

Victims' Rights Working Group



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"Justice cannot be for one side alone, but must be for both."

Eleanor Roosevelt

Bulletin

From Nuremberg to Rome: what role for victims before international criminal tribunals?

By Clémentine Olivier, REDRESS

In February 2005, the World commemorated the sixtieth anniversary of the liberation of the first Nazi extermination camp: Auschwitz-Birkenau. The first trial before an international tribunal was held in 1945 and 1946, for crimes against peace, crimes against humanity and war crimes committed by the Nazis: the International Military Tribunal in Nuremberg. The victims were not given any particular recognition before the tribunal. It was not until 2002, with the entry into force of the Rome Statute of the International Criminal Court, that an international tribunal offered a veritable place to victims of the most serious crimes of concern to the international community. Almost sixty years, but the road was long!

Between Nuremberg and Rome, in the 1990s, two tribunals provided an intermediate place to victims: the International Criminal Tribunals for the former Yugoslavia and Rwanda. The largely identical Statutes of these two tribunals are predominantly of Anglo-American conception. Accordingly, proceedings are based on a contradictory debate between the prosecution and the defence. Each of the two parties (the prosecutor and the accused or defence) present opposing arguments to the judges. This approach considers that the crime only concerns the representative of the public interest (i.e. the prosecutor) and the accused. The victim plays an incidental role, only appearing as a witness.

On the contrary, the Statute of the International Criminal Court grants a specific place to victims. Firstly, the will to bring justice to victims was one of the driving forces behind the establishment of the Court, in addition to the need to restore and maintain international peace and security and

the desire to prosecute those responsible for such crimes. Thus, the Court's procedure is intended to be victim friendly. Victims may be authorized to inform the Court of their views and concerns if their personal interests are affected [Article 68(3) of the Rome Statute]. They can also request reparations for their losses [Article 75 of the Rome Statute]. Victims may be legally represented, which may allow them to question witnesses [Rule 91(3)(a) of the Rules of Procedure and Evidence]. Thus, the framework laid down in the Statute and Rules of Procedure and Evidence grants victims a real place.

The current issue is finding the means for effective implementation of this framework. Indeed, it is important that the rights set out in the statute do not remain merely theoretical possibilities, but that they are able to become *effective* in practice. Concretely, this implies that the different organs of the Court, as appropriate, take the necessary positive measures to enable victims to enjoy the rights that they have been afforded under the Statute. For example, the Court must take appropriate measures to protect the safety, physical and psychological well being, dignity and privacy of victims and witnesses [Article 68.1 of the Rome Statute]. This implies obligations for a range of actors; e.g., the Office of the Prosecutor will need to take concrete steps to ensure that investigations proceed with due sensitivity and that the questioning of victims does not lead to their re-traumatization or to further victimisation or reprisals. The Victims and Witnesses Unit of the Registry will need to find ways to become effective on the ground in providing adequate support and assistance to victims and witnesses throughout the process and ensuring respect for victims' privacy and confidentiality as required and effective systems will need to be put in place to ensure that the conduct of counsel participating in proceedings is appropriate at all times.

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Interview with Professor van Boven

Professor of International Law at the University of Maastricht, Former Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. Former Special Rapporteur of the UN Commission on Human Rights on torture, and Patron of REDRESS

1. Professor Van Boven, you drafted the “Basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law” for the United Nations. Could you briefly explain what is the purpose of this document, and whether it has been formally adopted by States?

Some fifteen years ago a United Nations human rights body, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (now called the Sub-Commission for the Promotion and Protection of Human Rights), entrusted me as a then member of the Sub-Commission to undertake a study which formed the initial basis of the draft principles and guidelines. The study had to deal with the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. I was also requested to explore the possibility of developing some basic standards and guidelines.

interview

After having submitted a series of progress and interim reports to the Sub-Commission, I completed my study in 1993 and I included in it a set of proposed basic principles and guidelines. I received at the time a good deal of assistance and advice from experts and human rights activists from countries that had lived through periods of repression and gross violations of human rights. The drafting of the basic principles and guidelines was a collective effort but it remained my responsibility. It was clear from my study, based on national and international law and practice, that to a large degree the rights and interests of victims of gross violations of human rights are overlooked and ignored. Victims continue to suffer in silence, in spite of many provisions concerning redress and relief in human rights law. My study was a victim-oriented undertaking and the purpose of the proposed principles and guidelines was to highlight reparational justice for victims as a requirement and prescription of international human rights law, to underline the responsibility of States to give priority to the rights and interests of victims, and to present to victims a tool that may help them to claim reparation.

Since 1993 the proposed principles and guidelines have gone a long way from the level of independent experts of the Sub-Commission to the inter-governmental arena of the UN Commission on Human Rights. They were the subject of many revisions as a result of comments received from governments, from non-governmental organizations, notably the International Commission of Jurists, Amnesty International and REDRESS, and work done by Professor Cherif Bassiouni who was appointed by the Commission as an independent expert and who added new dimensions to the draft, in particular relating to serious violations of international humanitarian law. In recent years three consultative meetings were held under the authority of the Commission and the chairmanship of the representative of Chile, an active

proponent of the exercise. This whole process was meant to arrive at a text that would receive as broad a consensus as possible without reducing it to the level of a low common denominator. It is my earnest hope that, after years of efforts with the involvement of many, the text as it now stands will be endorsed by the United Nations Commission on Human Rights at its forthcoming session (March-April 2005) and be submitted to the United Nations General Assembly for approval.

2. What are the principles included in the Basic principles and guidelines?

As I already indicated the thrust of the document is motivated by the victims' perspective. It identifies, as is stated in the preamble, mechanisms, modalities, procedures and methods of implementation of existing legal obligations under international human rights law and international humanitarian law. As it now stands the operative part of the document comprises eleven sections, spelled out in twenty-seven paragraphs.

The basic principles and guidelines start by restating the obligation of States to respect, ensure respect for, and implement international human rights law and international humanitarian law. They further define the scope of this obligation. They acknowledge the close link between reparational justice and criminal justice by underlining the duty of States, in case of gross violations that constitute crimes under international law, to investigate and, where there is sufficient evidence, the duty to prosecute and, if found guilty, the duty to punish the perpetrator. In principle, statutes of limitations do not apply to gross violations of international human rights and humanitarian law.

The central part of the document deals with victims. It defines victims along the lines of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) and states that victims should be treated with humanity and respect for their dignity and human rights. Most essentially victims' rights to remedies are described to include: (a) equal and effective access to justice, (b) adequate, effective and prompt reparation for harm suffered, and (c) access to relevant information concerning violations and reparation mechanisms. The principles and guidelines go much in detail in spelling out the scope, the meaning and the implications of victims' rights to remedies, in particular setting out the forms of reparational justice which may be considered the *pièce de résistance* of the document. It states that reparation should be proportional to the gravity of the violations and the harm suffered. While in principle the duty to afford reparation is a matter of State responsibility, the principles and guidelines recognize that also a human person, a legal person or other entity may be liable to provide reparation to a victim.

3. What does “reparation” mean?

In traditional international law and in the history of international relations, reparations were often a substantial part of a peace settlement at the end of an armed conflict. Powers that had lost a war were requested to provide “reparations” to victorious powers.

Human beings, victims of violations of human rights or humanitarian law usually remained outside the spotlight of State and inter-State interests. The draft principles and guidelines, however, put the victims' right to reparation into the central focus. Before coming to the meaning of reparation, we should recall that regrettably and painfully many gross violations, such as executions, torture, rape, are by their grave nature irreparable. Nevertheless, also in these instances measures with a reparational aim, such as full and public disclosure of the truth, public apologies and the establishment of the criminal responsibility are a requirement of justice. Reparation involves restoration, healing and doing justice to individual persons, groups and societies.

The principles and guidelines describe and spell out, in line with relevant articles on State Responsibility drawn up by the International Law Commission, the following forms of reparation: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The principles and guidelines base themselves on a broad and comprehensive notion of reparation. They are not limited to compensation in terms of financial resources, although it cannot be denied that financial awards are highly important to alleviate the plight of victims. Nevertheless, for many victims public acknowledgement and revealing the truth are most essential. It is in the light of these considerations that the principles and guidelines provide a detailed list of measures aiming at affording satisfaction to victims. Victims of torture and rape often experience lasting traumatic effects of the ordeals they suffered. In this regard the principles and guidelines state that rehabilitation should include medical and psychological care as well as legal and social services. Following numerous pronouncements by international human rights adjudicators, such as the Inter-American and European Courts for Human Rights and the Human Rights Committee, the principles and guidelines underline the importance of guarantees of non-repetition as a form of reparation and spell out a series of measures that will contribute to preventing gross violations of human rights and serious violations of international humanitarian law.

4. In practice, how could the Basic principles impact on the rights of victims throughout the world?

This is the most crucial and equally the most intricate question. It is interesting to note that during the many years the principles and guidelines were under elaboration and revision, they had already an impact. Several Latin American countries took them into account when establishing national programmes for reparation and other assistance to victims. The Inter-American Court for Human Rights referred in its case law to the draft principles and guidelines. Moreover, Article 75 of the Statute of the International Criminal Court

dealing with reparations to victims bears the imprint of the draft principles and guidelines, at least in terms of the version that existed in 1998. In its future work on principles relating to reparations, awarding reparations in specific cases and making the Trust Fund operational as provided for in Article 79 of the Statute, the International Criminal Court may take the principles and guidelines into account as a helpful instrument.

While there are therefore already examples of the impact of the draft principles and guidelines, as it were an impact *avant la lettre*, once the principles and guidelines are adopted and have received the endorsement of the United Nations, they can effectively be used in many ways as an inspiration, as a model, as a tool for victim-oriented policies and practices. As already occasionally happened in the past, the principles and guidelines could in the future be used more consistently by States in developing programmes for reparation and other assistance to victims. National human rights commissions or, as the case may be, truth and reconciliation commissions could also make use of the principles and guidelines as a frame of reference in setting out modalities, procedures and methods for rendering justice to victims. Victims themselves, their legal advisors and advocates can employ the principles and guidelines as a tool in making claims to receive reparation. Civil society organizations may invoke the principles and guidelines in their advocacy work for victims. And at the international level, human rights adjudicators making awards to victims who have petitioned these judicial organs, treaty bodies in their dialogues with and recommendations to States Parties, and special mechanisms of the Commission on Human Rights in their efforts to provide redress and relief, they all must be mindful of the principles and guidelines on reparation and impress upon State authorities and other organs of society that the adoption of a victim-oriented perspective is a requirement of human solidarity and a prescription of basic human rights. □

Interview conducted by Clémentine Olivier, REDRESS

Note by the editor:

Subsequent to the writing of this article, the *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 International Humanitarian Law* were adopted by the United Nations Human Rights Commission at its recent annual meeting in Geneva, April 2005, in which it recommended that States take them into account and promote them (Resolution E/CN.4/2005/L.48).

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Cont. from page 1.

The Registry will in particular have to implement a system that allows victims to have access to the information necessary for their effective participation [Rule 16 of the Rules of Procedure and Evidence of the Court]. This includes, in particular, the broad dissemination of information to victims' groups in the areas concerned by situations under investigation by the Office of the Prosecutor and the more detailed notification requirements to those victims and victims groups that have been accorded the right to participate in proceedings. The Registrar will need to determine the most effective means for notification to victims, having regard to logistical constraints particularly when dealing with victims in the most isolated communities and will also need to consider how best to ensure confidentiality of communications. Surely, such practical measures will have great implications on the resources the Court needs, both personal and financial.

The ability for victims to be legally represented in proceedings is essential for the enjoyment of their rights to participate and to apply for reparations; in fact, the Statute and Rules of Procedure and Evidence make it clear that such involvement of victims will be through legal representatives. Similar to the situation with defense counsel, in most cases victims will not have the resources to hire independent counsel themselves, and will be reliant on the Court to assist them with costs. The States Parties of the International Criminal Court are now facing the challenge of how to afford sufficient resources for this in the budget. However there are a number of competing demands for funds and it is not clear whether the budget of the Court will adequately address legal representation for victims. Even though the Statute and Rules of Procedure and Evidence specifically refer to common legal representation and the Court has established a public-defender system which may reduce some of the costs, potential conflicts of interests between groups or classes of victims and the sheer number and locations of counsel would seem to necessitate several teams of counsel in each situation. The Registry of the Court held an expert consultation on legal representation issues in end May 2005 in order to further inform its procedures. □

Non-Retroactivity of the Rome Statute

By Ernest Sagaga, Spokesperson of the International Criminal Court

A key feature of the Rome Statute is its non-retroactivity. The International Criminal Court may exercise jurisdiction over perpetrators of genocide, war crimes, and crimes against humanity only when such crimes have been committed on or after the entry into force of the Statute on 1 July 2002.

The Rome Statute creating the International Criminal Court is a treaty, negotiated and signed by States. Treaties are generally non-retroactive, unless States expressly provide otherwise. States decided that the Court would exercise jurisdiction only over crimes committed after it was established. This limitation follows the general principle of criminal law, according to which, an individual may not be held criminally liable before a tribunal unless the behavior was punishable

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under criminal law. Consequently the Judges and the Prosecutor may not prosecute crimes committed before 1 July 2002.

When a State ratifies or accedes to the Statute after 1 July 2002, the International Criminal Court may exercise jurisdiction over crimes committed on the territory or by nationals of such a State only after it has become Party to the Statute. For instance, if a State becomes party to the Rome Statute in June 2005, the Court can only prosecute crimes committed on this State's territory or by its nationals after this date. However, a State Party to the Rome Statute may opt to make a declaration accepting the Court's jurisdiction over crimes

committed after 1 July 2002, but prior to entry into force of the Statute for that State. Non-States Parties may also make such a declaration. For example, Côte d'Ivoire has lodged a declaration accepting the exercise of jurisdiction by the Court with respect to crimes committed in its territory since 19 September 2002.

The non-retroactivity of the Rome Statute does not mean that impunity is granted to perpetrators of genocide, war crimes, and crimes against humanity committed prior to the establishment of the International Criminal Court. The Court is but one tribunal within the pervasive system of international criminal law. Most of these crimes have long been deemed punishable under international law. Thus, perpetrators of these crimes can – and should – thus still be prosecuted before by national courts. Indeed, the Preamble of the Rome Statute stresses that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes.”

The creation of the International Criminal Court is a legal milestone. However, States involved in the Court's creation agreed to limitation's on the Court's exercise of jurisdiction. Neither the prosecutor nor the judges are empowered to override those limitations. □

"The victim's perspective may be perceived in many societies as a complication, an inconvenience and a marginal phenomenon. However, the awareness is growing that redress and reparation for the victims of gross violations of human rights is an imperative demand of justice and a pressing requirement under international law, in particular the law of human rights."

Theo van Boven, preface to publication of the proceedings of the "Seminar on the Right to Restitution Compensation and Rehabilitation of Victims of Gross Violations of Human Rights and Fundamental Freedoms," held in Maastricht, the Netherlands, 11-15 March 1992.

Victims and Justice in Afghanistan's Transitional Process

By Niamatullah Ibrahimi,

ICC Coordinator for the Afghan Professional Alliance for Minority Rights (APAMR).

The question how to redress the losses and grievances of victims of war crimes and crimes against humanity remains highly controversial in Afghanistan and often surrounds the transitional political process in the country. Most victims believe their rights and interests are being overlooked and compromised for short-term political expediencies.

The absence of a programme by the international community and the transitional authority to redress victims' losses and to protect them against further abuses creates the public perception of the political process as serving the interests of perpetrators rather than the rights and concerns of victims. Many people link the future and sustainability of peace and stability in the country with justice and genuine reconciliation. They think there are very limited prospects for sustainable stability if victims' rights and interests continue to be sacrificed for short-term political gains.

A recent opinion survey conducted by the Human Rights Research and Advocacy Consortium found that victims across the country often do not trust the people who are meant to provide them with justice.¹ Many respondents asserted that they do not see major differences between former militias and the newly trained national police force. The domination of justice and law enforcement agencies by former militia-men and factional commanders remains a key factor of the pervasive feeling of insecurity and lack of protection across the country. The traditional perception of rampant corruption and lack of impartiality clouding the credibility of the Afghan justice system is compounded by militia domination of the justice and security institutions of post-conflict Afghanistan. This has the potential to lead to the desire for revenge and justice through informal means, which are often tribal and factional and also criminal in nature.

There are many parts of the country where justice and the rule of law is virtually non-existent and perpetrators of human rights abuses occupy key positions of power and continue to act with full impunity. The present Afghan judicial system lacks the capacity to address crimes and losses of this enormity. The existing penal and procedural codes, mainly those that came into force in the 1970s, do not pro-

vide specific safeguards and rights for victims and witnesses.

However in laying foundations of the new state institutions, particularly the judiciary and law enforcement agencies Afghanistan should learn from its past and consider the needs and rights of victims and witnesses who can no longer afford to suffer. Lessons need to be learnt both from the Afghan victims' experiences and from the new developments made in justice and victims protection elsewhere in the world. The Rome Statute for the International Criminal Court (ICC), to which Afghanistan is also a member, includes the

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most comprehensive provisions on protection of victims and witnesses. Those protective measures ought to be considered in implementing the ICC Rome Statute in Afghanistan.

Finally, aid to Afghan victims and more victims-centered approaches are essential in reconstructing the judiciary as well as other institutions. It is crucial to indicate that victims are not completely neglected and abandoned and that there are concerns about their losses. The transitional process should inspire and enjoy a popular confidence by all including the victims and witnesses. Certainly issues and dilemmas are many. The role the international community can play is also essential. □

¹Take the Guns Away, Human Rights Research and Advocacy Consortium, September 2004 www.afghanadvocacy.org

How May Victims and Human Rights Defenders be Protected in Practice?

A seminar was held in Bukavu, Democratic Republic of the Congo, from 31 March to 3 April 2005, on the issue of security for victims and human rights defenders. The seminar was organized by three NGOs: the Congolese Initiative for Justice and Peace (*Initiative Congolaise pour la Justice et la Paix*, ICJP)¹, Human Rights Watch, and REDRESS.

Thirty Congolese NGOs² participated actively in the associated working groups.

Following discussions with the technical assistance of international experts from Human Rights Watch, REDRESS, the Victims and Witnesses Unit of the International Criminal Court, Global Rights, the International Criminal Tribunal for Rwanda and *Avocats sans Frontières* (lawyers without borders - ASF), the participants adopted the plan of action and recommendations set out below, addressed to both the international community and national bodies. These recommendations do not engage the international experts who participated in the seminar.



A. Recommendations to the international community

1. Recommendations to the International Criminal Court (ICC)

- Support efforts to translate and distribute documents relating to the protection of victims and witnesses;
- Identify local partners able to act as "focal points" in the field, linking victims, witnesses and human rights defenders with the Court;⁴
- Provide secure communication systems;
- Offer specific training to local NGOs on instruments relating to victim protection and participation;
- That specific clauses relating to the protection of human rights defenders be adopted during current negotiations for a collaboration agreement between the ICC and MONUC;
- Establish mechanisms for rapid re-location of victims and witnesses in case of imminent danger, both within the country and abroad;
- Establish the planned ICC field offices in Kinshasa and Bunia rapidly. Establish further sub-offices in other provinces; these sub-offices would be staffed according to needs and would integrate the protection of victims, witnesses and human rights defenders in their work.

2. Recommendations to the United Nations Mission in the Democratic Republic of Congo (MONUC)

- Train judicial personnel and rehabilitate judicial and penitentiary infrastructures;
- Establish a Protection Unit in the provinces;
- That specific clauses relating to the protection of human rights

defenders be adopted during current negotiations for a collaboration agreement between the ICC and MONUC.

3. Recommendations to International NGOs (INGO) and financial backers

- Finance action by Congolese NGOs working to combat impunity;
- Provide adequate institutional support to Congolese NGOs so as to strengthen their capacity;
- That INGOs working in the area of victim and witness protection maintain constant contacts to ensure harmonious action;
- That INGOs support the creation of detraumatization centres;
- Finance an emergency fund for the protection of human rights defenders, to be managed by Congolese NGOs.

B. Recommendations to National Bodies

1. To Congolese Non Governmental Organizations

- Each NGO should, within its sector or range of intervention, set up teams to prevent suspected criminals from exercising any negative influence on witnesses and investigations;
- Develop maximum alert mechanisms by adopting the means to monitor the behaviour of suspects and the authorities with respect to victims, witnesses and human rights defenders;
- Promote the adoption of a law prohibiting reprisals against victims, witnesses and human rights defenders;
- Join a coalition for the ICC and increase their action in the Congo in order to build awareness in the general community and among victims and witnesses of the ICCs mandate, participation in proceedings before the ICC, the risks incurred and the protection measures available to those who participate;
- Fully implement their role as a relay⁵ between ICC investigators and victims and witnesses, by facilitating their movements for the purposes of ICC investigation while avoiding any stigma.

2. To the Congolese State

- Adopt and promulgate a law on protection and reparation for victims, including before national courts, as soon as possible;
- Recycle and train judges, rehabilitate judicial infrastructure and pay the salaries of judges and others judicial personnel;
- Create an indemnification fund for victims;
- Integrate training courses on international criminal justice in the programs of Universities, Bar Associations and the judicial corps;
- Accelerate the process for adoption of implementing legislation for the Rome Statute;
- Try initial cases rapidly in order to encourage victims. □

Bukavu, 03rd April 2005

¹ Contact: icjp_rdc@yahoo.fr

² From the Eastern provinces (CIP/Ituri, *Forum des Mamans de l'Ituri "FOMI"*, *Association des Victimes de la Guerre de l'Ituri "AVIGUITURI"*, Justice Plus/Bunia, *Groupe Justice et Libération/Kisangani*, SOFEPADI/Bunia-Ituri), From Northern Kivu (*Société civile/Beni*, *Centre d'Etudes Juridiques Appliquées "CEJA/Butembo"*, *Synergie pour l'Assistance Judiciaire aux Victimes des Violations des Droits Humains "SAJ/Goma"*, *Femmes Juristes/Beni*, CREDDHO/Goma, PAIF/Goma, RE-PRODHOC/North Kivu), from Southern Kivu (*Centre Olame/Bukavu*, *Initiative Congolaise pour la Justice et la Paix "ICJP/Bukavu"*, SOFEBEF/Uvira, UGEAFI/FIZI, CEADHO/Uvira, ADEPAE/Uvira-Fizi, *Arche d'Alliance/Uvira*, *Héritiers de la Justice/Bukavu*, *Action pour l'Education aux Droits "AED/Bukavu"*, *Radio Maria Malkia Wa Amani/Bukavu*), from Katanga (ASADHO/Katanga), from Maniema (Uwaki/Maniema, *Maniema Libérés/Kindu*) and from Kinshasa (*Coalition Nationale pour la Cour Pénale Internationale* represented by ASADHO/Kinshasa).

³ These recommendations have been adapted to bulletin format.

⁴ The term "focal points" refers to a small number of preferential, confidential contact points for relations between the ICC and victims in the field. It does not cover all the NGOs conducting information and awareness activities.

⁵ For NGO "focal points" in particular.

Training for Lawyers in the Democratic Republic of the Congo: A Condition for Effective Action by the International Criminal Court?

By Francesca Boniotti and Ladislav de Coster, *Avocats sans Frontières*, the Democratic Republic of Congo

The Democratic Republic of Congo (DRC) has been shaken in recent years by the commission of the most heinous of crimes. Few of those responsible have been brought to justice for their actions. Yet it is impossible to lay the foundations of a democratic, just and peaceful State in the DRC without putting an end to impunity and providing reparations to the victims for their suffering.

The complementary jurisdiction of the International Criminal Court and national courts

The decision of the Prosecutor of the International Criminal Court (ICC) to open an investigation into the most serious crimes committed in the DRC provides new impetus for the struggle against impunity and opens the way to in-depth reform of the Congolese judicial system. Yet the ICC intervention will not lead to the prosecution of *all* those responsible for such crimes. The ICC will only investigate a limited number of cases, leaving the Congolese judicial system with a fundamental role to play.

As a multi-donor justice sector audit in 2003-2004¹ demonstrated, the DRC judicial system is currently in a very precarious state. There are many reasons for this: poor infrastructure, insufficient geographical distribution of courts throughout the country, a serious lack of evidence, a clear drop in legal training levels, insufficient remuneration for judicial personnel, a judiciary under executive control, inappropriate legislative framework, incompetent defence counsel and endemic corruption.

The prosecution of those accused of the crimes under the jurisdiction of the ICC cannot await the total reconstruction of the Congolese judicial system, yet it is vital that the capacity of those who are already involved in the struggle against impunity in the DRC (in particular lawyers, judges and victims associations) is further developed. The basic legal knowledge of Congolese lawyers should be strengthened as a matter of priority, as they often have insufficient



or outdated training. Furthermore, lawyers, judges and victims associations should be made more familiar with the unique aspects of the procedures of the International Criminal Court and its multicultural judicial personnel.

Capacity building for Congolese lawyers

Due to the complexity of trials involving international crimes, lawyers

appearing before national and/or international courts will need special experience and expertise in the areas of criminal law and procedure, and international law. Those working on the domestic cases will also need to be able to appear before military tribunals, as indeed, only the DRC military courts have jurisdiction over the most serious crimes committed before July 2002. At present, these qualities are lacking within the Congolese legal community. There are a number of reasons for this.

The level of national legal training has seriously declined since 1970-1980, when it was generally considered superior to many other countries in Africa. Secondary and university education continues to erode and more and more graduates clearly do not have the necessary competency. Furthermore academics are under-paid (State university professors earn 50 euros per month) and the faculties are too small and inadequate for the growing number of students. Finally, legal materials are unsatisfactory: legal codes not updated, there is no decent library service, no access to Internet especially for provincial faculties such as Kisangani or Kananga (the subscription being too expensive: 100 euros per month), and no case-law database. This situation is made worse by the fact that, since leaving university, neither judges nor lawyers have received any continuing legal training, despite significant changes in the law, including a range of legislative, regulatory and jurisprudential reforms. Lawyers in the Eastern provinces are even harder hit, having been isolated from the rest of the country due to continuing conflict in recent years.

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Another set of difficulties relates to the specificity of international criminal trials. The Rules of Procedure and Evidence for the International Criminal Court are a mixture of Common Law (the principle that the parties have strong control over the proceedings) and Civil Law (where the judge plays a greater role in the running of the proceedings). In this mixed system, defence counsel conduct investigations in order to prepare the defence, while the prosecutor prepares the case for the prosecution. Victims may participate in the proceedings through a representative, and may even examine witnesses in certain circumstances. This type of proceedings requires counsel to have specific skills in investigation, preparation of the parties and questioning witnesses, skills that are not always present in those familiar with a purely civil law system. Moreover, the circumstances in which the crimes were committed create additional difficulties specific to conflict situations: difficulties in obtaining evidence, security problems, population movements caused by combat, etc.

Finally, given the serious trauma experienced by victims of the most serious crimes, legal representatives must also have an understanding of their client's situation that can be said to go beyond the law, in order to fully appreciate the impact of victims' experiences on the investigation and trial.

Avocats Sans Frontières has established a training course in DRC for legal representatives of victims and defence counsel. This course is open to counsel admitted to any Congolese bar, but the places are limited to 100 participants. In addition to the seminars, workshops are organized in the provinces for smaller groups of lawyers.

For more information, please visit www.asf.be or contact info@asf.be

¹DRC justice sector audit, "Rapport d'Etat des lieux [Report on the current situation]", September 2004.

Working Group of States Parties meets in New York to discuss the Draft Regulations of the Trust Fund for Victims

By Carla Ferstman, REDRESS

On 4-5 May 2005, the States Parties Working Group on the Trust Fund met at the United Nations in New York under the chairmanship of Trinidad & Tobago, to discuss the draft Regulations of the Trust Fund for Victims. These Regulations were presented to the Assembly of States Parties by the Board of Directors of the Trust Fund at the Third Session of the Assembly in September 2004. At this Session, States Parties had decided that Parts I and II of the draft text (on Management and Oversight of the Trust Fund and Receipt of Funds, respectively) shall be applied provisionally as an interim measure and that Part III (dealing with the Activities and Projects of the Trust Fund) would be a reference point for further work.

On 3 May, one day before the start of the official Working Group meeting, civil society representatives, under the auspices of the Coalition for the International Criminal Court and the Victims Rights Working Group met with States Parties and presented their views and concerns. The main focus of these discussions was how the voluntary contributions collected by the Trust Fund could be used: what discretion did the Board of Directors have to apply these funds in the situations under scrutiny by the Court? Does the Board have to await a decision on reparations of the Court and apply its resources within the confines of this decision, or does it have some flexibility to support victims' broader needs in the communities affected by crimes within the jurisdiction of the Court?

It is anticipated that the Working Group will now prepare a series of comments and questions for the Board of Directors that arose in the course of the meeting and provide an opportunity for the Board to respond. The issue will then come to the Assembly of States Parties at its 4th meeting, scheduled for 28 November – 3 December 2005 in The Hague. □

It takes a Toll: Secondary Traumatization

By Sara Sharratt, Ph.D Professor Emerita of Psychology, California USA. Advisory Member WIGJ and Visiting Professor and Special Advisor University for Peace, Gender and Peace Building Program, United Nations/Costa Rica

Many of us are directly or indirectly working with people who have experienced profound atrocities committed against them. Dealing with other people's suffering causes us pain and grief and it takes its toll. For many years, we ignored our own suffering as "helpers" with the omnipotent notion that our task was only to help others and to be there to deal with *their* pain. We felt responsible and somewhat obligated to demonstrate our psychological fitness to help and in doing so deny signs of our own traumatization. We did not think we had to pay attention to *ours*. But, we must.

Dealing with atrocities can lead to vicarious traumatization, that is, we experience some of what the victims are sharing with us and sometimes even develop the same symptoms. Hearing about the trauma suffered by others may also trigger painful memories from our own past which psychologists have termed "counter-transference". Faced with so much pain and need, we might feel obligated to deal with more problems than we can handle or are feasible for any individual, thereby creating unrealistic expectations among beneficiaries and ultimately provoking negative reactions.

Many of the events that you hear about may elicit very strong feelings in you – feelings that are very appropriate. You may feel angry, sad, grieving, frightened, horrified, shocked, and deeply disturbed. Sometimes it is helpful to share a little of these feelings, so that people you are working with realize that they are with a human being, and so that you can remind them that it is appropriate to feel.

If not conscious of what is happening to them helpers become tired, overworked, feel isolated, defeated and even cynical. It is difficult to keep faith in humanity after being faced with so much senseless violence, so much

cruelty. Taken together psychologists refer to these phenomena as secondary trauma.

Secondary traumatization often causes such symptoms as:

- Fatigue, sadness, depression;
- Cynicism, discouragement, loss of compassion;
- Hyper-arousal, sleep disturbances, intrusive nightmares, flashbacks related to trauma material;
- Somatic problems: head aches, joint pain, abdominal discomfort/diarrhea;
- Feelings of helplessness, denial and disbelief, anger and rage.

What can we do to prevent secondary trauma? We can make connections (keep in touch with family, friends, and others). We can maintain a daily routine (keeping up with daily routine of work, errands, household chores, and hobbies provides us with a feeling of stability when the world around seems chaotic). We can and must take care of ourselves (make time to eat properly, get adequate rest, exercise, and rest). Caring for ourselves and even having fun will help us stay balanced and enable us to better deal with stressful times.

Developing professional support systems, including sharing with fellow colleagues, certainly helps. It is necessary to realize that it is normal for helpers to be moved by what they hear or witness. Feelings need to be openly acknowledged and resolved. Secondary trauma is a real phenomenon.

This is the advice I would give to people who work with victims of heinous crimes: do not let your life be overwhelmed by others' traumas, and be sure to get plenty of support and help for the feelings that come up for you in working with other peoples' traumas. If you have had traumas in your own life that you are not finished dealing with – and most of us do – then you can expect that the memories and issues and feelings associated with them will be retriggered by working with other peoples' traumas. To summarize, working with trauma makes it essential to have emotional support, make sure that we deal with traumas in our lives as helpers. Otherwise, the benefits will be minimal for all. □

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For further information please contact Clémentine Olivier - clementine@redress.org
The REDRESS Trust
c/o WFM – CICC, Anna Paulownastraat 103; 2518 BC Den Haag;
The Netherlands
Tel: +31.(0)70.311.10.87 fax: +31 (0)70.364.02.59
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