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Use of Rights Language at the International Criminal Court:
A Revealing Closer Look at ICC Transcripts

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Abstract

This paper studies the use of rights language at the International Criminal Court (ICC), in the context of situations from the Central African Republic (CAR) and Uganda. The research looks firsthand at transcripts from court proceedings and extracts references to the term “right.” The results reveal that rights are referenced most often in the context of “general” rights, and that there is much greater emphasis on rights in the context of due process, as opposed to rights of victims of the original abuses. This paper proposes that the ICC should adopt a human rights-based framework that (1) encourages judges, victims, the prosecution, and the defense to use specific human rights rhetoric that references particular, justiciable rights, and (2) encourages actors within the criminal justice process to attempt to give near-equal weight to the rights of the various parties. The framework’s priorities should be: (1) promoting and protecting human rights within the International Criminal Court; (2) ensuring that rights of all parties in the criminal justice process are recognized and appropriately addressed; (3) enhancing the likelihood that a party with a specific grievance will raise the grievance in the form of a reference to an explicit right; and (4) enforcing the responsibility of duty-bearers to meet their obligations with regard to rights-holders’ particular claims.

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I. Human Rights and the International Criminal Court

Introduction

Discussions on the relevance and effectiveness of the International Criminal Court (“ICC”) have never been as pertinent as they are today. Burundi,¹ the Gambia,² and South Africa³ announced their intent to withdraw from the ICC in October of 2016, due to its allegedly biased focus on African countries alone. In its October 19 Instrument of Withdrawal from the ICC, to take effect on October 19, 2017, South Africa wrote that “in complex and multi-faceted peace negotiations and sensitive post-conflict situations, peace and justice must be viewed as complementary and not mutually exclusive.”⁴ South Africa thus “found that its obligations with respect to the peaceful resolution of conflicts at times [were] incompatible with the interpretation given by the International Criminal Court.”⁵ Burundi’s withdrawal will take effect on October 27, 2017.⁶ Similarly, Russia, which had not ratified the Rome Treaty, stated in November 2016 that it was nonetheless withdrawing its signature.⁷ As a result, many have been questioning whether the court will soon slide into obscurity and irrelevance – or worse, cease to function – as countries increasingly refuse to submit to its mandate.

¹ “Burundi says plans to quit the International Criminal Court,” 6 October 2016, http://www.reuters.com/article/us-burundi-politics-idUSKCN12622V?feedType=RSS&feedName=worldNews&utm_source=Twitter&utm_medium=Social&utm_campaign=Feed%3A+Reuters%2FworldNews+%28Reuters+World+News%29.

² “Gambia withdraws from International Criminal Court,” 26 October 2016, <http://www.aljazeera.com/news/2016/10/gambia-withdraws-international-criminal-court-161026041436188.html>.

³ “South Africa to Withdraw From International Criminal Court,” 21 October 2016, http://www.nytimes.com/2016/10/22/world/africa/south-africa-international-criminal-court.html?_r=1.

⁴ “Instrument of Withdrawal,” 19 October 2016, <https://www.justsecurity.org/wp-content/uploads/2016/10/South-Africa-Instrument-of-Withdrawal-International-Criminal-Court.jpg>.

⁵ “Instrument of Withdrawal,” 19 October 2016, <https://www.justsecurity.org/wp-content/uploads/2016/10/South-Africa-Instrument-of-Withdrawal-International-Criminal-Court.jpg>.

⁶ “Burundi: Withdrawal,” 28 October 2016, <https://treaties.un.org/doc/Publication/CN/2016/CN.805.2016-Eng.pdf>.

⁷ Statement by the Russian Foreign Ministry, 16 November 2016, http://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2523566.

Yet to assume that the withdrawal of a number of countries from the ICC will mean its inevitable demise is to ignore important realities that point in the opposing direction. First, many African countries have reaffirmed their support for the international court in light of the withdrawal announcements. In October and November of 2016, Cote d'Ivoire's president said that his country did not intend to leave the ICC, Nigeria affirmed to the United Nations General Assembly its "continuous commitment to support and cooperate with the court," and Senegal invited "all States Parties to contribute all of the assistance and cooperation necessary for the court."⁸ Similarly, Malawi emphasized that it would not "be pressured to leave the ICC by its neighbors," and Tanzania said in a statement to the UN General Assembly that the establishment of the ICC had become "an inspiration against impunity and injustice."⁹

In fact, the Gambia announced on February 14, 2017 its decision to rescind the country's withdrawal from the ICC,¹⁰ committing itself instead "to the promotion of human rights, democracy, good governance, and respect for the rule of law."¹¹ In the general debate session of the annual meeting of the ICC, several African country representatives emphasized that criticism was valid but, as Lesotho stated, "change must come from within."¹² Ghana said it would continue to be a "strong supporter," Mali said that states could better respond to the needs of

⁸ Sarah Rayzl Lansky. Human Rights Watch. "Africans Speak Out Against ICC Withdrawal: Governments Signal Continued Support for Court," November 2, 2016, <https://www.hrw.org/news/2016/11/02/africans-speak-out-against-icc-withdrawal>.

⁹ Sarah Rayzl Lansky. Human Rights Watch. "Africans Speak Out Against ICC Withdrawal: Governments Signal Continued Support for Court," November 2, 2016, <https://www.hrw.org/news/2016/11/02/africans-speak-out-against-icc-withdrawal>.

¹⁰ "Gambia Rejoins ICC: South Africa, Burundi Now Outliers on Exit," February 17, 2017, <https://www.hrw.org/news/2017/02/17/gambia-rejoins-icc>.

¹¹ "Gambia rescinds withdrawal process from ICC," February 14, 2017, <http://thepoint.gm/africa/gambia/article/gambia-rescinds-withdrawal-process-from-icc>.

¹² "African Members Reaffirm Support at International Criminal Court Meeting," 17 November 2016, <https://www.hrw.org/news/2016/11/17/african-members-reaffirm-support-international-criminal-court-meeting>.

justice from within the ICC system, and Burkina Faso said that withdrawals would “only undermine justice.”¹³

Second, in March of 2016, Trial Chamber III of the Court convicted Jean-Pierre Bemba Gombo, former Vice President of the Democratic Republic of the Congo, of two counts of crimes against humanity and three counts of war crimes.¹⁴ Many described it as a landmark ruling,¹⁵ given both that it recognized rape as a war crime and that it convicted Bemba on the basis of “command responsibility,”¹⁶ which permits conviction when a commander allows crimes to occur on his watch – even if he does not take direct part in committing them. With groundbreaking moves in these crucial directions, the Court is proving its relevance and weight – if imperfect – in the relatively young field of international criminal law.

Third, the ICC, under the leadership of its chief prosecutor, Fatou Bensouda, has been moving away from its highly-criticized focus on the African continent. At the start of 2016, Bensouda was authorized to open an investigation in Georgia,¹⁷ and preliminary examinations of situations in Afghanistan and in Palestine are currently under way.¹⁸ The launching of a full investigation of the situation in Afghanistan could even prompt scrutiny of U.S. actions in the country, a marked departure from the ICC’s history of avoiding direct conflict with the world’s

¹³ “African Members Reaffirm Support at International Criminal Court Meeting,” 17 November 2016, <https://www.hrw.org/news/2016/11/17/african-members-reaffirm-support-international-criminal-court-meeting>.

¹⁴ Press Release, ICC, ICC Trial Chamber III Declares Jean-Pierre Bemba Gombo Guilty of War Crimes and Crimes Against Humanity (Mar. 21, 2016), ICC website. <https://www.icc-cpi.int/Pages/item.aspx?name=pr1200&ln=en>

¹⁵ “ICC: Milestone Guilty Verdict Treats Rape as a War Crime.” <http://www.loc.gov/law/foreign-news/article/icc-milestone-guilty-verdict-treats-rape-as-a-war-crime/>

¹⁶ “The International Criminal Court recognises rape as a war crime.” www.economist.com/news/middle-east-and-africa/21695328-courts-guilty-verdict-against-jean-pierre-bemba-marks-milestone?zid=309&ah=80dcf288b8561b012f603b9fd9577f0e.

¹⁷ Situation in Georgia, ICC Website, <https://www.icc-cpi.int/georgia>.

¹⁸ Report on Preliminary Examination Activities, ICC, 2016, <http://www2.courthousenews.com/wp-content/uploads/2016/12/ICC-PE-2016.pdf>.

major powers. On August 15, 2017, the International Criminal Court issued an arrest warrant for a Libyan commander, Mahmoud al-Warfalli, said to have been involved in the killing of thirty-three captives in “cold blood” earlier in 2017.¹⁹

These realities are only three examples of ways in which the International Criminal Court is reshaping itself and its image in the global community, solidifying its place as a legitimate actor and advocate of justice in the forum of international criminal law. Yet much work remains to be done, to improve the Court and its operations. Many of the residual questions about how best to direct improvements relate to the ICC’s mode of functioning. For instance, what strategies does the Court employ in resolving the situations it pursues? To what discourses does the Court resort, and to what effect? Are there gaps in what the various actors within the system emphasize?

Debates about the effectiveness of the ICC based on various measures are common, but have not tended to examine the ICC’s use of rights language or rights-based approaches. Research by Jo and Simmons, for example, has looked at the effectiveness of the ICC in deterring states from committing certain atrocities, concluding that states that have ratified the Rome Statute do, in fact, kill fewer civilians.²⁰ Critics have argued that the effectiveness of the ICC depends on which circle of influence is being considered,²¹ such that the ICC has “narrow authority” over rebels, for instance, but more “intermediate authority” over states and other actors that provide support for the ICC’s work.²²

¹⁹ The Associated Press, “ICC orders arrest of commander loyal to Libyan general,” August 15, 2017, <http://abcnews.go.com/International/wireStory/icc-orders-arrest-commander-loyal-libyan-general-49228634>.

²⁰ Hyeran Jo and Beth A. Simmons, *Can the International Criminal Court Deter Atrocity?* (Dec 18, 2014), http://papers.ssrn.com.ezproxy.cul.columbia.edu/sol3/papers.cfm?abstract_id=2552820.

²¹ Karen J. Alter, Laurence R. Heifer & Mikael Rask Madsen, *How Context Shapes the Authority of International Courts*, 79 *Law & Contemp. Probs.*, no. 1, 2016, at 9-12.

²² Karen Alter, *The New Terrain Of International Law: Courts, Politics, Rights* (2014).

This paper aims to resolve one such question: how the ICC makes use of rights language throughout its pre-trial, trial, and appeals proceedings. Understanding how rights language is used, and by whom – regardless of how conscious or subconscious the use may be – can be immensely helpful in understanding who focuses on what rights, and whether that is a positive indication of a trend, or symptomatic of a larger problem. If the rights of alleged victims are not referenced throughout ICC proceedings, for instance, the victims may find that their voices are not being heard. On the other hand, if most mentions of “rights” are in a very general context, the ICC and its relevant actors may have failed to place specific, justiciable rights at the forefront of the proceedings in question.

The research conducted therefore concludes that the ICC does not make use of human rights language to the fullest extent possible. This paper argues that the ICC should employ a human rights-based approach in its work that focuses on encouraging the spread of specific rights rhetoric so as to strengthen the implementation of human rights in carrying out its mandate.

Summary of Conclusions

The data gathered for this thesis reveal (1) that judges reference rights most often, and (2) that rights are referenced most often in the context of “general rights,” and are not specific enough to be justiciable. The statistics also reveal that, second only to general rights, rights of the accused are mentioned most often, and the rights of victims are rarely mentioned at all.

This paper argues that the ICC should place rights rhetoric at the forefront of its work, implementing a human rights-based approach to its caseload to strengthen the realization of human rights. This would allow the ICC to encourage actors other than judges to look to specific, justiciable rights in an international context, and to push for powerful references to

actionable rights of actors other than the accused, such as victims. Much more attention may need to be paid to rights of such actors before the ICC can improve its image and status as one of the most influential bodies for the protection of human rights around the world.

Human Rights Language

Rights language is a relatively new phenomenon, although the sentiments and values upon which it is built are not. Growing into the globally understood discourse that they comprise today, human rights include civil and political rights as well as economic, social, and cultural rights, recognized to various extents in different political systems around the world.

International conventions have strengthened and solidified the articulation of these rights in the years since the 1940s.²³

Part of the power in rights language lies in the social pressure and expectations it can create around moral right and wrong in the political and legal fields. As a tool of soft power, rights language can have great influential effect on the arena of international law, which does not have a powerful enforcement or policing mechanism. International law has previously been compared to the informal, decentralized law of villages that do not have formalized rule-making processes, in that both international and informal village law rely on

custom, social pressure, collaboration, and negotiations among parties to develop rules and resolve conflicts ... In both, law is plural and intersects with other legal orders, whether that of nation-states or other organizations or forms of private governance (Nader 1990). Each order constitutes a semiautonomous social field within a matrix of legal pluralism (Moore 1978).²⁴

²³ Sally Engle Merry. M. Goodale and S. Engle Merry, eds, *The Practice of Human Rights: Tracking Law between the Global and the Local* (2007); S. Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (2006).

²⁴ Sally Engle Merry.

The skepticism that is often accorded to the effectiveness of international law and human rights in influencing actual legal or political realities is thus not entirely warranted. Law in general operates in different forms, and interacts with other tools, including social pressure, custom, and negotiations, all of which are heavily influenced today by the growth of rights language and discourse – both as a way of reinforcing legal norms and as a type of moral standard.

Rights language has been studied before in constitutions, where the researchers found that approximately 60% of the constitutions around the world mention “human rights” at least once, but that the average overall is over 6 mentions per constitution. Expanding the scope of the research to include any mention of the word “rights” yielded an average of 86 mentions of rights across the 189 constitutions. The researchers in this study concluded, based on their research, that human rights language tends to operate “as a general symbolic canopy rather than a set of explicit legal formulations,” because many rights tend to be presented as citizenship rights rather than human rights.²⁵ The influence of rights language as a soft power tool may thus not be as acute or relevant in the case of constitutions as in other cases, due to its tendency to be used as just this sort of “symbolic canopy.”

²⁵ World influences on human rights language in constitutions: A cross-national study, Beck et al., *International Sociology*. “Human rights language also tends to appear in preambles and general introductions to rights sections. For example, the Venezuelan constitution’s preamble refers to the ‘universal and indivisible guarantee of human rights,’ and El Salvador affirms the ‘human person’ as the basis of the state (Preamble). Yet preambles are primarily symbolic rather than explicit legal guidelines. For instance, the current French constitution, originally written in 1958, has not one, but three preambles as it includes both the Declaration of the Rights of Man and Citizen from the 18th century First Republic and the Fourth Republic’s 1946 preamble. But the main part of the constitution’s articles remains administrative and legal in nature. Across all constitutions, the proportion of rights phrases that explicitly reference human rights is fairly low, averaging 5%. Overall, this suggests that for many countries, many legal rights continue to be presented as citizenship rights, rather than human rights. This falls in line with our expectation that human rights language operates as a general symbolic canopy rather than a set of explicit specific legal formulations.”

Similarly, Fons Coomans in a 2012 study looks at the use of human rights language in United Nations specialized agencies. Coomans explains that the human rights-based approach adopted by many UN agencies is meant to underlie the carrying out of their mandate, and that the approach involves “clearly spell[ing] out the specific human rights that are at stake and fram[ing] policies and programs by using human rights language.”²⁶ Coomans studied the extent to which UN specialized agencies have adopted, and are using, “rights language” on economic, social, and cultural rights (“esc-rights”) as a basis for their programs. He presumed that the implementation of economic, social and cultural rights by UN specialized agencies would be strengthened if rights language regarding these rights is used in their practice.

Coomans defined “rights language” as an explicit reference to universal human rights and to right-holders and duty-bearers. “Practice” was seen as either *internal*, relating to the institutional structure, policy documents, and the training of staff, or *external*, relating to country programs, awareness raising, and promotional activities and publications. Coomans then conducted a content analysis of “official policy documents, website information, programs and projects adopted by the competent bodies of these UN agencies, which [were] mainly available on the Internet.” He concluded that references to economic, social and cultural rights have become more prominent and visible over time, but that there have been some disappointing experiences. He bases this conclusion on his study of rights-based approaches within the structures of the UN Development Assistance Framework, the Food and Health Organization, UNAIDS, and UNFPA. Coomans also concluded that rights language is only meaningful when it is backed by a translation into implementation of clear and concrete activities, programs and

²⁶ Fons Coomans, On the right(s) track? United Nations (Specialized) Agencies and the Use of Human Rights Language (2012), *Verfassung und Recht in Ubersee / Law and Politics in Africa, Asia and America*, Vol. 45, No. 3, <http://www.jstor.org/stable/43239646>.

projects, which requires political commitment by willing governments as well as the backing of departments and senior officials of the relevant UN agencies.

To reach these conclusions, Coomans looked at various agencies and developed an overview of the landscape of rights-based approaches. Several UN agencies since the early 2000s have adopted strategies aimed at integrating human rights into their programs and policies. One example is UNESCO, which in 2003 adopted a Strategy on Human Rights that set forth an aim to integrate a human rights-based approach into all UNESCO activities and projects.²⁷ Likewise, the 2008-2011 Global Human Rights Strengthening Programme of the United Nations Development Programme (UNDP)²⁸ had the overall objective of fully integrating human rights into UNDP policies, programs, and processes. The Food and Agriculture Organisation (FAO) adopted in 2004 the Voluntary Guidelines to Support the Progressive Realization of the Right to Food by the Member States, framing food issues in a rights-based manner.

No such study has been completed yet on rights language at ICC legal proceedings, whether in pre-trial, trial, or appeals courts. Consequently, in this thesis, the use of rights language is studied so as to recognize exactly what kinds of rights are emphasized in legal proceedings at the ICC and what rights are not given enough attention – or perhaps do not need to be given as much emphasis – based on the understanding that rights language can have a powerful influential effect, both as a symbolic canopy and as a particular tool for social pressure. The argument here – that the ICC should amplify its focus on adopting a human rights-based approach in its legal frameworks and casework – is based also on Coomans' assumption that the

²⁷ UNESCO Strategy on Human Rights, p. 5, available at <http://www.unesco.org>.

²⁸ André Frankovits, *The Human Rights Based Approach and the United Nations System*, Paris 2006, p. 28, n. 13.

implementation of human rights by the International Criminal Court would be strengthened if rights language regarding these rights were used in its practice.

Human Rights and the ICC

What can knowledge of human rights referencing rates at the ICC contribute to our understanding of legal proceedings at the ICC as a whole?

First of all, knowledge of ICC rights referencing rates can allow for a better understanding of the position of human rights within the international criminal law system. The translation of human rights principles into criminal law is not necessarily a natural progression without tension. The former has traditionally focused on seeking to hold states accountable for human rights violations, a state-centered understanding of the legal world that looks to protect individuals from state transgressions. The latter, on the other hand, has traditionally been focused on holding individuals accountable for crimes for which they are legally culpable.²⁹ The two are not irreconcilable – in fact, the way they have increasingly begun to blend together over the past few decades is proof of that point – but this does mean that human rights law has been less concerned about safeguards for the accused, while criminal law has been more concerned about protecting the rights of the accused in the best way possible.

In an article from 2006, Bassiouni looks more specifically at the literature on victims of atrocities, which he describes as disparate and heterogeneous, highlighting these differences between international criminal law and human rights law, as one example. Each discipline, he explains,

pursues different goals, relies on different methodologies, employs different terminology and provides for different roles and rights for the victim . . . Thus, from a purely legal perspective, victims' fate and the punishment of violators vary and depend on whether

²⁹ Human Rights at the Crossroads. Cary, GB: Oxford University Press, USA, 2012. ProQuest ebrary. Web. 29 July 2016.

lawyers apply international human rights law, international humanitarian law, international criminal law or domestic criminal law.³⁰

Because of this, a study of how different types of international law, from human rights to criminal law, interact when brought together is an important way to understand what is emphasized in the legal proceedings and what might need to be emphasized further.

Second of all, knowledge of ICC rights referencing rates can help in understanding the contexts in which rights language is used at the ICC, particularly given the claims that rights rhetoric is irrelevant. Human rights language has previously been said to be an isolationist or politically biased type of language to use, particularly where other discourses and expressions are used to describe complex realities of the struggle for recognition of basic claims. An article published in 1999 describes Africa as living through a “human rights crisis,” where most people, despite facing immense human rights problems, are reluctant to describe these problems in terms of human rights. The author explains that this is because the human rights movement does not channel the people’s frustrations “into articulate demands that evoke responses from the political process,” and thus human rights have become “the specialized language of a select professional cadre with its own rites of passage and methods of certification.”³¹

Given the ICC’s purported focus on African countries, a closer look at rights language within these contexts can show that such rhetoric is in fact increasingly employed in these situations, and also can show how the rhetoric is used and to what effect.

³⁰ Human Rights Law Review (2006) 6 (2): 203-279. doi: 10.1093/hrlr/ngl009; See also An Emerging Universality of Justiciable Victims’ Rights in the Criminal Process to Curtail Impunity for State-Sponsored Crimes’, (2004) 26 Human Rights Quarterly 605.

³¹ Chidi Anselm Odinkalu, Why More Africans Don’t Use Human Rights Language, Human Rights Dialogue 2.1 “Human Rights for All?”
http://www.carnegiecouncil.org/publications/archive/dialogue/2_01/articles/602.html

Human Rights-Based Approaches

What is a human rights-based approach, and why should the International Criminal Court adopt one? According to the UN Practitioners' Portal on Human Rights Based Approaches to Programming, a rights-based approach is

a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse [sic] inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress.³²

A powerful human rights-based approach develops and builds on the relationships between rights, duties, and their bearers, and sets forth a solid framework for the promotion of human rights through concrete mechanisms and clear steps. United Nations agencies have agreed on several essential attributes of a solid human rights-based approach:

- (1) that the main objective of the approach is to fulfill human rights;
- (2) that the approach identifies rights-holders and their entitlements, and works towards strengthening their capacity to make their claims;
- (3) that the approach identifies duty-bearers and their obligations, and works towards strengthening their capacity to meet their obligations; and
- (4) that principles and standards derived from international human rights treaties guide all cooperation and programming in all sectors and phases of the programming process.³³

On a conceptual level, therefore, an effective rights-based approach within the ICC should aim to fulfill and promote human rights, should identify rights-holders and duty-bearers and strengthen their capacities to make claims and meet obligations, and should keep

³² <http://hrbaportal.org/faq>.

³³ <http://hrbaportal.org/faq>.

international human rights principles and standards at the forefront of the ICC's work. One of the simplest, most effective ways to promote human rights is to ensure that rights language is the common currency of the various actors within the system, so that rights-holders have a specific basis on which to make their claims and duty-bearers have a basis on which to address their obligations. Language creates the possibility of a shared ground upon which to build assumptions and reach for the realization of certain aspirations. If the International Criminal Court can create a framework that encourages ICC actors to use language referencing specific, justiciable human rights that are applicable within the international criminal justice context, the ICC will have taken a huge and important step towards promoting and protecting those rights within its institution.

Given the conclusions revealed by the research in this thesis, which show that rights are referred to most often in the context of so-called "general rights," and that judges speak of rights to an overwhelmingly greater extent than the other actors in the ICC system, a human rights-based framework is necessary for the promotion of human rights within the ICC. Judges in a case, along with the prosecution, the defense, and the victims, will be better able to realize specific human rights when the language for precise claims and obligations is identified and set out in an ICC framework document. This will make it easier for the various actors to pick up on unambiguous ways of framing their needs, goals, and challenges, and convey them in an appropriate and easily-understood manner.

The statistics in this thesis also reveal that, second only to general rights, rights of the accused are mentioned most often, and the rights of victims are rarely mentioned at all. With a framework outlining a clear human rights-based approach to the work of the International Criminal Court, and setting forth explicit terminology that can be used in pursuit of rights and

claims, victims can draw upon a bank of terms that will allow their experiences in the past and their concerns with the judicial process to be heard, validated, and appropriately addressed. If a victim can say, “The accused violated my fundamental right to bodily security in *x*, *y*, and *z* ways,” a more direct understanding of the claim, the violation, and the most appropriate response in the form of reparations or justice can be developed. Reparations and implementations of retributive measures can also become more consistent across the board in the cases the ICC decides to pursue. Similarly, a victim’s statement saying, “

A framework outlining a human rights-based approach for the ICC that encourages use of human rights language by all relevant actors in a case is also extremely beneficial for the cause of legal recourse for victims. The justiciability of a claim means that it is amenable to adjudication in judicial or quasi-judicial fora.³⁴ If a right is justiciable in the context of international human rights law, it can be brought before the ICC, and if the claim is upheld, the claimant can be granted an enforceable remedy. Without the appropriate rights language, however, many claims will go unmentioned, and many claims will be presented in the form of violations of “general human rights” – rather than violations of specific, justiciable rights – as the research in this paper discovers was the case in many ICC proceedings. Mention of justiciable rights can force accountability for violators, effective remedies for victims, and deterrence from future violations of fundamental rights for the global community.

It is important to recognize here that the Rome Statute of the International Criminal Court was the first in history to recognize the rights of victims to participate, and to reparations, in international criminal proceedings.³⁵ Legal rights for victims under international law have been

³⁴ Justiciability, Right to Education Initiative, <http://www.right-to-education.org/issue-page/justiciability>.

³⁵ International Federation for Human Rights, Victims’ Rights Before the International Criminal Court: A Guide for Victims, their Legal Representatives and NGOs, https://www.fidh.org/IMG/pdf/4-CH-I_Background.pdf, at 3.

established with particularity since the 1985 UN General Assembly adoption of the Declaration of Basic Principles for Victims of Crime and Abuse of Power, which set out victims’ criminal justice process rights including the rights to reparation, to protection and assistance, to be treated with basic respect and dignity, and to access justice. Two other international instruments form the core of victims’ rights in an international criminal justice context: the United Nations basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of humanitarian law, known as the “Van Boven/Bassiouni Principles,” and the United Nations principles for the protection and promotion of human rights through action to combat impunity, known as the “Joinet/Orentlicher Principles.”³⁶ The Rome Statute of the ICC draws upon such principles for the recognition of victims’ rights, and provides for victim participation in an effective manner; a human rights-based framework that encourages increased mention of victims’ rights would only enhance and strengthen this commitment to their vindication.

II. Methodology

General Methodology

In this paper, the research focuses on pre-trial, trial, and appeals chamber transcripts from two countries for which the International Criminal Court has cases running: that of the Central African Republic (CAR), and that of Uganda. We chose those two countries as our study targets, given the availability of transcripts and their sizable number relative to other cases.

In the case of Uganda, we looked at 62 transcripts published between June 2005 and November 2015. In the case of the Central African Republic, we looked at 813 transcripts

³⁶ International Federation for Human Rights, *Victims’ Rights Before the International Criminal Court: A Guide for Victims, their Legal Representatives and NGOs*, https://www.fidh.org/IMG/pdf/4-CH-I_Background.pdf, at 5.

published between June 2008 and June 2016. The nontrivial number of transcript files gives credence to the results in terms of breadth of search, and the time span allows for some analysis on the evolution of the use of human rights and human rights language at the ICC.

The texts of the documents from these legal proceedings were parsed carefully for mentions of the word “right,” in an effort to understand the types of rights that tend to be mentioned in the practice of international criminal law at the ICC.

Human rights language was thus defined narrowly, in this case, as only any explicit mention of the word “right” in the sense of a claim. No other terms that could possibly fall under the umbrella of human rights language were included, for two reasons: first, to streamline, focus, and simplify the research; and second, because explicit uses of the word “right” point towards a certain understanding of the concept and a desire, if subconscious, to draw attention to the right as a *right*, rather than as a procedural or substantive detail.

Why is it important to classify uses of the word “right” into the type of right they refer to? One answer is that it draws attention to the rights that carry the most weight, in the aggregate, throughout trial proceedings at the International Criminal Court. Further studies that evaluate how often the prosecution, defense, and judicial authorities each refer to rights, or that evaluate the manner in which rights are referenced, would be particularly interesting, and could serve as a catalyst, as this study can, for organizations and states to push for under-recognized rights to be brought to the forefront in ICC trials.

It is important to acknowledge, at this point, that whether a specific right is brought up more often than others can mean any number of things. The hypothesis in this paper does not dwell on this question, and does not aim to prove correlation or causation, but rather aims to draw upon quantitative research to make qualitative conclusions that are descriptive in nature.

The main goal behind doing so is to understand the mechanisms and workings of the International Criminal Court. This study will also pave the way for future studies that can use the data and derived insights to further understand the workings of the ICC.

In deciding how to organize the data derived from the ICC transcript texts and classify the information appropriately, Bassiouni's 1993 delineation of different rights or groups of rights basic to the criminal justice process was particularly relevant. The interplay between human rights and criminal justice in an international context is valuable for study, for "the protections afforded persons in the context of the administration of criminal justice . . . are important protections against abuses of power which affect the life, liberty, and physical integrity of individuals. Without these protections and limitations on the potential abusive exercise of power by states, democracy could not exist . . . The field of battle in which democracy and human rights are tested is the administration of criminal justice, which encompasses all processes and practices by which a state affects, curtails, or removes basic rights."³⁷

It is a strong statement, to be sure. Yet many scholars seem to agree, given that the focus of criminal law is the prosecution of individuals by states or an international state system, while the focus of human rights is the protection of the claims and liberties of individuals against such states or international courts, that the two are in constant tension. This inevitably requires a way of ensuring that the rights of both victims and the accused are protected in an adequate manner.

³⁷ M. Cherif Bassiouni, *Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions*. *Duke Journal of Comparative and International Law*. 235-297. 1993.

Classification of Rights

Procedural safeguards are found in both domestic and international courts and are aimed at protecting human rights in one way or another. Bassiouni lists eleven different such rights and groups of rights deemed basic in the criminal justice process. They are as follows:

1. *The Right to Life, Liberty, and Security of the Person.*

This right is a basic part of the foundation of both international human rights law and domestic civil rights. The death penalty is sometimes an exception to the right to life.

2. *The Right to Recognition Before the Law and Equal Protection of the Law.*

This is another such basic part of the foundation of human rights in criminal law, a basic protection for the accused that guarantees recognition “as a legal personality who enjoys equal protection and application of the law.”³⁸

3. *The Right to be Free from Arbitrary Arrest and Detention.*

This right carves out exceptions to the right of liberty, above (1), and seeks to ensure that these exceptions are not arbitrary and do not deprive individuals of freedom without reason. It is an essential part of due process safeguards.

4. *The Right to Freedom from Torture and Cruel, Inhuman, and Degrading Treatment or Punishment.*

This right “protects the dignity and physical and psychological integrity of a person.”³⁹ It deals not only with lawful punishment but also with the use of techniques for eliciting confessions or information, when the techniques are torturous, cruel, inhuman, or degrading.

³⁸ M. Cherif Bassiouni, *Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions*. *Duke Journal of Comparative and International Law*. 253. 1993.

³⁹ M. Cherif Bassiouni, *Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions*. *Duke Journal of Comparative and International Law*. 262. 1993.

5. *The Right to be Presumed Innocent.*

This right guarantees the protection of accused individuals against abuse of power. Proof of guilt beyond a reasonable doubt may be required, or personal conviction of the judge beyond her subjective doubt.

6. *The Right to a Fair Trial.*

a. *The right to the inadmissibility of certain evidence.*

This right pertains to evidence obtained in ways that violate the rights of the accused. In some cases, a remedy of civil damages or prosecution of the individual in question may cover this right instead, allowing the evidence to still be admissible.

b. *The right to an impartial and independent tribunal.*

This right requires that any judges partaking in the trial are not politically biased or prejudiced in any way, whether institutionally, administratively or otherwise.

c. *The right to have procedures established by law.*

This right for procedures is that they be established by law prior to the acts allegedly committed by the accused, as part of the due process rights of every individual.

d. *The right to a speedy trial.*

e. *The right to a public hearing.*

This right is meant to protect the accused from secret trials or hearings, and allow the public to access legal proceedings and serve as a balance or safeguard against blatant injustices.

f. *The right to be informed of the charges.*

This right covers not only the right to be informed of the content of the charges, but also the right that the charges be made in a timely enough manner for the accused to prepare the defense and not to be unduly surprised by unexpected charges.

g. The right to equality of arms.

This right expects defense counsel to participate in the actual trial, just as the prosecution can, to the same extent and with relatively equal procedural opportunities.

h. The right to assistance of counsel.

i. The right to compulsory process.

This right guarantees that the court will assist in producing evidence and obtaining witness testimonies.

j. The right to be tried in one's own presence.

This right is important because trials *in absentia* can be inherently unfair, since the accused does not participate in the trial and cannot prepare an effective defense.

7. The Right to Assistance of Counsel.

This right is explicitly guaranteed in some cases, although it may not always ensure the assistance of counsel to all accused individuals and at all stages of trial.

a. The right to counsel of one's choice.

This right is presumed to allow for a fairer defense, since the accused is more likely to work effectively with counsel of his own choice and prepare a more powerful defense.

b. The right to appointment of counsel in case of indigency.

c. The right to self-representation.

This right is not meant to replace the general right to counsel, only to supplement it in ensuring that the accused may participate in the defense or conduct it if he so wishes.

d. The right to assistance of an interpreter.

This right covers both proceedings and accusatory documents, and is a particularly important right in the context of the ICC, with language playing a role in determining how effective any given trial is. No defendant should face a trial that he cannot understand.

e. The right to the presence of counsel during all stages of the proceedings.

8. The Right to a Speedy Trial.

This right is meant to “limit infringements on personal freedom caused by pretrial and trial detention . . . undue delays may cause the loss of evidence or the fading of the memories of the witnesses.”⁴⁰

9. The Right to Appeal.

This right protects, to the extent possible, against errors in judicial rulings and proceedings. Not all the rights at appeal may be available as at trial, but allowing an appeal in itself is particularly important.

10. The Right to be Protected from Double Jeopardy.

This right protects the accused from being prosecuted more than once for the same offense.

11. The Right to be Protected from Ex Post Facto Laws.

This right guarantees that laws will not retroactively punish acts as crimes, out of a sense of fairness and against abuse of power by officials.

⁴⁰ M. Cherif Bassiouni, Human Rights in the Context of Criminal Justice: Identifying International Procedural Protections and Equivalent Protections in National Constitutions. *Duke Journal of Comparative and International Law*. 285. 1993.

Throughout this paper, I also include several additional sections for the purpose of classification, listed below. Category 12, of General Rights, covers any mentions of rights that are general and canopy-like, such as “human rights violations” or “respect for human rights.” The categories that follow also refer to such general mentions, but in the context of certain figures: for instance, category 13 of General Rights of the Accused includes mentions such as “rights of the accused” or “a violation of the suspect’s rights.”

12. *General Rights.*

13. *General Rights of the Accused.*

14. *General Rights of Victims.*

15. *General Rights of the Prosecution.*

16. *General Rights of the Defense.*

17. *General Rights of Witnesses.*

Use of Transcripts

Why the use of transcripts from legal proceedings to examine the intersection of human rights and international criminal law? A chapter by Michela Giordano, titled “Trial Proceeding Transcripts as Genre: Decontextualization and Recontextualization,” from a collection published in October 2014 deals with a similar question related to transcripts, looking at trial proceedings transcripts “as a genre in their own right.”⁴¹ Giordano quotes Hale and Gibbons (1999: 203) as follows:

First there is the reality of the here and now, of the courtroom itself, with its unique cultural characteristics [...]. The other plane of reality is the world outside the courtroom,

⁴¹ Linguistic Insights Studies in Language and Communication : Evolution in Genre : Emergence, Variation, Multimodality. Bern, CH: Peter Lang AG, Internationaler Verlag der Wissenschaften, 2014. ProQuest ebrary. Web. 3 September 2016.

most importantly the particular context and events that are the subjects of the court's deliberations.⁴²

It is important to note the limitations of this area of research, given that trial transcripts are a form of reporting in which speech is converted into written text, which does not necessarily include other aspects of speech that also convey meaning but are not spoken – i.e. gestures, body language, actions, or other forms of movement or communication. Despite this, as Gibbons (2003: 28 “legal transcription or reporting is an arena...”) and Heffer (2005: 46-52) make clear, only what is written in official transcripts is in fact recognized by law.

Trial proceedings transcripts, as autonomous documents, are referred to by judges and counsels in cases of appeal as an indispensable means to refresh their memory, to resumé the legal issues at stake, and to gain insight and understanding from any precedents as contextual aspects and events in the trial, along with the narration of past events, are invaluable in re-enacting face-to-face interactions which took place at a distance of time and place outside the legal courtroom itself.⁴³

Data Extraction

The sheer amount of data contained in the ICC transcripts and the unwieldy nature of manual data extraction within this context propelled the seeking of alternative ways to scan the transcripts, extract data, and classify that extracted data. The process of data extraction included identifying a list of six data fields, developing an algorithm to scan the transcripts, and extracting the data fields. The algorithm was coded in Java and applied to the transcripts.⁴⁴

The first step was the compilation of the transcript files for each country, or situation, in a separate folder. The algorithm then traversed the files and parsed the text in each one. A naming convention of “Case_Situation_Date_Code” was adopted in saving the files, to allow consistent

⁴² Linguistic Insights Studies in Language and Communication: Evolution in Genre: Emergence, Variation, Multimodality. Bern, CH: Peter Lang AG, Internationaler Verlag der Wissenschaften, 2014. ProQuest ebrary. Web. 3 September 2016.

⁴³ Giordano 121.

⁴⁴ See Appendix A.

processing by the algorithm. For each file the chamber, situation, case, and date were extracted, by looking at the title and first few paragraphs of the transcript file. Subsequently, the algorithm scanned the rest of the text and located all mentions of the word “right.” It then identified the speaker and the actual sentence or context of the mention of that right.

Below is the list of data fields extracted using the algorithm, and the conceptual way in which the algorithm operated for each field:

- Chamber: extracted by executing a keyword search for the word “chamber” then identifying the corresponding chamber type, which is co-located near the mention of “chamber” e.g. appeals, pre-trial, or trial.
- Case: identified from the title of the file by looking at the first string of characters in the title.
- Situation: identified from the title of the file by looking at the second string of characters in the file.
- Date: identified from the title of the file by looking at the third string of characters in the title.
- Speaker: once the algorithm locates the mention of the word write, it traverses the transcript text backward until it locates a colon “:” indicating the beginning of a quotation. It then extracts the name preceding the quotation as the speaker.
- Actual Sentence/Context: in a similar manner to that of identifying the speaker, the algorithm identifies the beginning and end of the sentence surrounding the mention of the word “right” as the context.

The algorithm generated text files including the aforementioned data fields for each mention of a right. The text file served as a starting point for the construction of a master data

table in Excel containing the data fields, which allowed for the subsequent manual scanning of the actual sentence/context for each right and use of judgment to identify the specific right(s) referenced in each instance.

Many choices had to be made as to the inclusion and exclusion of various instances. The first choice was that of excluding mentions of rights that simply referred to human rights organizations, or that were part of an organization's name (such as Human Rights Watch). Because the overarching goal of this thesis is to understand use of rights language with regards to actual actors in the legal process of the International Criminal Court, mentions of rights organizations do not necessarily fit neatly into that description.

The second choice was to exclude names of conventions or other such proper names that included the term "right," such as the African Convention on the Rights of the Child. This was a strategic decision that also made sense in the context of the purpose of this paper, which was to look at rights language that refers to actors in the ICC arena. The third choice, however, was one of inclusion: to include mention of "human rights violations," because these do fit into this understanding of rights rhetoric.

Lastly, mentions of rights that were part of reading from an extract were excluded, as were arbitrary instances of use of the word "right," such as when a witness says, "we had the right to rule." Such cases do not relate to the trial itself or the crimes that led to the trial, and neither do they relate to the more basic concept of rights as human rights; therefore, arbitrary mentions of a right in the sense of a claim were not included.

III. Results and Analysis

Overall, out of 314 rights references found in the texts and analyzed, 219 are from the Central African Republic and 95 are from Uganda. Table 1 depicts the values. Part of the

discrepancy between the two countries' proceedings is due to the sheer volume of the transcripts for the CAR, which has two situations, as compared to Uganda, which has one.

Table 1: Total Number of Rights References by Situation

Situation	References to Rights
CAR	219
Uganda	95
Total	314

Most references to a “right” emphasize procedural due process rights, rather than rights of victims of the alleged crimes. For example, on the 23rd of May, 2016, during the trial of *Prosecutor v. Dominic Ongwen*, the prosecution asks for time to complete its work, explaining that “[t]he Prosecution with the best will in the world cannot reasonably be expected to conclude its disclosure before the date we’ve been given . . . without it being an abuse of their [sic] rights.” Similarly, the defense consistently calls attention to the rights of the accused, Dominic Ongwen, emphasizing “the ability of Mr. Ongwen to be able to exercise his right to be present at all stages of his trial,” and reiterating that the right to be present at all stages of the trial “is the true right that cannot be taken away from anyone.” The same trial transcript does not include any references to the rights of victims, or to rights abuses by Mr. Ongwen during the crimes he allegedly committed.

In a pre-trial transcript from January 26, 2016 from the *Prosecutor v. Dominic Ongwen* case, both the judge and the defense refer to the procedural due process rights of Mr. Ongwen. The judge calls to attention the Mr. Ongwen’s right to the assistance of an interpreter, emphasizing that the suspect has a procedural right to understand proceedings in “the language [he] fully understands or speaks.” The defense also calls attention to Dominic’s “own fundamental rights,” and says, “The Prosecution has failed this duty [to investigate incriminating

and exonerating circumstances equally] pursuant to Article 54(1)(a) [of the Rome Statute] and has thus violated Dominic’s rights to have this case investigated fairly.”

The two other mentions of the term “right” in this pre-trial transcript are generic references to the institution of human rights by the defense, as it disparages the fact that “Dominic [was] abducted as a child in violation of international humanitarian law and international human rights law.”

As shown in Table 2, out of the 314 rights references, the majority (225) are from the trial chamber, followed by the pre-trial chamber (72) and the appeals chamber (17). The difference is perhaps to be expected, given that transcripts from trial proceedings generally are greater in number and might be expected to contain more mentions of rights than transcripts from the pre-trial and appeals chambers. Appeals courts also do not tend to have the same types of safeguards as trial courts, as can be seen below.

Table 2: Total Number of Rights References by Chamber

Chamber	References to Rights
Trial Chamber	225
Pre-Trial Chamber	72
Appeals Chamber	17
Total	314

Seven types of speakers are identified in the extracted data. The highest number of rights references is by judges (101), followed closely by witnesses (81) and the prosecution (77), as shown in Table 3. The remaining speakers reference rights either modestly (Defense with 33, Victims with 19) or rarely (Registrar twice, Accused once).

Table 3: Total Number of Rights References by Speaker

Speaker	References to Rights
Judge	101
Witness	81
Prosecution	77
Defense	33
Victims	19
Registrar	2
Accused	1
Total	314

The discrepancy may be due to a number of factors. Judges consistently reference the same rights in a similar manner in almost every proceeding, and are careful to ensure that due process rights, particularly of the accused, are protected throughout the process. For instance, the judge in the pre-trial chamber stage of *Prosecutor v. Dominic Ongwen* asks the defense, as well as Mr. Ongwen himself, “whether he waives his right to have the charges read out orally to him,” and draws attention to “Dominic Ongwen’s right to a fair and public trial,” a consistent theme throughout the analyzed transcripts.

In a trial proceeding, for instance, a judge will typically introduce, at the beginning of a session with a witness, the order of events and what parties have the right to question the witness. Similarly, she will tell the defense or the accused that they have the right to an interpreter, or the right to a fair trial. Judges thus may play both an introducing and a balancing role in legal proceedings, introducing rights of different parties, stressing their importance when necessary, and balancing the two sides in what is an adversarial process between the prosecution and the defense.

Victims, however, have much less of a voice in the process as a whole. In the *Prosecutor v. Dominic Ongwen* proceedings, all the references to rights from victims occur on the 22nd of January, 2016, in the pre-trial chamber; few references are to a specific, justiciable right, and most are of general human rights or rights abuses. The representative for the victims mentions

their “right to truth and justice,” their right “to have the truth established and to obtain reparations,” the commission of “human rights abuses,” “the rights of the Acholi people,” and “the promotion of human rights.”

On the other hand, the fact that the defense does not have as much to say on rights as the prosecution does is fascinating and perhaps a little surprising. It may mean that the prosecution has a stronger case with regards to human rights overall, as the accused is alleged to have violated many rights; or it may mean that the defense does not find that violations of the rights of the accused are occurring, and thus has no need to mention them.

Rights references by the type of right, however, reveal a different dynamic, as shown in Table 4. The most frequently referenced rights type mentioned is General Rights (126). In second place come the General Rights of the Accused (48), General Rights of the Defense (36), and General Rights of the Witness (22). The remaining rights are referenced less frequently and add up to a total of 82 references.

So-called “general rights” are those that reference rights in a generic, non-specific way, that do not call attention to one precise abuse of a right, or that do not fit into any of the aforementioned categories. For example, in a trial chamber transcript from *Prosecutor v. Jean-Pierre Bemba Gombo*, dated November 1, 2013, the prosecution mentions “violations of human rights in the CAR,” the judge calls attention to “the legal right to conduct an independent investigation in Central African Republic,” and the spokesperson for the victims refers to “human rights allegations, crimes, etc.” Similarly, a witness in a trial transcript from the same case speaks of “the people responsible for human rights,” while the prosecution calls attention to “a human rights NGO [that] sent three human rights advocates to Bangui for a week-long mission.” The defense also references general rights in an April 8, 2013 trial proceeding,

explaining the presence of a “Code of Conduct, which was a document or a legal text [meant to] ensure compliance with human rights, with human rights for the civilian population.”

Several possibilities for why “General Rights” are mentioned most could be present. One is that rights language serves as a general canopy-like structure, to be used whenever the situation calls for a moral stance or nudge in a certain direction. Human rights in this case are seen as justifications after the fact – as a sort of supplement to the main arguments. Another possibility is that rights are a present and prevalent phenomenon in the context of the ICC, but that mention of rights of the accused dominates over other types of mentions because of its importance in the criminal justice process, and the fact that ICC legal proceedings still lean towards the international criminal law perspective rather than a human rights-oriented framework.

Table 4: Total Number of Rights References by Type of Right

Types of Rights	References to Rights
1. The Right to Life, Liberty, and Security of the Person.	1
4. The Right to Freedom from Torture and Cruel, etc	1
5. The Right to be Presumed Innocent.	1
6. The Right to a Fair Trial.	
a. The right to the inadmissibility of certain evidence.	1
d. The right to a speedy trial.	3
e. The right to a public hearing.	1
f. The right to be informed of the charges.	12
g. The right to equality of arms.	1
h. The right to assistance of counsel.	1
j. The right to be tried in one's own presence.	4
General	8
7. The Right to Assistance of Counsel.	
a. The right to counsel of one's choice.	4
d. The right to assistance of an interpreter.	5
e. The right to the presence of counsel etc	2
General	3
8. The Right to a Speedy Trial.	5
9. The Right to Appeal.	14
12. General Rights.	126
13. General Rights of the Accused.	48
14. General Rights of Victims.	13
15. General Rights of the Prosecution.	2
16. General Rights of the Defense.	36
17. General Rights of Witnesses.	22
Total	314

Studying types of rights references by situation yields slightly different results, as shown in Table 5. The Central African Republic features 219 rights references, driven in large part by General Rights (101). General Rights of the Defense (35), General Rights of the Accused (23), and General Rights of the Witnesses (22) feature similarly in the CAR case. Uganda references are relatively more balanced, with General Rights (25) and General Rights of the Victims (25) featuring equally. It is interesting to note that some rights such as General Rights of the Defense and General Rights of the Witnesses feature almost exclusively in the CAR situation but not in

Uganda (35 vs. 1 for General Rights of the Defense, and 22 vs. 0 for General Rights of Witnesses).

The difference is most stark with regard to references to the rights of witnesses. This may be due to the fact that trial transcripts from Uganda do not feature witnesses in the first place, but this would still make it a telling detail: the exclusion of witnesses is no small matter. In the Central African Republic, throughout the trial of *Prosecutor v. Jean-Pierre Bemba Gombo*, the earliest references to witnesses' rights are general: the "witness's right to write things," or the "witness's right to express himself freely." In one instance, the judge argues that "we have to balance the right of witnesses to protection with the right of the accused and of the public to a fair and public trial." In another instance, the judge addresses a witness, emphasizing the importance of "[ensuring] that your rights are respected and that you are fully aware and informed of the consequences of potential self-incrimination."

The difference between Uganda and the CAR is also stark with regard to "general rights" of the defense. The one such mention in the *Prosecutor v. Dominic Ongwen* case is by the defense, which only "reserves [its] right to amend any factual characterization . . . should this case proceed to trial." Other mentions of general rights of the defense take place in *Prosecutor v. Jean-Pierre Bemba Gombo*, where the judge consistently emphasizes the defense's right to question witnesses, "to seek any clarifications," "to put some follow-up questions," and "to challenge [the witnesses'] credibility." The prosecution, on the other hand, says during an April 9, 2013 proceeding, "we are very concerned not to undermine the rights of the accused or the Defence."

Table 5: Types of Rights References by Situation

Types of Rights	Situation		
	CAR	Uganda	Grand Total
1. The Right to Life, Liberty, and Security of the Person.	1		1
4. The Right to Freedom from Torture and Cruel, etc	1		1
5. The Right to be Presumed Innocent.		1	1
6. The Right to a Fair Trial.			
a. The right to the inadmissibility of certain evidence.	1		1
d. The right to a speedy trial.		3	3
e. The right to a public hearing.		1	1
f. The right to be informed of the charges.	6	6	12
g. The right to equality of arms.		1	1
h. The right to assistance of counsel.	1		1
j. The right to be tried in one's own presence.		4	4
General	4	4	8
7. The Right to Assistance of Counsel.			
a. The right to counsel of one's choice.	1	3	4
d. The right to assistance of an interpreter.		5	5
e. The right to the presence of counsel etc	2		2
General	3		3
8. The Right to a Speedy Trial.	2	3	5
9. The Right to Appeal.	10	4	14
12. General Rights.	101	25	126
13. General Rights of the Accused.	23	25	48
14. General Rights of Victims.	6	7	13
15. General Rights of the Prosecution.	1	1	2
16. General Rights of the Defense.	35	1	36
17. General Rights of Witnesses.	22		22
Total	219	95	314

With regard to the distribution of rights references by chamber, the Trial Chamber features the highest number of references (225) driven by General Rights (103), as shown in Table 6. General Rights of the Accused (48) feature most frequently in the Trial Chamber (23), followed closely by the Pre-Trial Chamber (20), while General Rights of the Defense (36) and General Rights of the Witnesses (22) are referenced almost exclusively in the Trial Chamber (35 and 22 respectively).

In the pre-trial chamber, most references are to rights of the accused. The defense in *Prosecutor v. Dominic Ongwen*, for example, argues against any “[violation of Dominic’s] own fundamental rights.” The judge in *Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen* emphasizes that the suspect should have “knowledge of the rights that are accorded to any suspect before the International Criminal Court,” and states that “[representatives of the Registrar] provided [the suspect] with a warrant of arrest together with its annex which contains all rights accorded [to him] as a suspect before [the ICC] by the Rome Statute, the Rules of Procedure and Evidence . . .” After informing Mr. Ongwen of his rights as a suspect, the judge again emphasizes that “Mr. Ongwen has been informed . . . of his rights . . . with due respect for the rights of the suspect.”

In the trial chamber, on the other hand, most references are to “general rights.” For example, in *Prosecutor v. Jean-Pierre Bemba Gombo* on November 1st, 2013, the spokesperson for the victims calls attention to “human rights allegations” and crimes. In a trial proceeding from April 9, 2013, a witness explains that certain “behaviour has given rise to serious violations of human rights,” and that it was important at one point to “ensure the respect of human rights everywhere.” The prosecution similarly mentions “human rights or upholding international law,” references the President of the Republic’s “right to wear military uniform or garb,” and asks, “How can one expect soldiers to respect the rights of civilians and to uphold human rights when they themselves are mistreated by the implementation of such measures as flogging, dishonourable discharge and forced labour which one may say are incompatible with the rules of human rights?”

In the appeals chamber, most references are to general rights and general rights of the accused. One instance in which “general rights” are mentioned is when a judge emphasizes, in a

September 16, 2009 proceeding for the *Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen* case, that “the international recognised [sic] human rights standards do not necessarily extend all the rights enshrined in Article 67 of the Statute to persons who have not yet been surrendered to the Court or appeared voluntarily before it.” An instance in which “general rights of the accused,” on the other hand, are mentioned, is one in which the judge refers to “the right of the four suspects to challenge subsequently the admissibility of the case.”

Table 6: Types of Rights References by Chamber

Types of Rights	Chamber			Grand Total
	Appeals Chamber	Pre-Trial Chamber	Trial Chamber	
1. The Right to Life, Liberty, and Security of the Person.		1		1
4. The Right to Freedom from Torture and Cruel, etc			1	1
5. The Right to be Presumed Innocent.		1		1
6. The Right to a Fair Trial.				
a. The right to the inadmissibility of certain evidence.			1	1
d. The right to a speedy trial.		3		3
e. The right to a public hearing.		1		1
f. The right to be informed of the charges.		4	8	12
g. The right to equality of arms.		1		1
h. The right to assistance of counsel.			1	1
j. The right to be tried in one’s own presence.		2	2	4
General	1	3	4	8
7. The Right to Assistance of Counsel.				
a. The right to counsel of one’s choice.	2	1	1	4
d. The right to assistance of an interpreter.		5		5
e. The right to the presence of counsel etc			2	2
General			3	3
8. The Right to a Speedy Trial.		3	2	5
9. The Right to Appeal.	3	1	10	14
12. General Rights.	6	17	103	126
13. General Rights of the Accused.	5	20	23	48
14. General Rights of Victims.		7	6	13
15. General Rights of the Prosecution.		1	1	2
16. General Rights of the Defense.		1	35	36
17. General Rights of Witnesses.			22	22
Total	17	72	225	314

The final set of results examines which speakers mention which rights most often. For example, does the defense team tend to reference rights of the accused more often than the prosecution? Do judges tend to balance mentions of all the different rights better than other

speakers do? The speakers in Table 1 are listed as “accused,” “defense,” “judge,” “prosecution,” “registrar,” “victims,” and “witness.” Any mention of a right by the accused, or the suspect, is listed in the second column, under “Accused,” in the row corresponding to the type of right in question. The columns titled “Defense” and “Prosecution” both include any and all speakers from their respective teams, while “Victims” denotes the legal representative of the crime’s victims.

Under rights 6 and 7, which are divided into types a-j and a-e, respectively, a “General” row is included for any references to the right to a fair trial or the right to assistance of counsel that do not go into further specification.

Table 7 shows that the judges tend to explicitly reference rights or speak of them most often, at 101 references out of a total of 314. Judges are followed closely by Witnesses with 81 mentions, the Prosecution with 77, and the Defense Team with 33. Judges speak most often of general rights of the accused; witnesses reference general rights most often, as do the prosecution and the defense.

In total, when references to rights as a general concept are removed from the picture, rights of the accused are mentioned most of all, at 48 references out of 314, throughout the legal proceedings of the Uganda and CAR cases at the International Criminal Court. This is followed by the rights of the defense as a whole, at 36.

Table 7: Types of Rights References by Speaker

Types of Rights	Speaker							Grand Total
	Accused	Defense	Judge	Prosecution	Registrar	Victims	Witness	
1. The Right to Life, Liberty, and Security of the Person.			1					1
4. The Right to Freedom from Torture and Cruel, etc			1					1
5. The Right to be Presumed Innocent.			1					1
6. The Right to a Fair Trial.								
a. The right to the inadmissibility of certain evidence.			1					1
d. The right to a speedy trial.			3					3
e. The right to a public hearing.			1					1
f. The right to be informed of the charges.	2	4	5			1		12
g. The right to equality of arms.			1					1
h. The right to assistance of counsel.				1				1
j. The right to be tried in one's own presence.	2	2						4
General		5	2	1				8
7. The Right to Assistance of Counsel.								
a. The right to counsel of one's choice.			4					4
d. The right to assistance of an interpreter.			5					5
e. The right to the presence of counsel etc				2				2
General				2		1		3
8. The Right to a Speedy Trial.		1	4					5
9. The Right to Appeal.			4	8			2	14
12. General Rights.		15	17	33	1	12	48	126
13. General Rights of the Accused.	1	2	30	13			2	48
14. General Rights of Victims.		1		2		6	4	13
15. General Rights of the Prosecution.		1		1				2
16. General Rights of the Defense.		4	14	6	1		11	36
17. General Rights of Witnesses.			7	2		1	12	22
Total	1	33	101	77	2	19	81	314

Given all of this, it is clear that several conclusions can be drawn: first, that judges speak of rights most of all; second, that references to rights take the form, most often, of “general rights”; and third, that the overall focus across the board, for almost every possible speaker, is on general rights and rights of the accused. Rights language at the International Criminal Court thus supplements and bolsters the criminal law process, in emphasizing the rights of the accused, but is not specific enough in most instances to be justiciable or powerful. Rights as often traditionally understood – as bulwarks for individuals against excessive abuses of power by the state – are not referenced and mentioned very often in this way at the ICC, and victims themselves are given little voice as compared to judges, the prosecution, and the defense. A solidification of the status of the ICC in the international arena, and an improvement of its image in the public eye, will require much more attention to rights of other actors than the accused, and recognition of the role that human rights can play in international legal proceedings.

IV. Implications for the International Criminal Court

Justice for Victims: Addressing Violations of Their Rights

What does justice for victims of large-scale atrocities truly mean? As Luke Moffett writes, a “statement on the International Criminal Court (ICC), whether by a prosecutor, the [U.N.] or a non-governmental organization (NGO), would be found wanting without the ubiquitous invocation of ‘doing justice for victims.’”⁴⁵ Justice for victims of human rights abuses around the world has historically been understood to mean the prosecution and fair punishment of those most responsible for perpetration of the crimes.⁴⁶ At the International Military Tribunal in Nuremberg, the prosecutor at one point equated justice with conviction of the defendants.⁴⁷ Similarly, the President of the International Criminal Tribunal for the former Yugoslavia (“ICTY”) stated the following in his first report to the UN Security Council and General Assembly:

... from the victim’s point of view, what matters is that there should be public disclosure of the inhuman acts from which he or she has suffered and that the actual perpetrator of the crime be tried and, if found guilty, punished. . . . [T]he punishment of the authors of those barbarous acts by an impartial tribunal can be a means, at least in part, of alleviating their suffering and anguish.⁴⁸

⁴⁵ Luke Moffett, *Elaborating Justice for Victims at the International Criminal Court*, 2015, https://oup.silverchair-cdn.com/oup/backfile/Content_public/Journal/jicj/13/2/10.1093/jicj/mqv001/2/mqv001.pdf?Expires=1503010249&Signature=Iw6p5zEgGKD~PQpbGSukT~UVWzk7sfmEaANvYGo8coAjdvtP7hXjFws6ZeN PkXWU4kqkd~FYX5y2pFmSwGM9akhNQKyvhCIXVhS7srE2befFeoSFLyBGDguWDH-Kx8fC7mnoPKQhjS8GV17ID3rAH9X9WrE~pnhFsb6JIO3DcWJWYeoJEnRS8jIXVd1N4ChLnzulbevTb kxVBgezadjZZo8TTkE~RSD8R9hxlUI30oNMdGR465YongYEkXccDyA~FD27uypVABY1XkcFYv8g CzI6xrbxmK12u5i36VuAAltRUqYm07gBXgGU4knr-n-TjbW--I5B2zQ2tEsd76UQ__&Key-Pair-Id=APKAIUCZBIA4LVPVAVW3Q.

⁴⁶ *Id.* at 282.

⁴⁷ *Id.* at 282.

⁴⁸ *Annual Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991*, UN Docs A/49/342, S/1994/1007 (1994), xx 50-51.

Yet victims have “often been disappointed by their lack of input or tangible benefits from the ICTY and the International Criminal Tribunal for Rwanda (“ICTR”).”⁴⁹ Rather than being treated as subjects with rights to present their own interests, victims in the ICTY and ICTR were treated as objects of moral concern.⁵⁰ As the research for this paper finds, the voices of victims at courts such as the ICC may often be heard, but specific mention of their rights is often ignored or paid little attention.

With a framework for a human rights-based approach in place that emphasizes use of specific rights rhetoric by all actors in an ICC judicial proceeding, rather than by some actors over others, the ICC can push to the forefront mentions of specific violations of victims’ rights, and encourage the various parties to look for appropriate recompense.

What Would a Rights-Based Approach Look Like?

Alisa Clarke argues that the United Nations should adopt the human rights-based approach for enhanced effectiveness, relevance, and legitimacy in the fulfillment of its mission.⁵¹ She argues that by implementing such an approach, the international system can evolve according to systems thinking standards from “the small, simple, and mechanical” side of the spectrum to the “more expansive, more inclusive, more complex, more internally cohesive, and more energetically dynamic and responsive.”⁵² The human-rights based approach, according to Clarke, is currently proving that it has the potential to influence (1) the politics around human

⁴⁹ *Id.* at 283 (quoting B. Nowrojee, “Your Justice is Too Slow”: Will the International Criminal Tribunal for Rwanda Fail Rwanda’s Rape Victims?” in D. Pankhurst (ed.), *Gendered Peace: Women’s Struggles for Post-War Justice and Reconciliation* (Routledge, 2007) 107-136.)

⁵⁰ C. Jorda and J. De Hemptinne, “The Status and Role of the Victim,” in A. Cassese, P. Gaeta, and J.R.W.D. Jones (eds), *The Rome Statute of the International Criminal Court: A Commentary* (Oxford University Press, 2002) 1387 – 1419, at 1389.

⁵¹ Alisa Clarke, *The Potential of the Human Rights-Based Approach for the Evolution of the United Nations as a System*, 21 Dec 2011, Springer Science and Business Media B.V. 2011.

⁵² See Senge (1990), *The Fifth Discipline—The Art and Practice of The Learning Organization* and Bánáthy (2000), *Guided Evolution of Society: A Systems View* (Contemporary Systems Thinking).

rights, (2) the delivery of development and other programming, and (3) the culture and qualities of international civil service.

As part of integrating human rights into the United Nations system as a whole, initiatives by UN Secretary-General Kofi Annan for the reform of the UN were intensified in 1997 and throughout the following decade. In 2002, the Secretary-General published a report focused on promoting human rights, titled, “Strengthening of the United Nations: an agenda for further change.” More reports followed, and as thinking about development began to change, the human rights-based approach rose to prominence.

The UN human rights-based approach framework was composed of the following elements, in no particular order: (1) universality and inalienability; (2) indivisibility; (3) interdependence and inter-relatedness; (4) equality and non-discrimination; (5) participation and inclusion; and (6) accountability and rule of law.⁵³ These elements bring together all human rights as equally important to the project of development.

A practical example of a human rights-based approach that strengthened and empowered the capacities of rights-holders and duty-bearers to make their claims and meet their obligations is that of the right-to-food campaign in Malawi,⁵⁴ which began at the village level by educating villagers about their rights and learning more about their experiences with food insecurity. Working groups in the village created policy proposals to have an impact on national legislation and propel national action. With these two prongs of education and policy, the campaign was able to ensure that duty-bearers codified the right to food at the legal level, and that rights-

⁵³ Alisa Clarke, *The Potential of the Human Rights-Based Approach for the Evolution of the United Nations as a System*, 21 Dec 2011, Springer Science and Business Media B.V. 2011.

⁵⁴ UN Practitioners’ Portal on Human Rights Based Approaches to Programming, FAQ, <http://hrbaportal.org/faq>.

holders knew the rights they had and how to claim them. Article 13 of the Constitution of Malawi reads,

“The State shall actively promote the welfare and development of the people of Malawi by progressively adopting and implementing policies and legislation aimed at achieving the following goals: . . . (b) Nutrition: To achieve adequate nutrition for all in order to promote good health and self-sufficiency.”

How can a human rights-based approach apply to the International Criminal Court?

Benison in a 1999 journal article argues that, because the two distinct bodies of international humanitarian law and international human rights law - the law of war and the law of peace - have melded together, the ICC should move closer to a comprehensive human rights approach.

Benison’s recommendations for a human rights-based approach for the ICC are that the body should

“(a) create judicial standards that provide guidance in weighing competing interests like respect for the laws of war and the opposing principle of military necessity and (b) identify non-derogable rights that are to be respected regardless of wartime or peacetime status.”⁵⁵

This paper proposes that the International Criminal Court should adopt a human rights-based framework that (1) encourages judges, victims, the prosecution, and the defense to use specific human rights rhetoric that references particular, justiciable rights, and (2) encourages actors within the criminal justice process to attempt to give near-equal weight to the rights of the various parties, depending on the context of each individual case. An ideal framework would set out the objective of promoting human rights within the ICC through encouraging the use of rights language, and would then provide detailed steps for doing so.

Programmatic priorities, for example, could focus on the following four pillars:

1. Promoting and protecting human rights within the International Criminal Court;

⁵⁵ Audrey I. Benison, War crimes: A human rights approach to a humanitarian law problem at the International Criminal Court, Nov 1999, *Georgetown Law Journal*, at 141.

2. Ensuring that rights of all parties in the criminal justice process are recognized and appropriately addressed;
3. Enhancing the likelihood that a party with a specific grievance will raise the grievance in the form of a reference to an explicit right; and
4. Enforcing the responsibility of duty-bearers to meet their obligations with regard to rights-holders' particular claims.

The International Criminal Court is in a unique position to advance human rights discourse in its legal proceedings, as the court in the international system entrusted with the prosecution of the most heinous war crimes and crimes against humanity. All parties in the legal proceedings the ICC undertakes can aim to center rights discourse in their arguments and claims, so as to advance attainment of their own rights as well as recompense or reparations for rights that have been violated.

After setting out the objective of the framework and its programmatic priorities, drafters of the rights-based approach document can provide a guide for actors within the ICC system. First, rights such as the first eleven rights categorized in this paper can be listed, followed by more specific delineations of the last five categorized rights. Second, the importance of addressing the rights of all parties throughout criminal justice proceedings can be set out, to encourage the realization of the second programmatic priority. Third, each right can be defined and described, with examples of its respective right-holders and duty-bearers, and with possible mechanisms for enforcement and reparations.

V. Conclusions and Recommendations

The International Criminal Court continues to solidify its place as a legitimate actor and advocate of justice in the international legal community. One of the ICC's main objectives, as described in the Rome Statute, is "to guarantee lasting respect for and the enforcement of international justice." To evaluate the ICC's effectiveness in achieving its goal of guaranteeing the enforcement of international justice, we can look to its success in promoting and enforcing human rights throughout the ICC's operations.

This paper finds (1) that judges reference rights most often in the legal proceedings of two situations at the ICC, and (2) that rights in these two situations are referenced most often in the context of "general rights," and are not specific enough to be justiciable. The research also reveals that, second only to general rights, rights of the accused are mentioned most often, and the rights of victims are rarely mentioned at all.

Given these conclusions, the ICC should strive to place rights rhetoric at the forefront of its work, implementing a framework for a human rights-based approach to its caseload to strengthen the realization of human rights. This would allow the ICC to encourage actors other than judges to look to specific, justiciable rights in an international context, and to push for powerful references to actionable rights of actors other than the accused, such as victims. Similar to other research done on rights language at the United Nations, this paper bases its argument on the premise that the implementation and recognition of rights by the International Criminal Court would be strengthened if rights language regarding these rights were used in their practice.

An effective human rights-based approach should develop and build on the relationships between rights, duties, rights-holders, and duty-bearers, and should set forth a solid framework

for the promotion of human rights through concrete mechanisms and clear steps. Within the context of the ICC, a rights-based approach should aim to fulfill and promote human rights, should identify rights-holders and duty-bearers and strengthen their capacities to make claims and meet obligations, and should keep international human rights principles and standards at the forefront of the ICC's work. By ensuring that rights language is the common currency of the various actors within the system, the ICC can promote human rights successfully, since a shared language can allow rights-holders to have a specific basis on which to make their claims and duty-bearers to have a basis on which to address their obligations. The International Criminal Court should therefore create a framework that encourages its actors to use language referencing specific, justiciable human rights that are applicable within the international criminal justice context, so that it can take an important step towards promoting and protecting those rights within its institution.

The need for a greater emphasis on human rights language and rhetoric within ICC proceedings is shown by the research undertaken in this thesis. Though the data do pose limitations and challenges, due to the fact that the full range of ICC cases was not studied, the results do provide invaluable insights from a qualitative perspective. In the case of Uganda, we looked at 62 transcripts published between June 2005 and November 2015. In the case of the Central African Republic, we looked at 813 transcripts published between June 2008 and June 2016. The texts of the documents from these legal proceedings were parsed carefully for mentions of the word "right," in an effort to understand the types of rights that tend to be mentioned in the practice of international criminal law at the ICC. Rights were categorized into eleven types described by Cherif Bassiouni, with the addition of five more "general" types of rights – for example, general rights of the accused, or general rights of the victims.

Most references to a “right” emphasize procedural due process rights, rather than rights of victims of the alleged crimes. The highest number of rights references is by judges, followed closely by witnesses and the prosecution. The remaining speakers reference rights either modestly or rarely. Rights references by the type of right, however, reveal a different dynamic. The most frequently referenced rights type mentioned is General Rights. In second place come the General Rights of the Accused, General Rights of the Defense, and General Rights of the Witness. The Trial Chamber features the highest number of references driven by General Rights. In the pre-trial chamber, most references are to rights of the accused. In the appeals chamber, most references are to general rights and general rights of the accused. Judges tend to explicitly reference rights or speak of them most often, at 101 references out of a total of 314. Judges are followed closely by Witnesses with 81 mentions, the Prosecution with 77, and the Defense Team with 33. Judges speak most often of general rights of the accused; witnesses reference general rights most often, as do the prosecution and the defense.

This paper proposes that the International Criminal Court should adopt a human rights-based framework that (1) encourages judges, victims, the prosecution, and the defense to use specific human rights rhetoric that references particular, justiciable rights, and (2) encourages actors within the criminal justice process to attempt to give near-equal weight to the rights of the various parties, depending on the context of each individual case. The framework’s priorities should be (1) promoting and protecting human rights within the International Criminal Court; (2) ensuring that rights of all parties in the criminal justice process are recognized and appropriately addressed; (3) enhancing the likelihood that a party with a specific grievance will raise the grievance in the form of a reference to an explicit right; and (4) enforcing the responsibility of duty-bearers to meet their obligations with regard to rights-holders’ particular claims.

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Appendix A: Code for ICC transcript data extraction algorithm

The following code was used to parse ICC transcripts and extract relevant information. The code was written in the Java programming language and compiled using the Netbeans IDE.

```

package javaapplication1;

import java.io.*;
import java.nio.*;
import java.nio.channels.*;
import org.apache.pdfbox.cos.COSDocument;
import org.apache.pdfbox.io.RandomAccessRead;
import org.apache.pdfbox.pdfparser.PDFParser;
import org.apache.pdfbox.pdmodel.PDDocument;
import org.apache.pdfbox.text.PDFTextStripper;

public class JavaApplication1
{
    public static void main(String[] args) throws IOException
    {
        String country=new String ("CAR");
        //file array
        File folder = new File("C:\\Users\\ajs\\Documents\\Misc\\Zeinab Thesis\\"+country+"
            Transcripts");
        File[] listOfFiles = folder.listFiles();
        String filename;
        File file;
        PrintWriter output = new PrintWriter("C:\\Users\\ajs\\Documents\\Misc\\Zeinab
            Thesis\\Output_"+country+".txt");

        //declarations
        int beg=0;
        int end=0;
        int counter =0;
        int totalcounter=0;
        int length=0;
        String substring=null;
        String speaker=null;
        int speakerend=0;

        for (int i = 0; i <listOfFiles.length; i++)
        {
            filename=listOfFiles[i].getName();
            file = new File("C:\\Users\\ajs\\Documents\\Misc\\Zeinab Thesis\\"+country+"
                Transcripts\\"+filename);
            PDDocument document = PDDocument.load(file);
            PDFTextStripper s = new PDFTextStripper();
            String input = s.getText(document);
            //System.out.println(input);

            //file name

```

```

System.out.println("*****
*****");
System.out.println("File: " + listOfFiles[i].getName());

System.out.println("*****
*****");

output.println("*****
*****");
output.println("File: " + listOfFiles[i].getName());

output.println("*****
*****");

//Case name
end=filename.indexOf("_");
System.out.println("Case Name: "+filename.substring(0,end));
output.println("Case Name: "+filename.substring(0,end));
//Date
end=filename.indexOf("_",end+1);
System.out.println("Date: "+filename.substring(end+1,end+12) );
output.println("Date: "+filename.substring(end+1,end+12) );
//Setting/Chamber
for (int k=0;k<(input.length()-10);k++)
{
    if (input.substring(k, k+7).equalsIgnoreCase("Appeals"))
    {
        System.out.println("Chamber: Appeals Chamber");
        output.println("Chamber: Appeals Chamber");
        break;
    }
    else if (input.substring(k, k+3).equalsIgnoreCase("Pre"))
    {
        System.out.println("Chamber: Pre-Trial Chamber");
        output.println("Chamber: Pre-Trial Chamber");
        break;
    }
    else if (input.substring(k, k+5).equalsIgnoreCase("Trial"))
    {
        System.out.println("Chamber: Trial Chamber");
        output.println("Chamber: Trial Chamber");
        break;
    }
}
System.out.println("\n");

```

```

output.println("\n");
//System.out.println(input);
length = input.length();
counter = 0;
speakerend=1;

for ( int j=0;j<length-4;j++)
{
    if(input.substring(j,j+1).equalsIgnoreCase(".") &&
Character.isUpperCase(input.charAt(j-1)))
    {
        speakerend=j;
        //System.out.println(input.charAt(speakerend));
    }
    substring=input.substring(j, j+5);
    if(substring.equalsIgnoreCase("right"))
    {
        counter++;
        totalcounter++;
        //System.out.println("Found ONE");
        System.out.print("Instance: "+counter+" -----");
        output.print("Instance: "+counter+" -----");

        //System.out.println(j +" "+ speakerend);
        if(speakerend>30)
        {
            speaker = input.substring(speakerend-30,speakerend);
            speaker = speaker.replaceAll("[\n\r]", "");
            speaker = speaker.replaceAll("[a-z]", "");
            speaker = speaker.replaceAll(" ", "");
            speaker = speaker.replaceAll("-?\d+", "");
            for (int l=0;l<speaker.length()-1;l++)
            {
                if
(Character.isUpperCase(speaker.charAt(l))&&Character.isUpperCase(speaker.charAt(l+
1)))
                {
                    speaker=speaker.substring(l);
                    break;
                }
            }
            System.out.println(" Speaker: "+speaker+" -----");
            output.println(" Speaker: "+speaker+" -----");
        }
        beg= Math.max(0,j-200);
        end= Math.min(j+200,length-1);

```

```
        System.out.println(input.substring(beg,end));
        System.out.println("\n");
        output.println(input.substring(beg,end));
        output.println("\n");
    }
}
System.out.println("\n\n");
output.println("\n\n");
document.close();
}
output.close();
System.out.println("\n\nTotal counter: "+totalcounter);
}
}
```

Appendix B: Sample output from the data extraction algorithm

Below is sample output from the data extraction algorithm applied to transcript files from the Central African Republic situation. The total output is over 300 pages. In observance of space constraints, only the output for three transcript files is included, as an example.

File: The Prosecutor v. Jean-Pierre Bemba Gombo_CAR_01-11-2013 1_88 NB T.PDF

Case Name: The Prosecutor v. Jean-Pierre Bemba Gombo
Date: 01-11-2013
Chamber: Trial Chamber

Instance: 1 ----- Speaker: MR SCALIOTTI -----

.2

(Interpretation) "Following the recent telephone conversation which we had, I wish³ to inform you of facts related to the accusations made to me by your organisation⁴ after violations of human rights in the Central African Republic.⁵ For your information, I wish to inform you that as soon as I was informed by⁶ airwaves of the assumed involvement of some of the men from the Congo Liberatio

Instance: 2 ----- Speaker: MR SCALIOTTI -----

mation, I wish to inform you that as soon as I was informed by⁶ airwaves of the assumed involvement of some of the men from the Congo Liberation⁷ Army, ALC, their involvement in violations of human rights, I immediately⁸ commissioned a commission of inquiry to carry out a check on the authenticity of⁹ these events, to identify the men the ALC involved in these violations and to hand¹⁰ them ov

Instance: 3 ----- Speaker: MR SCALIOTTI -----

commission, (Redacted).²

(Redacted)³

(Redacted)⁴

Q. If you mean that (Redacted)⁵

(Redacted), then once again Mr Bemba was wrong in his⁶ letter, when he said that (Redacted)⁷

(Redacted); am I right?⁸

A. Well, here I'm going to clarify this matter.⁹

(Redacted)¹⁰

(Redacted)¹¹

(Redacted)¹²

(Redacted)¹³

(Redacted)14

(Redacted)15

(Redacted)16

I'm telling you the truth, the truth just

Instance: 4 ----- Speaker: MR SCALIOTTI -----

(Redacted)15

(Redacted)16

I'm telling you the truth, the truth just like I've always been telling you, Madam17

President.18

Q. You stated during your testimony that the ALC did not have the legal right to19
conduct an independent investigation in Central African Republic. If you remember20
stating this, I would appreciate if you could simply answer "Yes" or "No," if that was21
your state

Instance: 5 ----- Speaker: MR SCALIOTTI -----

ed on interviews that the members of this NGO3

were able to conduct from statements that they took from interview from victims,4

including visiting hospitals and talking to victims.5

Now, isn't it right that ALC could have been the same, like the staff members of FIDH6

did, so they could have -- the ALC could have interviewed victims in the Central7

African Republic, in Bangui?8

A. Madam P

Instance: 6 ----- Speaker: MR SCALIOTTI -----

the commission also interviewed the victims. I think that's10

what you said. At the end -- well, I didn't really understand what you said at the11

end.12

Q. You said that the ALC didn't have the right to conduct an investigation, and I13
said that, as part of an investigation, the ALC - not the commission run by the Central14
African authorities - I mean the ALC could have interviewed or ha

Instance: 7 ----- Speaker: MR SCALIOTTI -----

answering my question. So, please, if you don't mind, listen to me and I will5

ask you the next question.6

And my next question is: Again, based on what you said, that the ALC did not have7

the right to conduct an independent investigation, now, as part of an investigation,8

isn't it true that the ALC was certainly able and they had the legal right to interview9

the soldiers, although they

Instance: 8 ----- Speaker: MR SCALIOTTI -----

what you said, that the ALC did not have⁷
the right to conduct an independent investigation, now, as part of an investigation,⁸
isn't it true that the ALC was certainly able and they had the legal right to interview⁹
the soldiers, although they were in Central African Republic? Am I correct?¹⁰
A. The MLC didn't have the competence to carry out an independent investigation.¹¹
Q. Now, I w

Instance: 9 ----- Speaker: MR SCALIOTTI -----

R-D04-PPPP-0054

01.11.2013 Page 11

So this is information, allegation of crimes, serious violence and looting by the ALC,¹
that was on the press, available to everyone, on 1 November 2002; is this right?²

A. Please, could you ask the question again, Madam President, so I can get a better³
understanding of it?⁴

Q. Yes, Mr Witness. I just read this short portion of the article that is in

Instance: 10 ----- Speaker: MR SCALIOTTI -----

angui town¹⁴

express their exasperation towards the rebels of the Congo Liberation Movement of¹⁵
Jean-Pierre Bemba."¹⁶

(Speaks English) And I continue from the first paragraph from the top on the right¹⁷
column:¹⁸

(Interpretation) "Worse still, according to these young people who decided to¹⁹
demonstrate, these Banyamulenges, with the endorsement of -- of another -- under²⁰
the leadership

Instance: 11 ----- Speaker: ALC -----

s 5 to 8, and the¹

French is transcript 296, confidential, edited, page 7, lines 15 to 18 - told the Chamber²
that nobody with a criminal record could enter the FARDC. (Redacted)³

(Redacted); am I right?⁴

A. Thank you for the question, Madam President. Now, the question of DDR, as⁵
you see, it was organised by the National Ministry of Defence of the Democratic⁶
Republic of Congo required

Instance: 12 ----- Speaker: MR KILOLO -----

ss, with regard to third parties. There are laws¹³

about that; they protect the private and family life of individuals. And that would¹⁴
also violate Article 8 of the European Convention on Human Rights.¹⁵

I leave it to your assessment, but I do not understand how, on the one hand, the¹⁶

Prosecution has such a document with personal data but, above all, that it authorises¹⁷
itself to use it

Instance: 13 ----- Speaker: PRESIDING JUDGE STEINER -----
st of documents to be used by the20
Prosecution? So given to the Defence well in advance.21
Furthermore, before deciding on whether the use of this document would be in22
violation of fundamental rights and therefore infringe upon Article 69 of the Statute, I23
would be interested in seeing how the document was obtained since, at the bottom of24
the page, it appears that it was obtained from

Instance: 14 ----- Speaker: MR ZARAMBAUD -----
the reality was. (Redacted)3
(Redacted)4
(Redacted)5
(Redacted)6
Q. (Redacted)7
(Redacted)8
(Redacted)9
(Redacted)10
(Redacted) Damango carried out investigations on the11
allegations, human rights allegations, crimes, et cetera.12
So, with regard to Mr Damango, if we look at the transcript 182, page 39 and page 40,13
lines 1 to 7; page 39, 24 onwards; 40, 1 to 7, it was indicated that

Instance: 15 ----- Speaker: QUESTIONED BY MS DOUZIMA-LAWSON -----
,
the version of the transcript with its redactions becomes Public
Trial Hearing (Closed Session) ICC-01/05-01/08
Witness: CAR-D04-PPPP-0054
01.11.2013 Page 65
(Redacted) Both on the left and1
right banks, that is where the soldiers were deployed. So you didn't have the2
general public there because people were evacuated so that they should not be3
involved in the hostilities. The marke

Instance: 16 ----- Speaker: JUDGE ALUOCH -----
terpretation) (Redacted) Mr Bemba2
went there. And then they left there with an escort, going towards PK12. (Redacted)3
(Redacted)4
JUDGE ALUOCH: Thank you. So this part of your evidence is not right, because5
you are recorded as having said (Redacted). So, but you saw Mr Bemba6
leave, going to PK12. Did you see him leave, going to PK12, on that day? Did you7
see him leave Mr Patassé's

File: The Prosecutor v. Jean-Pierre Bemba Gombo_CAR_03-05-2013 1_35 SZ T.PDF

Case Name: The Prosecutor v. Jean-Pierre Bemba Gombo
Date: 03-05-2013
Chamber: Trial Chamber

Instance: 1 ----- Speaker: PRESIDING JUDGE STEINER -----
Page 4

testimony. These powers are exercised by the Chamber in the interest of justice in1
order to ensure the efficient presentation of evidence and that the trial is fair and2
expeditious. The right to decide on the modalities of appearance of witnesses is3
certainly among these powers.4
The Chamber notes that counsel for the Defence made representations to this5
Chamber regarding the pr

Instance: 2 ----- Speaker: MR KILOLO -----

ss and we would also like to ascertain what the22
responses provided by the witness to the VWU were in a document that is actually a23
record of an interview, because we believe that the witness is right in fearing for his24
security if he were to testify from his current location.25
ICC-01/05-01/08-T-311-Red-ENG WT 03-05-2013 8/35 SZ T
Status Conference (Open Session) ICC-01/05-01/08
03.05.

Instance: 3 ----- Speaker: MR KILOLO -----

, this is24
doubly inconvenient for us.25
ICC-01/05-01/08-T-311-Red-ENG WT 03-05-2013 9/35 SZ T
Status Conference (Open Session) ICC-01/05-01/08
03.05.2013 Page 10

Firstly, in the context of the right to a fair trial, it will not be possible for the public to1
follow the hearing, and of course this is a major stake. If we find ourselves here in2
the context of this trial, it is because the

Instance: 4 ----- Speaker: PRESIDING JUDGE STEINER -----

So that is why we suggest that alternative measures should be sought in order to put20

things back on track, your Honour. Thank you.21
PRESIDING JUDGE STEINER: Maître Kilolo, since you have the right to be the last22
one, is there anything you would like to add before we go to the second topic?23
MR KILOLO: (Interpretation) Madam President, most of what has been raised by24
the OTP does

Instance: 5 ----- Speaker: MR BADIBANGA -----
would like to raise: When you talk about reviewing the Defence16
witness list, of course the Chamber cannot take a decision in advance, it has to remain17
neutral and objective, but we reserve the right to point out that if the Defence made18
an effort there are still 21 witnesses from CAR who could be former soldiers or19
victims. So they can be considered together and some of the witnesses

File: The Prosecutor v. Jean-Pierre Bemba Gombo_CAR_03-12-2012_1_71 SZ T.PDF

Case Name: The Prosecutor v. Jean-Pierre Bemba Gombo
Date: 03-12-2012
Chamber: Trial Chamber

Instance: 1 ----- Speaker: MR BADIBANGA -----
we conducted our12
business properly, but that doesn't mean that for six years I was unable to do anything13
and, well, if there was a problem, they would have criticised me, or done something.14
Right now, if you go to the border between the two countries, you'll see that there are15
people going back and forth without papers, and some person might spend three years in16
one country and the

Instance: 2 ----- Speaker: MR BADIBANGA -----
? Is that what you're asking about?18
Q. No. I'd like to know when did the first contact occur with a member of the Defence19
team of Mr Jean-Pierre Bemba, whether they're here in the courtroom right now or not?20
A. Okay. I think -- well, I didn't tell you, but I explained that in March I met Mr Kilolo.21
He called me on the telephone and asked me whether he could go to my country to t

Instance: 3 ----- Speaker: PRESIDING JUDGE STEINER -----
GE STEINER: Maître, if you would allow me?17
Mr Witness, just a -- to understand exactly what kind of relationship you have with18
Mr Bemba or his family. I noticed from many times yesterday, and right now, and I will19

be back to the Defence with the references on the yesterday's transcript, yesterday,20
Friday's transcript, that I heard many times you called Mr Bemba in a very informal way

Instance: 4 ----- Speaker: MR BADIBANGA -----

o one other than you, so what you can tell21

us will certainly be of assistance to the Chamber, to the Judges. Just a reminder, please22
speak slowly and observe the five-second rule. Is that all right by you?23

During your testimony, when you were asked the name of the MLC officers, you gave24
three names, unless I'm mistaken: Moustapha Mukiza, Commander René and25

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Instance: 5 ----- Speaker: MR BADIBANGA -----

ll you.19

MR BADIBANGA: (Interpretation)20

Q. However, when Mr Kilolo asked you about the violence and the abuse, you21

remembered that a -- a guard -- you did tell us about looting, isn't that right, by a Bozizé22
follower?23

A. Yes. Yes, I was the one who raised that point. Kilolo asked me the question and I24
said that I went to PK55.25

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Instance: 6 ----- Speaker: MR BADIBANGA -----

period of time that ended late February 200217

and ended on 15 March. We're not talking about what happened after 15 March; we're18

talking about during that time when the troops were there. All right? Now, during19

those five months, Mr Witness, you did not hear foreign radio stations, such as RFI, talk20
about violence or abuse committed by MLC soldiers in the CAR?21

A. Myself, no.22

Instance: 7 ----- Speaker: MR BADIBANGA -----

r any such thing in his16

speech.17

Q. And during that period, a period of five months, Mr Witness, did you hear any18

mention made of reports being produced by the United Nations, such as Human Rights19

Watch, on the subject of crimes committed by the MLC in the CAR?20

A. Well, I did not hear anything; any such thing.21

Q. And during that period, Mr Witness, did you have the opportuni

Instance: 8 ----- Speaker: MR KILOLO -----

01/05-01/08

Witness: CAR-D04-PPPP-0066

03.12.2012 Page 63

PRESIDING JUDGE STEINER: Maître Kilolo?1

MR KILOLO: (Interpretation) Let me point out for the record that the OTP does not2 have the right to use those documents without authorisation and that, if that were the case,3 then the Defence should have had a right to respond. For that reason, I believe that at4 this level that documen

Instance: 9 ----- Speaker: MR KILOLO -----

erpretation) Let me point out for the record that the OTP does not2 have the right to use those documents without authorisation and that, if that were the case,3 then the Defence should have had a right to respond. For that reason, I believe that at4 this level that document should not be part of the proceedings, except the appropriate5 applications and responses were made in line with each

Instance: 10 ----- Speaker: MR KILOLO -----

respond. For that reason, I believe that at4 this level that document should not be part of the proceedings, except the appropriate5 applications and responses were made in line with each party's rights.6 Thank you.7

PRESIDING JUDGE STEINER: Maître Badibanga?8

MR BADIBANGA: (Interpretation) Thank you, your Honour. I used information,9 which in any event I brought to the attention of th

Instance: 11 ----- Speaker: MR BADIBANGA -----

acted)17

A. Yesterday I explained to you that Mazangue was a commander. He was18 responsible for security in Bangui. (Redacted)19

(Redacted)20

(Redacted)21

Q. (Redacted)22

(Redacted) is that right?23

A. Yes.24

Q. Witness, could you exchange -- correction, could you explain to the Chamber what25

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ENG WT