and water. Indeed, the level of wartime trauma and experiences encountered by the interviewees is substantial and demonstrates that they suffered greatly during the war. In sum, the 300 interviewees reported they directly experienced a total of 2,884 events (of these, 2,813 were specifically asked about on the questionnaire, and the remaining events were described in short-answers provided by the interviewees). Clearly, these individuals have lived through tremendous suffering.

Figure 5.2 shows responses of those who either heard stories or did not experience, witness or hear stories about any of these events. Notably, the frequencies in this figure are fewer than in Figure 5.1, indicating that interviewees were much more likely to have directly experienced or witnessed the violence and destruction of war. Despite the substantial trauma suffered by the witnesses in the Pilot Study sample, there are still sizeable numbers who did not experience, witness or even hear stories about common war events. For example, despite the prevalence of sexual assault during the wars in the former Yugoslavia and the attention accorded to these crimes by the ICTY as well as the media, 157 interviewees indicated they knew nothing of such crimes committed by someone familiar and 98 interviewees said they knew nothing of such assaults committed by strangers. Despite the trauma suffered by a large percentage of the interviewees, there are still significant numbers of these

individuals who seem to have emerged from the wars with little knowledge of its violence and destruction. A total of 1,601 responses to 25 different questions.

Witnesses were also given the option to provide “other” responses in short, open-ended answer sections to indicate specific types of trauma they had experienced out of recognition that every conflict is unique, and that certain types of violence might not have been indicated by standard measures and the questionnaire. In fact this question elicited frequent responses—only three “other” short-answer questions prompted higher response levels (namely: reasons for testifying, coping strategies used, and psychological/physiological issues). Approximately 20% of interviewees used the open ended answer section to provide information about 61 additional traumatic wartime events that they experienced or witnessed (results not shown). Multiple interviewees identified events such as airstrikes, wartime conditions, being forced to take part in executions, and military and paramilitary actions. Most poignant were those interviewees who recalled graphic images that were deeply disturbing. Whether it is a man describing how multiple family members were shot in the next room, how an old man was shot in the head, or how a baby was crushed with a boot, interviewees give a unique context to the conflict in the former Yugoslavia and the high levels of trauma they experienced.⁷⁷

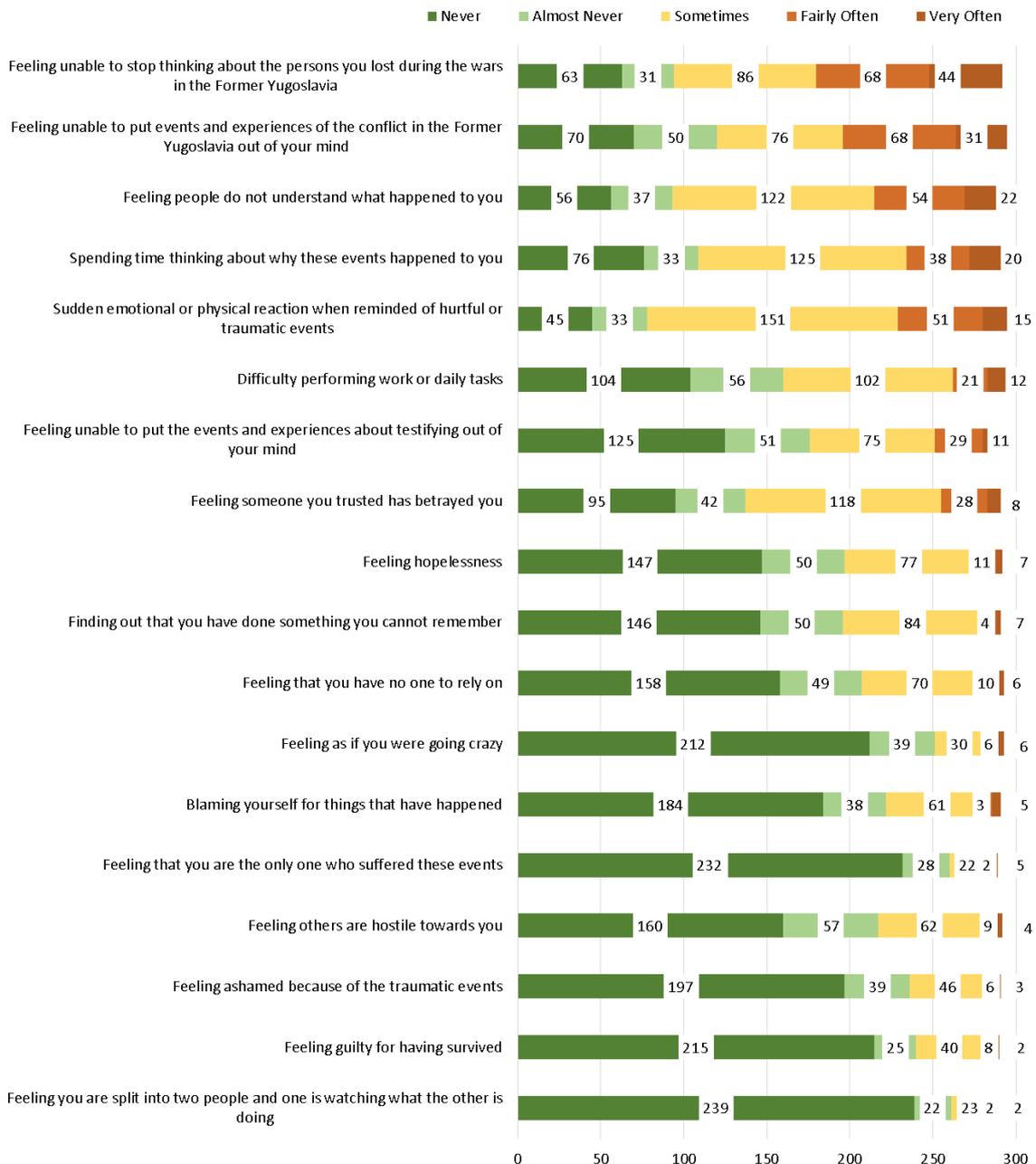
One cannot overstate the impact of this trauma in terms of the physiological and psychological health of those persons who are responsible for “bearing witness”. It means that not only did they endure significant levels of trauma, with which they still need to cope on a daily basis, but the very process of having to testify in one or more trials required them to recall these painful memories, to cope with waiting periods (which can last years) before being called to testify, and to deal with the residual impact of having testified. Having described the wartime traumas these individuals experienced, the following section addresses how interviewees have coped under such circumstances.

The short- and long-term impact of testifying on ICTY witnesses has been a subject of interest since the beginning of the Tribunal (Wald 2002). VWS personnel recount throughout their time spent working with witnesses that every person is different in terms of their needs and their resilience. Some witnesses are more fragile, while others are incredibly self-sufficient and composed despite having to recount horrific events. This Pilot Study also examined in greater detail witnesses’ emotional health and how they are coping today.

The consequences of dealing with the trauma on the scale the interviewees have encountered creates issues associated with re-traumatization, and can present substantial difficulties in obtaining closure (Bandes 2009; Başoğlu 2005). The Pilot Study employed standard measures from psychology to ask witnesses about their well-being within the last six months, as well as questions about the coping strategies they rely upon to handle stressors in their lives. Figure 5.3 represents the results from a battery of questions asking interviewees to indicate the extent to which particular feelings associated with traumatic experiences were present in their minds.

⁷⁷ This Pilot Study examined the relationship between the number of such experiences interviewees endured and gender, ethnicity and the number of times an individual testified. There was a negative relationship with gender, which means that women reported to have suffered less trauma than men, and there was no relationship with the number of times an individual testified. In the Pilot Study sample, Bosniaks and Albanians were statistically more likely to report more wartime trauma; Serbs were less likely to indicate higher levels of such trauma, and there was no relationship with the Croat ethnicity variable.

Figure 5.3 - Measures of interviewees' post-trauma symptoms in the last six months



Sorted in order from highest to lowest in terms of how frequently the interviewees indicated they experienced the feelings, the results reveal the lasting impact of the wars in the former Yugoslavia. The three most frequently experienced feelings of interviewees are: feeling unable to stop thinking about the persons lost during the wars in the Former Yugoslavia; feeling unable to put events and experiences of the conflict in the Former Yugoslavia out of their mind; as well as feeling people do not understand what happened to them. Importantly, interviewees expressed feelings of betrayal and disassociation which are also points of concern for health professionals who work with issues related to witness well-being. Other research has also found similar effects among survivors of war trauma (Palić et al. 2015; Opačić et al. 2006; Van der Kolk 2014; Başoğlu 1999), and this has important consequences for rebuilding societies in post-conflict contexts (Biruski et al. 2014).

Generally speaking, large percentages of interviewees respond with the “Sometimes” to “Never” categories of responses, which indicates they may not be facing many such challenges. Still, there are

several categories of questions which for a small, but critical group of witnesses, may reflect a need for additional post-conflict support as well as in the post-testimony period. The six questions that elicited a majority of respondents to indicate that they had such feelings “sometimes”, “fairly often” or “very often” are: (1) whether they feel someone they trusted betrayed them (51%); (2) whether they think too much about the events of the wars in the former Yugoslavia (58.3%); (3) whether they spend too much time thinking about why the events of the past happened to them (61%); (4) whether they feel unable to stop thinking about persons they lost during the wars (66%); (5) whether they feel people do not understand them; (66%) and most of all, (6) whether they experience emotional or physical reactions when reminded of certain events (72.3%).⁷⁸

5.1.2 Health before testifying and today

One of the most, if not the most, debated issues in the literature on transitional justice generally is whether those who testify before tribunals, truth commissions, and other venues are helped, harmed or affected in some other manner because of the testimony process (Doak 2011; Brounéus 2010; Stover 2005). Yet very little empirical research has examined systematically and scientifically this critical component of the testimony process (Stepakoff et al 2014, 2015; Doak 2011; Mendeloff 2009).

Mass conflict, such as the series of wars in the former Yugoslavia, produces adverse public health consequences that extend well beyond immediate wartime effects to the post-war period. Indeed, those consequences may be greater than the mortality rates associated with the war itself (Ghobarah et al. 2003, 2004; Poole 2012). More recently, there have been growing efforts to examine the impact of conflict across multiple psycho-social, physiological, and economic indicators relevant to the former Yugoslavia (Shemyakina and Plagnol 2013). Yet in all of the research in the last decade, the Tribunal’s critics (Clark 2014; Subotić 2009; Hayden 2011) and supporters (Orentlicher 2008, 2010) have not reached systematic, scientific, and conclusive results about the micro-level impact of testifying on the witnesses themselves.

To fairly, objectively and accurately address this question requires substantial data over time on witnesses who have testified to assess their mental and physical health before, during and after testifying.⁷⁹ Only recently have such efforts been established with respect to the International Criminal Court (Stover et al. 2014) and the Special Court for Sierra Leone (Stepakoff et al. 2014, 2015), and the recent results indicate that the process of testifying may not necessarily lead to re-traumatization or negative consequences for witnesses. It is a complex process with witnesses reporting fairly high levels of positive feelings about the impact of testifying.

Given the relative lack of research about the impact of testifying and legal intervention on crime victims in general (Herman 2003), the results of the Pilot Study add to the knowledge base. This contribution however is tentative because the Pilot Study measures witnesses’ *perceptions* of their own physiological/psychological states and are not compiled based on data provided by a medical report or trained professionals. Given that witnesses were asked to think back and provide their post-facto recollections about how they “thought” they felt before and after the process of testifying, one must be cautious in interpreting these results. *Nonetheless, witness perceptions about psycho-social health are a valid and important measure because their perspectives matter and these perceptions influence witness’ behaviour and coping.* One of the strengths of the research from Stover (2005, 2014) and Stepakoff et al. (2014, 2015) is that they have endeavoured to let the victims speak from their own perspectives. The Pilot Study endeavours to do that and to provide a systematic and scientific attempt to quantify these health experiences (Mendeloff 2009; Doak 2011). The results also contribute to a growing body of work

⁷⁸ The Pilot Study checked correlations between these measures and between gender, ethnicity and number of times testified, and in particular, those six items in which a majority indicated they had such feelings sometimes, fairly often or very often. The results are strikingly similar to what was found when examining wartime trauma. There are negative and statistically significant relationships between gender and all but one of these items; positive and statistically significant relationships between Bosniak ethnicity and all but one of these items; and statistically significant and negative relationships between Serb ethnicity and these feelings.

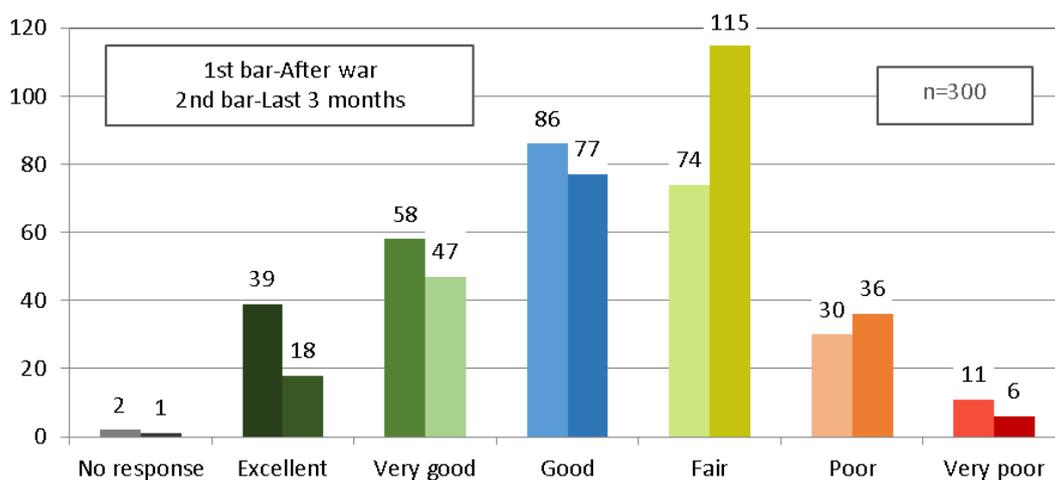
⁷⁹ There have been multiple attempts to assess the health of persons in the region of the former Yugoslavia going back in time (Mollica et al 1999; Cardozo et al 2000, Salama et al. 2000) and meta-analyses of data regarding the impact on mental and physical health that results for persons who are displaced or who have endured mass conflict (Steel et al. 2009; Percival and Sondorp 2010; Baçoğlu et al. 2005).

that seeks to understand the impact of significant trauma on persons who survive mass conflict because it can vary substantially depending on the particular conflict and the affected population (Silove 1999; O'Donnell et al. 2004; De Jong 2001).

Witnesses face multiple health issues as a result of having experienced wartime trauma, and as any other aging population, encounter physiological challenges during the time period(s) when they are testifying. VWS personnel have observed a myriad of conditions and behaviours, sometimes requiring medical attention⁸⁰ while witnesses waited to commence their testimony. Often physical changes are associated with travel, stress, and testimony.

Relative to studies looking at mental health, there exists less research at the micro-level on physical health (Shemyakina and Plagnol 2013). When examining the impact of war on public health, the picture that emerges is that there are long-term consequences across multiple indicators (Ghoborah et al 2003, 2004; Poole 2012; Kerridge et al. 2013; Letica-Crepulja et al. 2011; Mollica et al. 1999; Salama et al. 2000). Studies looking at the former Yugoslavia report higher levels of mental distress within the population during earlier post-war periods, but this seems to dissipate over time (Do and Iyer 2012). The nature of the lasting effects of war events on physical health is not fully understood. Mental well-being may be linked to physical health, region, gender or other factors.

Figure 5.4 - Interviewees' overall health before testifying and within last three months



This Pilot Study asked interviewees about their physical health by comparing their health before the first time they testified and within the last three months. In Figure 5.4 the first bar notes interviewees' health after the war and before testifying for the first time, and the second bar notes interviewees' health today⁸¹. These results reflect the aggregate health of the interviewees pool, and support the idea that interviewees health is generally in decline noticeably so in the "Very Good" and "Excellent" categories. Note that there is a substantial increase in the "Fair" category today. These results are not so surprising given that some interviewees are reporting about their health more than fifteen years ago, while the natural aging process will contribute to a reduction in overall well-being. It is important to remember that the average age of interviewees is 60.3 years for men and 54.3 years for women.

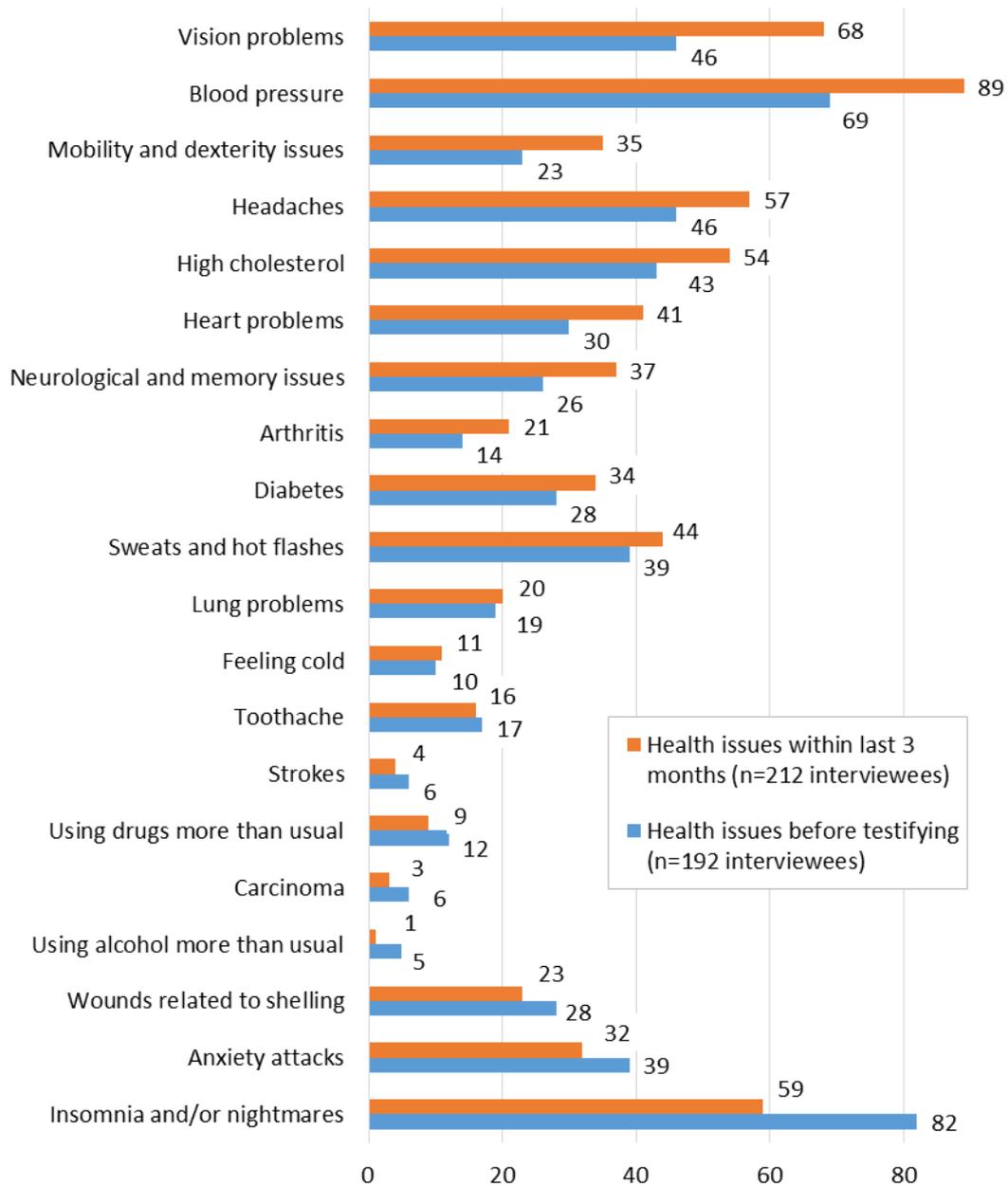
Examining ethnicity, gender, and controlling for age, Pilot Study results show that interviewees who are minorities in their community report significantly higher levels of health wellness before the first time

⁸⁰ During the testimony phase, witnesses may experience illness, may not have brought enough medication, or need to see medical personnel to treat a specific condition (e.g. dentist). The VWS works with local medical specialists to arrange treatment and therapy where needed to mitigate against ill health when witnesses are under VWS care.

⁸¹ The reason why witnesses were asked about their health in the period "after the war and before their first testimony" had to do with the many injuries witnesses suffered during the war, which drastically affected their health after the conflict. See question D1 and D2 in the questionnaire (Annex III). Additionally, for the purposes of this Pilot Study, witnesses who testified multiple times were asked to think about the period before the *first* testimony and after their *last* appearance when thinking of before and after testimony.

they testified, but when examined within the last three months of when surveyed the results do not remain significant. Men report significantly higher levels of health wellness today than before the first time they testified, indicating that perhaps over the long term women experience more adverse health impacts (or alternatively women report lower levels of physical well-being) (results not shown).

Figure 5.5 - Specific health issues before testifying and within last three months

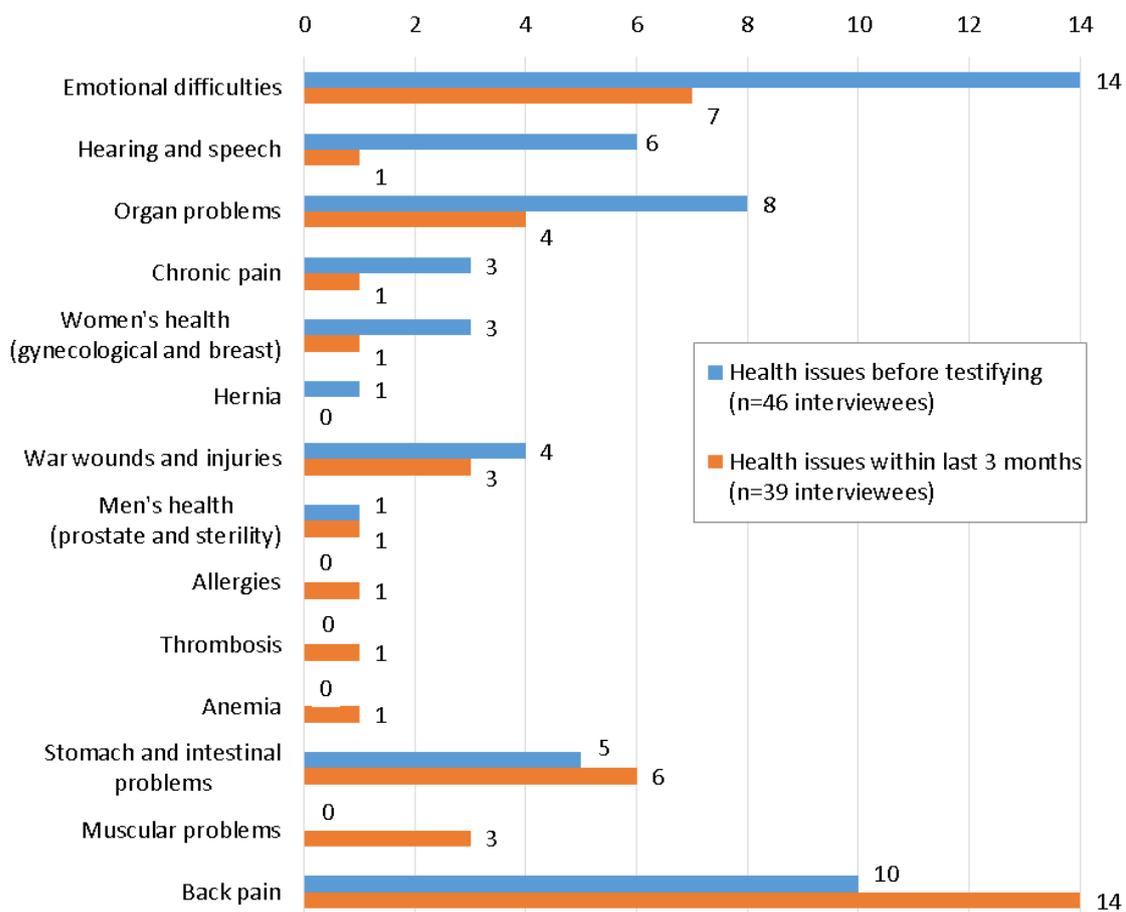


Just because women report lower levels of health wellness does not mean that testifying before the ICTY is the cause of poor health. To delve deeper into the issue of witness perception about their health vis-à-vis the ICTY, the project further surveyed witnesses about specific areas relevant to standard measurements of witness physiological health (Figure 5.5). Respondents could (and frequently did) check off multiple health-related issues that applied to them. When examining specific health issues before the first trial at which the witness testified and then within the last three months, interviewees report more health issues today *overall* than they did before the first time they testified.

There are a number of categories of health-related issues that are actually *lower in frequency today*, with insomnia, anxiety, and wounds related to shelling being the top three (results are sorted according to the level of increase in frequency in the last three months). Arguably, these are more likely to be war-related health issues, while those health issues most frequently identified by interviewees within the last three months when surveyed are health issues more commonly associated with an aging population such as vision, blood pressure, and mobility/dexterity.

Interviewees could also write in health related issues they have experienced before testifying the first time and today (at the time of the interview) in short open-ended responses. The most common health issues offered by interviewees relate to back problems, with emotional difficulties and organ problems showing significant drops from before testifying to today (Figure 5.6). These results lend support to what other researchers have found, that even though health-related issues stemming from the conflict may have diminished, there are still long-term health consequences that can have an impact on witnesses (Eber et al. 2013; Ghobarah et al. 2004).

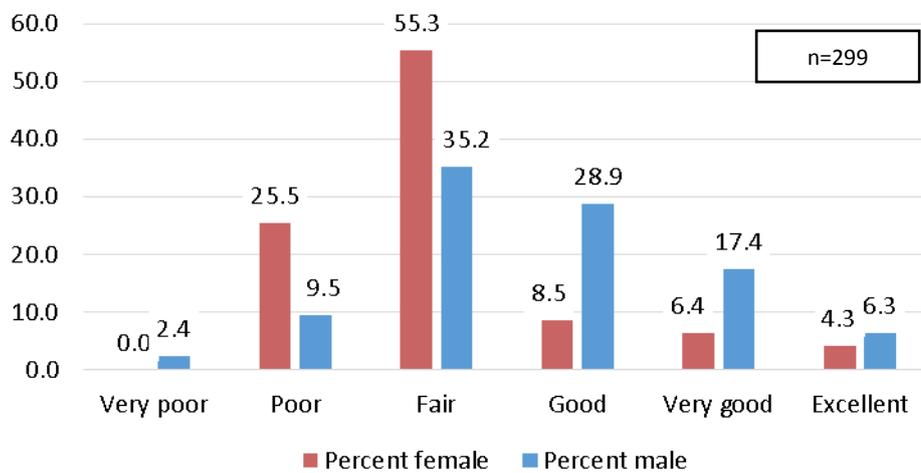
Figure 5.6 - Short-answer specific health issues before testifying and in the last three months



5.1.3 Health differences today

Are certain witnesses at risk of greater health issues today? The Pilot Study examined different factors that could contribute to health and well-being across ethnicity, gender, and number of trial appearances, while controlling for interviewee age, health perceptions, and trauma experienced during the conflict. Bosniaks, Croats, and Albanians consistently report more health issues than Serbs, today and before the first time they testified. In contrast, Serbs report significantly fewer health issues today than before testifying for the first time (results not shown). Women more often report their health is worse than do men both before the first time they testified and within the last three months (Figure 5.7 only for health perceptions today). The only category that consistently remains significant for any model analysing witness wellness is gender. Overall, women report their health is not as robust as do men, which is consistent with findings that women in conflict situations report higher levels of health consequences (Hudson et al. 2012; Eber et. al 2013; Stepakoff et al. 2014, 2015).⁸²

Figure 5.7 - Gender differences in perceptions of health today



⁸² Additionally, women are significantly more likely to perceive that they “get sick a little easier than other people.” See question D6 in the questionnaire (Annex III).

5.2 Process of testifying and its impact

5.2.1 Reactions before, during and after testimony

Almost all witnesses have some type of reaction to the process of testifying before, during and/or after their testimony. Articulating traumatic events that may have happened years ago in a formal courtroom setting in the presence of strangers may contribute to re-traumatization of the witness or shutdown of emotions. VWS staff has observed that witnesses' reactions in The Hague are frequently stronger when it is their first time testifying because they are recalling difficult and stressful events quite vividly. Sometimes witnesses share their thoughts and emotions with VWS staff because they are overwhelmed, or because they have no one back home with whom they can share their emotions about their testimony experience. Sometimes witnesses just need someone to sit quietly with them as they express and process their emotions. VWS staff are also available immediately after testifying to provide support to witnesses.

There has been a spate of research in the last ten to fifteen years on the emotional and psychological well-being of witnesses, victims, and persons who have survived the conflicts in the former Yugoslavia. There has been debate about the impact of testifying on psychological healing (Bandes 2009; Henry 2009, 2010; Herman 2003). Does the process of testifying do more harm than good to the emotional state of those who testify? Some have argued that the process of testifying may provide a healing, closure, or a catharsis to help overcome traumatic events (Moghalu 2004, 216; Stover 2005). Others argue that evidence is limited and questionable when it comes to the impact on victims (Bandes 2009, 16), and that this is particularly true for the ICTY witnesses (Clark 2009a, 2009b, 2009c, 2009d, 2014). The reality is, however, that little is known about "the individual psychological and emotional effects of national truth-telling and accountability mechanisms, or about victims' experiences with criminal justice more broadly" (Mendeloff 2009, 596).

Scholars have generally found that witnesses experience both positive and negative reactions to the process of testifying regardless of whether the venue is a truth and reconciliation commission (Byrne 2004; Hamber et al. 2000), community justice court (Brounéus 2010), or war crimes tribunal (Stepakoff et al., 2014, 2015; Stover 2014). Moreover the longitudinal beliefs and attitudes of witnesses about the testimony process may change over time (Backer 2010).

The survey provided witnesses with over thirty possible responses which ICTY VWS personnel generated based on their interactions with witnesses over the years as well as from data collected by an existing VWS survey.⁸³ Interviewees could select as many or as few feelings and emotions as most accurately reflected their state of mind before going into the courtroom and immediately after testifying. The types of responses were categorized into two categories: (1) positive affect⁸⁴ states (n=15); and (2) negative affect states (n=19). It is important to re-emphasize that this is a retrospective review by the witnesses about their affect states in the pre- and post-testimony processes.

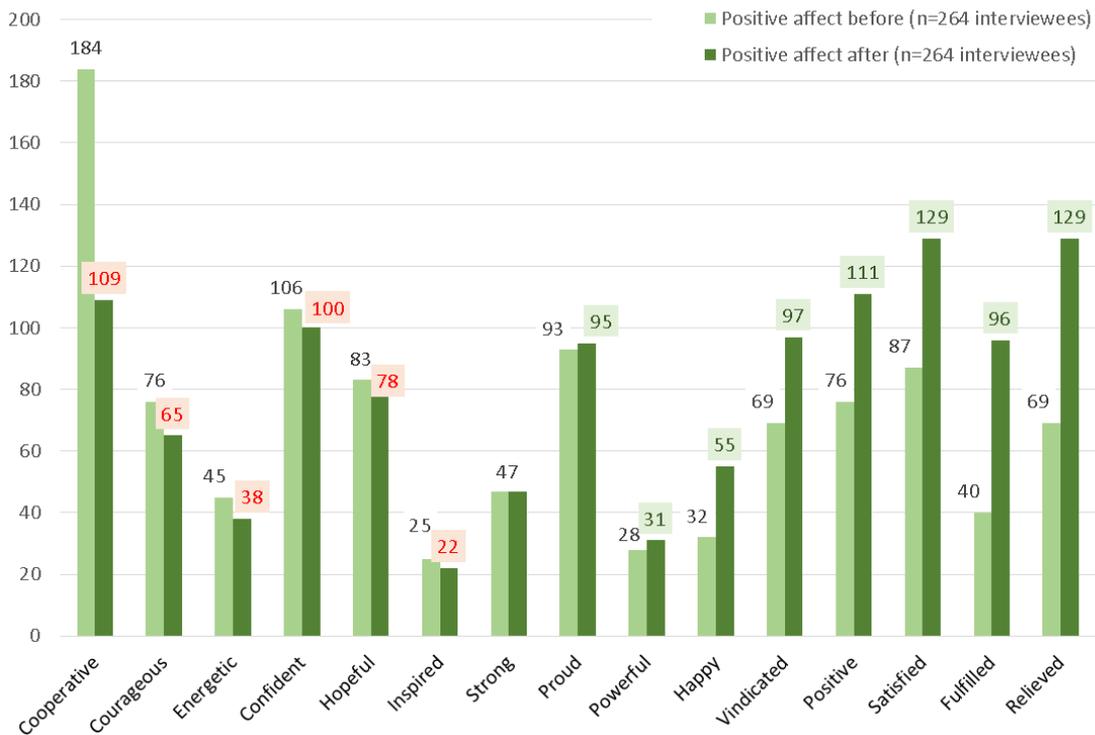
Overall, when interviewees reflect back on their testimony experience, comparing positive and negative affect, the results show significant differences between their pre- and post-testimony states (Figure 5.8, sorted in order of greatest reduction in affect *after testimony*). A majority of interviewees indicated they felt high levels of positive affect both before and after testifying, and significant numbers of interviewees reported a reduction in negative affect states after having testified for the last time (Figure 5.8 sorted in order of greatest drop in affect *after testimony*). By far the most frequently occurring positive affect state interviewees reported was feeling "cooperative" with 184 interviewees indicating

⁸³ Since 2009 the VWS is conducting an internal and anonymous written survey of witnesses done after they testify. It measures witness perceptions and satisfaction with VWS services immediately following testimony, and thus unlike the Pilot Study is a more contemporaneous account of witness emotions. It should be noted here that the preliminary results indicate that the Pilot Study mirrors in many ways the VWS internal and anonymous survey results. In both surveys witnesses express significantly higher levels of positive affect and lower levels of negative affect *after* testifying. One key difference is that in the VWS internal anonymous survey, the reduction in negative affect is higher than in the Pilot Study (results not shown). In all but two categories of negative states, respondents in the VWS Survey indicated lower levels of negative affect states in their post-testimony period.

⁸⁴ Affect is here used as a comprehensive term for emotions, moods, and attitudes.

they felt that way *before* testifying. Interviewees report being less “cooperative” (n=109) after testifying, but this may pertain more to the fact that they perceive their “cooperation” as having successfully concluded with the end of their testimony. Other significant increases in affect experienced by substantial numbers of respondents after testimony include feeling “satisfied”, “relieved”, “positive”, and “fulfilled”. Figure 5.8 shows there are several affect states in which respondents noted fewer positive states (indicated in red).

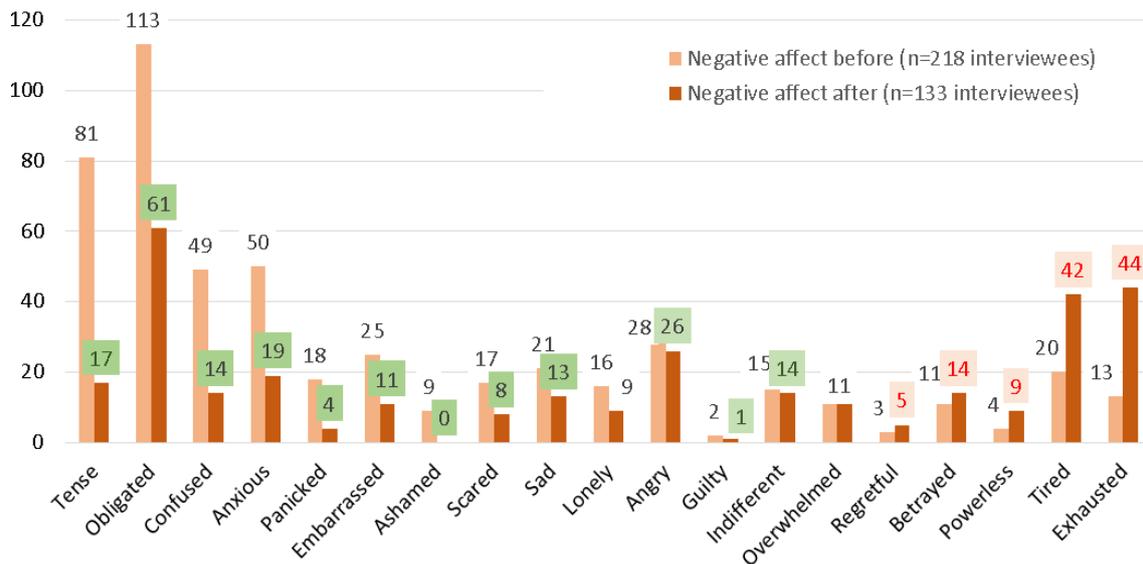
Figure 5.8 - Positive affect: before and after testimony



Interviewees could also choose from a range of negative affect states. During the survey development process VWS personnel presumed that there would be *more* negative affect types than positive ones, but in fact the opposite is true (Figure 5.9). There are *significantly* lower levels of negative affect as compared to positive states both before and after testimony. Moreover, interviewees report significantly lower levels of negative affect states following testimony. Of the negative states interviewees, to describe their state of mind prior to testifying, selected “tense”, “obligated”, and “confused” among the top responses. At the same time, however, these are quite likely to diminish significantly after the last time an individual testifies. Immediately after testifying, only “obligated” receives higher response rates, along with “exhausted” and “tired”. There were statistically significant differences along with “anxious”, “tense” and “confused” in terms of a difference of means.⁸⁵

⁸⁵ Interviewees could provide short answers, and interviewees provided slightly more negative than positive emotions. The range of responses included: physical (adrenaline rush, discomfort); psychological (calm, curious, pleased, uneasy, having stage fright, insignificant, regretful, respectful, disappointed), and philosophical (wanting to help, fighting for truth and justice, intolerant, fulfilling a civic duty).

Figure 5.9 - Negative affect: before and after testimony



In summary, when comparing self-reported positive and negative affect states by interviewees, there are *more positive* and *less negative* reactions both before and after testifying. This finding contributes to the debate about whether the process of testifying is re-traumatizing or cathartic (Stover 2014, *cf.* Brounéus 2010). It also suggests that at least in terms of witnesses recall of their reactions, witnesses are more likely to remember more positive than negative states after testifying.

Even though the previous section shows that positive affect states tend to prevail, there are other reactions and issues witnesses may experience. In general, research is progressing in analysing these physiological and psychological reactions, although much is still not known about what difficulties witnesses encounter on the witness stand or what helps reduce distress resulting from testifying (Stover 2005; Stepakoff et al. 2014, 2015). The VWS, through its Witness Assistants (WA), provides round-the-clock support to ensure a comfortable stay for all witnesses, as well as any accompanying support or dependent persons they may bring.⁸⁶ The Witness Assistants are the only contact the witness has once testimony starts because of legal restrictions.⁸⁷ The VWS personnel serve all witnesses—called by OTP, Defence, and Chambers—and they are to remain impartial while providing logistical and emotional support. In this role VWS staff accompany witnesses through all court proceedings and remain with them through the process, including a de-briefing following their testimony.

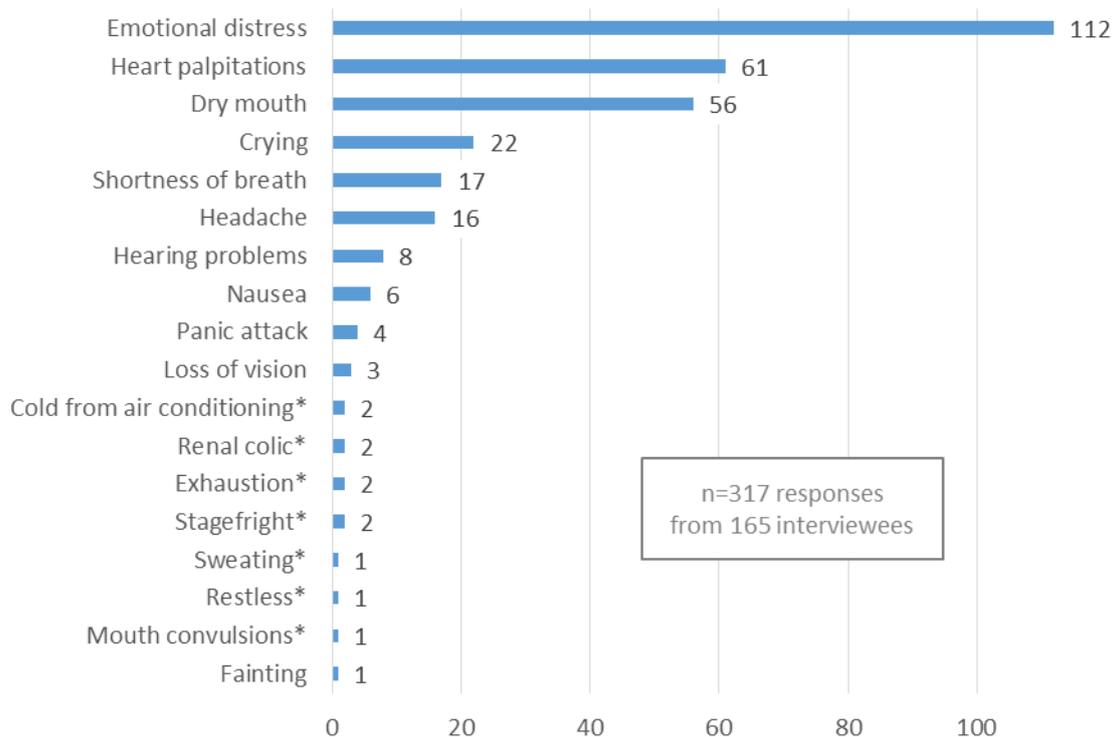
Witnesses experience both physical and emotional reactions during the process of testifying. To gauge how witnesses felt during the actual process of testifying in the courtroom, interviewees were asked whether they experienced a series of symptoms typically associated with distress, including the option of open-ended short answers to elaborate on other physical reactions they recalled experiencing. By far the most frequent response is “emotional distress” with over one-third of interviewees reporting this reaction. Dry mouth or heart palpitations occur for about one in five interviewees. Beyond that, the

⁸⁶ In specific cases it is important that VWS ensures that more vulnerable witnesses are accompanied by a **support person** for the duration of time that they are required to stay in The Hague. The VWS determines vulnerability of the witness by witnesses' age, psychological condition, risk of re-traumatization, health condition or disability requiring intensive daily support, or any other particular witness' circumstances requiring specific support. In addition, a witness can also be accompanied by a **dependent person** for whom the witness is the primary caretaker and if there are no other alternative provisions for the dependent person for the period of time the witness is required to attend before the Tribunal. Approximately 13 % of ICTY witnesses travelled to The Hague with an accompanying person or dependent.

⁸⁷ Under the Rules of Procedure and Evidence (Rule 90), witnesses swear a solemn declaration at the beginning of their testimony after which any communication with the Prosecution or the Defence team is prohibited until completion of testimony, unless otherwise instructed by the Chamber. While they can talk to the VWS staff, they cannot discuss the content of their testimony with VWS staff either.

remaining symptoms that are more frequently reported are shortness of breath, headache, and crying. For those witnesses who testified more than once, about 15% indicated that the physical symptoms were reduced for them when appearing in later trials (data not shown). Still, eight per cent of interviewees who appeared in multiple ICTY trials found that their symptoms *increased*, lending support to concerns about the idea of testimony fatigue i.e. the more witnesses appear, the greater the adverse impact on them physiologically and psychologically. The short answers for physical reactions are noted with an “*” in figure 5.10. Interviewees frequently took the opportunity to fill out lengthy responses that were not related to physical reactions.⁸⁸ This suggests that future research needs to examine in more detail the witness experience on the stand to better understand the complex nature of what witnesses go through in the process of testifying.

Figure 5.10 - Reactions on the stand during the testimony process

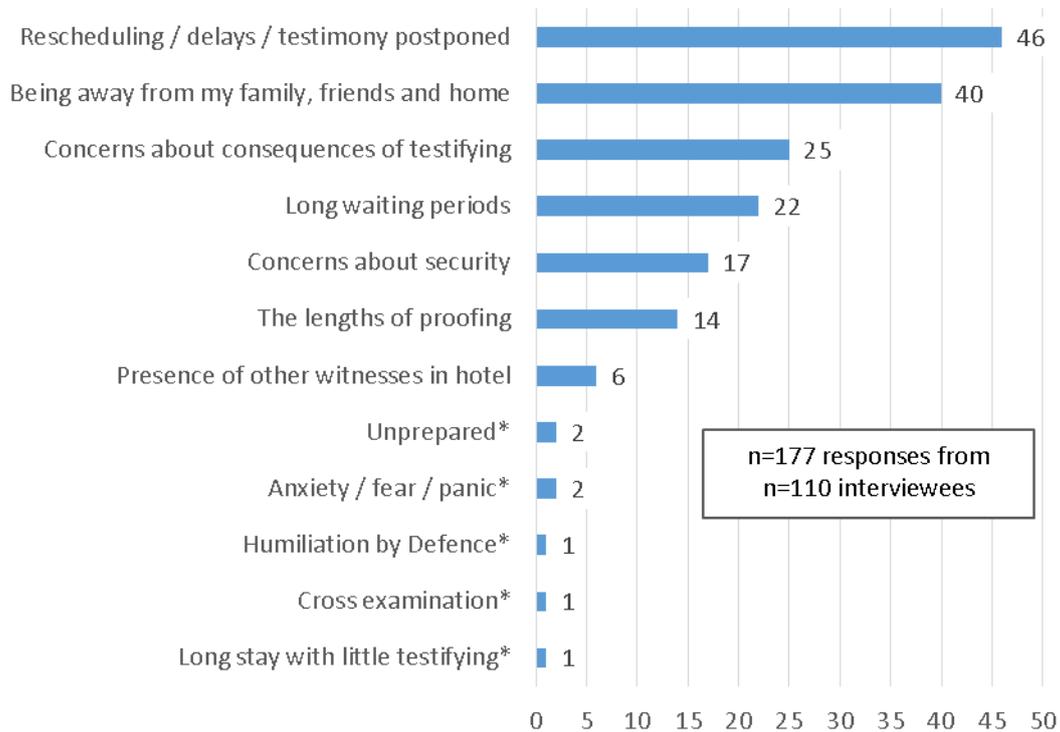


5.2.2 Factors impacting on witnesses during testimony period

Beyond the physical and emotional reactions that witnesses may experience during the process of testifying, witnesses may encounter other more challenging obstacles. Are there certain circumstances or events that make testifying more difficult (Figure 5.11)? Almost one-third (29%) of the interviewees indicated that there are such challenges. Most notably, postponement or re-scheduling of testimony, including long delays and waiting periods, but also being away from home, family, and friends.⁸⁹ These findings are consistent with other research (Stover 2005, 2014; Stepakoff et al. 2014). Being able to focus at the Tribunal can be difficult if a witness is concerned about the consequences of testifying. In some cases the presence of other witnesses or persons at the Tribunal may have an adverse impact on witnesses. Interviewees alluded to other logistical issues, the length of proofing sessions, preparation, and cross-examination as issues that concerned them (short-answer responses, noted with “*”).

⁸⁸ Interviewees indicated “trying to concentrate as much as they can,” “being angry” with the Prosecutor, Defence counsel, or the defendant, feeling “sad”, “insignificant”, “unneeded.” One interviewee recalled hearing “children cry like during the displacement,” as she was detailing vivid events during her testimony. Yet another witness felt empowered while on the stand, saying he felt as if he was contributing “to human equality and happiness of all the nations and people of the world.”

⁸⁹ The same witness might mark multiple categories, thus the numbers for each category do not reflect the actual number of witnesses who may have marked other categories as well.

Figure 5.11 - Issues making testifying more difficult

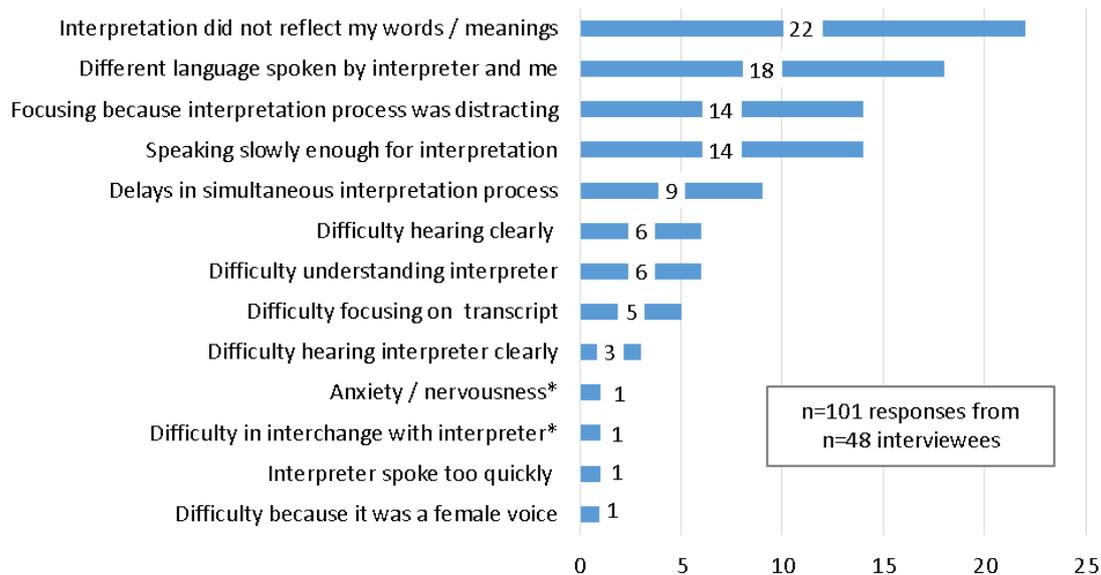
Traveling far away from home to answer difficult questions in an unfamiliar environment can be a daunting task. It is made all the more difficult by virtue of the fact that all statements made must be translated back and forth for all parties in the courtroom. The ICTY was subject to criticism about the issues of translation and interpretation (Elias-Bursac 2015; Karton 2008). Given that it has consequences for all of the stakeholders in the courtroom, as well as implications for how the law is ultimately interpreted, it is imperative to understand the impact that translation and interpretation has on witnesses (Buss 2013; Elias-Bursac 2012).

What are the challenges witnesses may face in a multi-lingual courtroom environment? Witnesses in such environment face unique difficulties because they must slow their speech down for simultaneous interpretation, listen carefully to the interpreters, and pay attention to questions that may be difficult to follow because of the complicated way in which it may be presented (Karton 2008). Similar issues were brought up by interviewees in this Pilot Study.⁹⁰

⁹⁰ The initial survey did not include a question regarding interpretation issues, but one was included after a number of surveys had been completed (total possible n=162 instead of n=300).

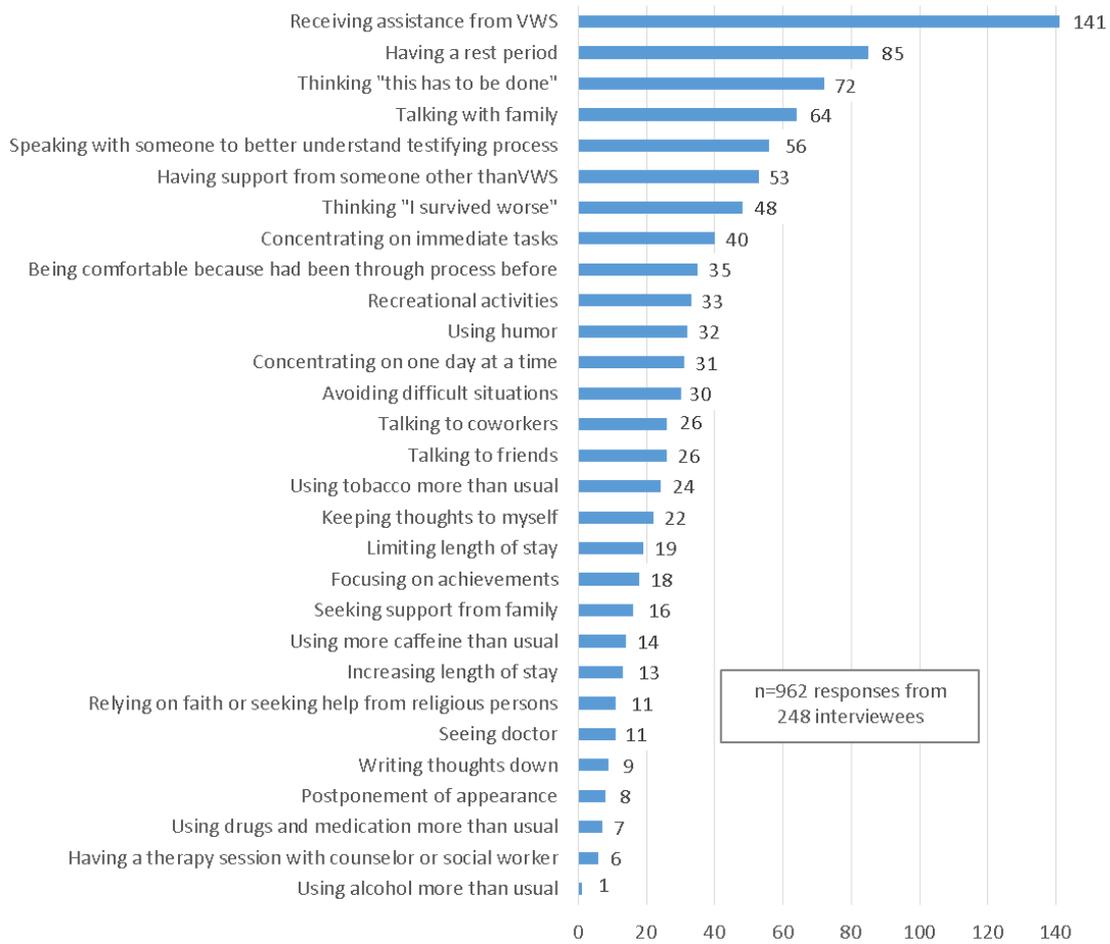
Figure 5.12 indicates that the two main concerns witnesses recalled about interpretation was that it did not accurately reflect their meaning and that there were language differences between them and with the interpreter (short-answer responses, noted with “*”). The pace of interpretation, the distracting nature of the interpretation process, and auditory issues associated with hearing interpretation are all additional concerns for witnesses. It is noteworthy that persons who identify ethnically as Albanian (n=11) or Serb (n=24) are significantly more likely to indicate they had interpretation difficulties consistent with other research about the ICTY and interpretation (results not shown, see Elias-Bursac 2015).

Figure 5.12 - Interpretation difficulties



In light of the above challenges during the testifying, interviewees were also asked whether there were strategies that would assist with reducing their discomfort (Figure 5.13).⁹¹ As the results indicate, the witnesses rely on a wide range of skills, but clearly the single most prevalent factor alleviating stress is “assistance from VWS” selected by more than 56.8% of those responding. Following that are coping strategies that include “rest periods”, and importantly, the witness’ own psychological resolve to be able to testify (“no matter how hard this is, this has to be done”). Additionally, “speaking with family”, “having a non-VWS support person present”, “talking to someone about the process”, or focusing on the ability to survive and concentrate were among interviewees’ most reported responses for coping. A number of interviewees (n=53) noted that having an accompanying support person with them helped ease the stress associated with the process of testifying. Spouses (n=21), children (n=8), friends (n=7) and siblings/other family (n=5) are among the most frequently cited.

⁹¹ There were 951 responses for those provided on the survey and interviewees gave another eleven responses on the short answer.

Figure 5.13 - Relieving emotional/physical distress during testimony process

Respondents were again given the opportunity to provide short-answers, and when examining the open-ended questions, interviewees do not provide as many responses as in some other question topics (n=11 interviewees-results not shown). The open-ended responses, however, have a common theme, that there was something memorable about the experience, such as the kindness of ICTY staff, being able to share experiences with other witnesses, and having access to medical treatment. Several interviewees pointed out specific events such as taking a “walk along the ocean” and “going to Keukenhof.”⁹²

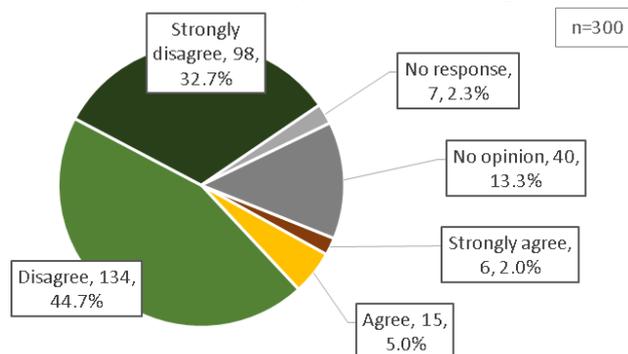
⁹² Keukenhof, in the Netherlands, is one of the world’s largest flower gardens.

5.2.3 Impact of testifying on health

The impact of testifying may be felt long after the witness has left the courtroom (Stover 2005), and given that these witnesses have experienced high levels of trauma, there may be negative consequences that endure to this day. Do witnesses *perceive* that there have been long-term consequences from testifying?

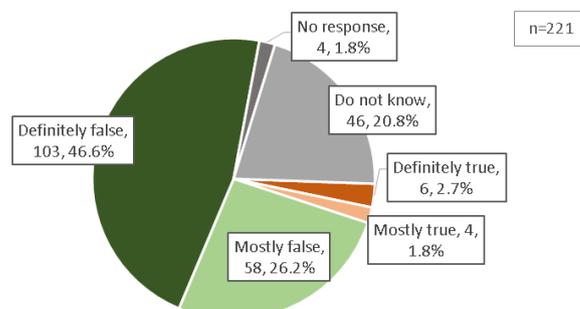
One major concern is the witnesses' health. Interviewees were asked to self-report about their health today (discussed above in 5.1.2) and whether: (a) their health is worse today *because they testified at the ICTY*, or (b) their health *will get worse because they testified at the ICTY*. As is clear from the findings in Figure 5.14, interviewees' perceptions that their health is worse today or will get worse are not borne out. The majority of interviewees *do not* think their health *is worse today because of having testified at the ICTY* (77.4%). Seven percent (n=21), however, do agree or strongly agree that their health is worse because of having testified at the ICTY. Interviewees' perceptions of health today correlate significantly with the number of health problems reported when controlling for gender. Thus, female interviewees who report more health issues today are more likely to believe that their health is worse because of testifying. It should be noted that this effect does not seem to be driven by age when doing a difference of means test for the two cohorts.

Figure 5.14 - Health worse today because of having testified at ICTY



Most persons in an aging population may reasonably expect that their health will worsen over time, but it is important to gauge witness perception about any separate impact *the Tribunal has had* on their health over the long term (Figure 5.15).⁹³ Almost 73% of witnesses *do not* think that their health will worsen as a result of testifying. A minority of interviewees seemed to be less certain in the face of the shadow of the future about their health, as over one in five interviewees said they "do not know" whether their health *will* worsen because of testifying. As with perceptions about health today, witnesses who reported more issues with their health conditions are significantly more likely to think their health will worsen because they testified. Perhaps those with poor health are more likely to attribute that health to their ICTY experiences.

Figure 5.15 - Health will worsen because of the ICTY



⁹³ There are 221 responses for this question because the second half of the question in the original English version was omitted due to an oversight.

Beyond perceptions about whether health will worsen, key factors that correlate with witness physical well-being are age, gender, and total wartime trauma, which were significantly related to having more physical health problems overall (results not shown). Females, who experienced or witnessed a wider range of traumatic wartime events, and who are older, reported higher numbers of issues related to well-being. These findings about traumatic events are consistent with other research about the impact on testifying on witnesses (Stepakoff et al. 2015) and findings that long-term effects of wartime trauma may be felt for generations to come (Hong and Kang 2015).

5.2.4 Testimony fatigue

As VWS personnel observed witnesses, on-going and multiple involvement in different trial proceedings requires much from witnesses, energy, patience, and additional coping skills. Such an "accumulated tiredness", which VWS terms "*testimony fatigue*", is a relatively new concept, but needs further research as local war crimes trials are likely to be held in the former Yugoslavia with the same witnesses called to appear over and over again.

Research on the impact of the process of testifying on witnesses variously uses the term "witness fatigue" to connote everything from: (1) taking repeated statements and re-examination of witnesses prior to trial (Human Rights Watch 2004); (2) delays and waiting for trials to begin or conclude (Orentlicher 2010); and (3) being called in repeated trials and presenting the same evidence (Harmon 2009; Vukušić 2012). Witnesses may be called to testify on multiple occasions before the ICTY because of the high number of accused and inter-related nature of many of the cases. They may also be called to testify in local courts about the same war crimes. The VWS experience has been that some witnesses reported they did not understand why they 'specifically' were being called to testify multiple times, especially if there were others who knew what happened and could provide equivalent testimony. The impact of testifying multiple times may mean that witnesses always feel tied to the witness role. As one witness aptly stated, "*Once a witness, always a witness*".

As witnesses have explained to VWS, they often feel trapped. On the one hand, they are determined to contribute to justice; they feel obliged not to remain silent. On the other hand, they feel exhaustion from being repeatedly obliged to recall traumatic events. For some, this requires being intensely preoccupied with the past, or even living in the past for longer periods of time. The time needed to prepare for testifying and to deal with the consequences of having testified is much longer than the actual time spent in court. As a result, rather than rush witnesses back home after having testified, VWS assesses the need for 'a day of rest' allowing witnesses time to process what happened during testifying before travelling back home, into their routine.

To determine if interviewees have testimony fatigue, whether witnesses who appear multiple times or who have lengthier durations of stays, that manifests in their emotional well-being, the Pilot Study used two different tests. The first was a difference of means test for total days a witness appeared and the number of times a witness appeared to testify for each of the questions relating to emotional impact (questions D25-D42). Second, to examine whether there might be other witness characteristics that might be influencing witness fatigue, an ordered logit model was constructed for each question D25-D42.⁹⁴ After controlling for gender, age, and total wartime trauma experienced, there were no significant differences on any question. Put another way, witnesses who had repeat appearances before the ICTY were not more likely to indicate they experienced higher levels of symptoms associated with emotional trauma in the last six months. This does *not* mean however that there may not be other types of factors that influence witness and testimony fatigue. For example, witnesses who are called repeatedly in trials involving high-ranking defendants, trials involving large numbers of defendants (so-called "mega trials"), or trials where the defendant was ultimately acquitted should be examined to see if these factors impact overall witness well-being.

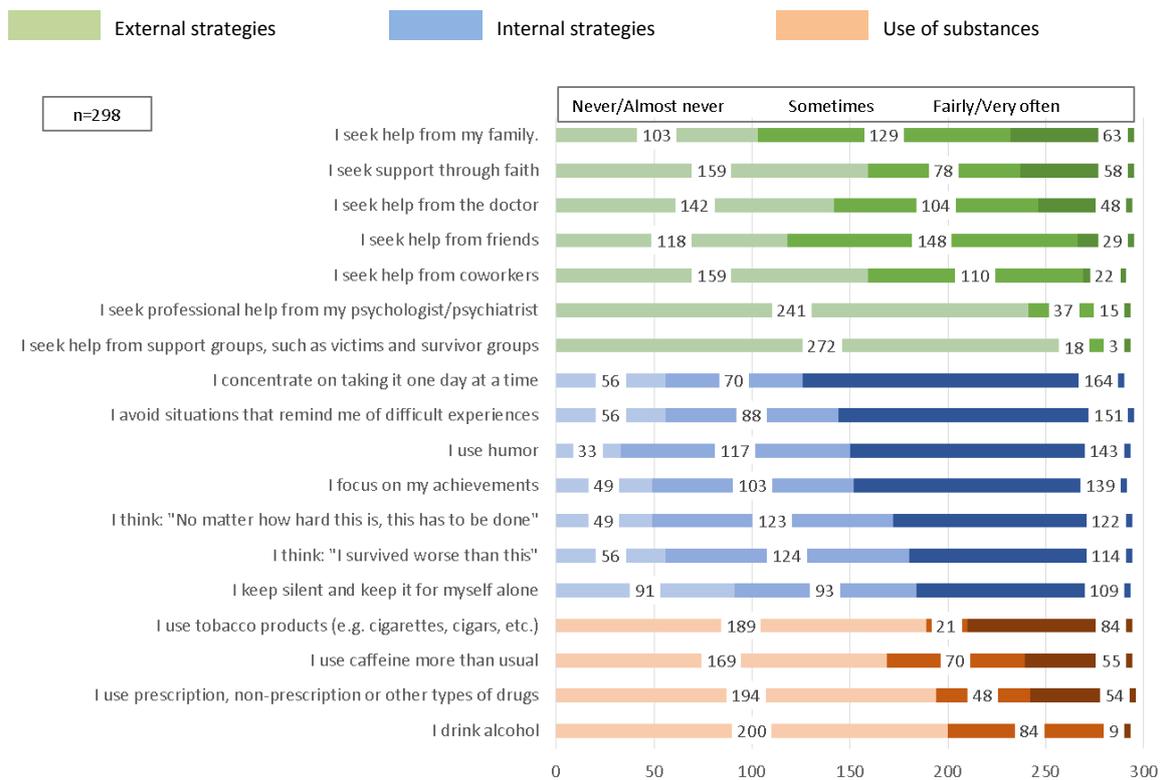
⁹⁴ For example, D25 asks how frequently someone experiences "sudden emotional or physical reaction when reminded of the most hurtful or traumatic events". See the questionnaire (Annex III).

5.3 Coping strategies and life satisfaction

5.3.1 Coping strategies

The way in which any person responds to life experiences, especially those involving substantial trauma depends greatly on their previous experiences, as well as their coping mechanisms (Herman 1993, 2003). As was discussed above regarding the impact of traumatic events (section 5.3), as well as positive and negative affect in the context of the process of testifying (section 5.10), it is also important to know how the witnesses are coping contemporaneously. Thus, interviewees were asked a series of multiple choice questions related to how they deal with difficult situations in their everyday life (Figure 5.16)⁹⁵.

Figure 5.16 - Coping strategies



The answers are divided according to the type of coping strategy the witness is more likely to engage in: (1) *external* (green - seeking support from family, friends, colleagues, etc.); (2) *internal* (blue - having a life philosophy, keeps things to themselves, etc.); or (3) *substance user* (orange - using more substances, including caffeine, alcohol, tobacco, etc.). Lighter colours for each category indicate "Never/almost never", the medium shade indicates "Sometimes" and the darkest shade indicates "Fairly/very often".

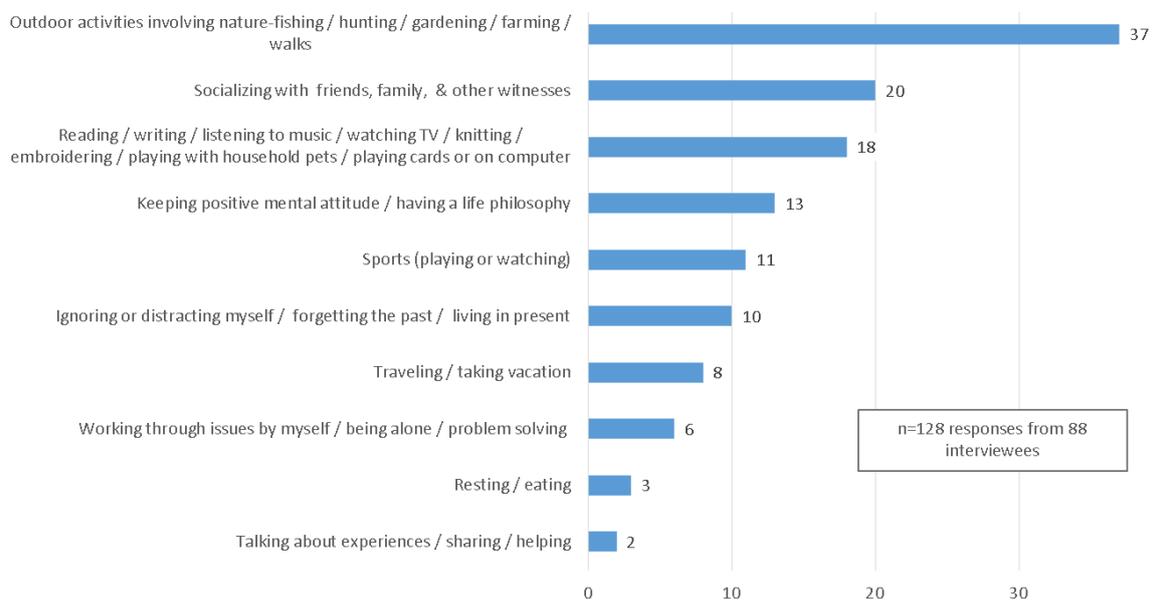
As is evident, coping strategies across interviewees can vary substantially. Interviewees indicate relatively low levels of reaching out to other people to seek support, whether it is friends, coworkers, or family. VWS staff members note that in some parts of the former Yugoslavia professional health services may not be available or easily accessible, which may help explain why seeking professional psychological help and social support networks are cited so infrequently. Regardless of access to support services, interviewees overall do not show a propensity to look outward in dealing with inner difficulties they may be having. Indeed, the more widely adopted strategy seems to be relying on their own mental resilience or perspective on life such as "using humour", "focusing on their achievements", or taking it "one day at a time". This internalization can also mean isolation for some interviewees, with almost half of them saying they "avoid difficult situations" and more than one-third saying they keep "silent" and "keep

⁹⁵ See questions from D43-D61 in the questionnaire (Annex III).

things to themselves". The Pilot Study examined gender differences using a difference of means test between men and women for each of the three different types of coping strategies. The only significant differences were on substance usage where men are significantly more likely than women to increase substance usage when dealing with difficult situations (results not shown).

To better understand the witness experience, interviewees were also given the opportunity to provide additional write-in answers for other coping strategies they use in difficult situations. This prompted interviewees to share their experiences, and the question is among the most frequently responded to from the survey (Figure 5.17). The more frequent strategies involve more external outreach, getting outdoors and engaging in a myriad of activities, as well as socializing with family and friends. More internal strategies such as reading, writing, staying at home, etc. as well as having a life philosophy are also used, but not to the same degree.

Figure 5.17 - Coping strategies (interviewee write-in)

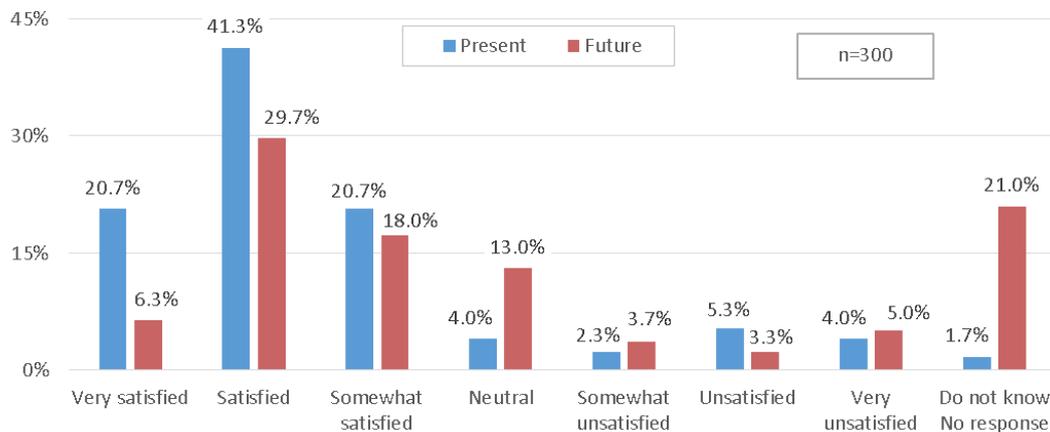


5.3.2 Life satisfaction – today and the future

Another critical element of overall witnesses' health is their general level of satisfaction with the world around them. Interviewees' perceptions of their own lives, their community and their government influence their willingness to reconcile (Meernik and Guerrero 2014) and their support for the ICTY (Meernik 2015). How do the interviewees perceive their world and the world around them? To that end, interviewees were asked several questions about their assessment of their own current personal situation, as well as the quality of their relationships in their communities, their economic situation and the political situation in their country. Interviewees were asked to comment both on these economic and political situations in the present as well as two to five years in the future.

Witnesses often reported to VWS that war experiences, losses endured, and the consequences thereof are the most important factors influencing their general well-being. Some are still refugees or internally displaced persons, who are unable to return to their original homes, while others are minorities or returnees in their local communities. Many witnesses stated that their lives will never be the same they were as before the conflict, although some indicate that for the sake of the next generation and in the honour of the lost ones, they need to continue with their lives no matter how bad it might get. Due to the high unemployment rate in many of the regions of the former Yugoslavia⁹⁶ and difficulties in finding suitable jobs, witnesses often complained about challenges of ensuring sufficient and regular income to meet the costs of living and for securing funds for their children's education.

⁹⁶ <http://data.worldbank.org/indicator/SU.UEM.TOTL.ZS>

Figure 5.18 - Satisfaction with present and future life situation

In general, the Pilot Study results show that the interviewees are presently optimistic about their overall life situation (Figure 5.18), but this optimism declines when respondents think of the next two to five years. More than 60% of the interviewees expressed that they were either very satisfied or satisfied with their present life situation, while only 36% expected to be satisfied with their situation in the next two to five years. Part of this issue, however, stems from the number of interviewees who indicated they did not know what the future would hold for them. In fact, of the 248 interviewees who chose one of the three “satisfied” responses in the present, 51 indicated they did not know about the future. What may appear at first glance to be a decrease in optimism is mostly an increase in uncertainty or inability to predict the future.

The trends are different, however, in Figure 5.19, when interviewees are queried about the interpersonal relationships in their community. This is an especially intriguing measure as it pertains indirectly to interviewees’ perceptions of the extent to which people in their community are getting along or perhaps reconciling with others. Most interviewees indicate that they are satisfied or somewhat satisfied with the present state of their interpersonal relations in their community (57%), while 49% expect to be satisfied in the next two to five years. There are fewer individuals who take a more pessimistic attitude about the future, a total of only 15% expect to be somewhat unsatisfied, unsatisfied or very unsatisfied in the next two to five years, while 31% are similarly unhappy about the present state of their interpersonal relations in their community. There are also a sizeable number of individuals (19%) who indicated they did not know about the future.

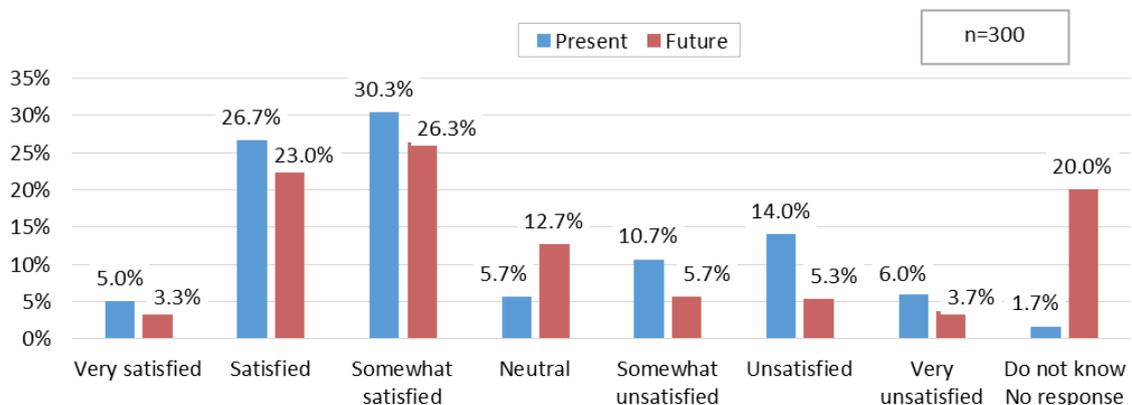
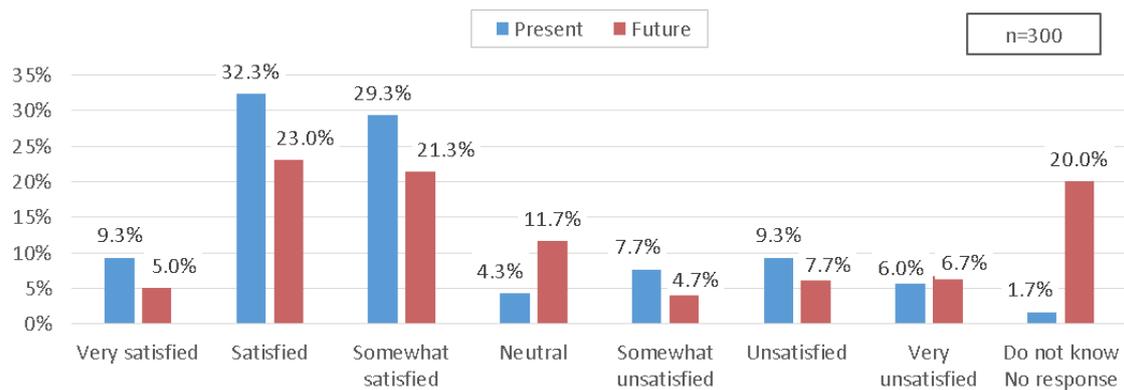
Figure 5.19 - Satisfaction with present and future interpersonal relations in community

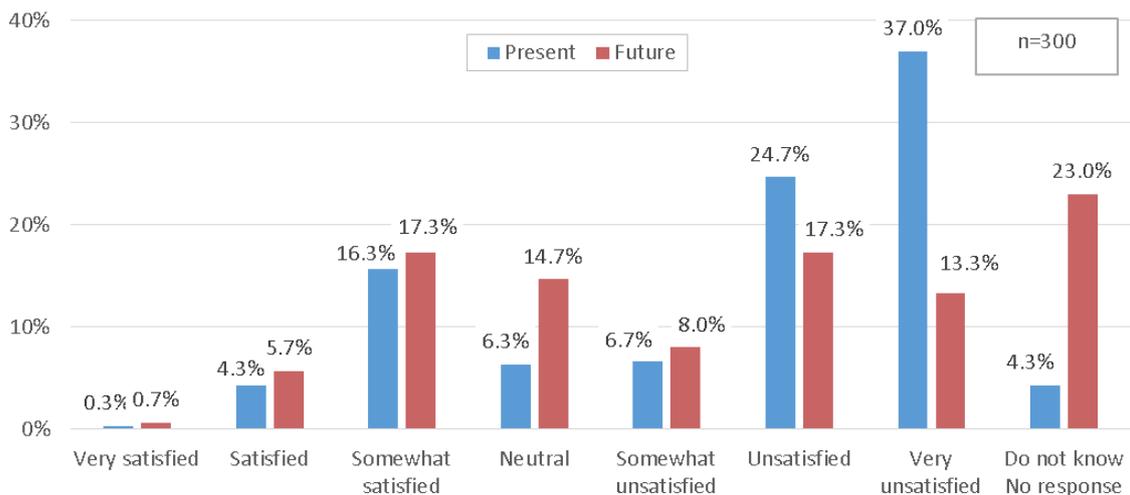
Figure 5.20 examines interviewees' attitudes about their present and future economic circumstances. Most interviewees are satisfied with their present economic circumstances, but those numbers drop off when they are queried about the future, although some number of the interviewees who are satisfied in the present did not know about the future. In fact, 40 of the respondents who indicated they were satisfied or somewhat satisfied in the present selected the "did not know" response about the future. In general, interviewees are fairly satisfied in the present, but uncertain or unable to predict the future.

Figure 5.20 - Satisfaction with present and future economic circumstances



The Pilot Study registered highest levels of dissatisfaction when interviewees are asked about the present and future political situation in their country. In contrast to the prior questions, respondents are much more likely to believe their present political situation is less than satisfying and tend to more often express greater satisfaction with how they imagine the political situation will be in the future (Figure 5.21). Nearly 70% of the interviewees indicated they were somewhat unsatisfied, unsatisfied or very unsatisfied with the present political situation in their country. Additional analyses (not presented here) were conducted to evaluate whether gender or ethnicity had an impact on satisfaction with life, interpersonal relations, etc. Generally, however, such factors were not predictive of individuals' views on the future (perhaps because of the large number of "do not know" answers).

Figure 5.21 - Satisfaction with present and future political circumstances



Summary

The Pilot Study findings indicate that a more systematic approach—before, during, and after testifying—is needed to better understand the positive and the negative, as well as the short- and long-term effects of testifying on witnesses' psychological and physical well-being. Across different physical and psychological dimensions, witnesses have experienced high levels of trauma, and yet still contribute to the ICTY with one-third testifying multiple times. The Pilot Study's results suggest that the process of testifying is more complicated than simple conclusions about whether bearing witness is ultimately an act of "re-traumatization" or "catharsis". In general, this Pilot Study finds witness affect, both before and after testimony, tends to be more positive than negative, lending support to notion that testifying is not intrinsically traumatic. The difficulties inherent in the process of testifying are helped by the presence of accompanying support persons, VWS staff, and the witnesses' own internal, coping strategies.

Given the high levels of trauma (witnessed and experienced) as well as the fact that the interviewee population is aging, the witnesses are rather resilient as reflected in their views of their psychological and physical health vis-à-vis the ICTY. Witnesses utilise a variety of coping strategies to deal with wartime and related trauma, many of which focus on the internal, self-driven coping strategies rather than external support systems. Interestingly, there are still significant numbers of interviewees who seem to have emerged from the wars with little knowledge of its violence and destruction. The Pilot Study, like others, provides additional data that are suggestive on such points, but in no way conclusive. Consistent with other Pilot Study findings, there is a percentage of witnesses who continue to experience adverse health effects and some of them attribute this condition to the process of testifying. Overall witnesses reported to be satisfied with their present life situation, while they were rather undecided when thinking about the future.

In sum, the Pilot Study found that a majority of witnesses appear to be emerging from the process of testifying without significant problems, although for some the process can be quite emotionally and physically difficult.

Chapter 6 - Perceptions of ICTY

To date, research on the effectiveness and fairness of international tribunals has principally concerned their impact on peace and the larger ICTY mandates. Research has examined such indicators as conflict, human rights, civilian casualties and similar variables measured on a state by state basis (Akhavan 2009; Barria and Roper 2005; Clark 2014; Gilligan 2006; Kim and Sikkink 2010; McAllister 2014; Meernik 2005; Simmons and Danner 2010; Stover and Weinstein 2004). Survey research on public opinion on international justice has burgeoned more recently yielding valuable insights into which factors are most determinative of individual support for and evaluations of international justice (Arzt 2006; Ford 2012; Hagan and Ivkovic 2006; Klarin 2009; Meernik 2015; Orentlicher 2009; Subotic 2009). Given the central role played by witnesses in international justice, it is critical in assessing the impact and legacy of the ICTY to explore their views on these topics.

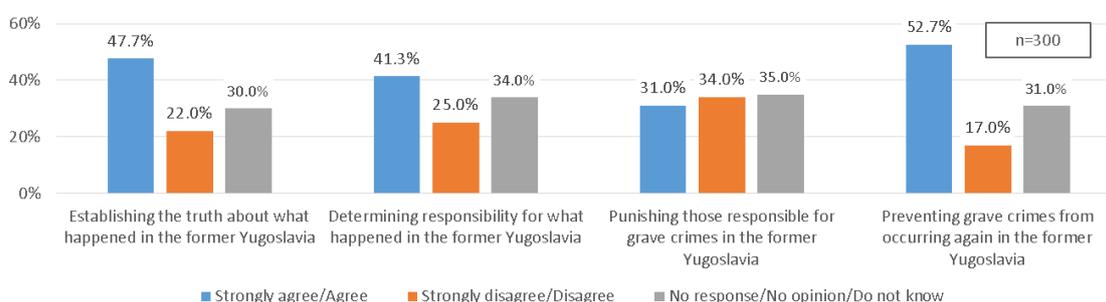
This chapter examines the interviewees’ views about the ICTY’s effectiveness in realizing the broader objectives of providing truth, determining responsibility for the crimes committed, punishing those found guilty, and helping deter further violations of international law. It also discusses interviewees’ perceptions of the fairness of the Tribunal’s procedures, the offices with which they had contact, and the effectiveness of their own testimony.

Topics addressed in this chapter relate to questions in section E of the questionnaire (Annex III).

6.1 Interviewee perception of ICTY effectiveness

This section first examines interviewees’ opinions regarding whether they believe the Tribunal has generally done a good job in advancing its most fundamental goals of truth, justice, punishment, and deterrence. Figure 6.1 shows that a plurality of interviewees (48%) believe the ICTY has helped establish the truth of what happened in the former Yugoslavia, and has determined who was responsible for committing grave crimes (41%). A majority believes the ICTY has helped prevent such crimes from occurring again (53%), but only 31% believe the ICTY has done a good job in punishing those responsible. Between 30% and 35%, however, also do not have an opinion or “don’t know” about how well the ICTY has performed, especially when asked about the ICTY’s effectiveness in punishing those responsible. The reasons for this are not clear, but it may be due to witnesses’ unfamiliarity with the criminal trials, the legal work of the ICTY, or their unwillingness to express a conclusion about such a complex and multifaceted subject.

Figure 6.1 - Interviewees who think the ICTY has generally done a “good job”⁹⁷



Researchers of public opinion and international justice (Arzt 2006; Clark 2009; Hagan and Ivkovic 2006; Klarin 2009; Meernik 2014; Nettelfield 2010; Orentlicher 2008; Subotic 2009; UNDP 2005) have generally discovered that views about whether the ICTY has fulfilled its objectives depend on which ones are being assessed and which groups are being queried. Researchers have generally found that positive evaluations of the ICTY vary considerably across ethnic groups. For example, Albanians in Kosovo typically register the highest levels of support for the ICTY, followed by Bosniaks, Croats and Serbs (Arzt

⁹⁷ For full questions see questions E1, E2, E3 and E4 in the questionnaire (Annex III).

2006; Hatay 2005; Nettelfield 2010; Peskin 2005, 2008; UNDP 2005). The United Nations Development Programme Early Warning System (2005) which conducted a survey found that 23.3% of those surveyed in Bosnia and Herzegovina believed that the ICTY had “done a good job and justified its existence”, while 36.8% believed that the ICTY had not performed well, but was still necessary.⁹⁸ Klarin (2009) and Ford (2012) argue that local elites and the media shape the narratives about group victimisation and culpability and that public opinion has often followed these narratives.

Given the findings from other research about the ICTY that ethnicity matters, it is not surprising that the results from the Pilot Study regarding ICTY performance vary according to ethnic identification. The findings in the Pilot Study both confirm and challenge what other major research had found about witnesses at international tribunals and the impact of the ICTY (Stover 2014; Clark 2014). Figures 6.2 through 6.5 examine whether interviewees’ views change depending on their self-identified ethnicity. The results show that there are consistent patterns among ethnic group perceptions regarding the ICTY.

Figure 6.2 - Interviewees who think the ICTY has generally done a “good job in establishing the truth”

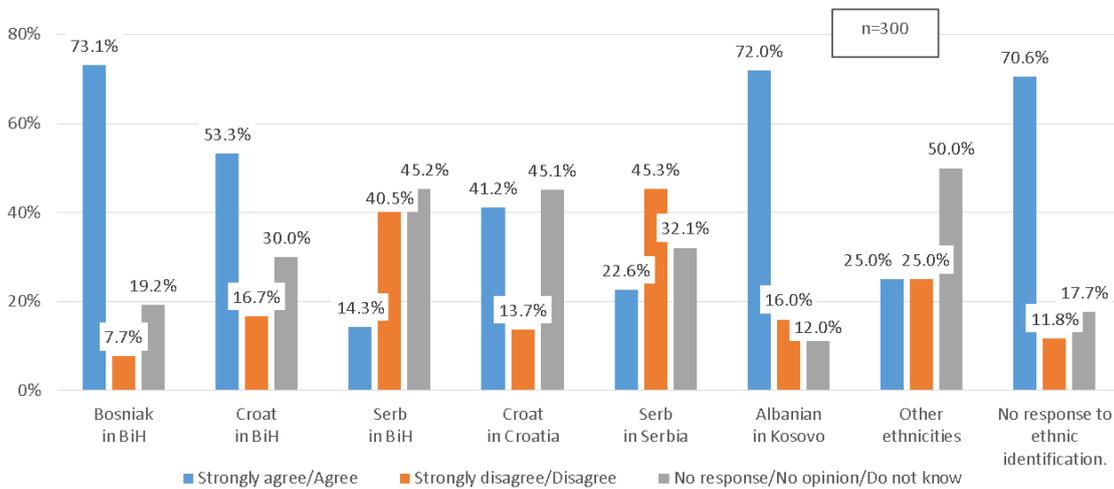
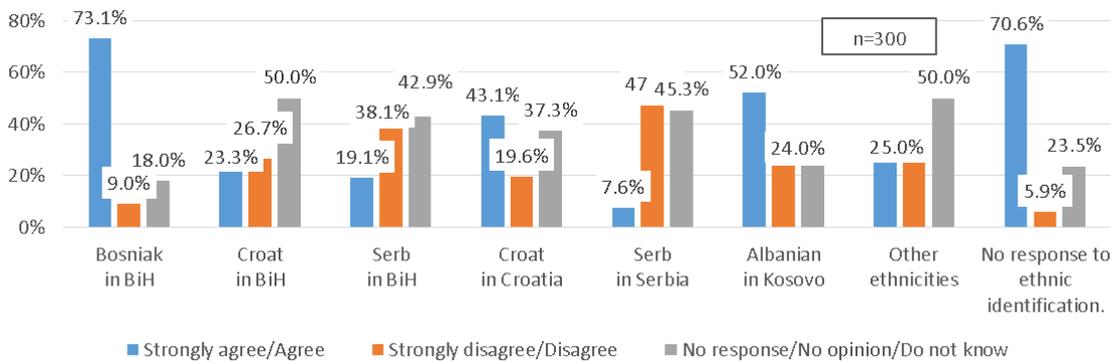


Figure 6.3 - Interviewees who think the ICTY has generally done a “good job in determining responsibility for grave crimes”



⁹⁸ UN Development Program Early Warning System Special Report. (2005). ‘Justice and Truth in Bosnia and Herzegovina: Public Perceptions’.

Figure 6.4 - Interviewees who think the ICTY has generally done a “good job in determining punishment for those responsible”

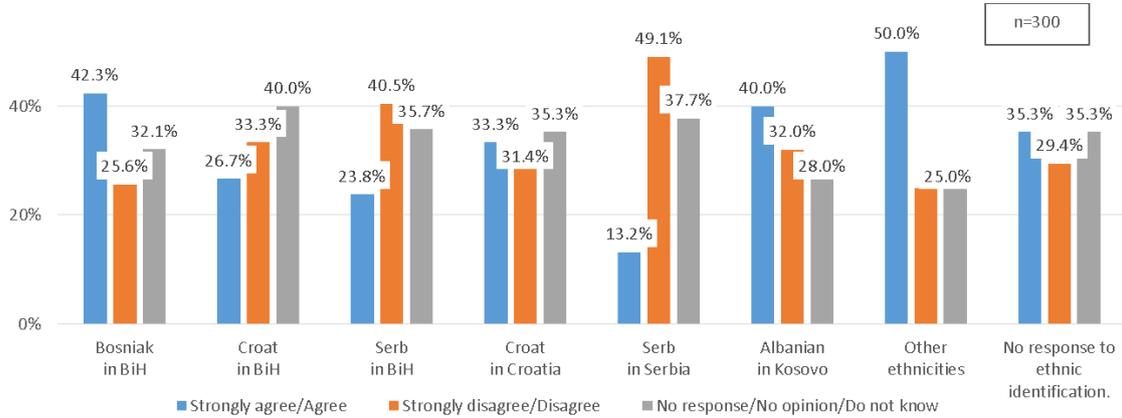
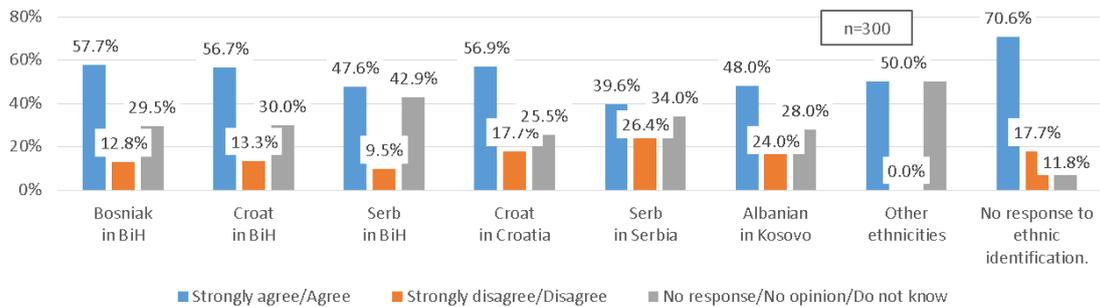


Figure 6.5 - Interviewees who think the ICTY has generally done a good job in “preventing grave crimes from occurring again in the former Yugoslavia”

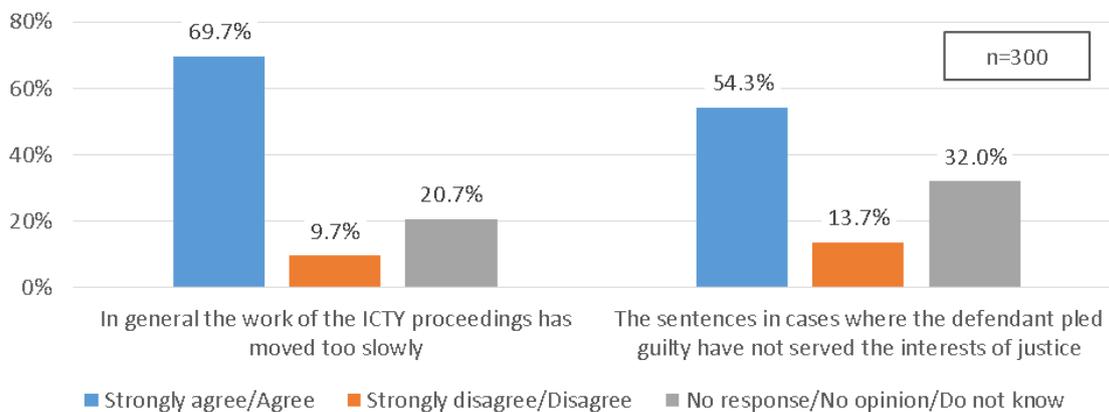


The results from this section of the survey are mostly consistent with the findings of other previous research (e.g., Meernik 2014). Bosniaks are the most supportive of any of the groups on those questions pertaining to the ICTY’s effectiveness in establishing the truth (73%); determining who was responsible for crimes (73%); and punishing those who are found responsible (42%). Bosniaks were also the most likely to believe the ICTY has done a good job in preventing crimes from occurring again (58%). Both Serbs in BiH and Serbia generally are the least supportive, while Albanians in Kosovo are usually the second highest, although both Croats in BiH and Croatia have higher levels of support on the deterrence question (Figure 6.5). There are too few respondents in the “Other ethnicities” (4) and “No response” (17) categories to draw any meaningful conclusion.

6.2 Interviewee perceptions of the administration of justice

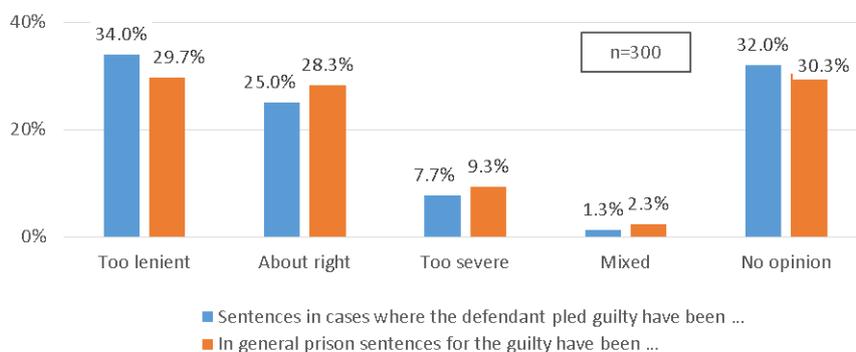
Survey respondents were also queried about their views on the manner in which the ICTY delivered justice. They strongly agreed or agreed that the proceedings have moved too slowly (70%) (Figure 6.6), while 54% believe that sentences in cases regarding guilty pleas have not served the interests of justice. The sentences in cases regarding guilty pleas have aroused controversy, and consistent with other research, are thought to undermine justice (Ivković and Hagan 2011). VWS has observed that a guilty plea can be perceived differently by victims. Some may be concerned that a guilty plea will result in a significantly lighter sentence and consider it unacceptable in view of the gravity of the crimes committed. Others may be interested more in the information an accused can share with the Prosecutor/Chamber in exchange for a lesser sentence. Notably, witnesses with missing relatives might benefit from learning about the circumstances of the death of their relatives or about the location of their remains, if such information is shared as part of the plea agreement.⁹⁹

Figure 6.6 - Perceptions of justice



As shown in Figure 6.7, when asked about the sentences in the guilty plea cases, the interviewees are more critical. The largest percentage (34%) believes the sentences are too lenient and 25% think they are just right. Many interviewees—32%—express no opinion. Interviewees' opinions on sentences in general are closely divided as 30% believe they are too lenient, 28% believe they are about right and 30% do not know. Only 9% believe these sentences have been too severe.

Figure 6.7 - Perceptions about sentences



⁹⁹ A total of 34,891 people have been reported to the International Committee of the Red Cross (ICRC) as missing in connection with the conflicts of the 1990s. According to International Commission for Missing Persons (ICMP), 70% of those missing have been accounted for. For more info on missing persons and their families in the Western Balkans visit websites of the ICRC (www.icrc.org) and the ICMP www.icmp.int

To dig deeper into witnesses’ perception about one issue that has generated much discussion, interviewees were asked about their opinion of the impact of international and national politics on the work of the ICTY and most provided negative assessments (Figure 6.8). Most respondents (61%) felt international politics had exercised a negative impact, while a plurality of interviewees (37%) felt the same about the impact of national politics on the work of the ICTY. Closely related to the issue of the impact of international and national politics on the work of the ICTY are the interviewees’ opinions about whether they think international or national courts are better suited to adjudicating the crimes before the Tribunal. Figure 6.9 shows that while a plurality of interviewees (47%) do not believe local courts are better suited to hearing the kinds of cases that have come before the ICTY, a substantial percentage also did not respond, had no opinion or did not know (39%).

Figure 6.8 - Perceptions on the impact of international and national politics on ICTY

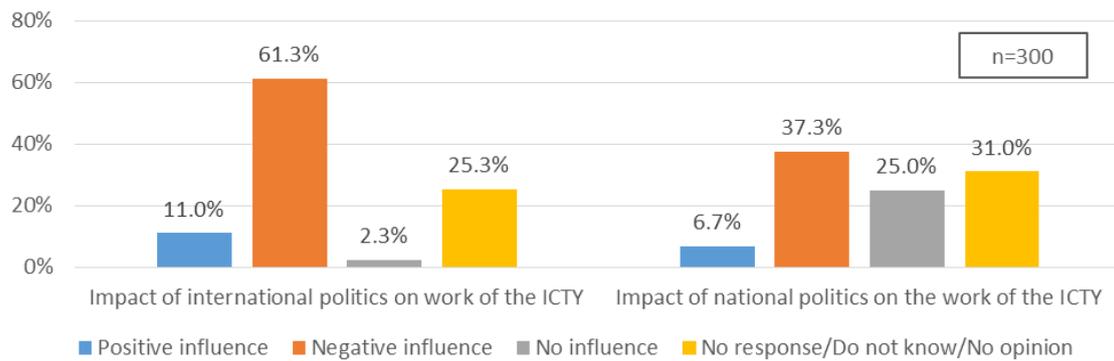
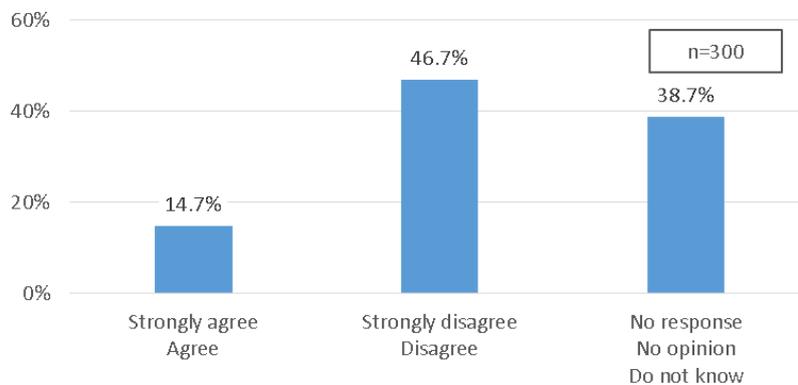


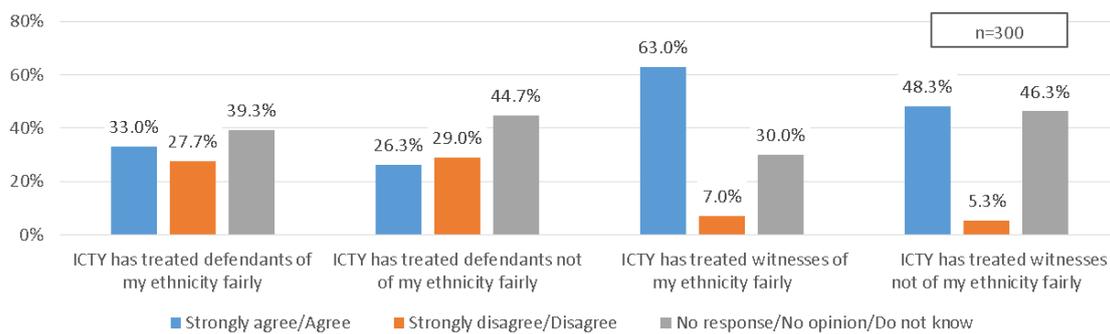
Figure 6.9 - Perceptions that local courts are better suited to handling war crime cases



6.3 Interviewee perceptions of fairness of ICTY actors

Survey respondents were asked about the fairness of treatment of witnesses and defendants (Figure 6.10). While 33% believed defendants of their own ethnicity have been treated fairly by ICTY, that number drops to 26% when the question pertains to whether “other” ethnicities have been treated fairly by ICTY. Similar findings have been found in research on preferential treatment of other ethnicities (Stover 2005). There are sizeable numbers in the former (39%) and the latter group (45%) who are unsure and have no opinion. On the other hand, 63% believe witnesses of their ethnic group have been treated fairly and 48% believe that witnesses from other groups have been treated fairly.

Figure 6.10 - Fairness of treatment by ICTY to defendants and witnesses



It is interesting that interviewees believe that defendants and witnesses from other ethnic groups were treated less fairly by ICTY than were those of their own ethnicity. Much research in the context of the former Yugoslavia and in other nations with ethnic divisions has found that members of ethnic groups tend to view themselves as the victimized or aggrieved party that has been treated unfairly in some manner and are often reluctant to perceive such treatment of other groups (Clark 2014). Thus, it is striking that these interviewees perceive the “other” as the party more likely to be treated unfairly.

It is notable that the definition of what it means to “treat a defendant fairly” has been differently interpreted and disputed by the participants of the Pilot Study. For example, some interviewees indicated that ICTY treats defendants fairly when imposing a sentence proportionate to the crimes committed. Some reported that defendants of “other” ethnic groups have received disproportional positive treatment (detention facilities and living conditions), which they believe creates too much “fairness” and is not deserved. Others indicated that the defendants are fairly treated when they receive proper legal assistance and detention facilities. It seems that the concept of “fairness” toward the defendant can both refer to an adequate punishment or to unbiased and fair trial proceedings.¹⁰⁰

The survey also examined whether witnesses have favourable views of how they were personally treated at the Tribunal. Fully 93% believe they were treated fairly by the Chambers; 79% believe they were treated fairly by the OTP; and 71% believe they were treated fairly by the Defence (Figure 6.11). The results further show that of all the ICTY actors, 95% of interviewees believed they were treated fairly by the VWS. Further analysis was done to determine if these opinions depended on which party called the witnesses (Figure 6.12). The percentages barely change when looking at treatment by the Trial Chambers and VWS with 93-96% of both OTP and Defence witnesses indicating they were treated fairly by both. While 88% of the witnesses called by the Office of the Prosecutor believed they were

¹⁰⁰ There are underlying differences between the civil law systems in the former Yugoslavia with which the witnesses are most familiar, and the common law-civil law hybrid system of the ICTY. An analysis of that is beyond the scope of this Pilot Study (for background, see Carter and Pocar 2013). For purposes of this study, there may be key issues involving differences between the civil and common law traditions that appear in interviewee responses about “fairness”. The notion of “guilty pleas”, the purpose and role of the Prosecution and Defence, as well as the role of judges as seekers of truth versus seekers of justice are markedly different in the two legal traditions. These differences have consequences not only for the perceptions of whether the defendant was treated fairly, but how the witnesses felt they were treated. For example, a witness may not necessarily understand the role of vigorous cross-examination, and therefore feel unfairly treated, and question why a judge does not stop the hostile questioning.

treated fairly by the OTP, only 63% of the defence witnesses expressed that opinion of the OTP. Opinions are reversed when examining perceptions of how witnesses were treated by the Defence. Among Defence witnesses, 89% believed they were treated fairly by the Defence, while only 60% of the OTP witnesses believed they were treated fairly by the Defence. In general, however, strong majorities of all witnesses believe they were treated fairly by all parties.

Figure 6.11 - Interviewee perception about treatment by ICTY

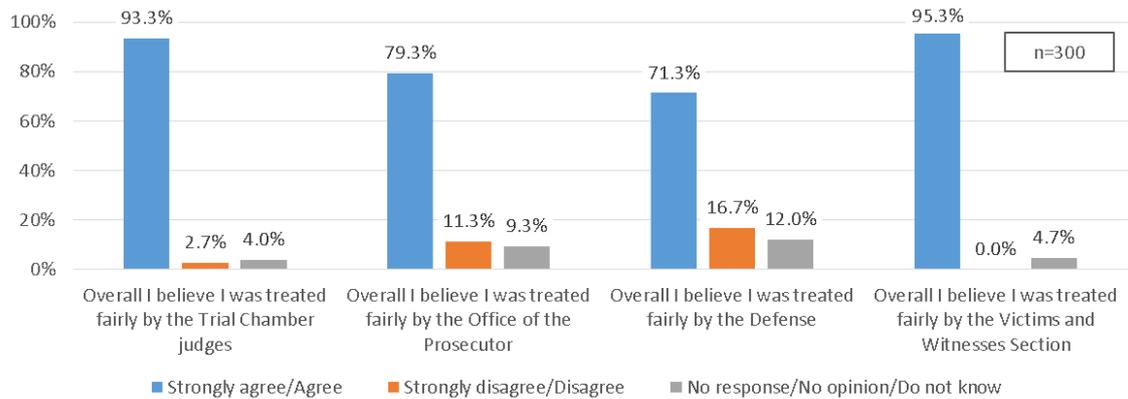
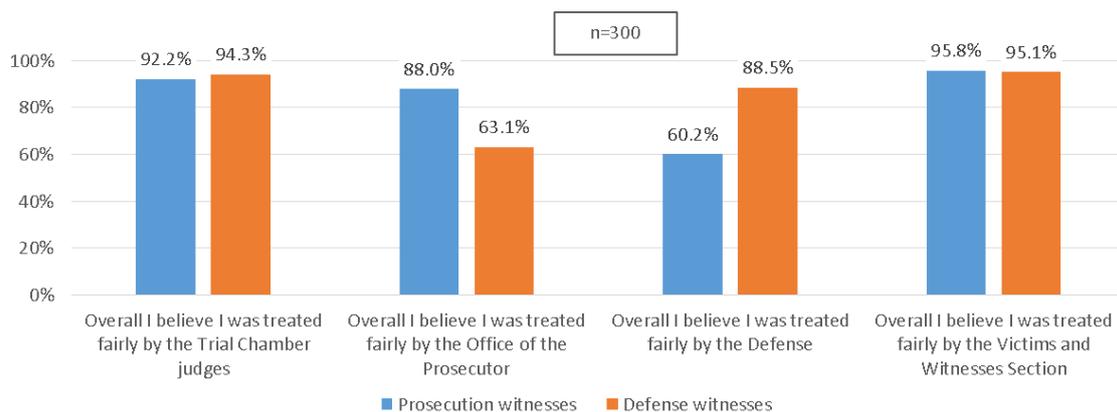


Figure 6.12 - Interviewee perception of treatment by type of witness



Interviewees were also given the opportunity to express opinions and give their perceptions of the Trial Chambers, Prosecution, Defence and VWS (results not shown). Interviewees believed the judges were professional and acted properly in their comments (38 interviewees wrote this type of response), while twelve believed the judges were not. Interviewees also frequently mentioned that they felt the judges believed them (10) and cared about their well-being (8). When asked specifically about their treatment by the OTP, a number of interviewees also believed that the OTP cared about their well-being (39); that OTP was professional and acted properly toward them (12); that they were allowed to testify without interruption (17), and that the Prosecution protected them from hostile cross examination by the Defence (13). There were, however, nine interviewees who indicated that the OTP in some way defamed or degraded them during their testimony. While the most frequent response about the Defence from those who made such comments was that the Defence cared about their well-being (39 interviewees), 38 interviewees said that the Defence attorneys acted unprofessionally. Numerous interviewees also mentioned that the VWS treated them professionally (44 interviewees) and paid the Unit a compliment of some sort (10 persons). It should be mentioned, however, that some interviewees would comment on the performance of judges and the Defence, for example when asked for their comments about the OTP and VWS. For instance, when given the opportunity to comment on their treatment by the VWS, 53 interviewees instead wrote that they believed they were treated unprofessionally by the Defence.

The witnesses' perceptions of their treatment by the parties is often influenced by their perceptions of courtroom dynamics and their preparation for the difficult act of testifying (Stepakoff et al. 2014, 2015). It is the calling party that usually determines what topics will be covered during the testimony, but some witnesses may find it hard to focus on a certain segment of their war experience and disregard other parts that they consider important. VWS noted that sometimes witnesses consider the courtroom as the right arena to tell the whole truth about what they survived, and they may feel offended when they are interrupted while talking about very important life events. When asked to reply only with 'yes' or 'no' to a series of questions posed by the parties and/or Trial Chamber, VWS noted that witnesses may feel that the complexity of their experience and the emotional suffering attached to it is not being properly acknowledged. Other researches also confirmed such observations (Wald 2002).

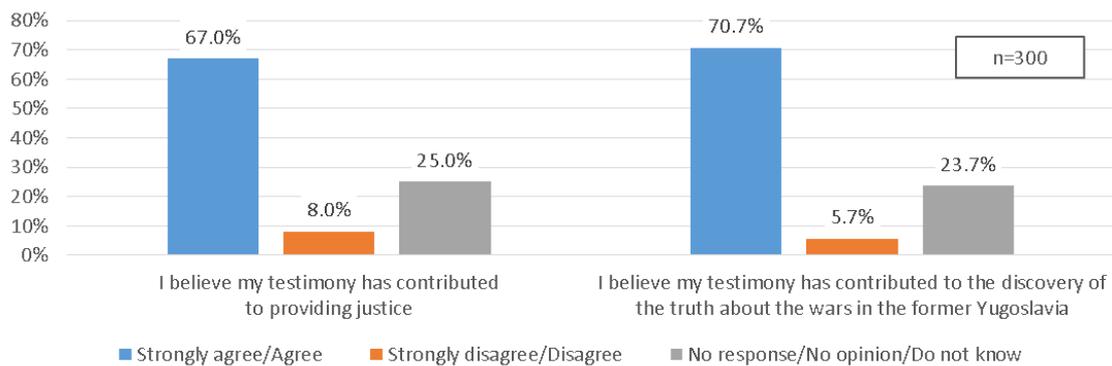
Witnesses are often surprised when an opposing party tries to undermine their credibility. Some felt outraged and reported to VWS they felt as if they were the ones in the dock. Particularly, witnesses who testify about their own experience of abuses and violence (sexual violence, torture, loss of closed family members, etc.) may be deeply hurt during cross-examination if they feel that the opposing party is questioning their evidence. Moreover, witnesses can be severely distressed when the questioning goes into details they might have preferred to forget.

It is the role of the Trial Chambers to control the proceedings and address violations of the code of conduct during the cross-examination. Witnesses appreciate it when a Trial Chamber intervenes on their behalf. Similarly, they have positively welcomed statements made by the Chambers at the conclusion of their evidence in which they acknowledge the witness' personal suffering (Stepakoff et al 2015). Additionally, many witnesses ask at the end of their testimony if they can make a final statement to the Court. The VWS experience is that these are usually short and that witnesses appreciate it when they are given permission to speak at the end of their testimony (Bandes 2009).

6.4 Interviewee perceptions of the effectiveness of their testimony

Lastly, the Pilot Study looked at how witnesses perceive their own contribution to justice by having testified. Previous research has shown that people are more likely to accord legitimacy and provide support to institutions of justice when they believe that they have some voice or influence in the institution (Doak 2015; Tyler 1990; Tyler and Darley 2000). The interviewees were asked whether they believed that, upon reflection, their testimony (1) contributed to providing justice and (2) contributed to the discovery of the truth about the wars in the former Yugoslavia (Figure 6.13). Most interviewees strongly agreed or agreed (67%) that their testimony contributed to justice, and 71% believed their testimony contributed to the discovery of truth. Only small percentages strongly disagreed or disagreed with these statements in either category (8% and 6%, respectively), while a number of interviewees did not know or were not sure. This is an especially critical finding for the long-term prospects of international justice, as such feelings of efficaciousness are key to establishing the legitimacy of institutions of justice, both national or international.

Figure 6.13 - Interviewees' perceptions of the effectiveness of their testimony



What witnesses care about is whether their testimony will help in reconstructing the truth about the wars in the former Yugoslavia. Sometimes they feel confused and insecure about how they performed in the courtroom and doubt the usefulness of their testimony. In addition to being given the opportunity to publicly tell their stories, witnesses are pleased when their contribution is acknowledged by the Tribunal and when they see that their testimony is relied upon in the final judgment.

Summary

The results largely confirm several key findings of earlier research on public support for international justice. This Pilot Study shows that interviewees' support for the Tribunal's performance in the discovery of truth, determination of responsibility, allocation of punishment and promotion of deterrence was generally good, although influenced by ethnicity. 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. It is the interviewees' perception, as other research has also indicated, that the judicial process has been too slow, the sentences often too lenient, and that guilty pleas sentences have not served the interests of justice.

While the findings of this Pilot Study are not surprising given what previous research has found the interviewees generally give the ICTY very good marks for its overall fairness and its fairness toward them individually. Interviewees in general are more likely than not to believe the ICTY has treated witnesses and defendants of their own ethnicity and others fairly. Perhaps what is most striking is that interviewees give very high marks to the ICTY units for their treatment of them personally, with roughly 90 to 95% indicating that the Trial Chambers and the VWS section treated them fairly. There was also strong majority support for the fairness of treatment given by the OTP and Defence, regardless of who called the witness.

Chapter 7 - Open-ended questions

The witnesses' voices—their story—in the courtroom is but one part of a much larger process. It is more than just their testimony, cross-examination, and return to civil society. The witnesses who took part in this Pilot Study have a wealth of experience and shared, through their answers what it means to testify in an international tribunal. It is critical to explore these insights both for the witnesses who desire closure and for the development of best practices in this and other tribunals.

In the final portion of the Pilot Study, interviewees were given the opportunity to speak freely on three important issues: (1) the impact of testifying; (2) their advice to future war crimes witnesses and (3) anything they would change related to the process of testifying. The purpose of these questions was to elicit from witnesses their thoughts and opinions regarding the entirety of their experience and the meaning of testifying for them. Additionally, it provided interviewees with an opportunity to address matters not captured through the questionnaire.

7.1 Interview process

Stover's path breaking (2005) study, which used structured interviews, provided a wealth of information, not only about the ICTY and its impact on witnesses, but on setting standards for how such research should be framed. The studies of the ICC and its witnesses (Stover 2014) and victim-participants (Stover 2015) revealed that evolving best practices should include standard follow-up surveys with witnesses and recommendations about how to improve the process of testifying so that witness well-being is maximized and stress is minimized. Perhaps the most important survey to date has been where witnesses were asked what they thought and felt about the consequences of testifying on their lives (Stepakoff et al. 2015; Stepakoff et al. 2015a; Stepakoff 2014).

The final portion of the Pilot Study survey followed the multiple-choice questions, lasted 15 to 30 minutes, and was an open-ended, unstructured interview where the interviewees could provide their final thoughts about testifying and the process of testifying. These completely open-ended questions allowed witnesses to share their thoughts about three key points most relevant to studies about testifying at international tribunals. First, what did testifying mean for the witnesses in their lives? Was it positive or negative and what kind of impact (if any) did it have? Second, given their experiences, what advice would they give to help future witnesses at war crimes trials prepare for and cope with the experience of testifying? Third, witnesses were asked what they would change about the proceedings or the process of testifying. This question was designed to enable witnesses to give critical commentary about testifying, and provide feedback about ways in which the ICTY and other courts can improve. The questions were open-ended and designed to elicit free association and thought from witnesses, sometimes prompted by the previous multiple choice questions in the questionnaire.

As outlined in Chapter 2, VWS personnel, with backgrounds and experience in social work, psychology and working with witnesses and trauma victims received training on conducting the interviews. They were not to elicit specific responses from witnesses in order to avoid contaminating the results. They were allowed to clarify when witnesses asked specific questions. If witnesses were unsure about what type of information was being sought, limited clarification was provided. If witnesses said that they really did not know how to comment or what to say, VWS staff reiterated that it was to gain witness insight and that it was an opportunity to provide anonymous feedback to the ICTY. Witness well-being and security were a primary concern as the interviews come at the end of a time-consuming survey which can evoke emotions about traumatic events in the past.¹⁰¹

VWS audiotaped interviews (tapes are destroyed by VWS as per the "Informed Consent" agreement signed by witnesses) with access to the interview material strictly limited the VWS. Thirty interviewees

¹⁰¹ Due to the fragility of one witness, one interview was brought to a close before it was completed and referrals for assistance were provided. Overall 21 interviewees received referrals and twenty requested additional information, which highlights the need for a small, but important number of witnesses to receive post-testimony contact. See section 2.4.5 for further information.

declined to give audio-taped interviews, but seven of those agreed to give answers in written form. The audio recordings and written transcripts were transcribed and eventually redacted where witnesses revealed their identity. Finally, transcripts were translated into English by CLSS and handed over to UNT for coding and analysis.

Before beginning the analysis of the Pilot Study data, it was clear that the timeline for concluding the project would not allow for a full content analysis in the native language or in English. Therefore the *results presented here are preliminary*. It should also be noted that while questions were presented as three separate and discrete items, this may not necessarily be the way witnesses responded. For example, a witness may have been well into answering question two and then thought about something that relates more specifically to question one. Each translated interview was read and coded for responses to each of the three questions, as it appeared in the interview process. Thus, there is some overlap on the topics covered by the witnesses, but the analysis is structured according to the question that elicited the response.

Based on the coding by three different persons, the coding team summarized all witness comments in a final categorization which principal investigators then cross validated. Duplicative answers within the same question were only counted once.

7.2 The experience of testifying

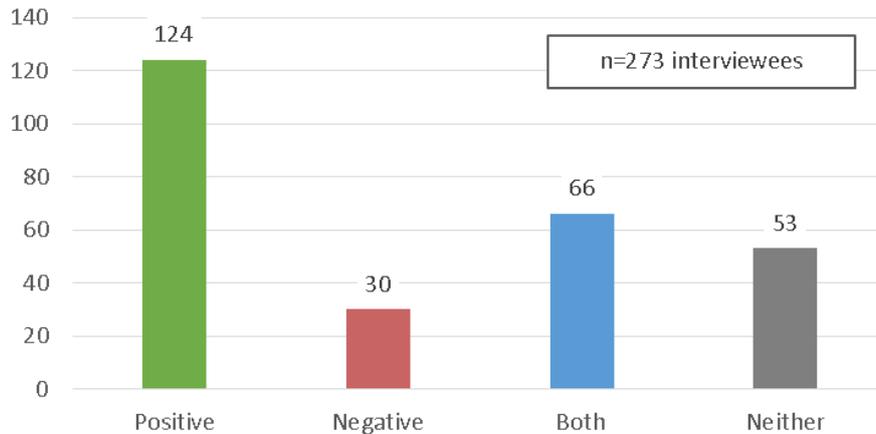
Question 1: Could you describe what the experience of testifying for you personally, in your life, means or has meant to you? Please indicate any positive and negative aspects that have left an impact on you.

Researchers have begun examining whether testifying or being a victim participating in the proceedings (e.g., at the ICC) has had a positive or negative impact on persons involved in violent conflict. It has been the dominant focus for evaluating witness impact at both the ICC (Stover et al. 2014; 2015) and the Special Court for Sierra Leone (Stepakoff et al. 2014, 2015).¹⁰² The findings here mirror that research and add to the growing understanding about the impact of tribunals. The process of testifying is complex, but most witnesses report fairly high levels of positive feelings about the overall impact of testifying, while approximately one-third of witnesses emphasized the adverse impact of testifying.

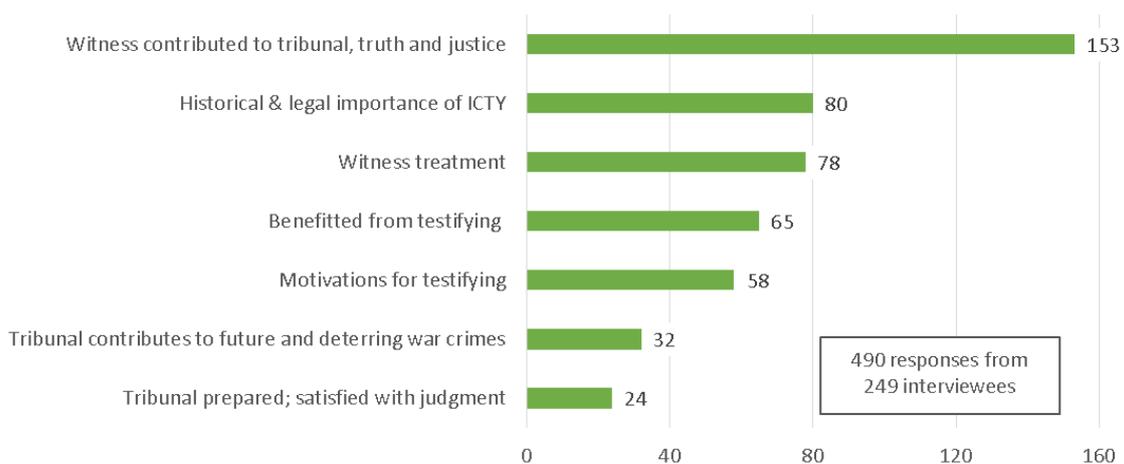
Looking first to positive comments regarding what it means to “bear witness”, each transcript for Question One was read to determine whether it was positive, negative, both, or neither (Figure 7.1).¹⁰³ Overall, interviewees report fairly high levels of positive statements about the experience (n=124) and 66 interviewees note both a positive and negative impact of their testimony experiences. With 30 interviewees reporting exclusively negative impact, and another 66 responding both, that means that more than one in three (35%) of the interviewees provided at least one or more negative concerns.

¹⁰² Victim participants (or civil parties) that may present their views, express concerns, and receive reparations are unique to the ICC, the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Special Tribunal for Lebanon. Though not part of the common law tradition, the involvement of victims through this mechanism gives them a voice in the proceedings by allowing them, through counsel, to intervene more directly beyond the giving of testimony and cross-examination. Evaluations of the effectiveness of the ICC and ECCC mechanisms and whether they meet the needs of victim participants and satisfy their concerns remain mixed (Vianney-Liaud 2015; Morrison and Pountney 2014).

¹⁰³ To be counted as “positive”, interviewees must have referred to the impact of testifying in a qualitatively superior manner e.g. excellent, outstanding, helpful, satisfied etc. To be considered “negative”, an interviewee must have referred to the impact of testifying in a qualitatively inferior manner e.g. disappointing, painful, harmful, dissatisfied, etc.

Figure 7.1 - Interviewees' appraisals of overall testimony experience

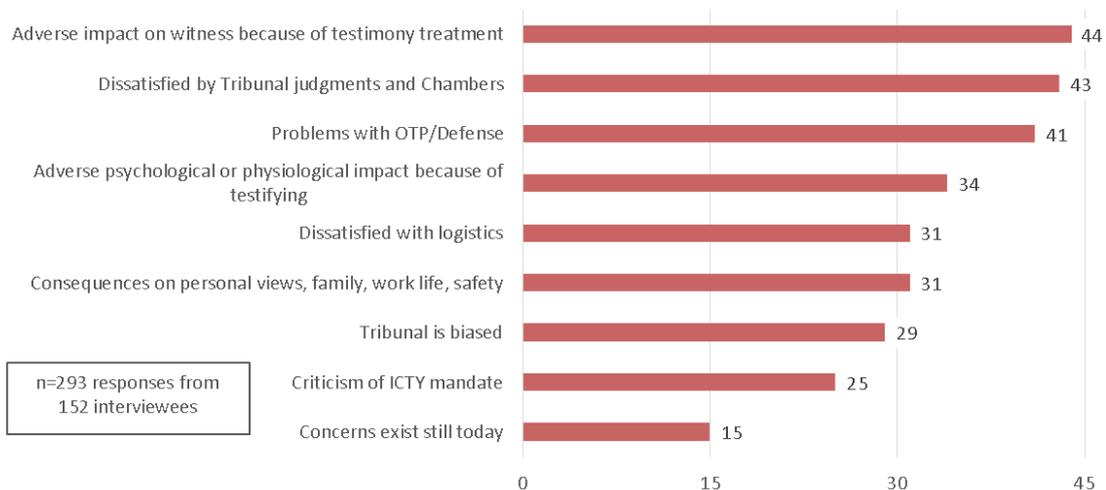
To examine in detail positive and negative impact, multiple categories below look more closely at what makes the experience positive (n=249 interviewees) or negative (n=152 interviewees). A majority of interviewees reported that contributing to truth, justice, and helping the tribunal reach a decision (56% or n=153) was positive about the testimony experience (Figure 7.2). Interviewees cited as second most positive impact the contributions they made to history, fact-finding, and the legal importance of the process of testifying at the ICTY. Indeed, almost two-thirds of all interviewees answering Question One indicated one of the top two answers. The next three most frequently cited categories involve more personal outcomes. These findings contribute to a broader understanding of witnesses' views about the tribunals. Twenty-eight percent (n=78) believed they were treated well (professionally) by ICTY personnel including VWS, felt prepared, or were satisfied with logistics. Almost one in four (23.8%) of all interviewees specifically discussed the cathartic and therapeutic nature of testifying including feeling a great burden lifted, a perception of an elevated social stature in the community, its contribution to an optimistic outlook, or the satisfaction of providing a civic service. One in five interviewees (n=58 or 20.8%) indicated a positive impact based on their personal motivations for testifying – on behalf of the victims, as a moral obligation, or duty to the community. Notably the categories least frequently cited as positive include witness contributions toward deterring future war crimes and contributing to peace, with last place going to how prepared the tribunal was for handling war crimes cases and how satisfied interviewees were with the judgments (including sentences).

Figure 7.2 - Interviewees' positive appraisals of testimony experience

While overall interviewees were more positive than negative and there were fewer negative responses from a smaller number of interviewees (as compared to more positive responses from a larger number of interviewees), interviewees still raised concerns that echo much of what has been written about regarding the ICTY (Figure 7.3).

The main negative types of impact related to their treatment during the process of testifying (n=44) including: problems with proofing, interpretation, discomfort with the usage of Anglo-Saxon legal procedures or being inside a courtroom for the first time; dissatisfaction at being made to feel like they were the criminal or being unable to tell their own story. A close second for negative impact factors included: dissatisfaction with judgments and sentences—feeling as if justice had been denied or that acquittals by the Appeals Chambers undermined the ICTY’s legitimacy (n=43). Here, interviewees expressed their unhappiness about judgments in cases, particularly regarding whether they provided justice, met expectations, and allocated proper punishment. The third most cited negative factor involved treatment by legal counsel (n=41), namely OTP, Defence or both with interviewees frequently recalling vividly their concerns about specific incidents. For these top three negative factors, more than one in three of the witnesses who gave interviews (34.8% or n=95, results not shown) indicated a negative impact related to their treatment during the process of testifying or dissatisfaction with the sentences and judgments handed down. Interviewees also expressed concerns about problems with their own process of testifying process and preparation by the OTP and the Defence (n=32, results not shown). Such concerns included everything from expressing regrets about having testified at all to wanting to have had more protection for their security.

Figure 7.3 - Interviewees’ negative appraisals of testimony experience

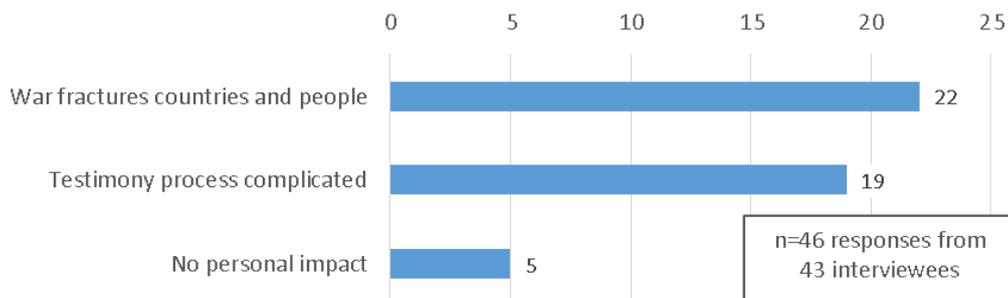


The next most frequently cited negative impact factor includes an adverse psychological or physiological consequence from testifying (n=34). This category goes beyond limited expressions of anxiety being in a courtroom environment to include witnesses who report feeling “horror”, being “traumatized”, or “exhausted” as a result of testifying or having to recall shocking events. The next two categories tied for same number of responses with interviewees expressing dissatisfaction with: (1) logistics at the time they testified (n=31) or else; (2) conveying the personal consequences they encountered after they returned from testifying, including its adverse impact on both home life and workplace, as well as interactions with others who treated them negatively or suspiciously (n=31). Note that the last category in Figure 7.3, of “concerns still exist today” also captures the consequences of the Tribunal on interviewees’ lives today (n=15). Here witnesses reflected on the fact that “nothing has changed” or that ethnic tensions are still rife in the former Yugoslavia. This category also includes issues regarding deeper and longer lasting adverse impact they are still feeling that are the result of having testified before the ICTY. So here one can see the long-term reflection from some witnesses that the ICTY may not have contributed to reconciliation in the region today.

Additionally, some interviewees articulated concerns about whether the ICTY is ethno-centric, whether it treated all persons from different backgrounds similarly, or whether there are biases within the institution and its actors (n=29). This category also includes issues with the media or politics in the region having too much influence over the decisional processes of the ICTY. Of additional note is that the ICTY's mandate and Statute were sources of disappointment for interviewees. This included everything from the failure to locate the tribunal in the region of the former Yugoslavia, to the apprehension that the Tribunal did not use judges from the region—but instead opted for judges from common law countries (n=25).

Finally, the witnesses exhibited a fairly broad perspective on the challenges facing both the ICTY and the region of the former Yugoslavia in the aftermath of conflict in ways that were not necessarily personal to their experiences as a witness. Many made such comments throughout the course of their interview. These responses could not be clearly categorized as positive or negative, but instead are categorized as “neutral” (Figure 7.4). In some instances, interviewees were speaking more philosophically about their role in the process of testifying (n=19) or giving insight into the impact that war and the breakup of the former Yugoslavia has had on their lives (n=22). Five persons indicated that testifying had no impact on their lives.

Figure 7.4 - Interviewees' neutral appraisals of testimony experience



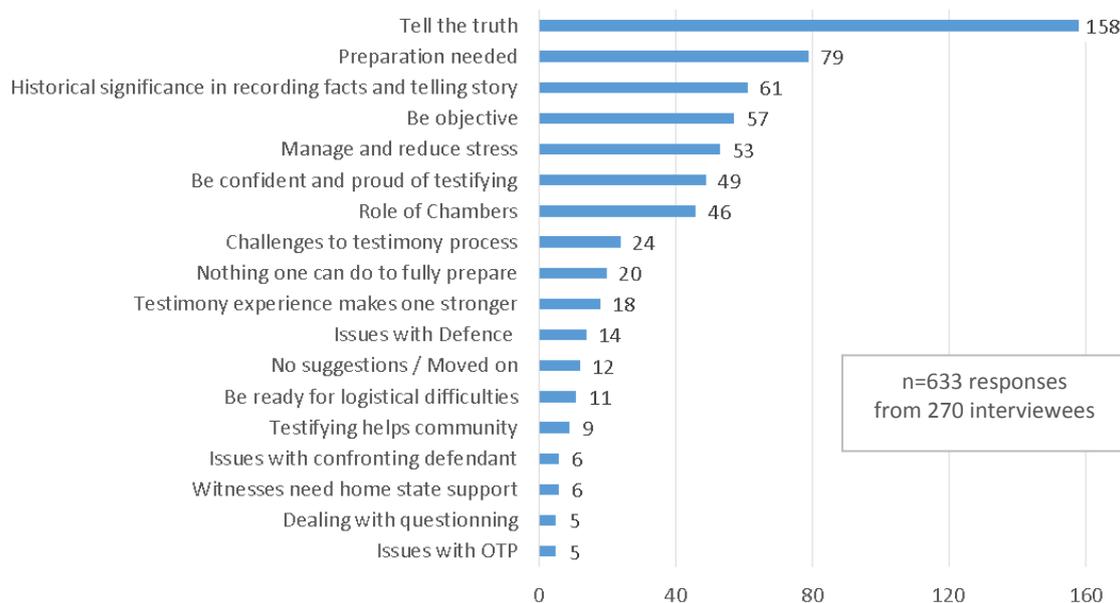
7.3 Advice to future witnesses at war crimes trials

Question 2: What advice would you give to help future witnesses at war crimes trials prepare for and cope with the process of testifying?

The witnesses interviewed bring insight and a wealth of wisdom to helping the general public and future war crimes witnesses better understand what it means to bear witness. Transitional justice institutions are increasingly assessing the impact of testifying on witnesses in terms of long-term threats to witness well-being and human security (OSCE 2010; Stepakoff et al. 2015). Based on the experiences of those who have testified and recognizing the ICTY is nearing the completion of its active trials, governments in Europe are enacting measures to protect witnesses in the former Yugoslavia from being threatened, harassed, and intimidated (Council of Europe Resolution 1784, 2011). Best practices for witness welfare have focused on support systems for witnesses that include peer-to-peer sharing of information (Mujkanović 2014) and recommendations that psycho-social and legal advice be provided to witnesses to assist in keeping the process of testifying running smoothly.

Interviewees were asked what advice they would pass on to future witnesses and the results in Figure 7.5 reinforce other findings of the Pilot Study. The witnesses' experiences are unique and varied. Their advice to future witnesses mirrors much of what has been part of their own experiences. Witnesses most often said that telling the truth was the most important advice they would give to other witnesses (n=158). While more than 25% indicated that being prepared for testifying was important (n=79), it is striking that a smaller number (n=20) thought that there was nothing anyone could do to be fully prepared—thus highlighting that each witness will have a different perspective on the process of testifying. Interviewees urged future witnesses to remember the historical significance of what they are doing and to think about their contribution of telling their story and recording facts for future generations (n=61).

Figure 7.5 - Advice to future witnesses



Interviewees also gave advice about keeping a certain mindset—be as objective as possible and limit your biases (n=57), as well as try to manage and reduce the stress associated with being called to testify (n=53). Strikingly a number of interviewees indicated that they thought it important for witnesses to be confident and proud about testifying (n=49).

Of importance to future witnesses about the process of testifying is the advice interviewees have regarding how witnesses interact with the actors and the process of testifying surrounding the ICTY. These responses varied widely, and interviewee responses may be a direct function of the witnesses' individualized experience of testifying. In the other two questions, interviewees would occasionally elaborate with examples about their responses—here that occurred less frequently, and interviewees were more matter of fact about their advice. Interviewees spoke most frequently about the role of Chambers and of the ICTY in resolving the legal issues (n=46). Here they highlighted that it was the job of the judges to decide what was true or fair. Witnesses advised to cooperate fully with Chambers and answer all the questions that are asked—just tell the judges about what they know. Some even went so far to say that there is a duty to testify so judges can see to it that justice is done.

Interviewees were more likely to try to apprise future witnesses about issues with Defence counsel (n=14) and issues when confronting the defendant in court (n=6) than issues associated with OTP (n=5). Here interviewees indicated everything from concerns that Defence counsel was not helpful to statements or that Defence witnesses have a more difficult time appearing before the Tribunal. Those critical of OTP indicated that OTP was difficult in examination or cross-examination questioning. Interviewees also wanted to tell future witnesses to be ready to see the defendant and to be in close proximity in the courtroom. Here interviewees also indicated that they wanted to remind witnesses that it is the defendant on trial in the courtroom, *not* the witness. A few interviewees had general advice about how to deal with the questioning in the process of testifying regardless of OTP, Defence, or Chambers (n=5): including reminders that there were no “perfect” methods for testifying, witnesses should stay focused on the questions, answer only what they know, and answer yes or no questions as asked.

Far smaller numbers of interviewees indicated that witnesses need to expect logistical difficulties associated with testifying (n=11), but that the experience of testifying can make one stronger (n=18). Finally it should be noted that twelve interviewees said they did not have any suggestions or indicated that the experience of testifying is not something they think about any longer.

7.4 Suggestions for improvement

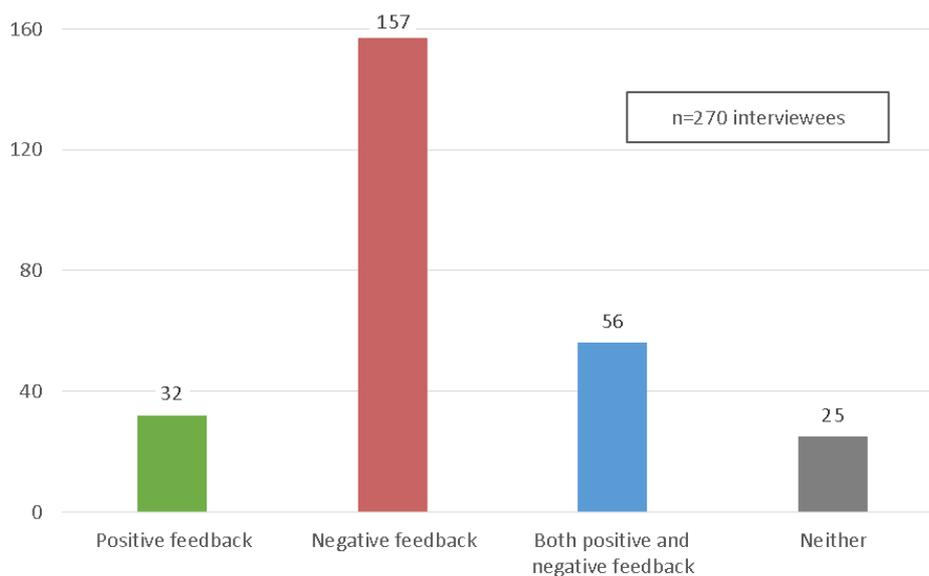
Question 3: What would you change about the proceedings or the process of testifying?

Interviewees had the opportunity to clarify things or expand on issues they felt necessary for the ICTY or future tribunals to consider about the witness experience and make suggestions (Figure 7.6). As with Question One, each interview was coded for whether the feedback was positive, negative, both, or neither (Figure 7.6).

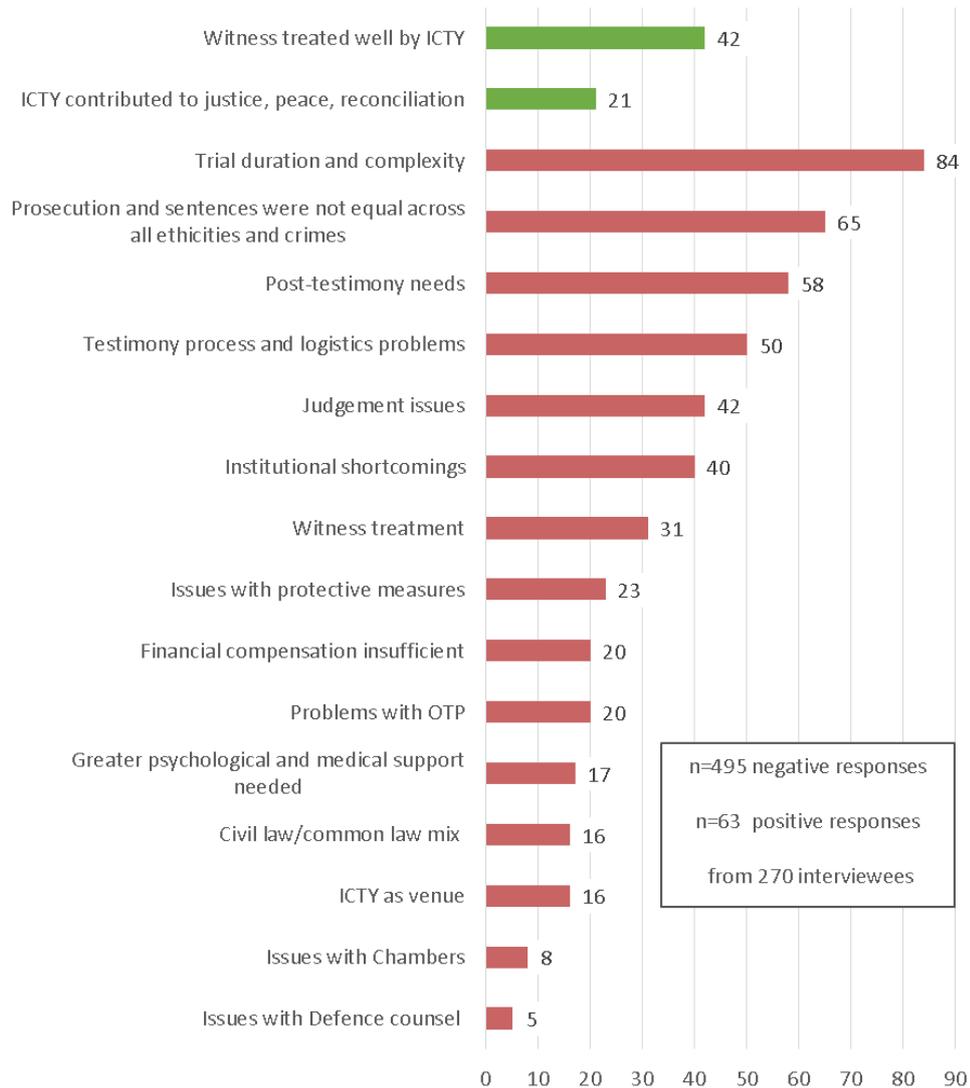
This question prompted more negative responses than the first question, and the comments covered the range of issues regarding the ICTY included in the questionnaire. This negative feedback mirrors what a majority of interviewees already voiced when answering multiple choice questions. One distinctive possibility is that the question itself elicited negative responses because it requested interviewees to consider specifically critical feedback about what can be improved.

By almost five to one, interviewees gave more negative (n=157) than positive (n=32) feedback, while 18% of interviewees indicated it was neither (n=25). Of those that were neither seven interviewees felt that they were not competent to give feedback.

Figure 7.6 - Overall appraisals of the proceedings and the processes of testifying



Turning to the specifics regarding positive and negative feedback (Figure 7.7), the most frequently commented positive point related to ICTY personnel in general, and the VWS staff in particular. The top two areas of negative feedback will not come as any surprise to the Tribunal's critics. There is nothing new about the observation that the ICTY has taken too long to complete its mandate or that the trials have become unnecessarily complicated (n=84). Indeed the third President of the Tribunal, Judge Claude Jorda noted this himself almost a decade ago (Wilson 2011, 59). Second to trial duration and complexity, the next most frequently cited criticism involves who was *not* punished. Were there persons who escaped liability? Sixty-five interviewees raised the issue of whether there had been equal punishment. Some said top leaders had escaped indictment, a number of interviewees said not all crimes or criminals had been charged, while others asserted that because all ethnicities committed crimes, all ethnicities should be equally charged. Several interviewees pointed out that NATO was guilty of crimes and should have been charged as well (including its leaders).

Figure 7.7 - Specific feedback about the proceedings and the processes of testifying

Of importance to advocates for war crimes witnesses is the third most frequently cited set of issues that involved witnesses' needs *after* trial (n=58). The need for post-testimony support for witnesses who are returning to communities that are still fractured means that the consequences of testifying continue to exist for some witnesses. Witnesses also want to be sure that others cannot deny the events that happened or to support the defendant. Yet this desire to see that justice be done can take a toll on those who bear witness. Of the 58 interviewees citing a need for post-testimony support, thirteen witnesses indicated that they were permanently harmed, and indicated better follow-up contact was needed in the post-testimony period (beyond the routine, regular follow-up calls made by VWS four to six weeks after their return home). To that end, eight interviewees commented that they appreciated the Pilot Study had been done, several noted they wished that it had been earlier, and one person commented that witnesses have been surveyed too many times without anything positive coming back to the witnesses (results not shown).

Interviewees provided a wide array of feedback regarding the process of testifying and the ways in which they believed that there can be improvements when it comes to the logistics of the trial process (n=50). These issues are more about the process rather than the substantive treatment of witnesses who are testifying. Here interviewees raised concerns about the proofing process (it took too long or was confusing) and about giving statements in court. Interviewees suggested that better information needs to be provided about what to expect or that the interpretation process had been problematic. Interviewees also had concerns about other witnesses—indicating that some witnesses talked for too

long and that there needed to be more yes or no questions. There were concerns that only eyewitnesses should be allowed to testify, moreover that the ICTY needs to seek out better quality of witnesses to testify.

The next two categories are clustered closely together and have to do with the institution of the ICTY as a whole—judgment issues and the sentences handed down (n=42) and the institution’s shortcomings (n=40). The responses about sentencing illustrate the challenges the ICTY has had regarding public opinion on punishment. Interviewees found sentences both “too lenient” and “too harsh”, but then also “inconsistent.” Witnesses also responded with concerns regarding the fairness of acquittals, reversing convictions, plea agreements, and provisional release. These practices were characterized as doing a disservice to victims, justice, the truth, or the Tribunal itself. Still other interviewees took umbrage with the thought that defendants were treated too well by the UN system once they were incarcerated. As for institutional shortcomings, here again, interviewees were concerned about outside politics, alleged corruption, OTP, and purported NATO influences over the workings and work product of the ICTY. Witnesses challenged whether the Tribunal favored some ethnicities over others and moreover questioned whether the staff should be more diverse in terms of ethnicity and gender.

The next category highlights the substantive issues associated with the treatment of witnesses at trial, which is another area where the ICTY witnesses indicate there is room for improvement (n=31). This category includes issues that directly relate to the witnesses’ needs and concerns regarding the way in which the process of testifying plays out for witnesses. Most comments relate to specific issues that have remained in the memories of witnesses since their having testified. There was a small, but critical number of witnesses who indicated that the ICTY needed to recognize that testifying created a hardship for themselves or their family or that witnesses need help recalling past events (n=13), while others felt that they did not get to tell their full story (n=10). The remaining observations in this category include issues related to feeling like they were treated like a criminal, that witnesses should be kept separate from defendants, or that the same witnesses are called repeatedly, and witnesses wanted to know why they were called (n=8).

Question Three triggered responses relating to protective measures, but interestingly, interviewees expressed different perspectives. Sixteen interviewees thought that there needed to be improvements in protective measures and wanted to see greater levels of protection provided while traveling and in The Hague, while seven interviewees argued just the opposite—that there should be no protective measures or protected statements permitted. While it might be tempting to think this division depends on whether the witness was designated as an OTP or Defence witness, interviewees from both roles are represented in each category.

Interviewees also raised concerns about financial compensation for the losses they endured (n=20). The majority indicated that they had suffered losses from the conflict that should have resulted in compensation (n=18). Two interviewees thought that entitlements were insufficient to cover the costs associated with testifying. This highlights again the need for better witness support for information and assistance regarding their rights and access to information about reparations.

Finally, the last six categories of negative responses harkened back to controversies that existed at the time of the ICTY’s founding, and have been consistently raised since that time. Overall OTP (n=20) relative to Chambers (n=8) and Defence (n=5) received the most negative feedback. After this interviewees noted that greater psychological and medical support is needed in advance or during the trial (n=17). A small, but critical number of interviewees questioned whether the mix of Anglo-Saxon common law with the continental civil law approach worked at the ICTY (n=16). Clearly some witnesses felt it was confusing or made it more difficult to testify. In that same vein, others pointed out that locating the ICTY in The Hague had been an inferior choice of venue for international justice (n=16) and that courts in the region would do a better job to decide cases like this.

Summary

The results from open-ended questions here magnify what the data from questionnaire has illustrated in more detail: the witness experience is varied and complex with most issues surrounding the events leading up to the process of testifying and the act of testifying itself. While a majority of interviewees found the experience to be positive, there are still a small but critical number of witnesses for whom the experience of bearing witness has a negative and adverse impact which continue to this day. As noted at the outset, it is also critical that a thorough content analysis is conducted with these data, especially using programs that rely on the native language of the interviewees.

The feedback obtained from the witnesses in the open-ended portion of the survey has proved invaluable. It represents an important moment for the witnesses to reflect back on all they have been through during the process of testifying, and thus seems to have had significant psychological import to them. It constituted a moment and opportunity for closure. It is also a critical moment for international justice. For many of these witnesses, it will likely be their last official encounter with the ICTY as the Tribunal completes its mandate. Thus, it is critical that the accumulated wisdom of these witnesses be preserved for posterity and for the betterment of justice at the international and national levels. The international community has invested an incredible amount of time, money and effort into a nascent international criminal justice system. The witnesses have given greatly of themselves. Witnesses' hard-earned experiences, candidly shared with the interviewers, can help international justice become better and ensure that their voices are preserved for history.

Chapter 8 - Conclusions and recommendations

Witnesses are vital for establishing truth and justice in a post-conflict environment. While scholars and practitioners are studying the impact of testifying on witnesses' lives, there is still much that needs to be understood. The Pilot Study explored how witnesses perceive they have been affected before, during, and after the process of testifying. The Pilot Study is also exceptional in that it interviewed 300 witnesses and had access to witnesses whose identities had been protected by court orders.

This chapter presents the Pilot Study's preliminary conclusions based on the most important findings from the 300 interviews conducted, and offers recommendations. By delving deeper into witnesses' motivations for testifying, human security concerns, their psychological and physiological health, and their overall perception of international justice, VWS and UNT hope that the results of this Pilot Study will facilitate the further development of best practices and a more detailed understanding of what it means to bear witness.

8.1 Recommendations regarding the survey and methodology

The Pilot Study advances the study of witnesses and the impact of the process of testifying on them. Its reliance on empirical research and methodology has provided insight, and as practitioners and scholars seek to build on this work, it is important to address and improve upon the limitations of this study. Therefore, in the spirit of scientific advancement, the authors offer the following observations and recommendations.

Recommendations

- **Expand the witnesses surveyed to include those who testified in the four ICTY trials that were on-going at time of the Pilot Study.** This study did not include witnesses in the cases of Ratko Mladić, Radovan Karadžić, Vojislav Šešelj and Goran Hadžić to prevent interference with on-going trials. Many of those testifying in these four trials had also testified in earlier related trials, such as those involving Srebrenica.
- **Expand the witnesses surveyed to include witnesses living outside the former Yugoslavia.** Likewise, the Pilot Study did not include witnesses living outside the former Yugoslavia due to reasons of logistics and funding.
- **Investigate the impact of ICTY personnel conducting these surveys on witness responses.** Trained VWS staff carried out the survey because of confidential and secured information related to witness well-being and security. It is possible that interviewees' perceptions were skewed as compared to the general population of witnesses because of the administration by VWS staff. Further research should explore whether such an approach biases responses.
- **Investigate impact of witness physical and emotional health on survey responses.** Among the most prominent reasons witnesses offered for not wishing to take part in the Pilot Study were health issues. If witnesses who were experiencing more challenges to their physical and emotional health were systematically more likely to choose not to take the survey because of these problems, then the findings here may also be skewed. Further analysis is required to determine if this poses a problem.
- **Analyze in greater depth testimony fatigue and resilience.** Witnesses testifying multiple times before tribunals may experience either fatigue or resilience as a result. The impact of this

unexplored phenomenon should be addressed by including those who have testified multiple times at both the international and local levels.

8.2 Recommendations per key areas

8.2.1 Witness background and motivations for testifying

Evaluations about witnesses' motivations for and satisfaction with testifying are crucial to ensure their full involvement and preparation in the judicial process. It is important to emphasize that interviewees were drawn from diverse demographic and ethnic backgrounds with 81 interviewees (27%) describing themselves as Croat; 78 persons describing themselves as Bosniak (27%); 95 persons (31.7%) describing themselves as Serb, 25 persons (9%) describing themselves as Albanian, and several other identities. Such diversity should enhance the generalizability of these findings. Providing witnesses with the information they needed to help understand a new and unique system of international justice, and especially their critical role in it, is an important responsibility for the ICTY, as well as all international tribunals. As expected, while a sizeable proportion of interviewees (25%) knew a great deal of information even before they testified, a greater and more substantial proportion (75%) knew a great deal or some information after the last time they testified.

Given the wartime trauma interviewees endured and the challenges of appearing before an unfamiliar court far from home, the findings indicate that witnesses care about the legal, moral, and personal implications of testifying. Regardless of demographic and ethnic diversity, and irrespective of the number or types of trials in which they appeared, a large majority of the interviewees think it is important to help judges reach an "accurate decision", as a "duty" to victims, or to "tell their story". Moreover, both OTP and Defence witnesses were about equally likely to be satisfied with their experience testifying (93% and 90%, respectively). Without the witnesses, there can be no search for justice, and this makes clear why it is critical that their encounter with international justice be a positive one.

Recommendations

- **Disseminate information to the wider witness community.** It is important to raise awareness in communities where the conflict has occurred that the process of testifying provides opportunities to contribute to transitional justice and that the experience need not be viewed as necessarily difficult or negative.

8.2.2 Human security and legal consequences

Because it is essential both for international justice and witness safety and security that witnesses testify freely and openly without fear of significant consequences, it is critical to assess how witnesses perceived their treatment by their community as a result of testifying. There is a small, but critical group of witnesses who have endured negative consequences as a result of testifying at the ICTY, and who faced challenges subsequently in their communities when they testified about the wartime events. These negative consequences range from criticism and loss of association, to economic harm and threats to their physical safety and the security of their families. Ostracism and threats to human security directly endanger justice and jeopardize prospects for reconciliation.

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, and one out of seven report contact or threats as a result of having testified. Criticism, loss of association, and threats come from a wide range of persons including those who may or may not share the ethnicity of the witness, and include the defendant and those who affiliate with him, as well as religious and community leaders. Only 22 interviewees out of those 44 who received threats contacted authorities and five noted that they moved as a result of security issues. This finding is of particular importance because it suggests that witnesses may not feel they have a safety net in their communities in the event of threats to their security. Of note is that 13% of the interviewees continue to feel some level of insecurity today, although whether this is owing to

their having testified or continuing tensions in the region, this cannot be definitively answered with the results here. Importantly, witnesses report greater levels of satisfaction with the ICTY Field Offices and local authorities regarding security concerns compared to other actors, such as attorneys and the media.

Threats to economic security also impair the ability of tribunals to carry out their mandate. Economic losses are more likely to occur after the last time a witness testified, although a smaller, but critical group continues to experience losses to the present day. While in theory witnesses have the legal right to bring civil reparations claims, only ten interviewees indicated that they did so to receive compensation against defendants who were convicted by the ICTY. It is also noteworthy that almost one out of eight interviewees has also been called to testify before the local courts due to their appearances before the ICTY. This highlights that witness involvement at the ICTY can result in further legal participation beyond what was originally anticipated at the Tribunal.

The issue of victim and witness security is one of the key issues encountered by transitional justice mechanisms. Due to the potentially serious implications of being found guilty before an international tribunal for the political and military leaders who stand trial, their governments and other regional states, as well as the international community, it is not surprising that some defendants, and most especially their supporters back home, try to prevent witnesses from testifying. Therefore, it is critical to utilize this research to determine how best to ensure witness safety and security.

Recommendations

- **Identify factors associated with witnesses that place them “at-risk.”** While witness safety and security can never be completely guaranteed, it is critical to take all reasonable steps to protect witness safety and security before, during, and after testifying and to determine which factors may place certain witnesses and their families at higher levels of security threats.
- **Strengthen local assistance and cooperation with field offices.** Witnesses indicate that the field offices offer higher levels of satisfactory resolution of security risks, thus efforts should be made to establish and develop strong relationships within the communities where the field offices are located and witnesses reside.
- **Determine measures to assist witnesses in exercising their right to reparations.** Witnesses need to be provided with information about and assistance with the legal framework, costs, and the accessibility of legal support to pursue compensation or reparations.

8.2.3 Psychological and physiological well-being

The impact of the testifying process on witnesses’ emotional and physical health continues to be dynamic. While the Pilot Study adds to the debate over the extent to which testifying has positive or negative consequences for witnesses, further research across international, regional, and local legal mechanisms is needed about the short- and long-term impact of testifying. One important caveat to the recommendations here is that the Pilot Study interviewee sample may include a more emotionally and physically resilient group of individuals than the larger witness population. As health and emotional distress were the top two reasons why some witnesses declined to participate in the Pilot Study, it is critical to determine if there is some type of selection bias occurring with more healthy witnesses being more likely to take part in surveys such as this.

Most interviewees have experienced severe forms of emotional and physical trauma as a result of their experiences during the wars of the former Yugoslavia. Certain traumas were especially prevalent, with more than two-thirds of interviewees selecting shelling, being close to death, and 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. Interestingly, while large numbers of interviewees heard stories about the range of traumatic experiences occurring during the war, there are still sizeable numbers who did not experience, witness, or even hear stories about common war events.

The consequences of dealing with the trauma on the scale the interviewees encountered create issues associated with re-traumatization while testifying, and can present substantial difficulties with obtaining closure about their war experiences. The Pilot Study's results indicated that there are also lasting emotional effects regarding these wartime events for significant numbers of interviewees. Many indicated that they often or fairly often think about loved ones they lost (37%) and events and experiences from the conflict (25%), while a number of interviewees also continue to think about the experience of testifying (33%). Interviewees 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. Interviewees indicated relatively low levels of external psycho-social support (reaching out to others close to them, seeking assistance from professionals who can help, or finding encouragement from support groups). Interestingly, when in The Hague to testify, interviewees indicated that support by VWS and being accompanied by a support person helped to alleviate distress, which leaves unanswered the question of why witnesses do not seek similar support at home upon returning from testifying.

In terms of physical health, a substantial majority of interviewees do not think their health is worse today, nor do they think it will get worse because of their having testified at the ICTY. Given the average age of the witnesses surveyed, it is not surprising that they report higher levels of stress related health problems at the time of testifying, and that today there is a reduction in the overall wellness of the interviewee group as a whole. In particular, women indicate that overall their health is not as robust as is men's, which supports other findings that women in conflict situations report higher levels of health consequences from conflict.

As for the psychological impact at the time of testifying, when interviewees reflected back, positive affect recollections surrounding the process tend to outnumber negative affect recollections. Significant numbers of interviewees reported increases in positive affect after testifying and drops in negative affect after having testified for the last time. These results are markedly similar to the on-going, internal and anonymous VWS survey that has been conducted for all witnesses appearing at the ICTY since 2009. These results also corroborate results from surveys conducted at the Special Court for Sierra Leone.

There are however indications based on the experience of VWS that some witnesses who testified on multiple occasions may experience "*testimony fatigue*". Almost one in three interviewees had testified more than once (three-fourths of those testified twice, with a small but critical number of witnesses testifying three or more times). Whether interviewees find it physically and psychologically harder to deal with the experience of testifying or if they face increased security risks given multiple appearances cannot be fully understood based on this preliminary analysis. The linkages between multiple appearances, well-being, and security in particular need further analysis as other research has shown individuals who perceive security threats are more at risk for PTSD and depression. As there is so little known about how testifying repeatedly affects witnesses, additional inquiry in this area is needed.

There are two additional findings that have an impact on the process of testifying—logistics and interpretation and the outlook witnesses have on their life both today and in the near future. First, 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). These challenges for interviewees often required additional attention from VWS. More than 50% of all interviewees indicated that receiving assistance from VWS or having a support person with them was important for reducing stress associated with testifying. Some witnesses also complained about interpretation difficulties and the accuracy of the interpretation between native speakers and the interpreters. This was particularly a concern for Albanian speakers.

In general the interviewees were optimistic about their overall life situation. More than 60% of the interviewees expressed that they were either very satisfied or satisfied with their present life situation, although only 36% expected to be satisfied with their situation in the next two to five years. Most interviewees indicated that they are satisfied or somewhat satisfied with the present state of their interpersonal relations in their community (57%), while 49% 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 have in common is dissatisfaction with the current local political situation where they reside. One should not disregard this problem as it directly influences local communities and eventually how witnesses cope with the aftermath of the war and testifying.

Recommendations

- **Standardize pre-testimony needs assessment.** There is a small number of interviewees for whom the experience of testifying was more negative. Additionally, the high levels of trauma experienced and witnessed by the interviewees during the wars, call for awareness of possible vulnerabilities and the need to address psychological, medical, logistical, and linguistic needs well in advance to minimize negative consequences. Where possible, one should consider engaging the support of local and external organizations for witnesses who require long-term assistance. Additionally, the field offices should play a critical role in this phase.
- **Raise awareness about available trauma treatments and related psychological benefits.** The unavailability of adequate support services in war-torn areas creates problems for those who are in need of such services. The survey results confirmed that interviewees who have suffered significant trauma do not tend to seek external professional help and are more inclined to internalize coping strategies. Efforts should be made to raise awareness among witnesses on the latest developments in the field of trauma treatment and redress and the organizations that can provide them with assistance. Witnesses have a wide range of needs that only one agency cannot easily address. The establishment of relevant points of contact in specific governmental and non-governmental institutions could help address the psycho-social needs of witnesses in the post-testimony period.

8.2.4 Perceptions of ICTY

The findings of this section capture poignantly interviewees' dual perspectives on international justice. On the one hand, interviewees found issues on the macro-level of performance of the ICTY, such as the duration of the trials and the punishment imposed on those convicted. On the other hand, they personally felt fairly treated by the Tribunal and felt they had personally contributed to justice and truth telling.

The Pilot Study's results indicate that despite the great demographic diversity of the interviewees, the types of trials they testified in and their motivations for doing so, they generally came away from the experience of testifying with great personal satisfaction regarding their contribution to international justice.

The majority of the interviewees believed the ICTY has helped establish the truth of what happened in the former Yugoslavia, and has determined who was responsible for committing grave crimes. However, only one third believed the ICTY has done a good job in punishing those responsible. The majority of interviewees also indicated that the proceedings have moved too slowly and that sentences where defendants entered into guilty plea agreements had not served the interests of justice. The interviewees were generally critical of sentences in the guilty plea cases, as one third believed the sentences were too lenient. It should be noted that large numbers of individuals in this section of the Pilot Study indicated they did not know, had no opinion or did not respond to these questions. As well, almost half of the interviewees indicated that they did not believe local courts are better suited to hearing the kinds of cases that have come before the ICTY.

The results further show that of all the ICTY actors, interviewees were most likely to believe they were treated fairly by the VWS, followed by Trial Chambers. There was also strong majority support for the fairness of treatment received from the OTP and Defence, regardless of who called the witness. Fair treatment by ICTY actors may have contributed to the interviewees' overall positive experience of testifying.

Recommendations

- **Provide regular updates to witnesses on important developments in the trials in which they have testified.** Given the difficulties involved in understanding the work of international tribunals, all those involved in international justice should make special efforts toward educating the public in general about the trials, and especially critical decisions and outcomes. Witnesses are especially keen to know about and understand the judgments and outcomes of the trials in which they testified. With this in mind, the practice of informing witnesses on judgments and (early) release of the convicted should be further explored.

8.3 Overall recommendations

The Pilot Study sought to provide critical insights into multiple dimensions of witness well-being in the entire context of the witness experience. While the experience of testifying is unique for every witness and influenced by diverse factors and actors, the Pilot Study aimed to arrive at generalizable and useful conclusions for practitioners, scholars and the international justice community more generally. The Pilot Study has sought to more thoroughly investigate the witness experience in a scientific fashion to better understand what it means to bear witness and how witness support structures at all tribunals may be enhanced to better serve the interests of witnesses and international justice. All of the specific findings and recommendations discussed above are further elucidated in detail in the following three areas.

8.3.1 Requirements for witness support structures in judicial settings

More than two decades ago, the VWS endeavoured to define the contours of *“support and counseling”* within an international legal institution mandated to “do justice.” There is recognition today that witness support services within international courts, like the ICTY, are an integral and a necessary part of the court structure. Interviewees appreciated and highly rated services provided by the VWS, and they confirmed that its services alleviated emotional stress and other issues related to their testifying. Further, the Pilot Study’s findings affirm that follow-up with witnesses provides invaluable insight into their on-going needs and concerns about the process of testifying and the work of the Tribunal.

It is important to address the issues that make the process of testifying fraught with the potential for adverse psychological and physiological impact. Some individuals may not possess a reservoir of psychological resolve necessary to help see them through the process, and others may have undergone particularly traumatic wartime experiences that left them more fragile. The combination of such indicators may signal that some individuals need more support or enhanced levels of counseling to have a positive experience as a witness. Related to this, interviewees indicated a range of coping strategies which alleviated the burden of testifying. The data from this Pilot Study should be used to further examine and help improve witness support programs.

The ratio of VWS staff members to witnesses and its relationship to witness well-being is of critical importance for other tribunals to study further and understand. Further analysis is needed to determine if higher levels of VWS staffing resulted in higher levels of care, greater satisfaction, and a more positive experience with the process of testifying, and perhaps the existence of better coping strategies today as a result.

Recommendations

- **Develop early on and embed witness support structures in international and national tribunals for witness assistance before, during, and after testifying.** This is necessary to ensure adequate care and assistance is provided to victims and witnesses by qualified staff members both at the seat of the court and in the field.
- **Maintain high quality staff and services for victims and witnesses.** Witness support units need witness’ feedback in a timely manner regarding ways to improve the experience for witnesses and enhance services to better meet their needs. Further inquiry should be undertaken into the

impact on staff of working with victims and witnesses in war crimes cases. Maintaining high quality services necessarily means acquiring more insight for witness support staff into adverse consequences that may follow from continued exposure to clients with high levels of trauma (such as vicarious trauma, compassion fatigue, burn out). Such insight could provide information needed for preventive interventions while ensuring the provision of quality support services to witnesses.

8.3.2 Evaluating gender

The overall number of women who testified before the ICTY is relatively small (approximately 13 percent), with disproportionate numbers represented in sexual violence cases. The Pilot Study purposely over-sampled women to ensure sufficient participation of them and it will be important in future studies to continue to ensure robust numbers of women in surveys, given that they are not called to testify nearly as frequently as men. It is also important to ensure that the contributions made by witnesses to international justice reflect the diversity of the affected populations, especially in the context of the prevalence of crimes of sexual violence. These crimes of sexual violence were frequently committed and widespread in the conflicts in the former Yugoslavia, as well as those situations investigated by other tribunals.

The Pilot Study found that there are distinctive gender differences between men and women when it comes to the experience of testifying on a number of issues, but especially the impact of testifying on their psychological and physiological health. Women have higher levels of both positive and negative affect about testifying (both before and after). Of concern is the finding that women report their health is worse than is men's both before the first time they testified and within the last three months. Women who report more health issues today are more likely to believe that their health is worse *because of* testifying.

Recommendations

- **Develop witness support policies and services that reflect evolving practices regarding gender sensitive approaches.** The needs of female witnesses may be distinctive and require additional analysis about how and why there is a disproportionate impact on women. Based on findings here and research regarding the role of gender in other post-conflict settings, practices need to be developed to reduce the adverse impact on female witnesses and strengthen women's participation in legal proceedings.
- **Assess the long-term impact of testifying in cases of sexual violence crimes.** The prosecution of wartime sexual violence has been a singular accomplishment of the ICTY. Even though women appear disproportionately in cases charging sexual violence, both men and women in the Pilot Study indicated they had been victims of sexual violence by either strangers or known acquaintances. Additional research should examine the long-term impact of testifying about sexual violence on both women *and* men.

8.3.3 Post testimony follow-up

VWS staff members conducting the interviews in the Pilot Study found that the vast majority of the witnesses interviewed supported the project and its goals, and most especially welcomed the renewed opportunity for contact. Numerous and intense—sometimes positive and sometimes negative—reactions during the participant recruitment calls gave the VWS staff members reason to believe that post-testimony contact fulfilled a need of the witnesses to share their thoughts and feelings about their experiences. Similar reactions occurred during the in-person meetings in which it seemed that many interviewees had been waiting for an opportunity to finally provide feedback. Other interviewees had needs which necessitated further support or referral. Perhaps the ultimate contribution of the Pilot Study was indicated by those interviewees who told VWS staff that the interview resulted in peace of mind and an opportunity for closure.

These observations, coupled with the higher than expected Pilot Study participation rate indicates that this type of follow-up study is important for international justice and enhancing best practices in effective witness support—something which has already been recommended by UNICRI’s report (2009). The findings here support and reinforce their recommendations about witness support as a necessary component of the process of testifying and also suggest that even longer-term evaluations of witness well-being should be conducted.

Recommendations

- **All international and national judicial institutions should develop a program of short- and long-term follow-up activities for witnesses.** These programs can be used to ascertain potential issues pertaining to security, emotional well-being, and physical health. These activities should be embedded in the post-testimony service program to provide better insight into witnesses’ needs and ensure timely actions are taken, if needed. Such programs will also ensure that witnesses will develop a better understanding of and appreciation for international justice.
- **Standardize usage of post-testimony questionnaire.** To accurately measure the impact of testifying on witnesses’ physiological and psychological health as well as their lives in general, it is essential that this type of survey (tailored to the needs of a particular conflict setting) be administered immediately after testifying through witness support structures. This will ensure that witness recollections of various logistical issues, their health, and the emotional impact of testifying, and other such measures, is as accurate as possible. There should also be a subsequent survey administered six to twelve months later to follow-up with witnesses to both ensure their health and welfare and determine if any issues or problems identified in the original survey continue or have been ameliorated. Longitudinal studies over multi-year periods would be ideal.

8.4 Concluding thoughts

This Pilot Study has sought to thoroughly and scientifically survey, analyze and understand the nature of the witness population at the ICTY and understand the impact of testifying on witnesses. It sought to contribute to an ever-growing body of research that is, at long last, seeking to document the experiences of these individuals who are often both victims and witnesses, and ultimately citizens who return to war-torn communities. As such, not only does this Pilot Study contribute to a better understanding of witnesses at the ICTY, it also helps advance knowledge about witnesses across the spectrum of international and national justice mechanisms. For international justice to function best, it is critical to ensure that support services help provide witnesses with the support they need to testify most effectively both for the sake of the witnesses themselves and the tribunals. It is also critical that practitioners and scholars understand in depth the impact of testifying on the lives of witnesses after their time in court has ended. Witnesses often represent their communities by testifying in court about events that have damaged or destroyed these communities, and they can also enlighten others in their community about the process of testifying upon their return. For all these reasons and more, it is fundamental that international justice continues to investigate and understand witnesses and the experience of bearing witness.

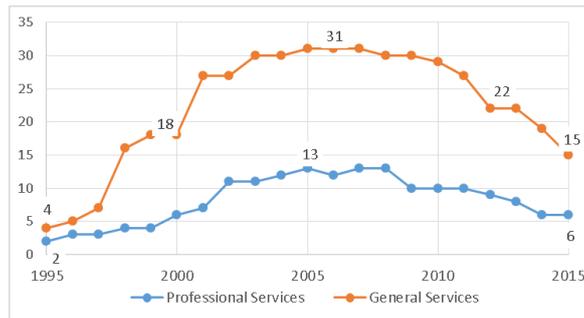
Annexes

Annex I - VWS staff and structure

VWS Staff Composition 1995-2015

Figures 1.3 and 1.4 illustrate the annual staffing numbers, as well as the witness caseload over time. While staff remained relatively stable over time, caseload ratios were rather volatile.¹⁰⁴

Figure 1.3-VWS Staff Composition 1995-2015



VWS staff categories include:¹⁰⁵

P - Professional and higher categories. Internationally recruited – requiring substantive expertise and/or managerial leadership ability, university degree for professional director level positions, also first level university degree with qualifying work experience suffices.

P5 Chief of Victims and Witnesses Section

P4 Deputy Chief of Victims and Witnesses Section

P3 Support Officer (Head of SU), Protection Officer (Head of PU), Liaison Officer (Head of OU)

P2 Associate Support Officer, Associate Protection Officer, Associate Legal Officer

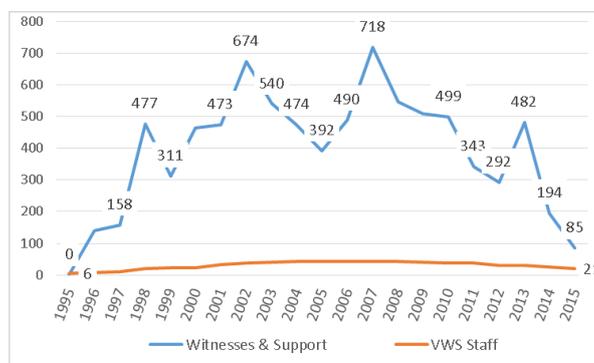
G - General Service categories. Locally recruited. Administrative, secretarial and clerical support as well as specialized technical function to support the functioning of the organisation.

G6 Senior Support Assistant, Senior Administrative Assistant

G5 Witness Support Assistant, Field Assistant, Administrative Assistant

G4 and G3 Driver

Figure 1.4 - VWS Staff/Witness Ratio-1995-2015



¹⁰⁴ Note that Figures 1.3 and 1.4 denote different total numbers annually because of: (1) funding from outside sources and other donor countries, and (2) the creation and elimination of positions during an annual cycle. Figure 1.3 contains the more comprehensive numbers, but overstates the human resources funded by and available to the ICTY.

¹⁰⁵ For more info on UN Professional and General Services staff categories see <https://careers.un.org/lbw/home.aspx?viewtype=SC>

Development of the Victims and Witnesses Section structure

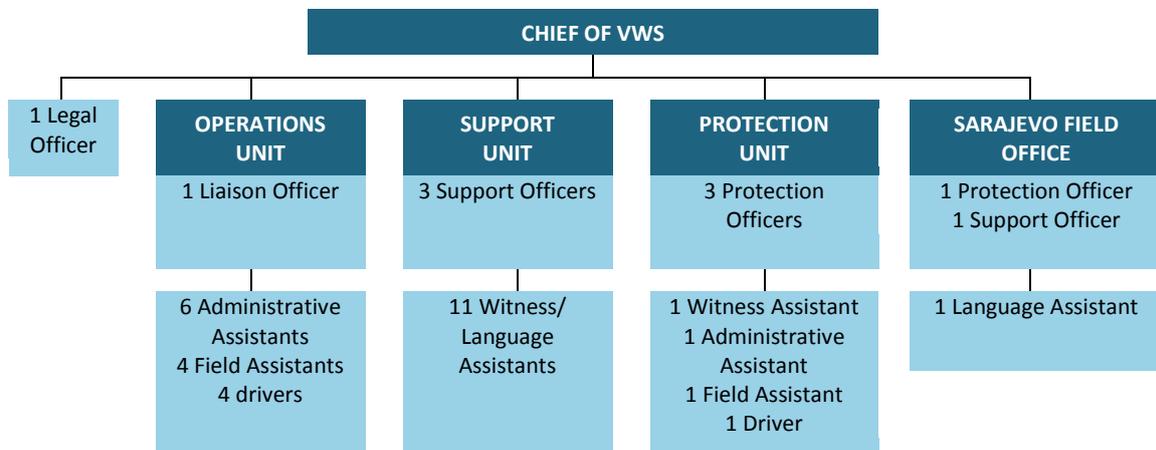
1995 -Victims and Witnesses Unit

(total number of staff 6)



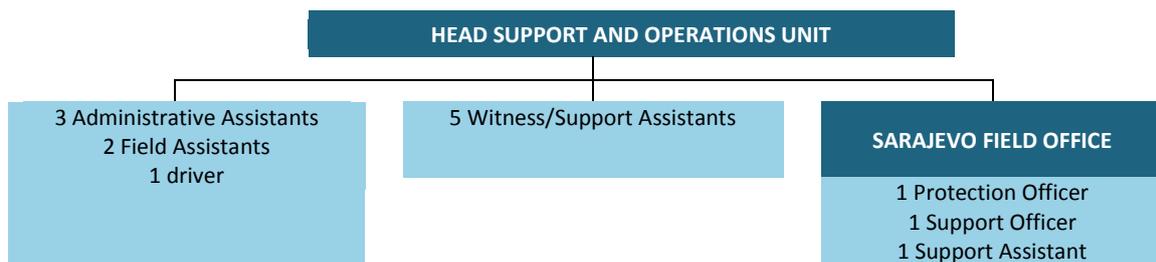
2005 -Victims and Witnesses Section

(total number of staff 41)



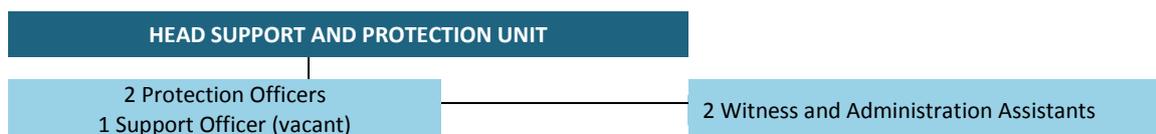
2015 -Victims and Witnesses Support and Operations Unit

(total number of staff 14)



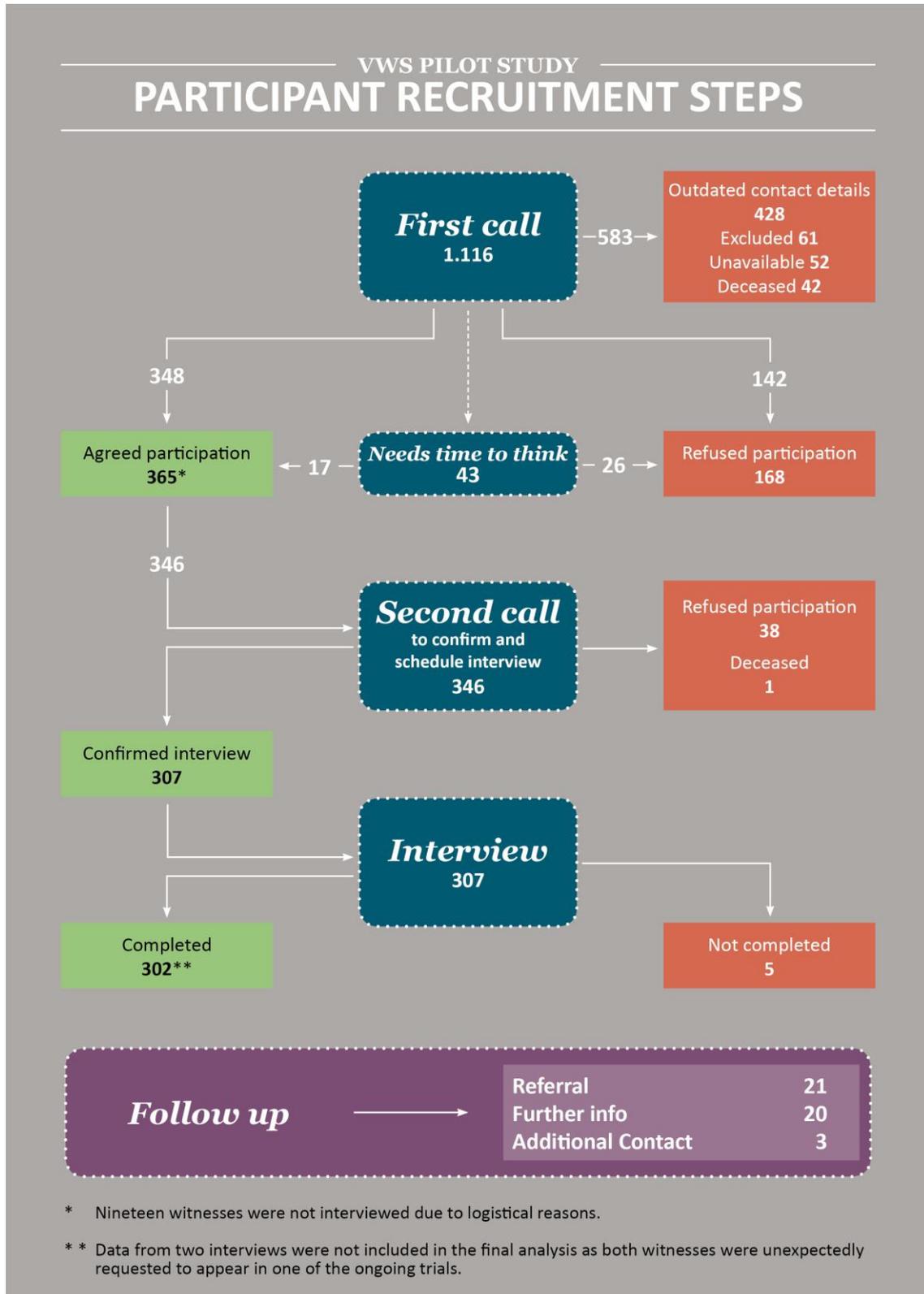
and Witness Support and Protection Unit - MICT

(total number of staff 5¹⁰⁶)



¹⁰⁶ Per April 2016 the post of MICT Support Officer was vacant. Duties and responsibilities of this post are assumed by the ICTY counterpart through “double-hatting arrangements” whereby individuals serve in both organisations. In 2014, VWS and WISP were placed within the newly created Court Support Services Section in the Registry.

Annex II - Participant recruitment steps



Annex III - Questionnaire

Anonymous ID# _____

Testimonial Impact Survey – Victims and Witnesses Section – November 2014

Basic Information

Survey Date _____ Current country of residence _____

Age _____ Gender Female Male

Education

- Less than primary education
- Primary education degree
- Vocational education/trade school degree
- Secondary school or high school degree
- Two-year or associate degree
- College or university degree
- Masters degree
- Specialist training
- Ph.D.

Ethnicity _____ (optional) Religion _____ (optional)

Are you an ethnic or religious minority in the community where you are now living?

Yes No Do not know

Are there any mixed ethnic marriages in your immediate family (parents, intimate partners, siblings, or children)?

Yes No Do not know

The following questions relate to background information on your testimony at the ICTY

A1. Were you subpoenaed to appear at the ICTY? Yes No Do not remember

A2. Were any of your travel dates re-scheduled? Yes No Do not remember

A3. I had sufficient time to prepare for my testimony *before the first time* I testified at the ICTY.

Strongly Agree Agree Not Sure Disagree Strongly Disagree

A4. The process of testifying was adequately explained to me so I could understand what would happen when I testified *for the first time*.

Strongly Agree Agree Not Sure Disagree Strongly Disagree

A5. I was satisfied with the information and assistance I received from the VWS *before the first time* I testified.

Strongly Agree Agree Not Sure Disagree Strongly Disagree

A6. How much did you know about the work of the ICTY *before the first time* you testified?

A great deal of information Some information Little information Nothing at all

A7. How much did you know about the work of the ICTY *after the very last time* you testified?

A great deal of information Some information Little information Nothing at all

A8. Were you called to testify for the national courts *because* you testified at the ICTY?

- Yes, I was called & *yes* I testified.
 Yes I was called, but *no* I did not testify.
 No, I was not called, and I did not testify.
 Do Not Remember
 Other _____

A9. Did you initiate a civil case for reparation in your country based on the ICTY sentence in the case where you testified?

- Yes No Do not wish to answer Do Not Remember

The following questions relate to your reasons for participating in the legal proceedings before the ICTY.

A10. I believe it was important for me to testify to help the judges reach an accurate decision.

- Strongly Agree Agree Not Sure Disagree Strongly Disagree

A11. I believe it was important for me to testify because I wanted to confront the defendant(s) in court.

- Strongly Agree Agree Not Sure Disagree Strongly Disagree

A12. I believe it was important for me to testify because I wanted to tell my story.

- Strongly Agree Agree Not Sure Disagree Strongly Disagree

A13. I believe it was important for me to testify so I could put the events from the wars in the Former Yugoslavia behind me.

- Strongly Agree Agree Not Sure Disagree Strongly Disagree

A14. I believe it was important for me to testify because I had an obligation to speak for the dead.

- Strongly Agree Agree Not Sure Disagree Strongly Disagree

A15. I believe it was important for me to testify because I do not want the war events in the former Yugoslavia to ever happen to anyone else.

- Strongly Agree Agree Not Sure Disagree Strongly Disagree

A16. I believe it was important to testify as a moral duty towards all victims of the war.

- Strongly Agree Agree Not Sure Disagree Strongly Disagree

A17. I testified despite the fact that my family and friends did not want me to testify.

- Strongly Agree Agree Not Sure Disagree Strongly Disagree

A18. I felt pressured to testify because I was concerned that legal action might be taken against me if I refused.

- Strongly Agree Agree Not Sure Disagree Strongly Disagree

A19. If you had different reasons to testify please explain. Other:

A20a. When you think of the reasons why you testified, are you satisfied with your testimony?

- Yes No No opinion

A20b. If you answered *Yes* or *No*, please briefly summarize reasons why you are either satisfied or dissatisfied with the reasons you testified.

| |
|------------------------------|
| Socio-economic Impact |
|------------------------------|

The following questions are to help us understand the impact that your testimony has had on your socio-economic situation.

B0a. Relationship Status

- Single
 In a relationship
 Married
 Divorced
 Widowed

B0b. Did any of your testimony at the ICTY have an impact on your intimate relationships?

- Yes, positive Yes, negative No Do not know

B0c. If Yes, please explain

B1a. I believe I was *criticized* because of my engagement with the ICTY.

- Yes No Not Sure No opinion

B1b. If you answered *Yes*, please indicate all of the individuals or groups of persons who you believe *criticized you personally* as a result of your engagement with the ICTY. (check all that apply)

- Immediate family (parents, intimate partners, siblings, or children)
 Extended family members
 Friends
 Neighbors
 Employers
 Co-workers
 Defendant(s)
 Family of the defendant(s)
 Friends of the defendant(s)
 Politicians
 State employees
 Religious leaders
 Community leaders
 Persons *of my own* ethnicity
 Persons *of my* religion
 Persons *who are not* of my own ethnicity
 Persons *who are not* of my religion
 Other _____

B2a. There are some people who *do not associate/interact* with me because of my testimony.

- Yes No Not Sure No opinion

B2b. If you answered *Yes*, please indicate all of the individuals or groups of persons who you believe *do not associate* with you as a result of your testimony. (check all that apply)

- Immediate family (intimate partner(s), parents, siblings, or children)
- Extended family members
- Friends
- Neighbors
- Employers
- Co-workers
- Defendants
- Family of the defendant(s)
- Friends of the defendant(s)
- Politicians
- State employees
- Religious leaders
- Community leaders
- Persons *of my own* ethnicity
- Persons *of my* religion
- Persons *who are not of my own* ethnicity
- Persons *who are not of my own* religion
- Other _____

B3a. *During the time(s)* of your testimony at the ICTY, did you or your family members have any change(s) in your economic livelihood (work, employment) *because of your testimony* at the ICTY?

- Positive change(s)
- No change(s)
- Negative change(s)
- Both positive and negative change(s)
- Not sure

B3b. If you answered that there were any *positive or negative* changes in B3a, please check all that apply.

- Wages/Salaries/Income
- Opportunities for additional income
- Opportunities with possible business partners
- Seasonal work
- Livestock
- Agrarian assets
- Property
- Government intervention with your livelihood
- Educational opportunities
- Other _____

B4a. *After you testified for the last time* at the ICTY, was there a change in your or your family's economic livelihood (work, employment) *because of your testimony* at the ICTY?

- Positive change(s)
- No change(s)
- Negative change(s)
- Both positive and negative change(s)
- Not sure

B4b. If you answered that there was any *positive or negative* change in B4a please check all that apply).

- Wages/Salaries/Income
 Opportunities for additional income
 Opportunities with possible business partners
 Seasonal work
 Livestock
 Agrarian assets
 Property
 Government intervention with your livelihood
 Educational opportunities
 Other _____

B5a. Are you or your family experiencing change(s) to your economic livelihood today *because of your testimony* at the ICTY?

- Positive change(s)
 No change(s)
 Negative change(s)
 Both positive and negative change(s)
 Not sure

B5b. If you answered that there are currently *positive or negative* change(s) in B5a, please check all that apply.

- Wages/Salaries/Income
 Opportunities for additional income
 Opportunities with possible business partners
 Seasonal work
 Livestock
 Agrarian assets
 Property
 Government intervention with your livelihood
 Educational opportunities
 Other _____

B5c. What was your occupation *before the first time* you testified for the ICTY?

- _____
 Unemployed
 I prefer not to respond

B5d. What is your occupation *today*?

- _____
 Unemployed
 I prefer not to respond.

B6a. Were you satisfied with the financial entitlements provided from the ICTY *during the time of your testimony*?

- Yes No Not Sure No opinion Do not remember

B6b. If you answered *No*, please explain

B7a. If you have testified in more than one ICTY trial, did you notice any difference or changes in how your testimonies impacted your social and economic situation?

- Yes No No opinion I did not testify in more than one trial

B7b. If you answered *Yes*, please briefly explain.

| |
|------------------------|
| Security Impact |
|------------------------|

The following questions are designed to better understand the impact of how secure you feel as a result of your testimonial process.

C1. Were you contacted before your testimony and asked *not* to testify by someone?

Yes No Not Sure

C2. Was anyone in your family contacted or told to tell you *not* to testify?

Yes No Not Sure

C3a. Were any threats made against you warning you *not* to testify?

Yes No Not Sure

C3b. Did you receive *verbal* threats as a result of any of your testimony at the ICTY?

Yes No Not Sure

C3c. Did you receive *physical* threats as a result of any of your testimony at the ICTY?

Yes No Not Sure

If you answered “No” to *all* questions C1-C3 (a-c) then skip to C4.

C3d. If you answered *Yes* to any of the above questions regarding threats, who do you think was responsible for these threats? (check all that apply)

- Immediate family (intimate partners, parents, siblings, or children)
- Extended family members
- Friends
- Neighbors
- Employers
- Co-workers
- Defendants
- Family of the defendant(s)
- Friends of the defendant(s)
- Politicians
- State employees
- Religious leaders
- Community leaders
- Persons *of my own* ethnicity
- Persons *of my* religion
- Persons *who are not* of my ethnicity
- Persons *who are not* of my religion
- Other _____

C3e. If you received threats, how were threats made to you? (check all that apply)

- Telephone calls
- Email
- In person
- In written notes
- In the mail
- Graffiti
- Other _____

C3f. If you answered “Yes” to any of the above questions regarding threats, did you ever contact authorities?

Yes No Not Sure

C3g. If you answered “No” and you did *not* contact authorities, can you please indicate why you did not and then skip to C4.

C3h. Please check all of the following whom you contacted as a result of any threats you received related to testifying for the ICTY.

- ICTY Victims and Witnesses Section in The Hague
 Victims and Witnesses Section in the Sarajevo Field Office
 Local Police
 Lawyer
 Victims’ Group or Associations
 Non-governmental Organization
 Media
 Co-workers
 Religious personnel
 ICTY Prosecutor
 ICTY Defence
 Other _____

C3i. How satisfied were you with the final action taken by the authorities regarding your complaints about threats?

- Very unsatisfied Unsatisfied No opinion Satisfied Very satisfied

C4. In your opinion, has any of the following happened to you as a result of your decision to testify at the ICTY?

- Vandalism where I live
 Vandalism where I work
 Damage to my place of worship
 Harm or injury to myself
 Harm or injury to my family
 Other damage to property
 Harm or injury to my friends
 Other _____
 None of the above

C5a. If you testified in more than one ICTY trial, did you notice any differences or changes in how your testimonies impacted your security?

- Yes No No Opinion I did not testify in more than one trial

C5b. If Yes, please explain.

C6a. Did you ever *request* protective measures for your testimony?

- Yes No Do not remember

If answer is “No” then skip to C9.

C6b. If Yes, which protective measures did you *request*? (check all that apply)

- Pseudonym Voice distortion Face distortion Closed session Do not remember

C7a. Were the protective measures granted?

- Yes No Do not remember

C7b. If protective measures were not granted, did you testify voluntarily?

- Yes, I testified voluntarily
 No, I was subpoenaed to testify
 I did not testify
 Do not remember
 Other _____

C7c. If you answered *Yes* protective measures were granted, did the protective measures help you feel more secure *during the time(s)* you testified

- Strongly Agree Agree Not Sure Disagree Strongly Disagree

C7d. If you answered *Yes* protective measures were granted, did the protective measures help you feel more secure *immediately after* you returned home following your testimony?

- Strongly Agree Agree Not Sure Disagree Strongly Disagree

C8a. Did you ever agree to any change to protective measures that were previously granted?

- Yes, augmentation
 Yes, variation
 Yes, rescission
 No
 Do not remember

C8b. If you answered *Yes*, please explain why you agreed to do so.

C9. *Overall*, how secure have you felt in the last six months?

- Very Insecure Somewhat Insecure No opinion Somewhat Secure Very Secure

C10a. Have you moved temporarily or permanently *within your own country* since your testimony?

- Yes No Not Sure

If you answered “*No*” to question C10a then skip to C11a.

C10b. If you answered *Yes* to moving temporarily or permanently *to another location in your country*, how many times did you move? _____

C10c. If you answered *Yes* to moving temporarily or permanently *to another location in your country*, how important was it that you had testified before the ICTY when you made your decision to re-locate?

- Not Important Somewhat Important Important Very Important

C10d. If you answered *Yes* to moving temporarily or permanently *to another location in your country*, why did you re-locate? (check all that apply)

- Similar culture
 Ethnic similarity
 Better job opportunity
 Be with family
 Security
 Economic conditions
 Health & climate
 Start a new life
 Other _____

C11a. Have you moved to temporarily or permanently *to another country* since your testimony?

- Yes No Not Sure

If you answered “No” to question C11a then skip to D1.

C11b. If you answered Yes you have moved temporarily or permanently to another country, to which country have you moved?

C11c. If you answered Yes you have moved temporarily or permanently to *another country*, how important was it that you had testified before the ICTY when you made your decision to re-locate?

- Not important Somewhat important Important Very important

C11d. If you answered Yes you have moved temporarily or permanently to another country, why did you re-locate to that country? (check all that apply)

- Similar culture
- Ethnic similarity
- Better job opportunity
- Be with family
- Security
- Economic conditions
- Health & climate
- Start a new life
- To be far away from region where wars occurred
- Other _____

Impact on Physical & Psychological Health

The following questions are designed to better understand the impact of testifying on your physical and psychological well-being.

D1. In general, how would you describe your health *after the war and before the first time* you testified for the ICTY?

- Excellent
- Very Good
- Good
- Fair
- Poor
- Very Poor

D2. Which of the following health issues did you have *after the war and before you testified* at the ICTY *for the first time?* (check all that apply)

- Headaches
- Toothache
- Vision problems
- Sweats and hot flashes
- Feeling cold
- High cholesterol
- Arthritis
- Diabetes
- Carcinoma
- Strokes
- High blood pressure
- Wounds related to shelling
- Using alcohol more than usual
- Using substances and drugs (such as pills, prescriptions, etc.) more than usual
- Insomnia and/or nightmares
- Neurological problems and memory issues
- Mobility and dexterity issues (being able to move around and to manipulate objects)
- Lung problems (shortness of breath, trouble breathing)
- Heart problems due to heart attacks or heart surgery, angina pectoris, etc.
- Anxiety attacks
- Other _____
- None of the above

D3. Which of the following health issues did you have *in the last three months*? (check all that apply)

- Headaches
- Toothache
- Vision problems
- Sweats and hot flashes
- Feeling cold
- High cholesterol
- Arthritis
- Diabetes
- Carcinoma
- Strokes
- High blood pressure
- Wounds related to shelling
- Using alcohol more than usual
- Using substances and drugs (such as pills, prescriptions, etc.) more than usual
- Insomnia and/or nightmares
- Neurological problems and memory issues
- Mobility and dexterity issues (being able to move around and to manipulate objects)
- Lung problems (shortness of breath, trouble breathing)
- Heart problems due to heart attacks or heart surgery, angina pectoris, etc.
- Anxiety attacks
- Other _____
- None of the above

D4. How would you describe your health *in the last three months*?

- Very Poor Poor Fair Good Very Good Excellent

D5. Do you think your health is worse today because you testified before the ICTY?

- Strongly agree Agree No opinion Disagree Strongly Disagree

D6. I seem to get sick a little easier than other people.

- Definitely True Mostly True Don't Know Mostly False Definitely False

D7. I am as healthy as anybody I know.

- Definitely True Mostly True Don't Know Mostly False Definitely False

D8. I expect my health to get worse because of the stress caused by the testimonial process at ICTY.

- Definitely True Mostly True Don't Know Mostly False Definitely False

The following questions are about your emotional well-being.

D9. Please indicate all of the emotions on the following list which describe how you felt about your testimony *right before you entered the courtroom to testify for the very first time* at the ICTY. (check all that apply)

- Angry
- Anxious
- Ashamed
- Betrayed
- Confident
- Confused
- Cooperative
- Courageous
- Embarrassed
- Energetic
- Exhausted
- Panicked
- Fulfilled
- Guilty
- Happy
- Hopeful
- Indifferent
- Inspired
- Lonely
- Obligated
- Overwhelmed
- Positive
- Powerful
- Powerless
- Proud
- Regretful
- Relieved
- Sad
- Satisfied
- Scared
- Strong
- Tense
- Tired
- Vindicated
- Other _____
- None of above

D10. Please indicate all of the emotions on the following list which describe how you felt about testifying *immediately after you testified for the very last time* at the ICTY. (check all that apply).

- Angry
- Anxious
- Ashamed
- Betrayed
- Confident
- Confused
- Cooperative
- Courageous
- Embarrassed
- Energetic
- Exhausted
- Panicked
- Fulfilled
- Guilty
- Happy
- Hopeful
- Indifferent
- Inspired
- Lonely
- Obligated
- Overwhelmed
- Positive
- Powerful
- Powerless
- Proud
- Regretful
- Relieved
- Sad
- Satisfied
- Scared
- Strong
- Tense
- Tired
- Vindicated
- Other _____
- None of the above

D11. Did you experience any of the following during *any of the times* you testified when you were on the witness stand. (check all that apply)

- Fainting
- Crying
- Emotional distress
- Headache
- Shortness of breath
- Hearing problems
- Loss of vision
- Dry mouth
- Panic attack
- Nausea
- Diarrhea
- Heart palpitations
- Other _____
- None of the above

D12. If you testified in more than one ICTY trial, did your symptoms change with the number of times you testified?

- Yes, they increased
- Yes, they decreased
- No, they did not change
- Do not remember
- I did not testify in more than one trial

D13. Did any of the following *relieve* physical or psychological issues you experienced *during the period(s)* you testified for the ICTY. (check all that apply)

- Having a support person (***other than someone from the Victims and Witnesses Section***)
- Having a rest period or break
- Recreational activities
- Receiving assistance from Victims and Witnesses Section personnel
- Talking with family (on the phone or in person)
- Limiting the length of my stay
- Increasing the length of my stay
- Postponement of my court appearance
- Seeing a doctor
- Having a therapy session with a counselor or social worker
- Speaking with someone who could help me better understand everything about the process of testifying
- Being more comfortable with the testimonial process because I had gone through it before
- Thinking, “no matter how hard this is, this has to be done.”
- Thinking “I survived worse than this.”
- Seeking support from my family
- Talking to friends (on the phone or in person)
- Talking to co-workers
- Writing my thoughts and concerns down
- Seek help from my faith or from religious persons
- Concentrating on the immediate tasks
- Concentrating on taking it one day at a time
- Focusing on my achievements
- Using alcohol more than usual
- Using substances and drugs (such as pills, prescriptions, etc.) more than usual
- Using tobacco products (e.g. cigarettes, cigars, etc.) more than usual
- Drinking more caffeine than usual
- Using humor
- Avoiding situations that remind me of difficult experiences
- Keeping my thoughts and comments to myself
- Other _____
- None of the above

D13a. Did you have a support person with you during the process of testifying for the Tribunal? (other than someone from the Victims and Witnesses Section).

- Yes No Do Not Remember Other

If your answer is “No” to D13a, then skip to D14.

D13b. Who was your support person? (check all that apply)

- Child(ren)
- Spouse/Intimate partner
- Mother/Father
- Sibling
- Friend
- Other family _____ (please specify their relationship to you)
- Other _____ (please specify their relationship to you)

D13c. Where was your support person while you testified? (check all that apply)

- At the hotel
- In the courtroom
- In the gallery
- In the waiting room
- Other _____

D14. Were there any other issues associated with giving testimony that made the process more difficult *during the period(s)* you testified for the ICTY?

- Long waiting periods
- Delays of my testimony
- Postponement/rescheduling of my testimony
- Being away from my home
- Being away from my family
- Being away from my friends and support groups
- The lengths of proofing
- Concerns about safety and security
- Concerns about the consequences of testifying
- Presence of other witnesses in the hotel
- Other _____
- None of the above

D14a. Were there any issues associated with testifying in a multilingual environment that made the testimonial process more difficult *during the court proceedings* before the ICTY? (check all that apply).

- Differences between the language spoken by the interpreter and me
- Difficulty because interpreter's voice was male
- Difficulty because interpreter's voice was female
- Difficulty speaking slowly enough for interpretation
- Difficulty because interpreter spoke too quickly
- Difficulty in hearing the interpretation because of multiple people talking at once
- Interpretation did not accurately reflect my words / meanings
- Difficulty caused by delays in the simultaneous interpretation process
- Difficulty because interpreters change every half an hour
- Difficulty in understanding what the interpreter was saying
- Difficulty in hearing clearly what the interpreter was saying
- Difficulty in focusing on testimony because the interpretation process was distracting
- Difficulty in focusing on testimony because the real-time transcript or exhibit on the screen in front of me was distracting
- Other _____
- None of the above

D15. *Overall* how satisfied are you with your *present* situation in life (e.g. work, family, living circumstances, etc.)?

- Very Satisfied
- Satisfied
- Somewhat Satisfied
- Neutral
- Somewhat Unsatisfied
- Unsatisfied
- Very Unsatisfied
- I do not know

D16. *Overall* how satisfied are you with your *present* economic circumstances (e.g. your income, your cost-of-living, etc.)?

- Very Satisfied
- Satisfied
- Somewhat Satisfied
- Neutral
- Somewhat Unsatisfied
- Unsatisfied
- Very Unsatisfied
- I do not know

D17. *Overall* how satisfied are you with the *present* political situation in the country where you are currently living?

- Very Satisfied
- Satisfied
- Somewhat Satisfied
- Neutral
- Somewhat Unsatisfied
- Unsatisfied
- Very Unsatisfied
- I do not know

D18. *Overall* how satisfied are you with the *present* interpersonal relationships in your local community where you are currently living?

- Very Satisfied
- Satisfied
- Somewhat Satisfied
- Neutral
- Somewhat Unsatisfied
- Unsatisfied
- Very Unsatisfied
- I do not know

D19. *Overall* how satisfied do you think you will be with your situation in life *in the next 2-5 years* (e.g. work, family, living circumstances, etc.)?

- Very Satisfied
- Satisfied
- Somewhat Satisfied
- Neutral
- Somewhat Unsatisfied
- Unsatisfied
- Very Unsatisfied
- I do not know

D20. *Overall* how satisfied do you think you will be with your economic circumstances *in the next 2-5 years* (e.g. your income, your cost-of-living, etc.)?

- Very Satisfied
- Satisfied
- Somewhat Satisfied
- Neutral
- Somewhat Unsatisfied
- Unsatisfied
- Very Unsatisfied
- I do not know

D21. *Overall* how satisfied do you think you will be with the political situation in the country where you are living *in the next 2-5 years*?

- Very Satisfied
 Satisfied
 Somewhat Satisfied
 Neutral
 Somewhat Unsatisfied
 Unsatisfied
 Very Unsatisfied
 I do not know

D22. *Overall* how satisfied do you think you will be with your interpersonal relationships in your local community *in the next 2-5 years*?

- Very Satisfied
 Satisfied
 Somewhat Satisfied
 Neutral
 Somewhat Unsatisfied
 Unsatisfied
 Very Unsatisfied
 I do not know

D23. Were there other psychological or physical issues that you have experienced related to your ICTY testimony that you think important for ICTY personnel to know about?

D24. The following questions are about your experiences during the wars in the former Yugoslavia. This information helps to better understand how what you went through has an impact on you today, but some questions are upsetting. If so, please feel free not to answer. All answers are confidential. Please check any and all of the following you may have experienced, witnessed, or heard regarding the following types of events during the wars in the former Yugoslavia. You may choose as many answers as are applicable to your situation.

Experienced – means that the action in the question below was something which you had direct contact with and personally *experienced* during the wars in the former Yugoslavia.

Witnessed – means that that the action in the question below was something which you had direct contact with and personally *witnessed* during the wars in the former Yugoslavia.

Heard stories – means that that the action in the question below was something which you *heard stories* about from other people during the wars in the former Yugoslavia, but that you neither personally experienced, nor witnessed.

None – means that the action in the question below was not anything that you personally experienced, witnessed, nor heard stories about during the wars in the former Yugoslavia.

D24a. Lack of food or water

- Experienced Witnessed Heard stories None

D24b. Ill health without access to medical care

- Experienced Witnessed Heard stories None

D24c. Lack of shelter

- Experienced Witnessed Heard stories None

D24d. Imprisonment

 Experienced Witnessed Heard stories None

D24e. Detention (camp, building, residence, etc.)

 Experienced Witnessed Heard stories None

D24f. Serious injury

 Experienced Witnessed Heard stories None

D24g. Combat situation

 Experienced Witnessed Heard stories None

D24h. Rape or sexual abuse by stranger

 Experienced Witnessed Heard stories None

D24i. Rape or sexual abuse by familiar person

 Experienced Witnessed Heard stories None

D24j. Physical assault by stranger

 Experienced Witnessed Heard stories None

D24k. Physical assault by familiar person

 Experienced Witnessed Heard stories None

D24l. Mine explosion

 Experienced Witnessed Heard stories None

D24m. Ethnic cleansing

 Experienced Witnessed Heard stories None

D24n. Forced isolation from others

 Experienced Witnessed Heard stories None

D24o. Being close to death

 Experienced Witnessed Heard stories None

D24p. Forced separation from family members

 Experienced Witnessed Heard stories None

D24q. Family, friends, and relatives went missing

 Experienced Witnessed Heard stories None

D24r. Murder of family or friend or acquaintances

 Experienced Witnessed Heard stories None

D24s. Unnatural death of family or friend (suicide, accident, etc.)

 Experienced Witnessed Heard stories None

D24t. Murder of stranger or strangers

 Experienced Witnessed Heard stories None

D24u. Kidnapped

 Experienced Witnessed Heard stories None

D24v. Torture

 Experienced Witnessed Heard stories None

D24w. Exposed to propaganda

 Experienced Witnessed Heard stories None

D24x. Subject to psychological abuse

 Experienced Witnessed Heard stories None

D24y. Any other situation that was very frightening or you felt your life was in danger

 Experienced Witnessed Heard stories None

D24z. Any situation where artillery fire or shelling occurred

 Experienced Witnessed Heard stories None

D24aa. Other: _____

 Experienced Witnessed Heard stories None

D24ab. Other: _____

 Experienced Witnessed Heard stories None

D24ac. Other: _____

 Experienced Witnessed Heard stories None

The following are symptoms people have after experiencing hurtful or terrifying events in their lives. Please read carefully and decide how much the symptoms bothered you in the *last six months*.

D25. Sudden emotional or physical reaction when reminded of the most hurtful or traumatic events

 Never Almost Never Some-times Fairly Often Very Often

D26. Feeling that people do not understand what happened to you

 Never Almost Never Some-times Fairly Often Very Often

D27. Difficulty performing work or daily tasks

 Never Almost Never Some-times Fairly Often Very Often

D28. Blaming yourself for things that have happened

 Never Almost Never Some-times Fairly Often Very Often

D29. Feeling guilty for having survived

 Never Almost Never Some-times Fairly Often Very Often

D30. Feeling hopelessness

 Never Almost Never Some-times Fairly Often Very Often

D31. Feeling ashamed because of the traumatic events

 Never Almost Never Some-times Fairly Often Very Often

D32. Spending time thinking about why these events happened to you

 Never Almost Never Some-times Fairly Often Very Often

D33. Feeling as if you were going crazy

 Never Almost Never Some-times Fairly Often Very Often

D34. Feeling that you are the only one who suffered these events

 Never Almost Never Some-times Fairly Often Very Often

D35. Feeling others are hostile toward you

Never Almost Never Some-times Fairly Often Very Often

D36. Feeling that you have no one to rely on

Never Almost Never Some-times Fairly Often Very Often

D37. Finding out or being told by other people that you have done something you cannot remember

Never Almost Never Some-times Fairly Often Very Often

D38. Feeling as if you are split into two people and one of you is watching what the other is doing

Never Almost Never Some-times Fairly Often Very Often

D39. Feeling someone you trusted has betrayed you

Never Almost Never Some-times Fairly Often Very Often

D40. Feeling that you are unable to put the events and experiences of the conflict in the Former Yugoslavia out of my mind

Never Almost Never Some-times Fairly Often Very Often

D41. Feeling that you are unable to put the events and experiences about testifying out of my mind

Never Almost Never Some-times Fairly Often Very Often

D42. Feeling that you are unable to stop thinking about the persons I lost during the wars in the Former Yugoslavia.

Never Almost Never Some-times Fairly Often Very Often

Please indicate how frequently the following statements apply to you when you are dealing with a difficult situation in your everyday life.

D43. No matter how hard this is, this has to be done.

Never Almost Never Some-times Fairly Often Very Often

D44. I survived worse than this.

Never Almost Never Some-times Fairly Often Very Often

D45. I seek professional help from my psychologist/psychiatrist.

Never Almost Never Some-times Fairly Often Very Often

D46. I seek help from the doctor.

Never Almost Never Some-times Fairly Often Very Often

D47. I seek help from my family.

Never Almost Never Some-times Fairly Often Very Often

D48. I seek help from friends.

Never Almost Never Some-times Fairly Often Very Often

D49. I seek help from support groups, such as victims and survivor groups.

Never Almost Never Some-times Fairly Often Very Often

D50. I seek support through faith.

Never Almost Never Some-times Fairly Often Very Often

D51. I seek help from test.

Never Almost Never Some-times Fairly Often Very Often

D52. I concentrate on taking it one day at a time.

Never Almost Never Some-times Fairly Often Very Often

D53. I focus on my achievements.

Never Almost Never Some-times Fairly Often Very Often

D54. I drink alcohol.

Never Almost Never Some-times Fairly Often Very Often

D55. I use prescription, non-prescription or other types of drugs.

Never Almost Never Some-times Fairly Often Very Often

D56. I use tobacco products (e.g. cigarettes, cigars, etc.).

Never Almost Never Some-times Fairly Often Very Often

D57. I use caffeine more than usual.

Never Almost Never Some-times Fairly Often Very Often

D58. I use humor.

Never Almost Never Some-times Fairly Often Very Often

D59. I avoid situations that remind me of difficult experiences.

Never Almost Never Some-times Fairly Often Very Often

D60. I keep silent and keep it for myself alone.

Never Almost Never Some-times Fairly Often Very Often

D61. Please indicate other coping skills you have used and how frequently you have done so

Other _____

Never Almost Never Some-times Fairly Often Very Often

Other _____

Never Almost Never Some-times Fairly Often Very Often

Other _____

Never Almost Never Some-times Fairly Often Very Often

Impact of the ICTY

The following statements relate to your perception of the ICTY.

E1. I believe that *in general* the ICTY has done a good job in **establishing the truth** about what happened in the former Yugoslavia.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No Opinion
- Do Not Know

E2. I believe that *in general* the ICTY has done a good job in **determining** who was responsible for the grave crimes committed in the former Yugoslavia.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

E3. I believe that *in general* the ICTY has done a good job in **punishing** those responsible for the grave crimes committed the former Yugoslavia.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

E4. I believe that *in general* the ICTY will help in **preventing** grave crimes from occurring again in the former Yugoslavia.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

E5. I believe that the local courts are better suited to handling these types of cases than international courts.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

E6. I believe that *in general* the work of the ICTY proceedings has moved too slowly.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

E7. I believe that the guilty pleas made by some defendants have not served the interests of justice.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

E8. When I think of guilty plea cases, I believe that *in general* the prison sentences given at the ICTY in such cases have been

- Too Lenient
- About right
- Too Severe
- No Opinion
- Do Not Know

E9. I believe that *in general* the prison sentences given to the guilty at the ICTY have been

- Too Lenient
- About right
- Too Severe
- No Opinion
- Do Not Know

E10. What impact do you think that *international* politics have had on the work of the ICTY?

- Very Negative Influence
- Mostly Negative Influence
- Somewhat Negative Influence
- No Influence
- Not Sure
- Somewhat Positive Influence
- Mostly Positive Influence
- Very Positive Influence
- No opinion
- Do Not Know

E11. What impact do you think that *local* politics have had on the work of the ICTY?

- Very Negative Influence
- Mostly Negative Influence
- Somewhat Negative Influence
- No Influence
- Not Sure
- Somewhat Positive Influence
- Mostly Positive Influence
- Very Positive Influence
- No opinion
- Do Not Know

E12. *In general*, I believe the ICTY has treated defendants *of my own ethnicity* fairly.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

E13. *In general*, I believe the ICTY has treated defendants who are *not of my own ethnicity* fairly.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

E14. *In general*, I believe that the ICTY has treated witnesses *of my own ethnicity* fairly.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

E15. *In general*, I believe that the ICTY has treated witnesses who are *not of my own ethnicity* fairly.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

E16. *Overall*, reflecting back on my entire testimony I believe that my testimony at the ICTY contributed to providing justice.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

E17. *Overall*, reflecting back I believe that my testimony at the ICTY has contributed to the discovery of the truth about the wars in the former Yugoslavia.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

E18. Overall, I believe I was treated fairly by the trial chamber judges.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

Please explain briefly _____

E19. Overall, I believe that I was treated fairly by the Office of the Prosecutor.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

Please explain briefly _____

E20. Overall, I believe that I was treated fairly by the Defence counsel.

- Strongly agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

Please explain briefly _____

E21. Overall, I believe that I was treated fairly by the Victims and Witnesses section.

- Strongly Agree
- Agree
- Not Sure
- Disagree
- Strongly Disagree
- No opinion
- Do Not Know

Please explain briefly _____

Open Ended Questions

The following open-ended questions are to obtain important feedback about your experiences in testifying at the ICTY, and it will be useful for future witnesses and tribunals. Statements are audio recorded, but your identities are protected. The tapes will be destroyed after notes are taken, so no one will ever hear your tape.

- 1) Could you describe what the experience of testifying for you personally, in your life, means or has meant to you? Please indicate any positive and negative aspects that have left an impact on you.
- 2) What advice would you give to help future witnesses at war crimes trials prepare for and cope with the process of testifying?
- 3) What would you change about the proceedings or the process of testifying?

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Echoes of Testimonies

The Victims and Witnesses Section (VWS) of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Castleberry Peace Institute of the University of North Texas (UNT) together conducted a **pilot study into the long-term impact of testifying on witnesses who were called to testify before the ICTY**. Key areas explored included reasons for testifying; socio-economic impact of testifying; security concerns; physical and psychological well-being, and perceptions about justice and the ICTY.

Between 2013 and 2015, the VWS conducted interviews with 300 fact witnesses. The sample comprised 47 women and 253 men across a broad geographic area in Bosnia and Herzegovina, Croatia, Kosovo and Serbia. To date, no study of this scale has ever utilised a systematic and scientific sampling process of such a large population of witnesses called by all parties (Prosecution, Defence and Chambers).

The involvement of VWS allowed for the inclusion of witnesses who would have otherwise been excluded, such as witnesses whose identity is protected. UNT, as an external research partner, ensured the reliability and validity of the research process, including the independent analysis of data.



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Valuable financial contribution provided by the Royal Norwegian
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