

ACCESSES

Victims' rights before the International Criminal Court

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Protection is at stake for the first Darfur victims

On 27 June 2006, five victims applied for participation in the situation in Darfur in a confidential procedure. On 23 May 2007, the Pre-Trial Chamber invited the Prosecutor and the Office of Public Counsel for the Defense (OPCD) to present their observations on these first requests.

To protect the victims, the Chamber ordered that no organ of the Court could contact the applicants directly. If necessary, contact should be made through their legal representatives or the Victims' Participation and Reparation Section (VPRS). Nevertheless, contrary to previous decisions from the Court, the Chamber transmitted full versions of the application forms to the Defence Office and the Office of the Prosecutor. These applications include the victims' full identity, current location and other details. Previously, the Court has always transmitted "redacted" or blackened out versions to the defense, as well to

the Prosecutor in certain circumstances, such as in the Uganda situation.

On 31 May, the legal representatives of the victims filed a motion highlighting that most of the victims had families in Darfur and that threats had been made against those assisting the ICC in Sudan. The Sudanese government is said to have warned that those assisting the ICC would suffer severe consequences. The legal representatives asked that the Prosecutor and the Defense respect the anonymity of the applications and to refer to the applicants by their application numbers only.

However, while the Chamber granted this request on 8 June, ordering that the victims only be referred to by their application number, the situation still remains unsatisfactory given that the Defence Office (OPCD) is mandated to assist the defence and could find itself in a conflict of interest if and when it comes

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to assist the Defence and has in its possession the full identity of victims seeking to participate in the proceedings.

The Chamber stressed that the Prosecutor and OPCD staff are bound by Staff Rules and Codes of Conduct, and are thus under strict confidentiality obligations. Nonetheless, when the stakes are as high both for the victims and for the future defence in such cases, staff rules and codes of Conduct may not be enough to make the participating victims feel safe. •

Rapes outnumber Killings in Central African Republic

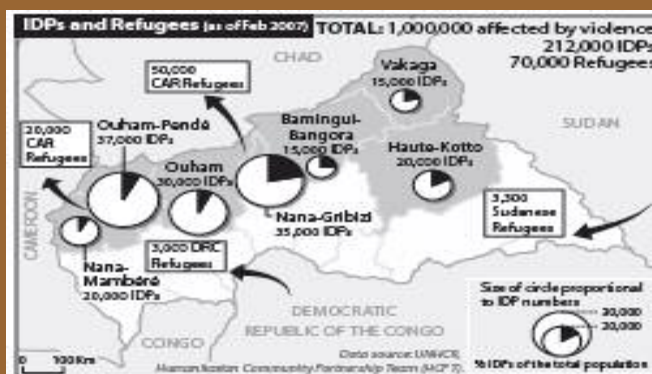
On 22 May 2007 the ICC Prosecutor announced the opening of an investigation in the Central African Republic (CAR). This announcement comes two and a half years after the government of CAR referred the situation to the ICC.

Massive crimes were committed by rebels against civilians following a failed coup in May 2001 against the then President Ange-Félix Patassé. Violence and particularly sexual violence peaked in 2002-3 until the government was finally overthrown staged by current President François Bozizé. Civilians were killed and raped; homes and stores were looted. It is said that rapes vastly outnumbered killings.

Once installed, Bozizé initially opened proceedings against former president Patassé and his accomplices including Jean-Pierre Bemba from neighbouring DRC. However, on 16 December 2004,

the CAR Court of Appeal ruled that the case fell into the jurisdiction of the ICC and that the CAR did not have the capacity to deal with it. As a result on 22 December 2004, the CAR government referred the situation to the ICC for investigation.

See article on CAR on page 6



- Estimated 282,000 forced to flee their homes due to insecurity, notably in country's northern regions.
- IDPs have fled to wilderness near their villages.
- Providing protection to civilians affected by violence is an urgent priority.
- IDP access to food and clean water is limited and likely to deteriorate in near future.

Sudan Laws Compound Trauma for Rape Victims

by Adrienne L. Fricke*



Photo credits © Aude LeGoff, Darfur 2006

unnecessary. Officials stated the - National Commission of Inquiry had already studied the problem, and the Government had responded with the establishment of Committees on Rape in Darfur.

Although the RI mission was designed to include research in both Khartoum and Nyala, my Sudanese colleague and I were denied permission to travel to Darfur. After a week of interviewing humanitarian workers, activists, attorneys and direct service providers in Khartoum, my colleague and I were told to discontinue our mission, and I was given twenty-four hours to leave the country.



Photo credits © Aude LeGoff, Darfur 2006

Rape is one of the most difficult crimes to document and prosecute in any setting. The physical and psychological healing required to recover from this violent crime is enormous, even where there is ready access to support services for victims. In Darfur, the challenges of accessing post-trauma care and bringing a rape claim through the Sudanese justice system are virtually insurmountable. For investigators, obtaining information about the ongoing sexual violence is increasingly difficult.

President Al-Bashir denies the existence of rape in Darfur

The high incidence of sexual violence in Darfur has been addressed by the media. The inadequacies of Sudan's laws, regulations, customs and courts for dealing with rape have received less scrutiny. Yet the response to rape cannot be improved until the laws are rewritten.

I recently led a mission in Sudan on behalf of Refugees International (RI) to address the impact of Sudan's laws on access to justice by rape victims. I was told by members of the Government of Sudan that such an assessment was both politically sensitive for the Government and

A rape claim could lead to prosecution of the victim because *zina* (illegal intercourse) is a crime that potentially carries the death penalty

In the course of our research, we spoke with Sudanese human rights workers dedicated to addressing the problem of rape in Darfur. These brave men and women continue to fight for the rights of victims in Darfur, often at risk to their own safety. They provided us with important insights into the difficulties facing those who provide direct services to survivors of rape in Darfur.

As recently as 19 March 2007, Sudanese President Omar Al-Bashir denied the existence of rape in Darfur. While Sudan denies rape, Sudanese laws deny justice to rape victims, and in fact expose victims to potential punishment. Article 149 of the Sudanese Criminal Code of 1994 defines rape: the first element is illegal intercourse (between a man and a woman who are not married to one another); the second element is lack of consent.

Because illegal intercourse, or *zina*, is a crime prescribed in the Qur'an that carries the potential for the death penalty in some circumstances, the evidentiary requirements are very high. In fact, Article 62 of the Evidence Law of 1994

requires the testimony of four competent male witnesses to establish a lack of consent. Therefore, in a court of law, it is almost impossible for raped women to prove their unwillingness to engage in intercourse, despite relevant circumstantial evidence of sexual assault.

The consequences of a woman's inability to prove she did not consent place her at grave risk of being charged with the crime of *zina*, since, in bringing such a rape claim, a woman confesses to illegal sexual activity. Unmarried women convicted of *zina* receive one hundred lashes and married women are sentenced to death by stoning. In February and March of 2007, two women were sentenced to death by stoning for committing adultery.

Prosecution of rape is often functionally impossible because Sudan grants immunity to individuals with government affiliations. Legal action cannot be taken against members of the military, security services, police, and border guards unless immunity may only be lifted by the individual's superior officer, which almost never happens. Many Janjaweed are integrated into the Popular Defense Forces, whose members also enjoy this kind of immunity.

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In the climate of fear and suspicion that prevails in Darfur, many survivors do not access medical, legal, and psychosocial services offered by legitimate national and international non-governmental organisations (NGOs). The Government of Sudan closely regulates NGOs through the Humanitarian Aid Commission and uses rules related to their staffing and operation to infiltrate otherwise independent organisations. Many victims are deeply suspicious of such organisations and therefore, are reluctant to report rapes or pursue legal remedies through them. Survivors' hesitancy is accentuated by the regime's creation of pseudo-

NGOs that outwardly appear committed to human rights but in actuality are fronts for the Government. Further, NGO workers are often subject to threats and intimidation, ranging from menacing phone calls to physical assault.

The Sudanese Government must change the definition of rape to conform to international standards. Islamic law does not require rape to be defined as zina, and other Islamic countries have chosen to amend rape laws that punish women for bringing claims. In the meantime, Sudan must not impede the vital work of international and national non-governmental organisations and human rights investigators. •



To download a copy of the Report in English or Arabic, visit:
<http://www.refugeesinternational.org/content/publication/detail/10070>

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Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation

21 March 2007



At the International Meeting on Women's and Girls' Right to a Remedy and Reparation, held in Nairobi from 19 to 21 March 2007, women's rights advocates and activists, as well as survivors of sexual violence in situations of conflict, from Africa, Asia, Europe, Central, North and South America, issued a Declaration highlighting specific principles relating to Girls's and Women's rights to a remedy and reparation.

With respect to access to reparation, the participants proclaimed that:

In order to achieve reparation measures sensitive to gender, age, cultural diversity and human rights, decision-making about

reparation must include victims as full participants, while ensuring just representation of women and girls in all their diversity. Governments and other actors must ensure that women and girls are adequately informed of their rights.

Full participation of women and girls victims should be guaranteed in every stage of the reparation process, i.e. design, implementation, evaluation, and decision-making.

With respect to development and reparations programmes, the participants stated that:

Governments should not undertake development instead of reparation. All

post-conflict societies need both reconstruction and development, of which reparation programmes are an integral part. Victims, especially women and girls, face particular obstacles in seizing the opportunities provided by development, thus risking their continued exclusion. In reparation, reconstruction, and development programmes, affirmative action measures are necessary to respond to the needs and experiences of women and girls victims.

The participants also proclaimed that:

Just, effective and prompt reparation measures should be proportional to the gravity of the crimes, violations and harm suffered. In the case of victims of sexual violence and other gender-based crimes, governments should take into account the multi-dimensional and long-term consequences of these crimes to women and girls, their families and their communities, requiring specialized, integrated, and multidisciplinary approaches.

Furthermore, women's ability to come forward was raised as follows:

Reparation processes must allow women and girls to come forward when they are ready. They should not be excluded if they fail to do so within a prescribed time period. Support structures are needed to assist women and girls in the process of speaking out and claiming reparation. •

The full text of the Declaration can be found on the website of Rights and Democracy: <http://www.dd-rd.ca/>

Interview with André Laperrière, the new Executive Director of the Victims' Trust Fund

1. Mr Laperrière, you joined the ICC at the end of January 2007. Tell us a little about your previous experiences. How do these relate to the work of the ICC's Trust Fund for Victims?

While I am originally from Canada, for the last 25 years I have been working overseas. The first half of this time I worked in the private sector and the second half was in the UN context. I have been in charge of large humanitarian programmes in emergency situations, which have in general been natural disasters, conflict or post conflict situations, serving in Iraq, Ethiopia, Guinea, Gabon and Haiti.

Through these assignments I acquired knowledge and experience assisting victims in rebuilding their physical and psychological strength, as well as in the reconstruction of their social, economic and physical environment; for instance, when I was responsible for the UNICEF portion of the Oil for Food Programme in Northern Iraq I gained extensive experience in the use of large trust funds aimed at providing immediate assistance to war victims, leading major initiatives in the areas of water and sanitation, health and nutrition, education and protection.

Beyond field/programme experience, I have also held senior management positions such as the Director of the Administration and Finance Division at the World Health Organisation (WHO), Copenhagen, Denmark.



André Laperrière listening to concerns in an IDP (Internally Displaced Peoples) camp in Northern Uganda.

On the personal side, I have been interacting with victims for quite a long time now. Having the opportunity to play a significant role in improving the lives of these innocent people, to help them regain their pride, dignity and hope in the future, is the best job I could think of. This is why I joined the Trust Fund for Victims.

2. Mr Laperrière, can you tell us what you see as the most immediate challenges for the Trust Fund?

There are many challenges so perhaps I can list a few:

Challenge No. 1 is Advocacy. Our first challenge is to change the perception of the Western World from seeing victims as hopeless dependents, into their true nature as fully fledged citizens wanting to contribute to their community and country. Victims are and deserve to be considered as partners, which deserve our respect and support. We also have an advocacy role to play with the victims themselves, for them to come out of the guilt and shame that has been imposed on them by evil perpetrators. We have to show them that they are not alone, and that they have nothing to be ashamed of; on the contrary, they have to be proud to have been able to manage despite the atrocities they had to face.

In a nutshell, the message of the Trust Fund to all is a message of trust and support towards the restoration of dignity and hope in the future.

Challenge No. 2 is about identifying partners; mobilising the most talented, capable and motivated partners that are ready to join the Trust Fund in its partnership with victims in their communities.

Challenge No. 3 is to build Donor support. We need to make sure that the reality of the victims is fully known to the potential donors. Victims are typically affected by a combination of factors that in turn, require a combination of response elements, which have to be implemented in a holistic manner, failing which the victims will not be able to regain complete control of their socio-economic environment and hence get out of dependency status.

The Trust Fund will implement multifaceted interventions designed with and implemented jointly by the Trust Fund Experts and partners on one hand, and with the victims themselves on the other. This unique partnership ensures the most suitable form of assistance, while providing empowerment, self-assurance and giving dignity back to the victims.

3. The Trust Fund will implement reparations awards to victims. It can also assist victims before there is a conviction. Could this be perceived as pre-judging cases given the primary role of the Fund?

As part of its mandate, the Trust Fund may indeed assist victims if its Board of Directors evaluates there is a need.

This type of assistance is exclusively based on the evaluation of the needs of a group of individuals and is not based on the identity of the possible perpetrator(s). This is precisely why the Trust Fund structure is totally independent from the Court (it is an independent secretariat). The Trust Fund does not act in relation to prosecutions or suspects and has no involvement or role to play in legal proceedings. The Trust Fund's exclusive interest is in helping victims, irrespective of who may have committed the crime. Therefore there is no prejudice for or against anyone who could be in front of the Court as the two are not at all related.

Now, in order to ensure that the presumption of innocence for the accused is protected, that the legal proceedings can take place without interference, and that at the same time victims in the most urgent need of assistance are helped, the Trust Fund will inform the Court of its intent to assist a group of victims. [And the Court will decide].*

For example: a village may have been attacked by an armed group which contaminated the only source of drinking water. Obviously unless someone helps, the villagers will be gravely affected if they are left with no other option but to drink the contaminated water until an eventual trial comes to a conclusion (with the additional possibility that there could be no conviction at the end).

In a case like this the Trust Fund could very well mobilise a Water and Sanitation partner to install a new water source (or de-contaminate the existing one), failing which the Trust Fund could do it directly. As you can see in this example, giving back safe water to the villagers does not cause prejudice against anyone but simply acknowledges an urgent need for assistance to victims, and acts on it.

4. We have heard that you have visited Congo and Uganda recently, and that you have openly been welcoming project proposals. What are the criteria for selecting projects and will these be made public?

We are currently updating the Trust Fund for Victims website (<http://www.icc-cpi.int/vtf.htm>) . The new website will include information and updates about the work done by the Trust Fund, but also provide tools for potential partners, tools that they can use to submit either project proposals or contributions to the Fund.

As for the criteria for assistance projects, they must:

- Target victims within the jurisdiction of the Court;
- Clearly describe the harm suffered by the victims and spell out their immediate; uncovered needs (physical, psychological, material, etc.);
- The benefits arising from the projects should be self sustainable;
- The project should be non discriminatory against any group, gender, etc.

A more detailed list of the criteria used by the Trust Fund to accept and/or prioritise projects will be posted shortly on our website. In the regions where Internet is not readily available we intend to count heavily on our local partners to help us disseminate the project proposal forms and help us explain the procedures for those interested to join.

In addition to receiving project proposals I must add that the Fund is initiating a number of projects in areas where needs have been identified. These TF initiated projects are being carried out either directly by the fund, or in association with partners mobilised by the Fund.



André Laperrière in an IDP (Internally Displaced Peoples) camp in Northern Uganda. There are an estimated 1.8 million IDPs living in camps in Northern Uganda

Therefore the Trust Fund is not only interested in receiving project proposals per se, but also expressions of needs from unassisted victims, as well as from humanitarian organisations that would be ready to offer their contributions to Trust Fund projects.

5. The fund has some 2.6 million euros in it. What are your thoughts on fundraising and raising the profile of the fund?

As the Trust Fund works directly at the grass roots with victims and local partners (sometimes supported technically from international experts or organisations), we believe to have a highly cost efficient mode of operation.

Despite this, the needs are so immense that we wish to significantly increase the funds available to help the victims through Trust Fund projects.

Our two main objectives are respectively to double the 2.6 million € currently available in the Trust Fund revolving fund to 5 million €, and to keep on replenishing this fund to the value of a total of 50 million € over the next three years. We believe that this is the amount that is needed to take care of the most immediate needs of the victims in the Congo and Uganda during this period, amounts that should allow for giving back a normal life to thousands of victims in these two countries.

With these funds we do not intend to rebuild cities or give individual monetary awards. We intend to pursue our strategy of providing the initial inputs to the communities , restarting the heartbeat that will

allow them to rebuild, find peace, reconciliation, hope and dignity with and within themselves.

To reach these funding objectives we will of course intensify our contacts with Member States but also include greater efforts with Foundations, private sector and individual donors.

6. As regards the implementation of reparations awards after a conviction, how will you make sure that the projects recognise the different levels of harm suffered, one person may have lost their cattle, another may have been raped as well. How will the reparations “repair” the individual and specific victims’ suffering?

If the reparations arise from a direct Court order, it is possible (but unlikely) that individual reparations be specified, taking in consideration the individual prejudice suffered by the victims. However in most cases the Trust Fund works directly with the communities, the groups of victims and discusses with them the prejudice suffered by all and the overall plan needed to get the group back on its feet. One should not under-estimate the maturity and wisdom found through these discussions, in which I have always found an understanding and natural support for the most vulnerable and most affected by the crimes. ●

*Note added by the editor.

Central African Republic: Victims will finally get ICC investigation

By Mariana Pena, FIDH

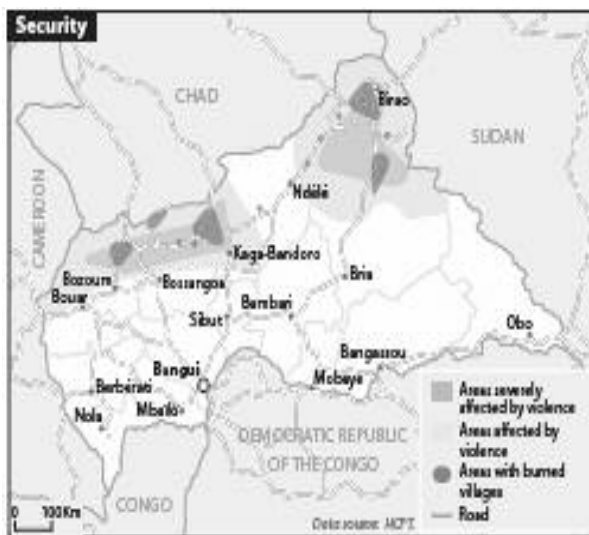
Victims in the Central African Republic (CAR) felt forgotten. They waited two and a half years to see the ICC Prosecutor take up an investigation. The situation had been referred to the ICC by their own government in 2004. "Victory" finally came on 22 May 2007, when the Prosecutor announced an investigation into crimes that have been brought to his attention repeatedly since February 2003.

The Prosecutor noted that "a peak of violence and criminality occurred in 2002-3". What happened during this period? On 25 October 2002, army General François Bozizé attempted to overthrow President Ange-Félix Patassé. In order to counter the attack by Bozizé's rebels, Patassé recruited foreign mercenaries. He called on troops headed by Abdoulaye Miskine (Chad) and Jean-Pierre Bemba (Democratic Republic of Congo). During the attempted coup, both the rebels and the loyalists committed atrocities against civilians, mainly in and around the capital Bangui.

Bozizé's attempted coup in 2002 failed and some troops withdrew to the interior of the country where they continued to commit atrocities. Bozizé attempted a second coup on 23 March 2003, this time he successfully seized power and became the new president. Further atrocities were committed around this date.

During the 2002-3 conflict, rape was used as an authentic weapon of war not only against women but also against children and men, and in particular against community leaders. Other types of sexual violence, such as sexual slavery and forced pregnancy have also been reported. However, even though the magnitude, extent and circumstances of the sexual violence are shocking, these are not the only crimes. Other serious crimes, including killings and looting are also alleged.

Perpetrators have enjoyed complete impunity in CAR. There have not been any investigations into the atrocities committed by Bozizé's troops. As for Patassé and his allies, an investigation was opened by CAR. However, the *Cour de Cassation* held in a decision of April 2006 that Central African courts did not have the capacity to investigate and prosecute such



- Security environment has deteriorated steadily in 2006, especially in north-east and north-west.
- Security threats include armed insurgents in north, highway banditry throughout the country and urban crimes in Bangui.
- Spread of light weapons, ranging from domestic hunting rifles to light-calibre military weapons.
- Civilians caught in recurrent rounds of violence. At least 100 villages burnt in the last months.

large-scale crimes and explicitly referred the situation to the ICC.¹

A unique and remarkable aspect of the situation in CAR is the solidarity among victims, who have coped with isolation, stigma and distress, organising themselves to help each other². Discrimination by their own communities has brought together victims from all over the country: from different ethnic groups and religions. These victims have been awaiting justice for over four years and their latest hope is the ICC: "Finally those responsible for the harm we suffered will be prosecuted and punished", they cried out on 22 May 2007. Victims now call for an investigation which looks at all parties to the conflict.

People in CAR consider that the opening of an investigation signals that time for accountability has come. They hope that the ICC investigation will contribute to the deterrence of current crimes in the north. Violence in that region has been widespread since the end of 2005, when fighting between rebels and the CAR Army intensified. As a result, displacement has increased and the humanitarian situation has deteriorated dramatically.

The Prosecutor has indicated that ongoing crimes will continue to be monitored and analysed.

The opening of an investigation in the CAR poses new challenges for the ICC. The inexplicable delay of the Office of the Prosecutor³ might have caused significant

loss of evidence. Additionally, some regions, in particular the northern areas, are very difficult to access. Protection of

victims, witnesses and the Court's investigators will also be a big challenge in a context where victims and former criminals live side by side. With only 600,000 inhabitants in its capital city Bangui, everyone knows each other. Finally, the opening of the investigation has brought huge expectations as well as misunderstandings. Launching a massive outreach campaign is thus imperative.●

1. For more information on the CAR, the referral and the different stages of the preliminary analysis by the Prosecutor, see FIDH site on the CAR: http://www.fidh.org/rubrique.php3?id_rubrique=60
2. FIDH Report, CAR: Forgotten, stigmatised: the double suffering of victims of international crimes, October 2006, http://www.fidh.org/article.php3?id_article=3707
3. Karine Bonneau, Forgotten, stigmatised: double victimisation in Central African Republic, Access, issue 7.

FIDH has recently produced a guide on Victims' Rights before the ICC for the benefit of victims, their legal representatives and NGOs. The guide has been published in English and will soon be available in French and Spanish. See: <http://www.fidh.org/article.php3?article=4208>



Sudan Victim Lawyers recount their experiences with the ICC so far

Interview with Attorneys Raymond M. Brown and Wanda M. Akin Brown

How did you come to represent victims from Darfur before the ICC?

We have been interested in international criminal justice for some time. We represented Morris Kallon before the Special Court for Sierra Leone and we jointly teach International Criminal Law at the John C. Whitehead School of Diplomacy and International Relations at Seton Hall University in New Jersey. After one of our lectures, some Diplomacy and International Relations students who had contacts with recently arrived refugees through the Darfur Rehabilitation Project, a U.S. based Darfuran NGO, made contact with us. They asked us if we might be interested in meeting with members of the Sudanese Diaspora to provide information on the International Criminal Court. This is how we came into contact with Darfurians that were interested in the ICC here in the United States.

What are the main challenges you face in representing Darfuran victims?

We initially filed 5 applications in June 2006. We were surprised at how difficult it turned out to be from a practical point of view. The main challenges were in obtaining supporting documents and of-course in dealing with the language barrier. Entire days are spent translating and processing sessions with our clients. There is a massive resource drain even with the use of electronic technologies.

After the first 5 applications, we subsequently filed another 16. All the applications are still pending before the Court and the delay is difficult to explain to our clients. It will soon be a year since we filed the first 5. Moreover, we are not totally satisfied that we will be successful. Based on previous decisions of the Court and observations made by the OTP and OPCD in the Uganda and DRC situations, we are not sure how the Court will determine which victims will be granted rights to participate in the Darfur situation or case.

What selection criteria have you used to determine which victims to represent?

The selection criteria has evolved with the jurisprudence at the Court. When we started working on this there was no juris-

prudence at all. Now there are some decisions which outline the difference between participation in the situation and participation in a case. The process of selection will also evolve as the cases move from one phase to the next. Victims want to participate in cases.

For successful participation the victims' personal interest must have been affected in a particular case. It is not clear what constitutes "personal interest" under article 68(3) of the Rome Statute. Imagine raids on villages: thousands upon thousands of individuals' personal interests are affected. If you select between 5 and 100 victims, how can you forecast that these incidents will match the prosecutors? Our contacts with the investigative arm of the Prosecutor's office have not been particularly fruitful as yet.



Raymond M. Brown and Wanda M. Akin Brown before the Special Court, Freetown, Sierra Leone.

Do you see major impediments to effective victims' participation before the ICC?

Yes, there are a number of serious barriers that need to be addressed.

First there is the issue of legal assistance. Pre-Trial Chamber II, has ruled out the possibility of obtaining legal assistance during the application phase. It has also ruled that there is no unconditional right to legal assistance. It is a conundrum how victims will have access. The mention of providing 'incentives' to victims to be represented by a common legal representative in the recent Uganda ruling also raises issues given the numerous conflicts of

interests that exist. We have found conflicts of interest amongst victims in the Diaspora, let alone conflicts between those in the US and those still in Darfur.

It would appear that this jurisprudence is the beginning of limiting the role of victims.

This brings us to the question of access generally. The impression we have is that the Court's perception of victims is affected by finances, and here perhaps we need to address the ASP. The Court is generally fearful of large numbers of victims. In Darfur there could potentially be millions of victims, but they are fearful of even a moderate amounts of applicants.

As a result there is a failure to provide adequate resources to effectively enable victims to exercise their rights before the Court. The Prosecutor's approach is having a detrimental impact on victims' participation, because the OTP has formally and informally been resistant to victim participation. There is a huge disparity between the resources that have been put forward to support victim participation compared to the size of the interested group. We are not saying that the Court has to fill that gap alone but it certainly needs to be addressed. The Registry has called on its NGO "partners" to help fill the resource gap.

What do you see as the way forward in supporting victims' rights before the ICC given the difficulties that you outlined?

We would like to have discussions with NGO groups about how to contribute to filling the gap mentioned above; how to join forces in supporting the application process. Some areas for discussion include:

1. effective coordination of exiled refugee groups
2. identification, training and protection of intermediaries
3. training of young local lawyers to support cases
4. addressing the needs of intermediaries
5. addressing the fear of large numbers of victims

While the court has a key role to play in enabling effective victim participation, NGOs also have a key role to play, and we would like to work with NGOs more closely in this respect. •

Traditional Practices are not a viable alternative to the ICC

A commentary on the Juba Peace Agreement for Northern Uganda by
John Francis Onyango, and Stephen Arthur Lamony¹

On 30 June, the Government of Uganda (GoU) and the Lord's Resistance Army (LRA) adopted an Agreement on Accountability and Reconciliation. At first glance, the Agreement lays out a wide spectrum of 'transitional justice' measures, including criminal investigations, the participation of victims in criminal proceedings, traditional justice mechanisms, truth-seeking, reconciliation, rehabilitation of offenders and reparation. However, the Agreement fails to reconcile how these provisions sit together, how they will be implemented in practice and most importantly, how they will impact victims' rights.

Will there be Justice for All?

Criminal proceedings are envisaged against those 'who are alleged to bear particular responsibility for the most serious crimes.' While the investigation and prosecution of those responsible for the crimes that have been committed in Uganda is to be welcomed, many challenges within Ugandan law and practice will have to be overcome before this is a possibility. In particular, legislation will have to be introduced which recognises the seriousness of the crimes committed. This will mean specifically incorporating crimes against humanity, war crimes, genocide and torture into Ugandan law. The Amnesty Act 2001 would also have to be amended so that it is clear that amnesty does not apply to this level of crimes. Investigations and prosecutions would also have to be conducted across the board. Unlike earlier drafts, the specific recognition of allegations against the Ugandan People's Defence Force (UPDF) has been removed. Yet, one issue that unites all victims of the northern Ugandan conflict is their sense of victimization as a result of the GoU's actions which include forced displacement and allegations of torture, killings of civilians and numerous other crimes.

What are 'Alternative' Justice Processes and Can They Really Be Used?

On 'alternative' and 'traditional' justice processes, the Agreement fails to recognise the range and diversity between the rituals of

different communities in northern Uganda. The Agreement does not explain how a ritual will be selected, whether the rituals will run in tandem and who will be subject to which ritual. For example, a comparison between *mato oput* and *culo kwor* illustrates the stark contrast between different rituals. *Mato oput* consists of a series of reconciliatory rituals specific to the Acholi tradition and is based on honesty and a willingness to admit responsibility. Other than a half-hearted apology by Vincent Otti, none of the other LRA commanders have expressed any remorse over what they have done. What is important to note about *mato oput* is that it not conceived as a 'justice' mechanism and has never been used to deal with large-scale crimes or crimes between different clans (bearing in mind the range of clans represented in both the LRA and the UPDF). In addition, in UCICC's experience, quite a number of victims – including from the Acholi region – have said that they do not want to forgive the LRA or the UPDF for what they have done; rather they want them to be held to account. At the other end of the spectrum, rituals such as *culo kwor* do not comport with victim's rights and human rights standards. *Culo kwor* traditionally refers to compensation for the spilling of blood, for example as the result of a murder. Traditionally, compensation would take the form of the giving of a girl to the family of the victim. She would then bear a child to replace the one that was lost.

Under the system, the clan or relatives of the offender must compensate the victim(s). There are tens of thousands of persons who can legitimately claim to be victims of LRA brutality. Again, neither the rebels nor their clans seem to have the capacity to compensate these victims. In fact, many of the former rebels have been rejected by their relatives and it is very likely that such relatives will be reluctant to pay any compensation to the victims on behalf of the rebels.

Beyond the substantive differences, the use of the rituals also presuppose a traditional family and clan environment, which given the extensive internal displacement and ongoing conflict, does not currently exist. How can the horrendous crimes such as mass murders, kidnapping, rape, mutilations, forced recruitment and sexual slavery be subject to traditional solutions when all

the parameters of the traditional context have been destroyed due to the very crimes in question? Many of the rituals were performed on ancestral land, which is not inhabited at present by the groups concerned. Particularly in relation to children and youth, it is questionable whether the rituals carry meaning and whether they have respect for them and the elders who implement them. Moreover, although the Agreement refers to wide scale consultations, the GoU and the LRA appear to have already determined that alternative justice mechanisms are the appropriate response to the conflict. Why should victims in northern Uganda not be entitled to formal reparation processes? They are no more 'traditional' than victims in southern Uganda so should not be discriminated against.

Where are the LRA's Obligations?

In contrast to the very specific obligations and undertakings on the part of the GoU, the agreement vaguely directs the LRA to 'assume obligations and enjoy rights pursuant to this Agreement' and 'actively promote' its principles. Nowhere does the Agreement require specific measures to be undertaken by the LRA, such as the release of victims. We must all not forget that the primary interest of the LRA is not to be held accountable before any court or justice mechanism.

Can the GoU Really Pay for All of the Accountability and Reconciliation Mechanisms?

Finally, the Agreement vests the GoU with the responsibility to 'adopt an appropriate policy framework' to implement the Agreement as well as provide the resources for the accountability and reconciliation mechanisms and legal representation for 'individuals facing serious criminal charges or allegations of serious human rights violations' and for victims participating in proceedings, unless they are capable of meeting their legal costs.

¹John Francis Onyango is the Project Assistant of the Uganda Coalition for the International Criminal Court and Stephen Arthur Lamony is the National Coordinator of the same Organisation.

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

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