

UCLAForum.com—ICT & ICC OTP Case Study

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ABSTRACT

The Human Rights & International Criminal Law Online Forum (Forum) is a co-operative venture between the UCLA Sanela Diana Jenkins Human Rights Project and the Office of the Prosecutor of the International Criminal Court (ICC OTP). The main purpose of the Forum, available online at UCLAForum.com, is to create an opportunity for the greater legal community to engage in a dialogue covering topics of special interest to the Prosecutor. The Internet offers the perfect platform, allowing direct involvement of legal scholars and thinkers from across the globe. The project was conceived in 2009 and negotiated into existence in 2010. The structure of the Forum stands on a carefully balanced triad of ideas: the Prosecutor's question and framing (together with extensive background materials), the detailed analysis of the question by the Invited Experts, and a discussion open to the online public. The framing of the Prosecutor's question provides the context of the problem. The Invited Expert Opinions give in-depth points of view on the Prosecutor's question. And the online debate opens the Prosecutor's question to extensive vetting by Invited Experts, legal scholars, politicians, and a wider audience of interested individuals. This structured approach creates a fertile ground for a high level analysis of the problem. There have been five full debates and one debate without invited expert commentary to date. Another full debate is scheduled to launch this summer. Individuals from 190 countries speaking 90 languages have visited the forum. Almost 280,000 words have been written on the Forum since its launch in September 2010. The Forum is a unique venue where posted opinions have the attention of the Prosecutor of the International Criminal Court.

KEYWORDS

online legal forum, UCLA, ICC, debate, human rights

1. INTRODUCTION

ICT is creating opportunities for legal scholars, politicians, students of law, journalists, human rights activist, and individuals interested in the evolution of international criminal law to engage in authentic debate on the issues of interest to the Prosecutor of the International Criminal Court (ICC OTP).

In 2009, Dr. Richard H. Steinberg, Director of Sanela Diana Jenkins Human Rights Project at UCLA School of Law approached Mr. Moreno-Ocampo, the Prosecutor of International Criminal Court, to brainstorm how Information Communication Technologies (ICT) could be used to assist the ICC OTP in its mission. Mr. Moreno-Ocampo expressed a need to moot some of the tough legal questions faced by his Office and the Court. Thus the Forum was born. It combines the best aspects of a legal journal with the approachability of an online community. After identifying specific questions, carefully framing them, and providing background research, the Forum is able to find a balanced group of legal scholars to generate a range of opinions. These Expert Opinions are structured in line with a high-level legal journal format:

scholars are contacted and presented with the OTP's question; they are asked to write a well-researched and document position paper; and the responses are edited and styled for the Forum. Once the Expert Opinions are posted, the Forum question is opened to the public. Anyone can join and anyone can post, although comments are carefully moderated and hate speech, spam, and off-topic comments are not posted. The Forum strives for a civil discussion, even of the most difficult questions.

UCLA Law students take a year-long course and act as associate editors, writing their own comments on these difficult issues, and getting valuable exposure to issues of international criminal law and to world-renowned scholars.

2. AN ONLINE FORUM

2.1 Discusses International Criminal Law Questions of Interest to the Office of the Prosecutor

The law of the International Criminal Court is based on the Statute of Rome, adopted at a diplomatic conference in Rome in 1998 with 139 signatories and 121 parties. The United States of America signed the Rome Statute and then purported to "unsign" it; of course, the United States has never ratified the treaty. It came into force in 2002. We may be at the dawn of an era governed by international criminal law. As cases are decided, the International Criminal Court at The Hague slowly clarifies its powers, its reach, and its jurisdiction. The Office of the Prosecutor has to gather evidence and make decisions, including who to prosecute. The OTP has limited resources and creating a shared knowledge of legal procedures and precedent is in the best interest of all parties: the prosecution, the defense, the court, and the signatories.

While there are many interesting topics that can occupy decades of legal debates, it is not the mission of this Forum to consider all international criminal law issues. This Forum narrowly focuses only on those questions that have the most urgent need of exploration as determined by the Prosecutor of ICC. The Prosecutor makes the decision of what is of interest to his Office. The Forum provides the support and technology to make this legal exploration possible.

2.2 Led and Moderated by the Sanela Diana Jenkins Human Rights Project at UCLA School of Law

The Forum is structured partly as a law journal and partly as an online debate. Sanela Diana Jenkins Human Rights Project at UCLA School of Law runs the Forum. It developed the technical infrastructure that supports the needs of the Prosecutor and the Project. It works with legal scholars and the community at large to create a safe and intellectually rigorous place to discuss the questions of interest to the Prosecutor.



Figure 1: The screen shots of the Home Page of the Forum as of May 2012 and the Darfur Debate.

3. GOALS

There are five main goals for the Forum. It serves as a platform for legal debate to moot issues of interest to the ICC Prosecutor. It is a tremendous advantage to debate contentious issues prior to deciding them or arguing them before the Court.

Opening up the issues to a wider audience and fostering public debate is another goal of the Project. There is no central location where international criminal law is debated in front of the public. Most law journals have limited distribution and are not readily available to the average person (even from countries that have signed the Statute of Rome and are thus bound by ICC law). The Forum is free and open to all.

The Prosecutor is grappling with very complex legal and political issues. A public online debate is a perfect place to explore these issues.

Not only does the Forum allow for multiple points of view and an active debate between opposing perspectives, it also keeps a permanent record of these discussions. As perspectives and thinking shifts in the midst of politics, there will still be the Forum.

And finally, up until the start of this project, the OTP had been a black box—why does the Prosecutor investigate this situation and not that one? Why are some crimes worth prosecuting and some not? Since the answers are not known, the media can intensify the emotions of those involved with or effected by international crimes. The unknown always causes anxiety. While its scope is limited to legal issues, the Forum can provide some visibility into the OTP's decisions.

4. APPROACH

4.1 Frame the Issue

In addition to posing the question for the debate, the Forum and the Prosecutor work together to develop a detailed framing of the issue. This framing provides the initial access to the problem to both the Invited Experts and the public at large.

Prior to releasing the issue to the public, the Forum gathers background materials (e.g. research papers, articles, legal documents, statutes, maps, etc.) that might be relevant to the discussion and makes them available on the site. Thus the Forum becomes a repository of information, including primary source material, related to each issue.

4.2 Invite Experts

The issues of interest to the Prosecutor are technical legal questions requiring a high degree of training and a high level of analysis. So while the Forum is open to all, it was important to design participation at multiple levels of expertise. Invited Experts allow the Forum to create a foundation of high-level discourse on the topic presented by the Prosecutor without excluding a broader community at large. The Experts present the primary legal arguments in the debate. Their opinions are well-researched and well-documented. The Experts are chosen from a small group of scholars whose research agendas closely align with the current topic under debate. The Experts are chosen to provide a wide range and balance of views which serve as a foundation for subsequent debate. Each question posed by the Prosecutor is currently discussed by five experts.

For the first debate—“Does the Prosecutor of the ICC have the authority to open an investigation into alleged crimes committed in the 2008-2009 Gaza conflict?”—Invited Experts wrote 32,000 words in the initial discussion of the issue. For the second debate— “What are the obligations of Contracting Parties to the Genocide Convention to implement arrest warrants for genocide issued by the ICC, and of African Union State Parties to implement ICC arrest warrants generally?”—Invited Experts collectively wrote 28,000 words.

Together with the framing of the issue, the Expert Opinions form the backbone of the subsequent debate. It is not only used by the public to generate informed opinions, but it creates a civic and educational resource available to all.

The current list of Invited Experts, including the upcoming issue and sorted by the debate, includes:

Can the International Criminal Court sustain a conviction for the underlying crime of mass rape without testimony from victims?

Dr. Kelly Dawn Askin, Senior Legal Officer, International Justice, Open Society Justice Initiative
Professor A.L.M. de Brouwer, Tilburg Law School, Department of Criminal Law
Professor John Hagan, Professor of Sociology and Law at Northwestern University
Professor Catharine A. MacKinnon, The University of Michigan Law School
Professor Ruth Wedgwood, The School of Advanced International Studies (SAIS), The Johns Hopkins University

What International Criminal Court reparations regime would be most appropriate for addressing mass atrocities and war crimes?

M. Cherif Bassiouni, Distinguished Research Professor of Law Emeritus, DePaul University College of Law
Carla Ferstman, B.A., LL.B, LL.M., Director at REDRESS
Saul Levmore, J.D., Ph.D., William B. Graham Distinguished Service Professor of Law, University of Chicago Law School
Frédéric Mégret, LIB, DEA, Dipl. IEP, Ph.D., Associate Professor, Canada Research Chair in the Law of Human Rights and Legal Pluralism, Faculty of Law, McGill University
Eric A. Posner, Kirkland & Ellis Professor, University of Chicago Law School

What measures should be taken to maximize the crime prevention impact of the International Criminal Court?

Kenneth Anderson, Professor of Law, Washington College of Law, American University
Dr. Tomer Broude, Professor, Hebrew University of Jerusalem
William W. Burke-White, J.D., Ph.D., Deputy Dean and Professor of Law, University of Pennsylvania Law School
Richard J. Goldstone, Professor, Fordham Law School
Ambassador David Scheffer, Mayer Brown/Robert A. Helman Professor of Law and Director, Center for International Human Rights, Northwestern University School of Law

What is the proper balance between the independence of the International Criminal Court (the “Court”) and the oversight role of the Assembly of States Parties (the “Assembly”) regarding the Court’s administration under Article 112 of the Rome Statute?

José E. Alvarez, Herbert and Rose Rubín Professor of International Law, New York University School of Law

Nicholas Richard Cowdery AM QC BA LLB, Professor, Sydney Institute of Criminology, University of Sydney

Max du Plessis, Associate Professor, University of KwaZulu-Natal, Durban

Christopher Gevers, Lecturer, Faculty of Law, University of KwaZulu-Natal, Durban

Akbar Khan, LLB (Hons), LLM, Barrister-at-Law, Director and Principal Legal Adviser to the Commonwealth Secretary-General, Commonwealth Secretariat, London

Harmen van der Wilt, PhD, Professor (Chair of International Criminal Law), University of Amsterdam, The Netherlands

What are the obligations of Contracting Parties to the Genocide Convention to implement arrest warrants for genocide issued by the ICC, and of African Union State Parties to implement ICC arrest warrants generally?

Dapo Akande, University Lecturer in Public International Law & Co-Director, Oxford Institute of Ethics, Law and Armed Conflict; Yamani Fellow., University of Oxford (St Peter’s College)

Paola Gaeta, Ph.D., Professor of Law, University of Geneva

Makau W. Mutua, Dean and SUNY Distinguished Professor, University at Buffalo Law School

William A. Schabas, LL.D., OC, MRIA, Professor of Human Rights Law, National University of Ireland, Galway

Göran Sluiter, Ph.D., Professor in the law of international criminal procedure, University of Amsterdam, Faculty of Law

Does the Prosecutor of the ICC have the authority to open an investigation into alleged crimes committed in the 2008-2009 Gaza conflict?

Professor George P. Fletcher, Cardozo Professor of Jurisprudence, Columbia Law School

Dr. Marlies Glasius, Senior Lecturer, University of Amsterdam

Dr. Michael Kearney, Legal Researcher, Al-Haq

John Quigley, M.A., LL.B., President’s Club Professor in Law, Moritz College of Law, The Ohio State University

Yaël Ronen, Assistant Professor, Sha’arei Mishpat College, Hod Hasharon, Israel

The Invited Experts represent a diverse group geographically, politically, and intellectually. They are the leading thinkers on these issues.

4.3 Open Discussion to a Wider Community

The Forum is currently the only place on the Web with “the ear” of the Prosecutor of the ICC. Ideas and opinions posted on this Forum are there at the request of the Prosecutor—these are the topics s/he is interested in and this is the place s/he is looking for answers to questions. This is a very unique opportunity for the general public to engage with the ICC OTP as well as with preeminent thinkers in the field of international criminal law.

The Forum fosters a dialog with the public. It creates a space where issues get thoroughly explored. And it provides visibility to a wide range of opinions.

As of May 2012, there are over 300 authenticated members of the UCLAForum community, although most visitors do not create a member profile and thus leave no permanent record of their particular visit (other than a general page view count). Visitors to the Forum hail from 190 different countries, speaking 90 different languages. Visitors from Syria have the highest average time on site at 13.01 minutes. Ghana is the next highest at 12.59 minutes. 45.82% of all visitors to the site are coming for the first time. 54.18% of all visitors are returning to the site for updated information.

One of the participants in the Gaza Debate was M. Cherif Bassiouni, a distinguished research professor of law emeritus at DePaul University College of Law and president emeritus of the law school’s International Human Rights Law Institute. He also is president of the International Institute of Higher Studies in Criminal Sciences in Siracusa, Italy, and honorary president of the International Association of Penal Law in Paris,

France. He was co-chair of the Committee of Experts to draft the Convention on the Prevention and Suppression of Torture (1977); member, then chairman, of the Security Council's Commission to Investigate War Crimes in the Former Yugoslavia (1992-1994); vice-chairman of the General Assembly's Ad Hoc and Preparatory Committees on the Establishment of an International Criminal Court (1995 and 1998); chairman of the Drafting Committee of the 1998 Diplomatic Conference on the Establishment of an International Criminal Court; independent expert for the Commission on Human Rights on The Rights to Restitution, Compensation and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms (1998-2000); and independent expert for the Commission on Human Rights on the Situation of Human Rights in Afghanistan (2004-2006). Bassiouni returned to the Forum as an Invited Expert on the Reparations debate.

The Forum attracts participants from the highest levels of international criminal law community as well as ordinary world citizens. It is an open and democratic Forum.

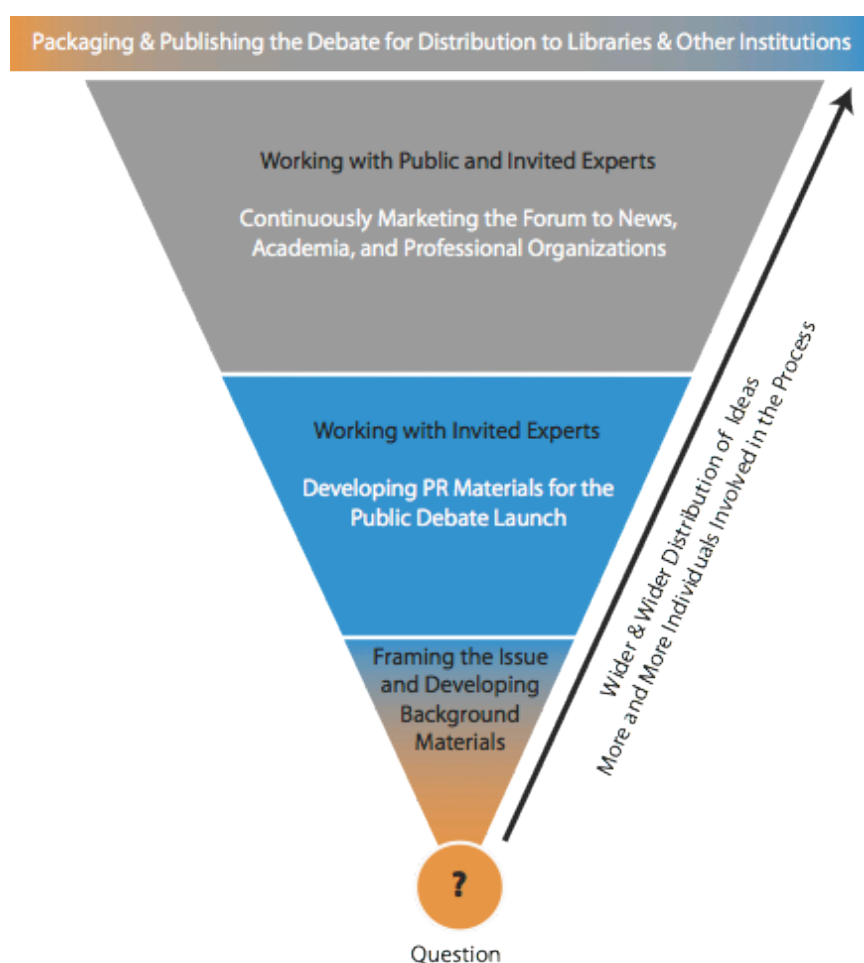


Figure 2: At each stage of development, the Forum is progressively opened up to a wider and wider audience.

4.4 Passive versus Active Engagement

With each debate, the Forum widens its scope of topics and broadens its intellectual appeal. It is fast becoming a repository of international criminal law discussions used by schools, journalists, lawyers, and researchers as an educational resource.

Engagement with a debate depends on an individual's interest in the topic and his or her level of expertise. If plotted, the interest in topic versus the level of discussion form a very narrow zone of engagement at the intersection. But each debate expands the opportunity for public participation by including a wider range of interests and expertise:

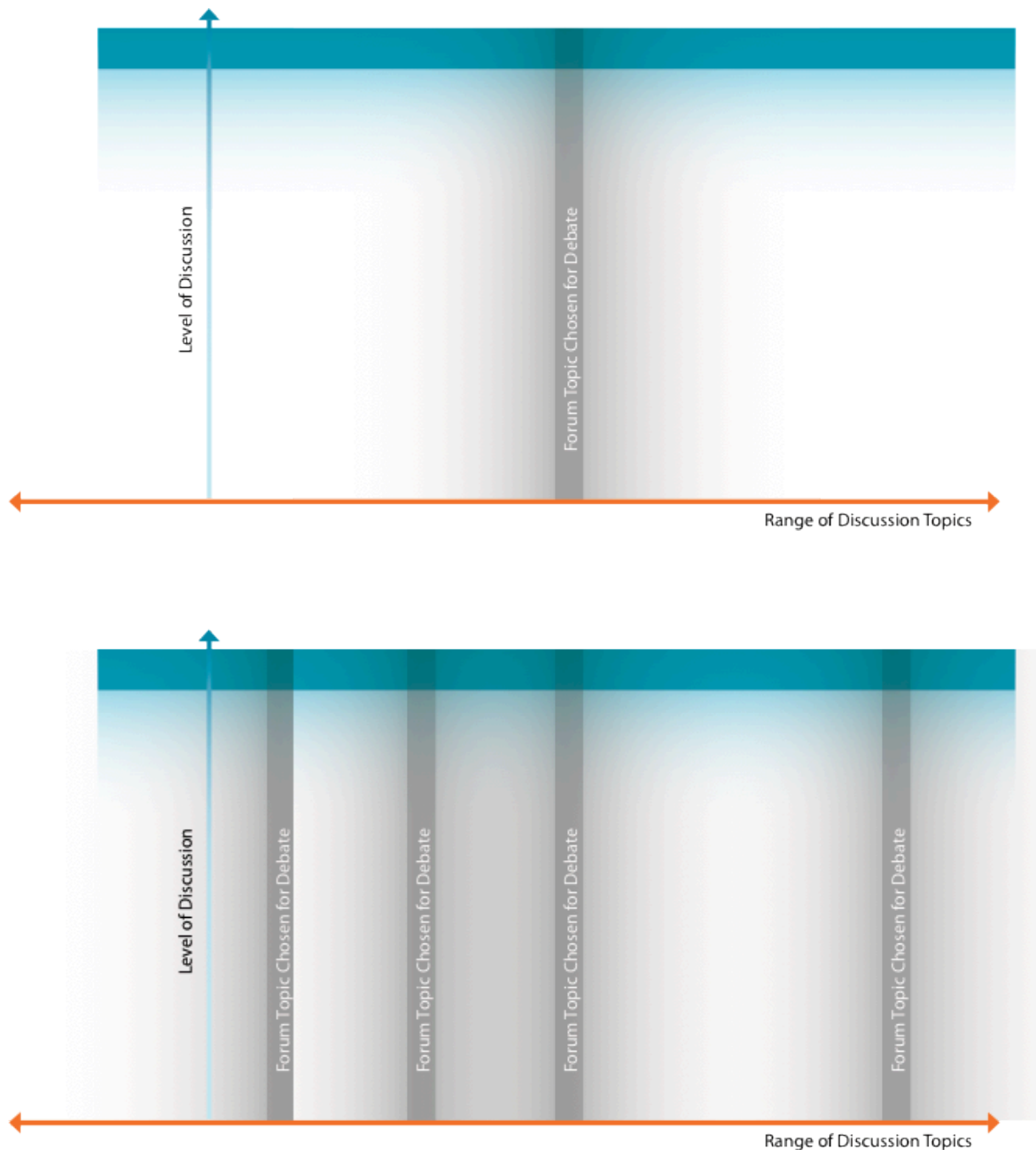


Figure 3: Each additional debate increases engagement with the Forum by providing a wider range of topics for discussion. The gradients represent the gradual falling off of interest and expertise.

There are two ways of measuring engagement of users with a participatory online project: active and passive engagement. Passive engagement with the material requires that the visitor reads the material, but

there are no other barriers to entry. The Forum doesn't require visitors to register prior to viewing the debate; there's no pay wall or other blocks.

Active engagement demands that the visitors to the Forum engage with the debate and other participants by grappling with the difficult issues presented by the Prosecutor and explored by the Invited Experts, and putting their thoughts in writing. This requires registering at the site, optionally creating a profile, and posting their comment. Active engagement requires higher-level language skills, more in-depth knowledge of the subject matter, and a willingness to openly state one's opinion in public and on the record. Out of thousands of people who visit the Forum, only a small percentage choose to write comments.

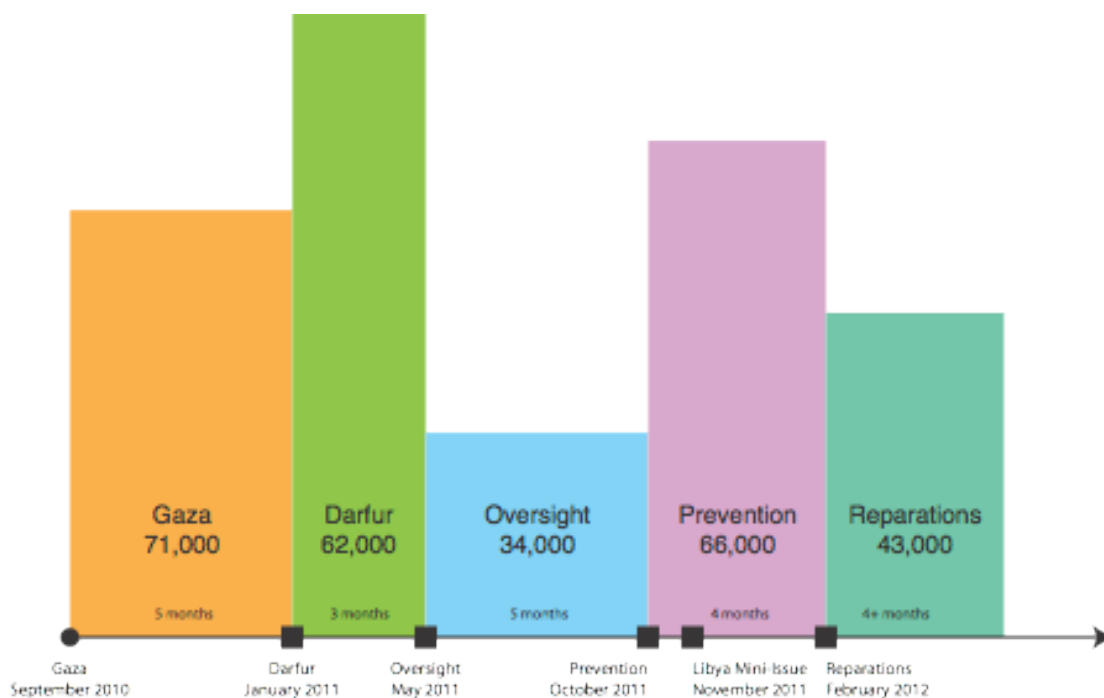


Figure 4: Active Engagement: the Forum issues by time and content quantity. Each block's size reflects the total number of words written on the subject on the Forum.

5. CONCLUSION

The Forum is a unique use of ICT to explore the issues of interest to the ICC Prosecutor. It provides a place where these issues get highlighted. It presents the relevant legal landscape with the framing of the Issue and the Invited Experts, in addition to the public debate. It gives voice to the public and creates a community of interested parties around each issue. And it vets each issue in a defined time span, making it a useful resource prior to its formal consideration or formal decision by the OTP or the ICC.

This project is at the intersections of international criminal law and technology, education and participation. This year, the Forum has been nominated by HiiL (hill.org) for The Innovating Justice Awards 2012.

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