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Victims' representative Fergal Gaynor at a talk on 5 February at the Asser Institute in The Hague (Photo: THTK; background altered for better visibility)

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By The Hague Trials Kenya

Last week, Fergal Gaynor, the lawyer appointed by the ICC to represent victims in the Kenyatta case, had his day in court when he spoke at the status conference on Kenyatta.

His speech was picked up all over the media. He told judges that it would be "unconscionable now to abandon the thousands of victims of this case at this stage before they have heard even a single day of trial."

But behind the big speeches there's a real job. To find out more, The Hague Trials Kenya went to hear him speak last Thursday at the [Asser Institute](#).

The Irish lawyer began by describing what victim participation actually entails.

Nightclubbing in daylight

"This isn't victim representation by Facebook or Twitter or radio. This is about going to meet people in person," Gaynor said.

He explained, for instance, how his staff first find a local venue to host the victims' meeting. It could be a church hall, a classroom or even a nightclub – which Gaynor joked made for a "bizarre experience" at 11 AM.

Each meeting is an opportunity to provide an update "about what's been going on in The Hague" as well as to "take as many questions as we can".

Although he admitted not knowing exactly what people discussed during the day's shared meal, he often got the impression they were swapping stories about suffering.

"I believe that that is just a bit of group therapy," he said, "a completely unexpected aspect of victim participation which I think is quite important."

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Who qualifies as a victim is clear-cut. Gaynor only represents individuals in the case against Kenyatta: victims who were targeted in Naivasha and Nakuru within two respective windows of time, each a couple days in January 2008. The estimated total is 20,000.

That strictness has created some painful juxtapositions. Gaynor recalled the day he spoke to a woman who in tears told of having been raped and widowed and to a man whose only experience of post-election violence was bread plundered from his bakery. Because in the first case, the incidents occurred outside the dates relevant to this case, the woman could not be represented. But the bakery was in the right place at the right time.

"Neither of them could possibly find any common sense, nor could I," said Gaynor, "in the fact that I am allowed to represent him – who has lost 90 loaves of bread – and I am not allowed to represent her – who was raped and whose husband was murdered."

Got to go to The Hague

Victims in these trials get to participate in a very proactive way. But are they happy the court is so far away?

Yes, said Gaynor, because they have an "enormously deep-rooted cynicism... about the integrity of the Kenyan prosecution system and the Kenyan judicial system".

And if you ask victims whether their president should be allowed to attend trial by video link or in absentia, they "absolutely overwhelmingly [say] he has got to go to The Hague".

To this question, at one meeting an old lady made his assistant laugh when she responded in Luo: "If a man steals a cow, who's gonna be in the courtroom – the cow?"

Unrealistic expectations?

But the most common concern is not about video links.

"It's about livelihood support, it's about food, shelter, jobs," stressed Gaynor, "in other words: things which do not fall within my mandate."

The Kenyan government "has given to these victims support which is absolutely and totally inadequate", he said. Over the last five year, one family has received just one 2-kilogram tin of maize meal; a few victims got a one-time payment of KSh 10,000 (90 euros); for "the vast majority," he said there's been "absolutely nothing".

Gaynor admitted that he also feels complicit in the "huge problem" of "the raising of expectations".

"I mean I've done it," he said. "I have literally told people in meetings just after the start of the Ruto trial: 'Look, everyone said these trials were never going to take place. Now we can see that William Ruto is now on trial and, mark my words: a couple of months from now Uhuru Kenyatta will be in a courtroom in The Hague, and we'll all sit back and enjoy the trial.' I've said that and now of course, what have I done? I've raised expectations of justice that we are certainly not in the immediate future going to be able to deliver. And, depending on which way the trial chamber rules, we might not ever be able to deliver that justice."

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