

Victims' Rights Working Group



Villagers in Sudan. © UN

“Justice is precious –
this is why
it is costly”

Francisco De Quevedo
(1580-1645)

Bulletin

Commencement of the Judicial Phase of Proceedings - What Impact for Victims?

Carla Ferstman, Director of REDRESS

Four situations have been referred to the International Criminal Court (ICC) Prosecutor, three by States Parties and one by the Security Council. The Prosecutor has formally opened investigations in three of the four situations that have been referred to it (the Democratic Republic of Congo (DRC), Uganda and Darfur, Sudan) and judges have been elected to Pre-Trial Chambers I, II and III, tasked with the situations in Democratic Republic of Congo, Uganda and the Central African Republic, respectively.

The involvement of the judiciary in this early phase of proceedings - at the investigations phase, prior to indictment - is certainly a precedent for international criminal proceedings, and may be a reflection of the specialised mandate of the Court. The principal consideration given by Pre-Trial Chamber I, in its decision to hold a status conference on the situation in the DRC (*ICC-01/04 of 17 February 2005*) was the need for it to provide, inter alia, for the protection of victims and witnesses and the preservation of evidence.

The decision on the status conference sparked further judicial activity with important impact for victims in the DRC. In particular, on 26 May 2005, Pre-Trial Chamber I received an application for the participation of victims in the proceedings, the first of its kind, in respect of the situation in the DRC. The opportunity for victims to participate in proceedings is foreseen by the Rome Statute, to

the extent that their personal interests are affected and in a manner that doesn't prejudice the rights of the accused or a fair and impartial trial. This is an important aspect of the Court procedure as it will enable victims to present their views and concerns, not only as witnesses for the prosecution, but as independent participants with a distinct role in the process. As part of their request, the applicants asked that their identities as well as any information in their application that could lead to their identification not be disclosed. This request underscores that it is not only witnesses who may be at risk; the precarious security situation in the DRC and potentially the other situations currently under investigation by the Prosecutor means that other persons involved in Court proceedings - in this case victims applying to participate in proceedings - may be at risk as well. These victims do not necessarily support either the accused or the Prosecutor, but they represent their own interest.

After having requested additional information from the applicants to substantiate their request, the Pre-Trial Chamber took a decision on protective measures on 21 July 2005 (*ICC-01/04 of 21 July 2005*). It indicated in its reasoning that it was satisfied that the applicants are facing serious security risks in the DRC. The Pre-Trial Chamber confirmed that it had the jurisdiction to order protective measures for persons applying to participate in proceedings; it indicated that when the security situation so requires, it has the ability to order the redaction of the application to participate so as to protect the identity of the applicants.

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The Proposed 2006 Budget for the ICC: What Impact for Victims?

By Jonathan O'Donohue, Amnesty International

The proposed 2006 budget submitted by the International Criminal Court (ICC) to the Assembly of States Parties (Assembly) in August 2005, if adopted by the Assembly in November 2005, marks a number of important developments in the effective establishment of victims' mechanisms and services at the Court.

The Budget and Finance Team of the Coalition for the International Criminal Court (Budget Team) has been following ICC budgetary issues since the sixth session of the Preparatory Commission in 2000. The budget process decides not only how much resources the Court will be provided for specific functions, it also sets out the structure and the goals of the Court in the financial year.

Adequate funding of victims' programmes and services is a concern that the Budget Team has focused on significantly in its lobbying around budget processes in previous years. It will remain a priority for 2006 and future years. The Team consults closely with the Victims Rights Working Group in analyzing the draft budgets and makes recommendations to the key budgetary decision makers: the ICC, the Committee and Budget and Finance (Committee) and the Assembly of States Parties.

The Rome Statute is very progressive in a number of victims' areas, including victims' participation and reparation. Budgetary issues in this

Summary of the budget process

The ICC, in a process that includes all organs of the Court, prepares its proposed annual budget for the following year in August.

The Committee, an expert body of the Assembly made up of 12 members, meets in October to consider the proposed budget and will make recommendations to the Assembly, including whether to cut any budget requests.

The Assembly meets in November to review the Committee's recommendations and decides whether to accept them or not. The Assembly then adopts the budget for the following year.

respect are crucial as these rights can be fully and effectively implemented only with adequate resources and proper structures. In these new areas there is little precedent for the ICC to draw on from other international courts. The Victims' Rights Working Group and the Budget Team have, therefore, been working to assist the Court, the Committee and the Assembly in this establishment process, by providing their input on victims' issues.

In September 2006, the Budget Team, in consultation with the Victims Rights Working Group, made a submission to the Committee analyzing the proposed budget for 2006: *Comments on the Proposed Programme Budget for 2006 of the International Criminal Court* - [available at: http://www.iccnw.org/buildingthecourtnew/issues_campaigns/budget_finance/Budget200613June05en.pdf]. The paper focuses on a number of aspects of the proposed budget relevant to victims.

Victims and witness protection and support

The Budget Team had raised serious concern in previous budgetary years about the inadequate investment in the work of the Victims and Witnesses Unit which is tasked with protection and support functions. In particular, there had been inadequate provision for staff and operations in the countries where investigations take place. The 2006 budget is a significant improvement providing for an important increase in field staff and field resources. The Budget Team has urged the Committee and States Parties to fully support this important investment in one of the most essential functions of the ICC.

Victims Participation and Reparations

The fact that victims are expressly allowed to participate in proceedings and apply for reparations is currently unique to the ICC (although it is hoped that future international courts will also be mandated these important roles). The responsibility for these tasks rests with the Victims Participation and Reparations Section and the Office for Public Counsel for Victims. As with the Victims and Witnesses Unit, the Budget Team had raised concerns in previous years about the lack of field resources in the Victims Participation and Reparations Section to undertake its important tasks, including: outreach to victims to participate and seek reparations; creating and distributing forms; training local actors to assist victims in completing forms and processing a potentially large number of applications. It is therefore encouraging that in 2006, the ICC has proposed an increase in field based staff and operations to undertake these tasks.

There has also been positive investment in providing counsel to victims to participate at the ICC. The budget provides for an Office of Public Counsel for Victims which includes counsel as staff who will represent victims at the ICC. In addition, the budget provides finances for a legal aid to fund external teams of counsel to provide legal representation to victims in cases in two situations under investigation. In accordance with the assumptions that there will be trials in two of the situations under investigation in 2006 and the likelihood of activities in the third situation which can give rise to victims' participation, the increased investment in legal representation of victims in the 2006 budget is important. The Court's experience of providing victims representation in 2006 will help clarify whether this investment will be adequate.

The Team has welcomed these developments as a positive progression in the ICC's work in this area; however, it has noted that any cuts by the Assembly could undermine the ability for the Section and Office to function effectively.

Trust Fund for Victims

The full budget for the Trust Fund will be in the expert Board of Director's Annual Report which will be submitted in the next weeks. The Budget Team has noted that due to the failure of the Assembly to adopt the draft Regulations of the Fund prepared by the Board of Directors last year, only minor progress has been made toward the Fund becoming fully functional. Nevertheless, despite this slow start, it is important that the Assembly continue to fully fund the Secretariat of the Trust Fund and in some areas provide further resources in 2006. This is necessary to allow the Trust Fund to become fully active, including the establishment of an Executive Director to manage the day-to-day operations of the Fund in accordance with the instructions of the Board.

Outreach

One of the most serious concerns arising from the proposed budget prepared by the ICC is the lack of investment in its outreach functions. This will of course have an impact on victims understanding of the ICC, their expectations of what it can achieve and their knowledge of its work. In particular, under-investment in field staff and resources will seriously limit the ability of the ICC to perform these tasks in 2006. The Budget Team has urged the ICC, the Committee and the Assembly to review this issue and address it as a matter of urgency.

The proposed 2006 budget overall provides for important and in some cases overdue investment for victims mechanisms and services. It is essential that this investment is supported by the Assembly and is not reduced. Outreach, however, remains of an area of significant concern as the ICC must be able to communicate with victims about its work. □

Interview with Olga Kavran

Deputy Outreach Coordinator - International Criminal Tribunal for the former Yugoslavia

Why did the ICTY start its outreach activities several years after the creation of the Tribunal?

The International Criminal Tribunal for the former Yugoslavia (ICTY), created in 1994, did not start its outreach activities until late 1999. There were several reasons for this delay. Firstly, busy with the establishment of what were then considered the Tribunal's core activities, the decision makers at the ICTY did not consider as a priority what people living in the former Yugoslavia thought about the Tribunal's work. War was still raging in many of the affected areas and the governments in power were the same ones whose actions and inactions led to the creation of the ICTY in the first place. The Tribunal initially conducted itself as would a national court: it considered it sufficient to conduct trials in a professional and transparent manner. It did not appreciate the importance of communicating the results of its work to the people in the former Yugoslavia. It was believed that providing a broadcast of court proceedings would make the activities at the ICTY sufficiently transparent to all those interested in its work.

It was not until 1998, after the end of the Tribunal's first full trial and the arrest of a significant number of accused, that the then President Judge Gabrielle Kirk McDonald recognised the huge gap that had been formed between the ICTY and local communities in the former Yugoslavia. Judge McDonald realised that what was considered a ground-breaking achievement at the Tribunal meant nothing to the people in the areas directly affected by it. Most strikingly, the facts established beyond a reasonable doubt in the courtroom seemed to make no difference - those sympathetic to the perpetrators continued to deny the atrocities in exactly the same way as before and the victims received no moral satisfaction.

It was only then that a decision was made that something had to be done. An Outreach Programme was established with external funding. Unfortunately, by the time Outreach Programme started to function it was already late 1999, and the Tribunal has had to pay a heavy price for this delay: it is much more difficult to dismantle already established misperceptions and propaganda than it would have been to start from the outset with updated and accurate information about the Tribunal. Also, possibly because it was not seen as crucial from the outset, Outreach has never become part of the Tribunal's main budget. This has limited the scope of outreach activities and has placed a heavy fundraising burden on the staff of the section. It is difficult to assess how much more successful in communicating its message the Tribunal would have been if Outreach had been established from the outset, but it is certain that it would not have to fill a 6-year information gap.

We can only hope that other international justice institutions, like the ICC, will learn from our mistakes and conduct extensive public information and outreach activities from the outset.

What is the impact of outreach activities on victims in the former-Yugoslavia?

The Tribunal could have had much stronger impact in explaining the work of the ICTY to victims. If the Outreach Programme had been established sooner, it could have resulted in a larger number of individuals coming forward to provide information to the

Tribunal. During those first years since its establishment, the Tribunal unfortunately left the presentation of its work to the local communities in the former Yugoslavia, the local governments and the media. In most areas, these were the same governments who controlled and used the media in waging the war and in whose interest it was to block all cooperation with the Tribunal. They successfully convinced many of the victims that the Tribunal could not and would not help them and went even further by telling them that the Tribunal would only exacerbate their suffering. Some investigations have even had to be discontinued as a result. Needless to say, this has had a negative impact on what the Tribunal was able to do. Providing information to the victims in their own languages could go a long way to convince them to come forward and tell their stories. Without these stories no judicial institution can properly function.

“A long line of cases shows that it is not merely of some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done”

Lord Hewart (Rex v. Sussex Justice, 9 Nov. 1923)

What kind of outreach activities towards victims does the ICTY do in the former Yugoslavia?

The ICTY Outreach Programme has been operational for about 6 years. In this time, the five offices (in The Hague, Zagreb, Belgrade, Sarajevo and Pristina) have conducted numerous activities. We disseminate information about the work of the Tribunal, such as press releases, case information sheets and other general information in the local languages - Bosnian, Croatian, Serbian, and, where relevant, Albanian and Macedonian. We also distribute translations of other Tribunal documents, such as the Statute, the Rules of Procedure and Evidence, Decisions, Orders and Judgments.

In addition, the ICTY Outreach Programme organises numerous events - symposia, conferences and round tables for legal professionals and journalists. Finally, and most importantly, the Programme organises various events in order to explain to the local communities, especially victims communities, what the Tribunal has done in respect of certain specific crimes in areas in which they live. For example, in the course of the past year, the Tribunal has held five so-called "Bridging the Gap" events in five different areas of Bosnia and Herzegovina affected by the war. At these full-day events, the Tribunal's experts explained to the representatives of victims' communities, NGO's, members of the local government and others what the ICTY has done in respect of the crimes that occurred in their area.

We consider all of these activities to be crucial in communicating the achievements and the work of the Tribunal and thus increasing popular understanding of its work. It is only by such initiatives that the Tribunal can truly fulfill its primary mandate of contributing to the restoration and maintenance of peace in the region. □

Interview conducted by Clémentine Olivier. REDRESS

Ensuring the Safety of Victims and Witnesses: A Challenging but Critical Mission of the ICC

By **Géraldine Mattioli**, International Justice Advocate, Human Rights Watch

Protection and support for victims, witnesses and others at risk due to testimony is a crucial aspect of effective operations at the International Criminal Court (ICC). Experience from the International Criminal Tribunals for Rwanda and the former Yugoslavia, as well as the Special Court for Sierra Leone, strongly suggests that victims and witnesses are likely to face serious security and psychological challenges when involved with international trials.

The ICC has a legal obligation under the Rome Statute and the Rules of Procedure and Evidence to protect potential and actual witnesses and victims, as well as persons at risk due to their testimony before the Court. It also has an ethical duty to ensure that victims and witnesses do not suffer further harm because of their involvement with the Court. National

security focus

authorities in the countries where international tribunals operate are often incapable or unwilling to assist with meaningful protection. Adequate and thorough arrangements must therefore be made to protect their safety, dignity, privacy and psychological well-being.

Moreover, the capacity of the ICC to ensure adequate protection will likely determine the extent to which victims and witnesses will be willing to cooperate with the Court and take an active part in proceedings in the future. It is therefore crucial to the overall success of the ICC.

At the outset, one must acknowledge that ensuring effective protection creates enormous challenges. There are limitations to what international criminal courts can do to guarantee the safety, privacy, dignity and psychological well-being of victims, witnesses and others at risk due to testimony. The Court is currently investigating in three situations (the Democratic Republic of the Congo, northern Uganda and Darfur in Sudan) where conflict is still ongoing and where civilians, human rights activists as well as staff of international organizations, face serious security risks daily. Logistics to operate in these situations are extremely challenging. Given the financial and capacity constraints of the ICC, meeting protection obligations is all the more difficult and will require creativity and flexibility. The Court will also need to adapt its protection systems and operations to three distinct situations which pose different and serious security risks and entail varied needs to ensure physical safety, as well as psychological and

medical support for victims and witnesses.

To fulfill the Court's obligations, both physical and psychological protection must be addressed from the initial interaction between victims and witnesses and the ICC (likely during the investigation stage), through trial and post trial. The different organs of the Court (Office of the Prosecutor, Registry - Victims and Witnesses Unit - and Chambers) share distinctive but complementary responsibilities to ensure effective protection.

In its annual Report on the activities of the Court submitted to the upcoming Assembly of States Parties (*ICC-ASP/4/16, September 2005*, [available at http://www.icc-cpi.int/library/asp/ICC-ASP-4-16_English.pdf]), the ICC has indicated significant progress in establishing a functional protection scheme.

We understand the ICC has taken the important initiative to coordinate action by the Office of the Prosecutor (OTP) and the Registry's Victims and Witnesses Unit (VWU) at the earliest stage of the Court's operations, during the investigation phase. For example, the VWU and the OTP have developed together security protocols for each of the situations under investigation, with the objective of guiding the work of the investigators who contact potential victims and witnesses. Information about individuals potentially at risk is shared with the VWU for action at the earliest possible stage. This coordination is important to ensure the most cohesive assistance to victims, witnesses and other persons at risk through the entire period in which they interact with the Court. By allowing the Registry to retain the primary responsibilities over the protection scheme from initial interactions with the Court, it will also enable the Registry to develop capacity to ensure the same standards for the protection of defense witnesses and victims participants.

Mindful of the security of victims, potential witnesses and other sources, the OTP has taken important precautions to limit the number of individuals contacted and to conduct interviews in a discrete manner (by using intermediaries or means and locations that limit exposure, for example). The Gender and Children Unit of the OTP assists with the assessment of the psychological condition of witnesses prior to their interview and specialized support for traumatized individuals.

The VWU has developed emergency response systems that allow victims and witnesses to seek assistance at any time should their security be threatened. These systems could include giving the coordinates of a contact person, who can be

notified when a victim or potential witness needs it, on a 24 hour basis, identifying safe havens (such as hotel rooms or apartments) in various locations in the country where the persons potentially at risk could be hidden for a given period of time. The VWU has currently a very limited field capacity with only one protection officer in the field in the Democratic Republic of the Congo and Uganda. It relies on a network of local partners to assist with protection activities.

The judges also have important responsibilities to ensure that the Court implement effective protection measures at all stages, including for victim participants. Pre-trial Chamber I, mandated to issue rulings on the situation of the Democratic Republic of the Congo has recently ordered protection measures for a group of victims who applied to participate in the proceedings related to this situation. During the trial phase, the judges will also have the possibility to order various protection measures, such as holding hearings in camera, expunging identifying details from the public records of the Court, giving pseudonyms to victims and witnesses, altering their voice and picture etc.

Even with these positive developments, important policy questions remain to be solved, notably regarding the scope of protection measures available for victims participating in the proceedings (as opposed to witnesses testifying for the prosecution or the defense). It is also not clear what kind of protection measures will be available, if any, for local actors who assist directly the Court in the implementation of its functions and who are at risk as a consequence. At the request of the Court, which acknowledges relying on local networks in a range of its activities, local actors will be essential to the Court's success. This involvement will likely create risks for them and they should therefore be provided protection, as necessary.

With the issuance of arrest warrants in the situation of Uganda, the ICC enters a new phase of its operations which, with the names of the accused in the public domain, will pose renewed and more acute challenges for the protection of vic-

tims and witnesses in contact with the Court. In many ways, the efficacy of the protection scheme will be put to the test. It will be critical for the Court to step up its presence in the field, as proposed in the draft budget 2006 [available at http://www.icc-cpi.int/library/asp/ICC-ASP-4-5_English.pdf], in order to be able to monitor regularly the security of victims and witnesses and be in a position to intervene immediately. Relying on local networks for protection activities poses challenges of confidentiality that will have to be addressed. The Court needs a visible field presence that could hopefully have a deterrent effect, while protection officers and investigators will continue to operate in a discrete manner. It will also be important for the Court to develop temporary and local relocation measures in the areas where the people are from, as well as to have the capacity to provide international relocation, when necessary. Witnesses, victims and others at risk must have an immediate option for safe haven as a precautionary measure as well as when they come under actual attack.

Effective protection also requires adequate information being given to affected communities and local actors. This will assist all actors to make informed choices about their involvement with the Court, will facilitate the mobilization of victims and witnesses and will contribute to creating more conducive environments for cooperation with the Court. The ICC should immediately begin distributing general information about the work of the Court, its role and mandate, as well as about potential safety risks and protection capacities, to the communities most affected.

Effective protection is not cheap, but it is necessary and well worth the costs. The ICC will need support to implement effective protection. States Parties should approve the proposed allocations dedicated to the protection of victims and witnesses in the draft budget 2006 at the upcoming Assembly of States Parties. States Parties should promptly conclude protection agreements with the Court to enable international relocations, when necessary. □

Commencement of the Judicial Phase of Proceedings - What Impact for Victims?

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Any expunging of the application must be strictly necessary in light of the applicant's security situation and must nonetheless allow for a meaningful exercise by the prosecution and the defence of their right to reply to the application for participation. Further, the Pre-Trial Chamber indicated that in the current phase of the situation - investigation - this type of redaction would not be prejudicial to the ad hoc counsel for the defence's right to reply to the applications and is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. It took a different view with respect to the prosecution; here, the Court indicated that because the Prosecutor was already under an obligation to

maintain confidentiality and to protect the safety, physical and psychological well-being dignity and privacy of victims and witnesses, and there was no indication that the transmission of an unredacted copy of the application to the Prosecutor would increase security risks, the Prosecutor should receive an unredacted application.

Pre-Trial Chamber I also convened a separate hearing on 8 July 2005 regarding the protection of victims in the situation in the DRC. At the hearing, the redaction of documents was also at issue. Those making observations sought to submit redacted materials to the Prosecutor and the ad hoc counsel for the Defence. Similar to its decision relating to the application to participate in proceedings, in its decision of 5 August 2005, the Pre-Trial Chamber decided to provide the Prosecutor with a non-redacted version of the materials, but that the Defence should receive only the redacted version. □

The Fundamental Importance of Outreach Towards Victims

By Alison Smith, Legal Counsel NPWJ; CICC Communications Team, Team Leader

The Rome Statute of the International Criminal Court (ICC) is evidence of a change in the way victims are perceived and their rights safeguarded by international criminal justice institutions.



Mother and child, in the Darfur region of Sudan. © U.N

The mandate of the ICC as being victim-oriented is indicated at the outset, with the second preambular paragraph of the Rome Statute noting that the States parties are “*Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity*”. The ICC is, in many ways, the first international criminal court to recognise explicitly that among its many goals is the provision of justice for victims, achieved primarily through its contribution to the restoration of the rule of law and the creation of an environment in which peace prevails and rights are respected, but also through the institutionalisation of the role of victims in proceedings, in terms of participation and in terms of reparations.

The question that follows from this set-up is how these innovative provisions will operate in practice. It is clear that unless victims themselves have an understanding of how they can participate in proceedings or in reparations processes, the Rome Statute’s orientation towards victims will remain empty words on paper that have little or no impact on the people for whom the provisions were drafted. Without that understanding, there is the risk that victims will not know they can participate in the ICC’s work or, if they do know of that possibility, they will not know how to go

about it. A lack of knowledge about basic pre-conditions and procedures almost guarantees a situation in which either the victims’ provisions are not utilised, or that there will be total confusion as victims try to navigate the often complex provisions without a basic understanding of the principles involved, resulting in delay and frustration and, consequently, disillusion and distrust.

This is where outreach comes in: in general, the term “outreach” refers to constructive and sustainable interaction between the Court and communities affected by specific situations under investigation or prosecution. The purpose of outreach is to promote understanding of, and support to, the judicial process at various stages as well as the different roles of different organs of the ICC, to clarify misperceptions and misunderstandings and to enable affected communities to follow trials. Within this overall approach, different strategies need to be adopted for different target groups, depending on their situation and depending on the information and messages that will enable those groups to feel engaged in the work of the Court and to give their support and cooperation where needed. In short, the information that victims require will be different from the information that, for example, ex-combatants require; similarly, the way that information is delivered and received from victims will be different from the way information is delivered and received from other target groups.

Within this context, outreach also has a vital role to play in managing victims’ expectations about what the Court can do. Without the provision of information about the Court’s possibilities and limitations, there is the risk that victims may have inflated expectations about what the Court can do for them. For example, they may believe that the Court will prosecute the people who they saw commit crimes against them, which is a remote possibility, given the prosecutorial focus on those who bear the greatest responsibility for the crimes, rather than the “rank and file”, lower level individuals. Similarly, they may believe that the Court can provide them with the infrastructure of their community that has been destroyed or was lacking in the first place, such as clean water, adequate food and education for their children. These are expectations that need to be addressed and clarified before they have had time to become “the truth”. Left unchecked, such misconceptions could lead to widening disillusionment with the ICC itself, leading ultimately to the undermining of its legitimacy.

While these concerns apply, to greater and lesser degrees, to the wide range of people affected by a conflict, they have particular resonance in relation to victims, given their integration in the Rome Statute from the very start and given the ICC’s mandate to help victims obtain a sense of justice. These concerns and the institutional framework require that outreach – and particularly outreach focused on victims – must be a central feature of the Court’s work at least from the time that a public interest is indicated in a situation. The critical importance of outreach in and of itself and as a tool to enable the Court to function effectively *vis à vis* victims also requires that it be given proper recognition and support not only in terms of overall court strategy and operational procedures, but also in terms of budgetary allocations and the organisational framework of outreach programs and personnel. A proper and adequately funded outreach program, designed and implemented according to the prevailing circumstances and the specificities of the target groups, is not a luxury; it is a prerequisite for the Court to fulfil its mandate and provide justice for victims. □

The Need to Adopt the Draft Regulations of the Victims Trust Fund

By Karine Bonneau, Permanent Delegate of the International Federation of Human Rights to the ICC

The reference to the Victims Trust Fund in the Statute of the International Criminal Court (ICC) is an unprecedented, historic measure recognizing the rights of victims before the Court. The Trust Fund, established by the Assembly of States Parties (ASP) in September 2002, has two roles: firstly, executing the Court's reparation orders; secondly, determining the appropriate use of voluntary contributions for assistance to the victims of crimes coming within the jurisdiction of the Court, and their families.

The Fund is managed by a Board of Directors elected by the ASP for a three-year term. It is currently chaired by Madam Minister Simone Veil (France) and made up of Her Majesty Queen Rania Al-Abdullah of Jordan, His Excellency Dr. Oscar Arias Sánchez from Costa Rica, His Excellency Mr. Tadeusz Mazowiecki from Poland, and His Eminence Archbishop Emeritus Desmond Tutu from South Africa.

In accordance with Article 79 of the ICC Statute, Rule 98 of the Court's Rules of Procedure and Evidence and ASP Resolution 6 (ICC-ASP/1/Res.6), the Board of Directors prepared draft Regulations for the Fund and presented them to the ASP for adoption in 2004 (ICC-ASP/3/14). The draft lays down rules concerning the manner in which funds (reparation orders, the proceeds of fines and confiscated property and voluntary contributions) may be received, managed and used by the Board of Directors, and establishes a secretariat to assist the Board.

Rapid adoption of the draft Regulations is thus vital for effective operation of the Fund. Unfortunately, perhaps due to the complexity of the draft Regulations, situated within the framework of a new system of international justice for victims, the draft Regulations have not yet been adopted by States Parties. In 2004, the ASP established an internal States Party working group in order to consider the text.

The Victims Rights Working Group, has closely followed the work of the States Party working group and its two meetings in New York. Panels have been organized and various position and information papers have been written, which are [available at <http://www.vrwg.org/>]. ("*Submission to the second meeting of the Bureau's Working Group on Regulations of the Trust Fund for Victims, 3-4 August 2005*", August 2005; "*The Draft Regulations for the Trust Fund for Victims: Questions & Answers*", July 2005; "*The Trust Fund for Victims: A Brief Introduction*", July 2005 [all available in English, French and Spanish] and "*Comments on the Draft Regulations of the ICC Trust Fund for Victims*", February 2005).

The Victims Rights Working Group greatly regrets that the States Party working group has so far been unable to find a compromise. Unless a compromise is found before the ASP at the end of November 2005, the ASP will examine a number of, at times, radically opposed texts. Contrary to last year, it is crucial that sufficient time be allowed for this examination and that the Regulations finally adopted respect the independence of the Fund as regards assistance to victims of crimes within the jurisdiction of the Court.

A joint proposal by eight States, coordinated by the United Kingdom, departs from the vision of the Fund defended by its Board of Directors and is particularly preoccupied with two essential points: (1) the fact that the use of voluntary contributions by the

Fund for assistance to victims is subject to Court authorization at an advanced stage in the investigation; and (2) the prohibition of earmarking of voluntary contributions. The capacity of the Fund to take action for the benefit of victims of crimes within the jurisdiction of the Court, and their families, would be seriously affected were these proposals to be adopted.

Firstly, the proposal suggests that the Court should control the use of *all* resources, including voluntary contributions collected independently by the Fund. Court control of such voluntary contributions (which the Court itself cannot collect and which are distinct from the proceeds of confiscation and reparation orders, which it effectively controls) would violate the mandate of the Court, its independence and that of the Victims Trust Fund. In addition, it is difficult to see how the Court could be judicially seized of requests for such decisions. Moreover, this proposal severely limits the role and powers of the Board of Directors, the members of which were elected for their internationally recognized personal competence. Finally on this point, the Board of Directors would not have the flexibility and capacity to react to the sort of situations subject to investigation by the ICC Prosecutor. If the proposal were adopted, the Fund could only benefit a minority of victims where a specific crime is being effectively tried and a presumed perpetrator is being prosecuted before the ICC. This would exclude the victims of the broader *situations* under investigation, for which independent action by the Fund was considered to be in accordance with Rule 98(5) of the Rules of Procedure and Evidence.

Secondly, this proposal ignores the practical reality of voluntary contributions. The limited mandate of some donors obliges them to earmark their donations. Under ASP Resolution 6, in particular, and the current text of the draft Regulations, the earmarking of voluntary contributions will be controlled so as to avoid any manifestly inequitable distribution among different groups of victims. □

Recommendations to the ASP by the Victims Rights Working Group:

- ◆ The Bureau of the AS should organise the programme of the next session of the ASP so as to guarantee the allocation of sufficient time for negotiation of the Regulations and ensure that they are effectively adopted in 2005.
- ◆ The Regulations of the Victims Trust Fund should preserve the independence of the Fund; the Board of Directors of the Fund should have the power, independent of the Court, to decide on allocation of the voluntary contributions it collects, in accordance with the current draft Regulations and Resolution 6 of the ASP; decisions of the Board of Directors concerning voluntary contributions should be subject to external examination, in order to guarantee the transparency of its decisions.
- ◆ In accordance with the current draft Regulations, the ASP should authorise the earmarking of a limited percentage of voluntary contributions, and adopt clear criteria and practices ensuring the equity and transparency of the procedure.

Interactive Radio for the ICC and Target Communities as a Tool for Outreach; The Example of the Democratic Republic of Congo

By Wanda Elisabeth Hall - Director, Interactive Radio for Justice

No one can dispute the power of radio in Africa. It is used by humanitarian and civic society NGOs, as well as the United Nations (UN) and governments, to promote everything from condoms and mosquito nets to registering to vote. In Rwanda in 1994, a single radio station played a frighteningly effective role in encouraging people to kill their neighbours. Today in the Democratic Republic of Congo, Radio Okapi- a collaboration between the Swiss Agency Hironnelle and the UN Mission in Congo (MONUC) - has contributed enormously to civil society by providing reliable and relatively unbiased information to the entire country, news to which most Congolese had no access a couple of years ago.

So, radio is powerful. Justice however, especially in regions which are reeling from the most extreme destruction and violence a society can inflict on itself, is a very slippery subject. 'Informing' the public that justice has arrived will not be particularly effective. At least not for the ICC in the DRC, Uganda or Sudan. Too many questions, too many sides and too many interests make it impossible to impose a set of standards on people without taking into consideration the cultural and political implications of that imposition. In Aru, in the north of Ituri DRC, for example, the arrest of war lords by the military is viewed with suspicion and resentment. "Why are our people arrested and 'held hostage' in Kinshasa, when other rebels now hold titles in the military and government"? Who will answer this question? And if these people view justice as selective, will rule-of-law ever get any respect? What about the role of victims at the ICC? How will these communities get information about participating in trials, and how will they take part in the on-going debate about what constitutes a victim in the eyes of the Court? If they are not involved in this debate, will they be engaged enough to make full use of the dramatic evolution in international justice the ICC offers?

The ICC runs a great risk when it starts to indict. If it chooses not to discuss how choices are made, the possibility for justice rendered in The Hague to have any long term effect locally gets very small indeed. The *How and Why* behind indictments, as well as the trial process itself, are not 'indisputable givens' in these places - a conversation is needed. How will these two vastly different cultures - war torn Ituri and that of the ICC in The Hague - get to talk with each other, and learn how to work with each other?

If used with care, radio can create a dialogue which strives to make full use of what the ICC has to offer these communities. A channel of communication between the ICC and target communities made by radio can breathe life and substance into the ideals of the Rome Statue, so that people can make an informed choice whether or not they want to respect, support and participate in the justice the ICC offers them. For that, radio needs to be used 'interactively'.

In a post-conflict and traumatized society radio should be used to

inform and to ease citizens into trusting information and their right to expression, without leading them into an interchange that can easily explode with fear and hatred. While the ICC is just starting to have a presence in a region, pre-recorded 'talk shows' which are interactive in presentation are recommended. This should be part of a general outreach strategy.

The pre-recorded 'talk show' is excellent for allowing two groups to talk with each other, with the protective buffer of time and space which allows each side the chance to process what the other says, and formulate responses which move the dialogue forward. Journalists who are trusted on both sides of the 'conversation' as neutral intermediaries relay between the two - recording questions from citizens, relaying questions and recording responses from the ICC, and then broadcasting the 'conversation' in languages everyone involved can understand. The project '*Interactive Radio for Justice*' which has been running in Ituri since June 2005 follows this model, and it is clear that as the series progresses authorities are becoming more at ease with being questioned (by citizens they are not accustomed to being answerable to), and people's questions are becoming more sophisticated.

Once there is basic trust between the communities and the Court, live talk radio could be extremely popular because it allows each group to experience the other in an immediate sense. This forces each side to interact with the other as individuals, learning each others' mannerisms and style. It is through this immediate dialogue that rapport can be established and citizens can feel they are 'on the same team' as those at the Court in establishing respect for law in their society. In order for this exchange to be productive however, there must be some common trust and understanding, and language barriers cause problems for live recording.

Once the ICC presence is well established and people are informed enough to develop commentary about the Court, discussion and magazine programming on the ICC is possible. Local experts and community members, such as victim-associations, can voice their concerns and ideas during an entire program, and the Court's representatives and international experts can do so as well. Once the Court is established in people's awareness there is room for responsible editorial programming that does not necessarily have all sides of a question represented, because the public is informed enough to listen and make up their own minds about what they want to take from it as 'truth'.

Interactive Radio is an excellent tool which the ICC should make use of as it embarks on what will probably be a long-term presence in these regions. But acknowledgment that the Court needs to process the concerns of these communities as they work there, so that the norms and requirements of international justice can take root and become part of these societies' consciousness, is the first step. □

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