

Access

Victims' rights before the International Criminal Court Victims' Rights Working Group Bulletin • Issue 8 • Spring 2007

ICC Update: Uganda Victims Denied Common Lawyer

On 19 June and 17 August 2006 forty nine victims applied to participate in the Uganda situation. Their applications were filed confidentially and have now been forwarded to the Prosecutor and the Defense representative for their observations. To protect the victims, Judge Mauro Politi, decided not to allow the Prosecutor to see their applications in full. This means that both the Prosecutor and Defence must make observations on the basis of redacted documents, departing from the approach taken for the Democratic Republic of Congo cases, where the Prosecutor was given full access.

The 49 victims had asked the Court for legal aid. On 1st February 2007 the Single Judge denied them legal representation, at least for now. In his decision, the Judge questioned whether there was a need to appoint a legal representative before the Chamber had decided on the applicants' status before the Court.

The judge found that legal representation is not *per se* necessary for victims to participate. The Rules state that participation "may include opening and closing statements" without making reference to legal representation either way.¹ The Rules allow the Chamber to appoint a legal representative where "the interests of justice so require".²

The judge explained that the idea of having victims represented by a common legal representative was developed to assist in maintaining streamlined proceedings. According to the Rules, certain acts like questioning a party or witness can be performed only by a legal representative.³ Victims acting on their own would be precluded from these "enhanced" rights. This creates "incentives" for victims to participate via a legal representative. Legal representatives have to satisfy certain criteria to be admitted before the court, which, it is said, might avoid "excessively disruptive" effects of victims' participation.

In the meantime, Judge Politi referred the victims to the Office of Public Counsel for Victims (OPCV) for assistance and support that may be necessary at this stage.⁴ While staff members of OPCV can be appointed as legal representatives, the judge explained that OPCV may also provide assistance to victims which fall short of legal representation.⁵ The single Judge held that while "none of the Applicants can rely on a legal representative, considerations of fairness make it

appropriate for the victims to benefit from the support and assistance which may be offered by the OPCV." OPCV has requested, and been given a number of confidential documents on behalf of the victims, including redacted arrest warrants.●

1. Rule 89(1) of the Rules of Procedure and Evidence
2. Regulation 80(1) of the Regulations of the Court
3. Rule 91 of the Rules of Procedure and Evidence
4. Decision http://www.icc-cpi.int/library/cases/ICC-02-04-01-05-134_English.pdf
5. Regulation 4 of the Regulations of the Court

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Suspects named in Darfur Situation

On 27 February 2007 the Prosecutor presented a lengthy 94 page document of evidence against Ahmad Muhammad Harun, former Minister of State for the Interior of the Government of the Sudan, and Ali Kushayb, a leader of the Militia/Janjaweed. He requested that Pre-Trial Chamber I issue summonses against the two individuals on the basis that his evidence provides the Chamber with reasonable grounds to suspect that the two are jointly responsible for 51 counts of war crimes and crimes against humanity. The crimes were allegedly committed during attacks on the villages and towns of Kodoom, Bindisi, Mukjar, and Arawala in West Darfur between August 2003 and March 2004.

In the submission, which includes numerous annexes, the Prosecutor has gone to considerable lengths to address issues of admissibility as the Special Court established by the Sudanese Government is also investigating Ali Kushayb (also known as Ali Muhammad Ali Abd-Al-Rahman). The Prosecutor has sought to demonstrate that his evidence against Kushayeb refers to different incidents and acts than those being investigated by the Sudanese Court.

The prosecutor also indicated his particular attention to the protection of victims and the fact that interviews had been conducted outside Sudan for security reasons. He also highlighted that in fulfilling his statutory responsibilities, he continuously monitored the security of victims and witnesses and implemented protective measures.●



Women in Darfur walk to collect firewood and run the risk of rape by the Janjawid © Photo: Derk Segaar/IRIN

Outreach in Sierra Leone: Fostering Ownership of Justice Process

Interview with Binta Mansaray, Head of Outreach at the Special Court for Sierra Leone



National Victims Commemoration Conference 1-2 March 2005 © SCSL

also how to do this in a symbolically reparative manner. This is how we came to organise Victims Commemoration Conferences.

Tell us about the Victims Commemoration Conferences, what did these achieve?

There were four Regional Victims Commemoration Conferences, one for each of the four regions of Sierra Leone. Then, there was a final national Conference in Freetown to conclude the regional conferences.

These Commemoration Conferences achieved a greater understanding and acceptance of the Court's mandate, which was a key turning point in the perception of success of the Court. There were two critical issues that victims were not happy. First of all, there was the issue of the "impunity gap". Victims felt that the mandate of the Court was insufficient prosecuting only those alleged to bear the *greatest responsibility* was not enough. Secondly, victims felt strongly about the lack of reparations. In general these two critical issues tainted the Court's possibility of being seen as a success. It affected victims' perception of whether justice was being done.

Instead of simply telling people that wider prosecutions and reparations were not the court's responsibility, we brought over 300 groups representing victims at that time to the conferences –women's groups, amputees, children representatives, etc. But we also brought all the other actors who bore some responsibility for impunity and for reparations to the conferences too. We

brought the Vice President to put the issue to rest regarding the "impunity gap". The government had to explain its position and the amnesty laws that are in place. All the other national actors were brought to the conferences to explain their part in the justice, reconstruction and reparations process. This included the Vice President, National Bodies like NACSA, which is implementing the Truth and Reconciliation Commission's recommendations on reparations, the Truth and Reconciliation Commission itself, but also international actors like DIFD, and some twenty post conflict institution leaders. This gave victims an opportunity to understand the entire spectrum of actors and how the Court fits in. It is significant for the Court that it was the one to organise these, instead of just saying that it was not our responsibility.

The participants reacted positively. It was very, very important for victims groups to see and hear that the Court cares. It was important for them to feel recognised, and for their frustration to be legitimised. In this way, commemorating victims was in and of itself symbolically significant. But it was also a turning point in victims' understanding of the Court's mandate.

The Court emphasised that "yes, its scope is limited, but that is what we have and let us work with what we have already." After that, victims still had issues with the mandate, but at least they understand it. Instead victims representatives will now say, "if you come across somebody who can help, don't forget to mention us". So we notice a real change in attitude.

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What exactly do you mean by Outreach at the Special Court?

For us at the Special Court, Outreach means "engagement to foster a sense of ownership". Engagement starts with the staff members themselves. You can't engage others without stepping out of yourself. That is what outreach means: stepping out, engaging, reaching out to others.

What are the objectives of Outreach at the Special Court for Sierra Leone?

The main objective of the Special Court's Outreach Programme is to engage with the people of Sierra Leone in order to foster a sense of ownership over the Special Court process. In Sierra Leone everybody is a victim, everybody suffered either physical, mental or economic harm, so the Outreach Section seeks to address the whole population as stakeholders in the justice process.

We also work with ex-combatants, to bring this otherwise antagonistic group on-side. One can't work on victims' needs without involving ex combatants.

Allowing victims to understand the Special Court has required specific activities aimed at managing expectations. The population thought that the Special Court would reform the national justice system. They thought that the standards of the Special Court would be transferred to national courts.

Managing expectations has been a key aspect of the Courts outreach strategy. Another issue that had to be addressed was reparations. Victims thought that the court would pay them reparations for the harm they have suffered. As a result the outreach programme had to devise a specific strategy to address the reparations issue, but



Town Hall meeting in Bo – Defence outreach event on the rights of accused and fair trial © SCSL 2002-3

Can you tell us about how you evaluate and monitor outreach?

Yes, this is an important area and there are some useful points I'd like to explain. A simple way of measuring the success of the overall outreach effort, is to monitor the number of people interested in the Court's work. I don't mean just to monitor positive feedback, articles or compliments (which of-course is useful), but to monitor for instance the number of people that attend public events: how many people come. Some events will be better attended than others, and it is useful to evaluate what the factors are.

As the objective of Outreach has been to foster a sense of ownership, an important indicator has been to measure support for our NGO programme and the strength of our partnerships.

We endeavour to create partnerships with NGOs, to design, develop and implement projects together (like "Accountability Now" clubs at schools, radio programmes, market theatre, etc.). To begin with we were working with 4 or 5 organisations. Now we are working with 15 to 20, and that is just in Free-



Special Court rural outreach event in northern Sierra Leone © 2004-5 SCSL

town. We have fostered the creation of a network of some 100+ organisations and 149 Paramount Chiefs and we receive request for partnership and affiliation on a weekly basis from local organizations including victims groups and ex-combatants nationwide. Many of these groups were first calling us names, now even the ex-combatants want to participate! So, we monitor and evaluate the quantity and quality of these partnerships, but also the significance of who the partners are.

Sometimes there are unsolicited evaluations done by other organisations, which are extremely useful. Of-course there are NGO or academic monitoring reports on the Court, but more interestingly there are also assessments done by others in

the course of their work. For instance, the ICRC seeks to educate the public about humanitarian law, and in assessing levels of local knowledge, it has been very impressed to discover the extent of the Court's outreach in the area of humanitarian law, as revealed in the high level of local knowledge.

Finally, we hired two consultants to set up a task force of 25 civil society organisations to allow them to take ownership of the evaluation process. We wanted NGOs to do their own grass roots evaluation but there were no funds for this cumbersome process. However, with the task force, the grass roots civil society organisations can be involved, and it will be more manageable.

Monitoring and evaluation is an ongoing process, there are many opportunities to observe our progress, we do it all the time. Now for instance, the electoral commission has set up an outreach office modelled on ours and DIFD, inspired by our outreach efforts, has supported the creation of an information dissemination office (ENCISS) that promotes awareness of the Sierra Leone government's poverty and reduction strategy. This in of itself is a means to evaluate our success. ●

Monitoring and Evaluating Outreach

During the last Assembly of States Parties Meeting (23 November–1 December 2006) the Court's proposed Outreach budget for 2007 was a major sticking point. The Assembly of States Parties had habitually adopted in block format all the recommendations made by its Committee on Budget and Finance. This year the Budget Committee recommended substantial cuts in the Court's proposed outreach budget, namely cutting 2 key new posts and €400,000 in project money. It had not been convinced by the Court's Outreach strategy. Questions being asked were: "how can one can measure outreach?" and "when is some outreach enough outreach?" The Assembly had to decide whether to go with its Committee's recommended cuts or to override the Committee adopting the Court's original requests.

NGOs were in a difficult position as they had been consulted about the outreach strategy very late in the day, giving them insufficient time to provide constructive input or have their criticisms addressed. It was clear that the strategy needed strengthening, particularly on monitoring and evaluation methodology. Nonetheless, NGOs pulled out all the stops at the Assembly of States Parties, holding out that it was more important to ensure funding first, and then to rectify the content of the strategy later. The budget would still only pro-

vide the Court with a skeleton structure of staff and minimal levels to enable victims and affected communities to hear about the Court and begin to have some questions answered. Still a far cry from the notion of gaining ownership over the process that might redress the injustices that they suffered.

Multiple strategies were used at the Assembly to safeguard the 2007 outreach budget, including a special hearing on outreach initiated by the delegation of Sierra Leone and supported by numerous other delegations. At the hearing, experts on outreach were invited to speak, including Robin Vincent, former Registrar of the Special Court for Sierra Leone, and Bukeni Beck Warurzi, of ADJEDI-Ka, an NGO working on the rehabilitation of child soldiers in South Kivu, Democratic Republic of Congo.

Ultimately States took the unprecedented move not to accept the Committee on Budget and Finance's recommended cuts, and the Court got the increased posts and project money requested. In February 2007, the Press and Public Affairs Section of the Court (PIDS), headed by Sonia Robla, convened a meeting with the NGOs involved,¹ to finally address their detailed comments on the Court's Outreach strategy. PIDS committed itself to revising its

strategy, and reworking its 'performance indicators'.

Since end November 2006, numerous suggestions have been branded about regarding monitoring and evaluation of Outreach. Here are just a few:

- External evaluation: Seeking out or liaising with NGOs, research institutes or other bodies monitoring perceptions of the Court's work in the field to provide independent base line studies and or external evaluations, if possible at regular intervals;
- Collecting and periodically evaluating questions, concerns and fears raised about the Court in the field in order to see how these evolve or demonstrate increased understanding;
- Revising objectives and expected results in line with monitoring and evaluation realities;
- Borrow on other indicators available in the Court: e.g. number of victims that have applied (evaluate whether applications can be tied to specific outreach activities) or number of counsel that have applied to be part of the list of counsel. ●

1. Members of the NGO Coalition's Team on Communications include No Peace without Justice, FIDH, Human Rights Watch, Centre for Justice and Reconciliation and REDRESS.

The Psychosocial Situation in Northern Uganda

Interview with Dr. Mungherera, Clinical Psychologist, African Centre for Rehabilitation of Torture Victims

What is the psychosocial situation in Northern Uganda after 20 years of conflict?

Not a lot of scientific research has been done into the psychosocial needs in northern Uganda. There should be more proper research to support what is going on now, given that access to the IDP camps has improved and some IDPs are moving out. The only existing piece of comprehensive research was done by the Ministry of Gender, Labour and Social Development back in 1998, funded by UNICEF. Many issues came out of this study, many of which are still pertinent now.

The magnitude of the problem is big. The psychosocial needs have been compounded by years of poor governance and state inspired violence in the North. The mental health of people affected by the conflict is a national problem, but the North has suffered most. However, I don't want to minimise others who have suffered, for instance those in the Weru Triangle near Kampala.

While people say that war affected populations have resilience, I must emphasise that the pattern and demography of mental health problems has changed dramatically. For instance, suicide was a phenomenon only observed in the elderly and mostly in elderly men. But now we see frequent cases of suicide in young people and in women. This is mainly due to feelings of hopelessness and helplessness in the endless conflict.

Psychological impacts of conflict include suicide, substance abuse, hysterical behaviour and post traumatic stress disorder.

Then there is substance abuse. **Alcoholism** is a serious problem that is not being addressed. There is only one psychiatric hospital in the whole of Uganda. Other hospitals provide psychiatric services but it is nowhere nearly enough to meet the populations' needs. Alcoholism has severe knock on consequences, including depression, domestic violence and child abuse.

The use of **narcotics** has also spread with the conflict. Drug use and abuse is difficult to address in the conflict areas as there is a lack of services, qualified staff and an increasing number of people in need of treatment.

As for the affects of the conflict on **children**, in refugee communities one finds a lot of hysterical behaviour, what we call "Hysterical Conversion Disorder". This occurs when the person has suffered traumatic experiences but is not allowed or able to express these. The difficult experience and related emotions are pushed down, suppressed, and so later these are



Silvia Alak tells her story at Cet Kana, an IDP camp in Gulu District, northern Uganda. Silvia and her seven children survived the ravages of the Lord's Resistance Army (LRA). Her husband did not © Manoocher Deghati/IRIN

revealed as a real disease or physical condition.

But children have many other emotional **disorders, like anxiety, depression and post traumatic stress disorder (PTSD)**. About 10% of the population in conflict areas suffers from PTSD. The symptoms of PTSD include pessimistic thinking, living just for the day, nightmares, sleep disturbances, flashbacks and reliving experiences.

PTSD - About 10% of the population in conflict areas suffers from Post Traumatic Stress Disorder. The symptoms of PTSD include pessimistic thinking, living just for the day, nightmares, sleep disturbances, flashbacks and reliving experiences.

A lot of illnesses are vague and complaints are based on **somatization**. Children can have conduct disorders, which can then develop into personality disorders. These are disorders bordering on psychosis (like schizophrenia).

Somatization is when physical symptoms are caused by mental or emotional stress and other mental health problems can cause physical symptoms such as: chest pains, tiredness, dizziness, back pain, feeling sick, diarrhoea, menstrual problems, etc.

Going back to chronic emotional disorders, often the basis of these is repressed anger. People talk about the importance of reconciliation procedures. Indeed, people feel more helpless if nothing is being done. So, in order to try to overcome their anger, traditional cultural practices are used as a means of getting reconciliation. There are many different rituals that have been used to enable people to overcome their experiences.

Women: What are the most serious psychosocial consequences for women?

Sexual violence was used as a weapon in the conflict. The LRA used it as a weapon of mass destruction. The magnitude of the problems resulting from mass rape are so big, and hardly anything is being done at all. Women who have suffered sexual violence often find themselves in the following situation:

- They were raped by 5-10 people;
- They have an unwanted child;
- Suffer from all difficulties of single parenthood;
- Suffer from HIV and many other chronic Sexually Transmitted Diseases;
- Often have VVF – Vesicular Vaginal Fistula (which is when the urine goes through the vagina instead of the urinary tract due to violent tissue damage);
- Suffer from social stigma and social exclusion

It is difficult for those from outside the communities here to understand the extent of the social stigma relating raped women. But you have to imagine, the role of women in traditional societies. In a recent case a woman had had 8 or 9 children and she was in her early thirties. She was advised to have family planning. Her husband said that if his wife could not continue having children then he would move away and leave her. So, women are seen as child bearing property. If a woman is raped, she is spoiled goods. Women are somebody else's source of income, a father's, brother's or husband's.

Vesicular Vaginal Fistula is a condition of incontinence caused by violent tissue damage of female genital organs. Urine goes through the vagina instead of the urinary tract. Those with VVF are incontinent and end up being social outcasts with no possibility of marriage or having children. VVF is easy to operate but often services are just not there.

The Government has said that there should be services at every level, but in the conflict areas there are no services at all. There is no training for police or social workers to know how to deal with those who have gone through sexual violence.

There are also significant legal barriers to helping those who have suffered sexual violence. Abortion is still illegal. Abortions can only be undertaken where there are threats to life. Post exposure prophylaxis is problematic due to low HIV/AIDS testing rates.

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What is collective depression?

There is no such clinical diagnosis as 'collective depression' because of the controversy of whether there can be such a thing as a collective mind. But in any case we see whole communities being affected by the experience and trauma of war or oppression.

In conflict areas, and particularly in the camps, there is no way out. Whole communities become unable to plan for the future. They live for the day. They have just given up, overcome by total hopelessness and helplessness. Depression is a chronic problem. People may start off numb or shocked as a result of a traumatic incident and never have the opportunity to recover. For instance, if there is nobody that is able to come in and support the person or there is no community outlet for the person to let out what happened the condition of shock and numbness can become chronic.

You can compare this to September 11. People were in shock but there were services available. There was an effort made to help people overcome their ex-

periences. I don't want to diminish their suffering, but if no effort is made, people don't have the opportunity to recover, and that has been the situation in Northern Uganda. The situation has just gone on, trauma upon trauma with no opportunities for people to recover.

Collective depression is accepted in the field of economic behaviour but as a mental state it is controversial. The unresolved philosophical issue of the existence of a collective mind. Whether it is seen as an emergent phenomenon or simply a totality of individual depressions, collective depression does exist. As with individual depression, collective depression can be treated with the therapeutic effect of small positive practical steps leading to the lifting of the sense of hopelessness.²

As somebody who works in the Ministry of Health, strengthening of mental health services has been put forward as one of the main priority areas. But that is for the 'health' sector. When it comes to ad-

ressing psychosocial needs, there are other actors too. The 'social' side of rehabilitation should not be overlooked. Social welfare officers are needed in much greater numbers, and they need to be trained. At the moment there is only 1 Social welfare officer per district and there is no vehicle!

NGOs do not provide a sustainable way of assisting. Particularly as assisting clients in mental health is a long term process. In Uganda we have traditional healing systems and we need to work closer with these, so that they become more widely available and acceptable. The traditional healers are amongst the population and they move with the population. Those who have been western trained have to change their attitude and be open to this existing resource. ●

1. Barton, T. & Mutiti, A., (1998). *NUPSNA: Northern Uganda Psycho-Social Needs Assessment*, UNICEF and Government of Uganda.

2. Bostock, W. *Perspectives - Vol. 6, No. 1 - Collective and Individual Depression: Is there a causal link?*

Northern Uganda ceasefire lapses: What solutions for victims?

Stephen Arthur Lamony

Many factors, such as poverty, displacement and illiteracy contribute to denying victims justice in Uganda. Often victims are also unable to access information on victims' rights due to ignorance and illiteracy. The majority of victims have no idea what remedies might be available or what rights they have. As there is no national legal aid is able to reach victims in their remote locations, the overwhelming majority of victims have no access to legal advice.

Uganda like many other common law countries, lacks a victim oriented legal regime. Uganda's legal system has little (if any) measures to ensure victim participation and reparations. Victims are witnesses at best, with no rights to restitution, compensation or rehabilitation.

Fear also plays a great role in keeping victims away from seeking justice. Children abducted by the LRA were forced to commit atrocities against their own families and communities, and are thus well known as perpetrators. The fear of reprisals within the community cannot therefore be underestimated.

With the Cease Fire Agreement of August 2006 recently expiring between the Government and LRA rebels, the situation in northern Uganda remains very fluid with many civilians wondering whether the peace will hold much longer. In such a situation of uncertainty, victims are afraid of seeking justice.

However, denying justice will not achieve sustainable peace. Victims have a right

to an effective remedy and to reparation in order to ensure that their suffering is recognised and redressed. Impunity might serve as a quick, short-term solution, but it cannot restore dignity, repair losses or deter future crimes. Indeed, reports from northern Uganda indicate that amnestied rebels are replicating the same abusive command relationships over their former abductees.

There are serious concerns regarding projects such as the Labora farm in Gulu. Labora farm is a government sponsored project created to generate livelihoods for returned rebels. However, at the farm, senior amnestied LRA commanders are in charge, effectively able to command and exploit the very women and girls they abducted, raped and held in captivity in the bush. Instead of getting justice, the rights of those who were abducted and brutalised by the LRA continue to be objects of their powers.

On 8 February 2007 a member of parliament from Northern Uganda told participants at a conference on "International Justice and the ICC" that Uganda would have a truth and reconciliation commission where the "Big Fish" would be tried and granted amnesty.

While a truth and reconciliation commission may be a way forward, granting amnesty for war crimes or torture would be contrary to international law. Any process that affirms and legitimises the heinous acts of perpetrators, as would an amnesty, would inevitably deny victims the

opportunity to be recognised and would reinforce their victimisation.

In order to ensure that secondary victimisation does not occur we should uphold victims' rights to a remedy and to reparation. Considering options to compliment the ICC, such as a truth commission, or local or national justice, we should:

- avoid processes that deny victims recognition of their status as victims;
- avoid processes that make a mockery of their suffering;
- avoid processes that are inhuman, disrespectful, overly time consuming, complicated or humiliating;
- avoid processes that confirm social stigmatisation and exclusion, particularly with respect to crimes of sexual violence.

Victims themselves need to be empowered to have their say as the interests of NGOs, community leaders, politicians or religious leaders are perhaps all legitimate voices in the debate, but none of these can ever represent the individual and very personal experience. None of these voices can ever express what exactly might begin to redress the harm done. ●

Bringing the Holocaust Reparations Experience to the ICC: Best Practice on Implementing Effective Reparations

On 1-2 March 2007 a Conference on Reparations was organised in the Peace Palace in The Hague by the Clemens Nathan Research Centre, in collaboration with REDRESS and with the support of the Carnegie Foundation of The Hague.

The Conference emphasis was not on 'whether' there is a right to reparation, as there is already ample evidence of the legal basis of the right to reparation, to be found in jurisprudence from national and international courts, the Rome Statute of the International Criminal Court, and reflected in the UN Basic Principles on the Right to a Remedy and Reparation. The Conference brought together expertise on the effective implementation of the right to reparation, exploring the practice of the Conference on Material Claims against Germany, governments, truth and reconciliation commissions and key judicial processes.

Useful best practice for effective implementation are drawn here from the conference presentations. It is useful to approach these in terms of procedural justice issue on the one hand and substantive justice on the other.

Procedural justice in obtaining reparations

Importance of Process

For victims, justice is an experience. It is as much about the way that they are treated, consulted and respected *procedurally* throughout the reparation process, as it is about the substantive remedy, material or otherwise, they may be granted as part of the end result. The handling of the process therefore plays an important role in ensuring that reparations will be accepted with satisfaction, even *owned* by victims, *empowering* them as survivors and reinstating their dignity, respect and their rightful place in society.

The process should be victim-led

To begin with, in attempting to determine appropriate reparations, the process must, as far as possible be victim-led. Every situation and set of victims will organically reveal different considerations, needs and requirements.

Consultation and outreach

- Far-reaching: Consultation and outreach will need to be far-reaching as widespread and systematic violations imply vast beneficiary groups to be redressed, with multiple layers of harm suffered by most victims.

- Appropriate cultural and socio-political approaches: Victims of mass violence are usually disenfranchised, dispossessed and difficult to reach. They may also mistrust outsiders and fearful for their security. There will be multiple cultural, ethnic socio-economic, gender and language barriers to overcome in ensuring effective consultations.

- Inclusive and empowering: Consultation and outreach are two-way processes. In addition to providing information, trust and confidence will need to be built. Inclusive and empowering processes are a valuable part of the reparative package as the process can restore a sense of significance, dignity and strength.

Accessibility

Access to information

Victims need to have a clear understanding of the process and need to remain informed of decisions that affect their interests. In the humanitarian context this will require mas-



Speakers share reparations experiences at the Conference. Speakers depicted here: Mariana Goetz, ICC Programme Adviser REDRESS; Shari Rieg, Deputy Master, Holocaust Victim Assets Litigation (Swiss Banks); Fiona McKay, Chief of the Victim Participation and Reparations Section of the ICC; and Yasmin Sooka, former member of the Human Rights Commission of South Af-

tery of local languages, dialects, access routes and security issues.

Application Forms

The nature and format of application forms will need to be accessible, sensitive and available in local languages. Applications that contain all the relevant information but do not use the form should be equally acceptable.

Social and Psychosocial Support

Victims may be put off applying because they may be psychologically unprepared to complete the form or retell their stories. Trained workers may be vital in providing support.

Time frames

Time limits on applying have proven to be the biggest bar to victims accessing reparations, so open ended or phased programmes may be needed, as appropriate.

Evidential Barriers

Potential beneficiaries may be put off or unable to apply if evidential thresholds are too high. Where medical records are deemed necessary but are unavailable, a special medical or psychosocial unit may be established to provide consultations and produce records.

Presumptions

Creative use of presumptions may assist in overcoming otherwise prohibitive evidential barriers. Presumptions of indigence, or presumption of certain crimes might be inferred from other key facts, such as refugee status

or residence in a certain place at a certain time.

Substantive aspects of reparations

Specificity of harm

If reparations address large classes of individual victims, the specific harm suffered by particular individuals should not get ignored in the group settlement.

Calculation of compensation

Calculation of loss can take into account widespread poverty as is done by the Inter-American Court. Loss is principally calculated on the present value of the victim's expected lifetime earnings, minus projected expenses, had he or she lived. Where victims were unemployed or employed in the informal sector, the Court presumes their income to have been equal to the minimum wage. However, in the context of complex civil wars which often involve conflict over land or other resources, awarding economic damages to one group may simply reignite violence and thwart possibilities of lasting peace.

Non-financial collective reparations

Collective reparations that provide satisfaction can be very powerful forms of redress for victims. The reparative impact of judicial remedies should not be overlooked. The Inter-American Court of Human Rights has for instance ensured publication of its judgments in newspapers and gazettes and ensured individual distribution to victims in local languages.

Collective reparations with financial implications:

In the humanitarian context, medical, psychosocial, educational or other reparations programmes should remain distinguishable from humanitarian, development or relief efforts. Programmes specifically designed to redress victimisation need to consider the views of victims and not necessarily their representatives views. Victims' perceptions differ greatly from community leaders' perceptions, who will be politically committed to ensuring inclusive programmes or peace building programmes as oppose to addressing the suffering of particular minority groups. Reaching and involving women victims is crucial given the particular social stigma and prevalence of sexual violence in violent conflicts. ●

For the full Conference Programme see: <http://www.redress.org>

For more about the Conference on Jewish Material Claims see: <http://www.claimscon.com>

For more on the Holocaust Victim Asset Litigation (Swiss Banks) see: <http://www.swissbankclaims.com>

Members' Activities in the Field: January to March 2007

Centre for Justice and Reconciliation continues with training for Faith-based Communities

In March 2007, the Centre for Justice and Reconciliation conducted a training and a workshop on Advancing Justice and Reconciliation in relation to the ICC in Uganda. The workshop was a follow up of a training held last year.



Left: Soroti training role play on different concepts of justice. CJR used a story on a Hare that ate the eggs of a Crocodile, hence the ears.

Right: Role play on the ICC's structure and proceedings.



Human Rights Watch Mission to Uganda – March 2007

Members of Human Rights Watch's International Justice Program went to Kampala and Northern Uganda to research the operations of the ICC. HRW is interested in understanding better how the Court's operations work, including Outreach and the facilitation of victims' participation in the Court's proceedings. <http://www.hrw.org>

Avocats Sans Frontières Continues its DRC Programmes

ASF continues its two year training programme for Congolese lawyers, with workshops currently taking place in Kinshasa, Goma and Lubumbashi. ASF also continues its programme to provide legal representation to both victims and defendants in domestic trials regarding international crimes, such as the trial concerning mass graves discovered in Bavi (Ituri) for which 14 FARDC soldiers were convicted. ASF has recently published a report on the impact of mobile courts in the DRC, available on its renewed website: <http://www.asf.be>

REDRESS Mission to Ituri District, Eastern Democratic Republic of Congo

REDRESS worked with LIPADHO, a DRC NGO with origins in Ituri. REDRESS sought to evaluate the issues facing victims in Ituri and also provide expertise on victims' rights at workshops, round table debates and conferences



Left: Training workshop on victims rights' with community based organisations in Mahagi territory (North East of Ituri District).

Right: Conference on the ICC and Victims Rights at the CUEB university in Bunia.



Federation International des Droits de l'Homme Report on Central African Republic (FIDH)

FIDH's report following its 2006 Mission to Central African Republic is now available in English: <http://www.fidh.org>

Reactions to Sudan Summonses

Officials of the Sudanese Government have more or less followed the same line as when the Darfur situation was first referred to the Court by the Security Council. The Government emphasised that Sudan was not a part of the ICC Rome Treaty and that the referral was a violation of its national sovereignty. There was also an indirect reaction, namely that the Sudanese justice system is quite capable and willing to deal with allegations itself, thus playing on the notion of complementarity.

After the Prosecutor's display of evidence against Mohamed Harun (Minister of Interior) and Ali Kayusheb (Leader of the Militia /Janjaweed) the Government's reaction has been somewhat different, it has down played the news, and has not made a big issue of it as in the past. In fact the President has said that only the Minister of Justice should respond publicly. The Minister repeated the same line as before, that Sudan is not a party to the Statute, etc. He also went on to say that there was an inquiry but that Harun is a free man. He was questioned and witnesses were called and it was decided that he had no case to answer. As for Kayusheb, he is in custody and will stand trial before the Special Court estab-

lished by Sudan.

Other political forces in Sudan mostly welcomed the news. The only major party to take a stand against the Court was the VUP (Democratic Unionist Party), which actually reflects the position of the party leader more than the rank and file of its members.

The question of victims has not come up at all in the public debate. There have not been any investigative journalists who have surveyed the views or interviewed victims, so there has not been any coverage from this perspective.

However, from those working on the ground with victims, there are two main themes that come up. The first is disappointment: they expected bigger names, they expected arrest warrants, they expected some enforcement body to actually carry out arrests. However, there are sceptics of this position – Harun is not such a small fish, and there is no reason why others will not come out now too. So, on the other hand there is the feeling that this is a historic step - it brings the Court to life both in Khartoum and in Darfur, especially because it has been some time since the Prosecutor started investigating in mid 2005.●

REDRESS is launching a Guide to the ICC for the Sudanese context in Spring '07



Reactions to Lubanga Confirmation in Bunia

On 30 January 2007 the Congolese organisation APRODIVI (Association for the Promotion and Dignity of Victims), which is also the focal point in Bunia of the Congolese Coalition on the ICC, met local human rights activists to exchange views on the confirmation of the charges against Thomas Lubanga. From Bunia they had all followed the confirmation judgement live on national television.

The general feeling was one of relief but also of concern about the lack charges brought other than child recruitment. Also the absence of other indictments against known high officials in Government or in the armed forces was quite worrying.

At the meeting, the plight of the victims was considered. It was also a time to recognise all those who had put their lives at risk in mobilising for human rights on the ground. Continued solidarity in confronting impunity with care was also needed, particularly in addressing insecurity for victims and local activists.

Another Congolese organisation LIPADHO (League for Peace and Human Rights), came out more directly. It criticised the Prosecutor for only pursuing child recruitment and criticised the Court for the time it had taken to simply confirm the charges.

LIPADHO made a list of recommendations to the Court, which included:

- Enlarging the scope to other grave crimes, which would imply promptness in investigating massacres, the burning of villages, sexual violence, slavery and torture;
- Promptly launching other arrest warrants for crimes committed in ITURI to ensure fairness;
- Fixing the start date for Lubanga's trial and rapidly constitute the Trial Chamber;
- Prioritising victims' rights by guaranteeing reparative justice, wide participation, protection for victims as well as intermediaries;
- To contribute to outreach for victims and affected populations.●

For the Press Releases of APROVIDI and LIPADHO see:
<http://www.vrwg.org/Publications/2.html>

Military Trial in Ituri quotes Rome Statute

On 20 February 2007, the Military Tribunal of the Garrison of Bunia handed down life sentences for war crimes against 4 soldiers of the Congolese Armed Forces (FARDC) for the assassination of two UN military observers in Mongbwalu in Ituri in 2003. Two others were sentenced to 20 and 10 years respectively. The decision reinforced the Rome Statute which is directly applicable in Congolese law.

During the same hearing, the Tribunal also found 13 soldiers guilty of having committed massacres of civilians in Bavi, (about 40km south of Bunia town) in August 2006 and sentenced them to life imprisonment. The massacres were committed by elements of the first Brigade integrated into government troops, which had often been cited as exemplary.●



Photos: Hearings at the open air court of the military tribunal in Bunia 5-7 February 2007 © E.Cermak

Working Group affiliated organisations:

Amnesty International ● Avocats Sans Frontières ● Centre for Justice and Reconciliation ● Coalition for the International Criminal Court ● European Law Student Association ● Fédération Internationale des Droits de l'Homme ● Human Rights First ● Human Rights Watch ● International Centre for Transitional Justice ● International Society for Traumatic Stress Studies ● Justitia et Pax ● Medical Foundation for the Care of Victims of Torture ● Parliamentarians for Global Action ● REDRESS ● Women's Initiatives for Gender Justice

For further information please contact:

Mariana Goetz - mariana@redress.org

THE REDRESS TRUST
3RD FLOOR, 87 VAUXHALL WALK
LONDON SE11 5HJ

TEL: +44 (0)207 793 1777 FAX: +44 (0)207 793 1719
www.vrwg.org

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