

## Season 6, episode 2 (December 2024)

### Victim Participation as Labor

*Welcome to Justice Visions. The podcast about everything new in the domain of Transitional Justice (TJ). Justice Visions is hosted at the Human Rights Centre of Ghent University. For more information visit [JusticeVisions.org](http://JusticeVisions.org).*

**Tine:** Welcome to this new episode of the Justice Visions podcast. My name is Tine Destrooper, and with me today as a co-host is Kim Baudewijns, who just joined the Justice Visions Team a few months ago. Kim, welcome.

**Kim:** Thank you, Tine. It's a pleasure to be part of the team and of course, also the Justice Visions' podcast.

**Tine:** And today we're doing a second episode that builds on the topic of our recent conference on victims, survivors and protagonists' participation in or sometimes resistance against formal TJ processes, but also how these are often the people driving or shaping a range of more informal transitional justice processes. We have a wonderful speaker on that topic whom I'll introduce in a second. But before I do that, Kim, that's of course also the topic that you work on. So for the listeners who are not so familiar with your work, could you first say a few more words about how the topic of participation, mobilisation, resistance features and the work that you do in the Democratic Republic of Congo?

**Kim:** Certainly. What I observed in the context of the DRC is that a variety of actors are mobilising elements of transitional justice, even in the absence of a political transition and in the context of entrenched violence, which has generated a complex ecosystem of TJ initiatives, standardised and informal, local and international, judicial and non-judicial, that all jointly aim to foster justice. Not only are there widespread, customary forms of justice, but also judicial processes instigated by mobile courts, victim centred interim reparations initiated by transnational organisations, the International Criminal Court cases, etc. I was really struck by how, especially in Eastern DRC, victim-survivors actively engage with, and often are the drivers behind these initiatives, despite the everyday insecurities they face. So, in a context in which there are just a few formal or more institutional initiatives, really a lot of work is being done by victims. Of course, also with the support of international organisations. In the end, what we see is that there are all these different ways in which victims are pursuing justice, but we don't quite know yet how these different spaces interact with one another.

**Tine:** Right. And I think in a very brief and dense overview that you're just giving us there, you're actually quite nicely taking us to the focus of today's episode, which is indeed the fact that victims aren't just participating in these

formal spaces. And that in itself, I think may have positive effects, but also can be very taxing, as various colleagues have pointed out in their work. But you're also talking about victims, survivors, protagonists, often being the ones doing all that work of creating other informal spaces for justice, right?

**Kim:** I also observed this dynamic in the context of Congo. Victims survivors are not only striving for recognition of the harms they endured, but also carrying the immense burden of creating new justice spaces. They're providing evidence, doing advocacy, navigating systemic inequalities, while often facing new instances of violence and victimisation. And all of this work asks a serious investment from them time wise, but also in terms of emotional investment, dealing with setbacks, finding courage to start over or keep going again, finding new, often creative ways to mobilise in the face of impunity or deadlock of formal processes.

**Tine:** Right. And you have been working on this for years, but I will have to cut you here. Will link to your work in the show notes on Justicevisions.org, Kim. But now I really want to also introduce our guest, because I think that the realisation that you're just also portraying about the burden of participation, mobilisation, resistance for victims, that is also what lies at the heart of much of the work that our guest for today's episode has been doing. And joining us for this episode is Leila Ullrich, who is an Associate Professor in criminology at the Centre for Criminology at Oxford University. Leila, welcome.

**Leila:** Thanks so much for having me.

**Tine:** It's a pleasure. And Leila, we're having you, of course, because a lot of the work that you do is at the crossroads between international criminal justice, transitional justice and victimology, and then specifically, because you've really been working a lot on how victims of massive human rights violations engage with justice processes at the international level. And you just published a book on that topic, which is called *Victims and the Labour of Justice at the International Criminal Court: The Blame Cascade. Congratulations.* And we don't typically do book launches in this podcast, but this book speaks to so many of the topics that lie at the heart of the discussions that we typically have here that we really wanted to hear you talk more about. So, I'm going to start with the most difficult question, which is if you can tell our readers in five sentences what the book is about.

**Leila:** So the book is looking at the International Criminal Court's victim engagement. So it's based on a multi sided ethnography of the work that the court does in The Hague, in Kenya and in Uganda, including 134 interviews. And basically in the book I look at victim participation differently. So I look at it from the perspective of labour. Because when I came back to Kenya and Uganda in 2019 to do more work on the ground and I observed the court's victim engagement on the ground, I realised, this is really exhausting. This is really hard work, both for the courts' field staff, but also for victims. So in the book, I'm looking at victim participation as a form of unpaid labour and



drawing on Marxist feminist theories, and that then provides an entry point for me to look more broadly at the relationship between the courts' victim engagement and the global capitalist system in which it operates. So it gives me an entry point into looking at how the court is part of reproducing capitalist social relations.

**Kim:** Thank you for that introduction. So if you're talking about situating victims, as it were, at the lowest rung of a division of labour, it makes sense from the perspective of the ICC. But in my own work I also observe impressive amounts of agency, mostly in grassroots initiatives. Do you see any of that agency in strategy materialising in your work on the ICC, either within the formal participation avenues or victims using that participation in some way as a stepping stone or catalyst beyond the ICC to support their activism in other spaces?

**Leila:** Yes, absolutely. A little bit the danger of the approach that I chose in the book is that perhaps victims come across a little bit too much as sort of passive ideological subjects who sort of engage with the court and sort of do all this invisible unpaid labour for the courts just because they hope that one day they will receive justice. But in fact, there is a lot of agency and a lot of strategic choices involved. And I think a key way, for example, is that victims, they don't so much resist the court's processes. So they do come to the courts' outreach meetings. They do come to the trial viewings. For example, in Uganda of the Ongwen trial. And they do come to the victims meetings that the lawyers organise, but they also try to reshape those processes by constantly reminding the lawyers what really matters to them. And one of the things that really matters to them is to receive reparation. So what you observe when you go to those meetings is that the lawyers have to constantly sort of say: "well, you know, we want you to receive reparations. But however, it's complicated and there are many sort of legal conditions that apply here." And I think what happens, because victims always put these demands on lawyers, is that lawyers often actually go beyond their mandate and start to do more broader victims' advocacy and lobbying. So, for example, in the Kenyan cases, the victim's lawyer was then also trying to lobby with the Kenyan government to give reparations to victims, or they're trying to sort of create connections between the victims and local NGOs on the ground that might be able to provide assistance. They, of course, also try to link them up to the Trust Fund for Victims. So you can see how victims sort of putting pressure on the lawyers then makes them extend their work beyond their legal mandate, doing both more emotional labour, but also much more social and advocacy labour beyond the courtroom. And I think another way in which I saw agency exercise, which I thought was quite interesting and it's not so visible, but I thought it was important, is that, when the court organises meetings, victims actually often come late to the meetings because they have to look after their gardens in the morning. They have to do subsistence work. They have to take care of their kids. And, of course, the meetings themselves are often interrupted because kids are screaming. And so there is a sense in which people also resist the court's processes by prioritising their subsistence and social reproduction. So the meeting itself becomes a site of social reproduction

because you know, there's food there. And that's also part of why victims come. They can see their friends, they can have tea. So, there is a lot of reshaping that happens in the context of the courts' victim engagement that people kind of know about, but they haven't thought about in terms of victims agency.

**Tine:** Thanks. And I promise Leila, we'll go back to the court itself as a site of justice. But actually, I wanted to just zoom in a bit on what you just said about how victims try to shape the processes by the court. But I'm also wondering, I'm interested in these different spaces, that is, on the one hand, the court but also victims, of course, moving and mobilising in other spaces, often spaces that they carve out for seeking justice, spaces that often have a very different epistemic or organisational moral foundation also. In your work, do you see any interaction between these spaces, how one space influences another? Because of course people move through these spaces, right? They don't just go to the court, they are engaged often in all kinds of justice initiatives. And do you see how participation in a highly formalised process like that of the ICC, how that possibly affects other justice spaces or how they try to bring in certain logics of these other spaces into what they do with, or at, or as part of their participation in the ICC?

**Leila:** Yes. So I think, as you say it's true, victims don't just participate in international criminal justice. They also participate in other transitional justice processes. And I think what struck me a lot about that on the ground was how complementary many of these processes are. So in Uganda, where I did a lot of my fieldwork, there's often this idea that, you know, international criminal justice is in tension with local justice, sort of traditional justice like Mato Oput, because these are very different processes. But what I found quite interesting was that actually often, you know, the sort of religious leaders and the cultural leaders would come to the court's outreach meetings and they would even do outreach on behalf of the court. And they felt that, yeah, of course, people participate in the ICC, but they will also participate in traditional justice. And actually, traditional justice is what ultimately matters. So, I felt that a lot of these processes were much more complementary on the ground than they're often portrayed in the literature. Now, I haven't directly compared victim participation in formal and informal processes. I haven't, and I think it would be really interesting to observe. I think I would say that all of these processes involve unpaid labour. So whether they're restorative or retributive, whether they're formal or informal, I think that the less substantive input people have, the more technical the process is. So for example, with the International Criminal Court, a big difficulty is that law is a very top down technical discourse. There is very little room for victims to actually have a democratic input in the process. It's not designed in that way. And of course, then making people participate, looks more like exploitation and a bit less like democracy. Now with informal processes where victims can shape those processes more. It will be different, you know, it will still be labour, but that labour may have a different meaning because, the workers can sort of shape the processes they are part of. But that said, I do think that a lot of the local processes themselves and of course restorative justice processes ultimately also rely on expertise,



right? Whether it's the culture leader or the NGO expert. So there is often a dynamic, even though there are different epistemically, they often have a top down dimension and there's also often a sense in which they're ritualistic. And of course the more ritualistic a practice is, the less people can shape it, right? Because if it's traditional justice it's supposed to look similar or the same each time. So, I think participation differs between formal and informal processes. But I do think it's still important to sort of make it politically visible as labor so that we can talk about it so that we can sort of see the knowledge and the resources and the time that people pour into those processes.

**Kim:** And if we return to the ICC itself, you talk about emotional labour in your book as well, and the victims being at the bottom of the global division of labour, of which their work tends to be overlooked. How does that argument intersect with the literature on secondary victimization, for example?

**Leila:** That's a really good question, and I don't actually make that connection in the book, but I think it's an important connection. I think the paradox of victim participation is a little bit that in a sense both the exclusion of victims, but also their inclusion can both be seen as forms of secondary victimisation because they can create harm even though the harm is different. So when victims are excluded from justice processes, then there is a sense in which they are treated as passive subjects. Justice is simply rendered in their name, like by institutions that are far removed. So it's perhaps infantilizing and that creates harm, right? When people feel they are not part of the processes that concern them. But I think also inclusion of victims also can create a different type of harm in the sense of exploitation, where people, especially with the ICC, the trials go on for years and decades even. So people pour their hope and desire into those processes. They participate, they come, they hope one day there will be a judgement, there will be reparations which might never materialise. And in the process they do legitimisation work for the court. They become part of that industry only that unlike the NGO workers or the lawyers, they're not paid for that work. And I think for me, there's an interesting parallel here between the precarity of victim participation and the precarity of labour participation. Because the funny thing is, it's not funny, actually. But I suppose in a sense, if you are able to participate in the court's processes as a victim, you are one of the lucky ones, right? You are one of the chosen ones because most victims won't be able to participate because the court won't reach them or the charges are too narrowly constructed. So and of course, it's very similar in a capitalist system where the worker is exploited, but they're also the lucky ones because they actually have work, because there will be a lot of people who will try to be in that position. And there is a lot of tension between those who work and those who don't work in the same way that there's a lot of tension between those who are recognised as victims and those who are not. So there's a lot of complexities and paradoxes involved in how victim participation functions.

**Tine:** That's really interesting. And I think especially the point you also raised about that dimension of time, which was also very prominent in the last conversation we had as part of the podcast, with Dr. Güneş Daşlı, who also focused on how the absence of progress, in her case with regard to the

Saturday Mothers' demands, and almost kind of to standstill how the dimension of time really affects and complicates the mobilisation, the activism, the work that victims do. And I'm wondering how that dimension of temporality, if you will, how it affects the people that you have talked to and whether you see that. Because here, too, we see that often there's years between an arrest or a judgement and then let alone a reparation order. And all this time, victims are in a kind of limbo. Yes, they are fortunate to participate, but they're really kind of on standby. And sometimes, like in the Katanga case, that can be as much as ten years. So how does that feature into or how is that visible in what you've been researching?

**Leila:** Yeah, I think time really matters. I think there is something about waiting time, and how that itself is a form of labour, even if you're not doing very much just because of all your investment and the process and how it means that you're not investing your energies into other processes. You're not going out to protest or you're not going out to do other things because you are waiting. You're waiting for the judgement to happen one day. And I think again, for me that's also quite integral to the capitalist system where of the way in which, for example, Marxists would see victims in northern Uganda. I mean, this is very much at the periphery of the global system. They would see them as part of the surplus population. So these are people who are not currently playing productive roles within capitalism, but they are nonetheless essential because the capitalism always needs a surplus population, a population that is waiting until the gate of the factory opens, waiting time is actually very productive because you need those people at the door of the factory. And so in the book, I draw a bit on Kafka's *Before the Law*, where there is this man from the country who was waiting his whole lifetime at the gate of the court, hoping that one day he will gain entry.

**Kim:** I think a lot of literature has focussed on process related elements that would allegedly remedy the shortcomings of the current production process, like, for example, better communication or expectation management. But I think your critique somehow is more fundamental in a way. Should it also be understood as a critique of the moral economy of justice processes more broadly?

**Leila:** Yes, absolutely. Expectation management has very much become a buzz word in international criminal justice. And to be honest, the field officers and the victims lawyers that I observed on the ground in Uganda and Kenya, they did a lot of expectation management. They were quite honest, brutally honest to victims in terms of the difficulty of obtaining reparations. But expectation management itself is a form of emotional labour, right? Telling people who often don't have any alternatives, constantly managing the expectations is actually quite a quite an exhausting depleting process. And it's not the judges who do it, it's the feminised and racialized labour on the ground. It's often intermediaries who are not even paid themselves who then have to manage those expectations. But I think, yes, it is also a critique of the moral economy itself because, the very expectation management works as a discourse is that it very much makes it seem like victims have unrealistic expectations. The



problem is the expectations. They have unrealistic expectations and we need to manage them. So the problem is with people, it's not with structures. But then if you think about what victims actually want, they have been experiencing conflict, they were victimised by horrible crimes, and they may want a small piece of land to build a house, or they may want to have a pension. These are unrealistic demands in the moral economy, the political economy of international criminal justice. But that's itself a construction of the system. From a victims perspective, they don't actually seem like unrealistic demands. And what bothers me about expectation management as a discourse is that it very much ends up blaming people for having the wrong or unrealistic expectations rather than blaming the structures that render people's reasonable expectations unrealistic because of the way in which the global capitalist economy operates and the way that constrains the work of the court.

**Tine:** It's interesting what you're saying about expectation management, because I think a lot of the early literature, at least on victim participation, really came from that angle of procedural justice, having this kind of idea of, it's a right that is being granted to victims. As in your story, you're kind of turning the image upside down and saying that this is labour that victims are doing for the international criminal justice architecture or actors. So in a way, I feel like the fact that people are doing this labour, if you see that as an investment to continue in a market based logic or rhetoric, granting this procedural justice raises expectations in terms of the kind of substantive justice that's going to be emerging afterwards?

**Leila:** Yes. And I think what you see on the ground is actually a lot of mixed messaging. So there is expectation management, but there are also a lot of promises being made. Because ultimately intermediaries, the court, they do want people to participate in these processes. They see it as a form of legitimating the court's work. So, I think on the one hand, there are these big promises of justice: there will be justice, there will be reparations, there's assistance, human rights, development, prosperity. And then, on the other hand, there is the constant going against that and saying, actually, don't expect anything, there might not be reparations. And so there is a lot of contradictions in the way in which the court engages victims. And I think it's really important to problematise procedural justice as labour, because especially at the court, there has been among the victims practitioners quite a lot of foregrounding of: ok; procedural justice is actually what really matters. Victims want to participate in the processes, it's important that we respect them, that we listen to their voices, that they feel validated through the process. And of course, that's also a little bit pragmatic because the court hasn't been that effective in producing judgements or reparation orders and even when there is a reparation order as in the Ongwen case. It's not quite clear whether there actually will be enough money to pay to victims. So procedural justice also suits the court as a way of saying, well, it's actually about procedural justice, because that's something the court has become actually stronger in. While the substantive justice is something that is a bit more difficult to produce. But then of course, a lot of victims do participate because they want substantive justice. So the procedural

justice is premised on the substantive justice, and that makes them labour for the court because they're so invested in one day receiving justice.

**Tine:** That's also really interesting because in what you're saying, there's also that tension in the broader literature that you're pointing to. I mean, for example, if we look now at the ICC, with the new policy on complementarity and cooperation, you kind of see that the office of the prosecutor is really aware of the fact that something does need to change and that we need to kind of enhance procedural justice by kind of bringing justice closer to affected communities, more emphasising closer engagement with victims. But at the same time, I'm also really interested and reading that or thinking about it alongside what you just said about the work that intermediaries then actually end up doing on the ground, if you will, which is very much representing that broader tendency that you see in a lot of the feminist scholarship now, also about an ethics of care, a politics of care. And I'm wondering if you feel that that's relevant here, if we need more of that and if we do need more of that, what that looks like in practice. Because again, it's going to obviously put a lot of burdens on the shoulders of people who might not be paid, etc. So you see the tension I'm speaking to and I'm wondering what your thoughts on that are?

**Leila:** Absolutely. It's interesting because NGOs and victims' rights organisations have for a long time pressured the Court to become more local. To take victim participation more seriously, to engage more on the ground. And actually, the court has been doing that more in the last, I mean it's not perfect of course, but there has been a shift both on the victim side but also now on the prosecutor side to localise the court's processes. But of course, in the context of a court that has a very limited budget, working on the ground locally in like 17 countries across four continents, basically depends on cheap local labour, racialized and feminised labour. So there's a structural problem here in terms of localising because it basically means drawing on all that unpaid labour of people who are often themselves victims. Ethics of care, it's an interesting concept in that context because, care is also work but then of course we do want to have a more caring world, right? We do want to produce more caring relationships. I think it depends on whether you see international criminal justice as an institution, as an institution that does ideological work for capitalism, as an institution that is also carceral in its approach, as an institution that distracts from structural violence and foregrounds individual violence. If you see that institution as more harmful than beneficial, then of course, embedding care might be a way of sustaining that system rather than sort of subverting or dismantling it. I would just caution a little bit because care is also work and I think we shouldn't romanticise or glamorise it, as sort of something because under conditions of capitalism care is often both essential, but also often exploited at work.

**Kim:** I was wondering how does your work relate to current debates on decolonising international justice from Eurocentric colonial and patriarchal cultures? And how do you situate your scholarly research on the recent debates aiming for an ICJ (International Criminal Justice) counterculture, for example?



**Leila:** Obviously decolonisation is really important. It's very important to think about how we can decentre Eurocentric approaches. What I have been struggling a little bit in my own work is the question of how to ensure that decolonisation doesn't just become a discourse like a metaphor or something that's just purely about knowledge production, something that is not connected to the very real material inequalities of the processes of international criminal justice. So like, when I do work in northern Uganda, I'm a privileged worker who is paid for their work and I'm involved also in the exploitation of the people that I'm studying. And so I think there is a certain discomfort that comes with that. And I think that discomfort is important and worry a little bit that when we say, we are decolonising our work, that somehow goes away. Decolonisation if it's just about: that we do more participatory action research, we involve people more in our knowledge production, we take their knowledges more seriously, which is really important. But I think we shouldn't forget about the material realities and also our own role in that.

**Kim:** If we take a bit of a different perspective, your work, of course, also touches upon realities that we face as researchers wanting to work in participatory ways. In an [earlier episode](#), [Sanne Weber](#) described how participation fatigue related to formal justice processes also affected people's willingness to participate in research projects. And in some ways, we're of course, asking victims to do the same kind of emotional labour when we invite them into our participatory projects. How does your argument speak to this topic?

**Leila:** To be honest, even before I started working more with Marxist feminist theories and even before I started to conceptualise victim participation as labour, my intuition was always that we should actually pay research participants for the work that they do for us. Because I never quite understood the ethical dilemma. I never quite understood the idea that to ensure the integrity of knowledge production, you can't pay people because that will compromise, that will bias knowledge production, we need pure motives for knowledge production to be genuine. And I think a similar argument is often made with victim participation. That people say if you pay victims for participation, you're tarnishing the process, you're turning it into something that people only do for money. And that's bad. It needs to be a non-monetised process to be a real justice process. And the issue I have with that, both for the knowledge production, also for victim participation, is that all of us like I'm a teacher and I'm paid for my work. It doesn't mean that I don't care about my students. It doesn't mean that I am not committed to teaching. It doesn't mean that I'm doing fraudulent research. So in a sense, our whole system of labour is predicated on, yes, we get money for our work, but we still care about our work and do it well most of the time. So it's not quite clear to me why that same argument wouldn't apply to something like research or victim participation. You can want money for what you're doing and still care and be invested in a process I think most academics are. So I never quite understood that sort of the ethical dilemma that is being constructed around that.

**Tine:** Thanks a lot, Leila. And I feel that I am cutting you short and I will cut you short because I feel like we could go on for hours. But let's take that as a cue that people will just have to go on and read your book because we are nearing the end of the episode. And one last question that I did want to ask is the one that we ask of all our interviewees, you painted such a dense landscape regarding victim participation in the context of international criminal justice processes. And so my last question would be, given the very critical position that you take, if there is also things that you are observing that make it feel hopeful that you draw inspiration from, and if you could share a bit about that?

**Leila:** I suppose what does make me hopeful is I mean, obviously I talk a lot about social reproduction labour, victimisation as a form of exploited labour, but I still think this is very important labour, right? It's not that I necessarily want to abolish participation, it's more that I want to really make it politically visible so that we can have an actual discussion around whether or not we should pay victims. And so I think what makes me hopeful is that I think that labour really has the potential of creating different types of relationships because it's non commodified, because people do it because they actually care about each other. And so there is something about, people investing in communities, giving their time. Even though we all live in a capitalist system, actually a lot of labour is not capitalist and a lot of labour we actually don't do for money. And I think that there is a lot of resistive potential of that labour in terms of reshaping our lives potentially offering a new way of prioritising life, making over profit making. So it makes me hopeful that those relations exist in whatever exploited forum and that they could be a sort of a platform for resistance, a reshaping of processes as they currently exist. So that's a little bit my hope in that rather hopeless world we're living in.

**Tine:** Thank you Leila. And I think that's exactly why we keep asking the question because it is so difficult to still see hope. But I think your description of where we can start to look for resistance against what we see happening around us, that is a way to end on a hopeful note. So thank you so much for that. We will make sure to link to all your work in the show notes and for our listeners. We will be back with a new episode next month. Thank you so much Leila and Kim.

**Leila:** Thank you.